

Wabash College Moot Court Competition  
Fall 2024 Participant's Guide

Preliminary rounds of the Competition will be on Saturday, October 19. Participants should report to Baxter Hall no later than 8:30 A.M. (breakfast is available at 8:00); room assignments will be available outside of Baxter 101. The First Round will begin at 9:00 A.M., and the Second Round will begin at 11:00 A.M. (followed by lunch at noon). Each two-member team will argue in two rounds, once for Petitioners and once for Respondents. **To participate in this competition, you must sign up on the Microsoft form at this QR code:**



If you have problems signing up, please contact Dr. Jeff Drury ([druryj@wabash.edu](mailto:druryj@wabash.edu)).

**I. THE PARTIES:**

<i>Party</i>	<i>Name before Trial Court</i>	<i>Result in Trial Court</i>	<i>Name in the Court of Appeals</i>	<i>Result in the Court of Appeals</i>	<i>Name in the Supreme Court</i>
T. OAK, et al.	Plaintiffs	<b>Won</b>	Plaintiffs-Appellees	<b>Lost</b>	Petitioners
WILLIAM ELM, ATTORNEY GENERAL, STATE OF RED, in his official capacity, et al.  (collectively "Red" or "Red State")	Defendants	<b>Lost</b>	Defendants-Appellants	<b>Won</b>	Respondents

**II. THE PROBLEM:**

- A. Red State enacted Senate Bill 1, the Prohibition on Medical Procedures Performed on Minors Related to Sexual Identity ("the Act"), to ban certain medical treatments for minors with gender dysphoria.

Under the Act, a healthcare provider may not "administer or offer to administer" "a medical procedure" to a minor "for the purpose of" either " [e]nabling a minor to identify with, or live as, a purported identity inconsistent with the minor's sex" or "[t]reating purported discomfort or distress from a discordance between the minor's sex and asserted identity." Prohibited medical procedures include "[s]urgically removing, modifying, altering, or entering into tissues, cavities, or organs" and "[p]rescribing, administering, or dispensing any puberty blocker or hormone." The Act does not restrict these procedures for persons 18 and over.

The Act contains two exceptions. It permits the use of puberty blockers and hormones to treat congenital conditions, precocious puberty, disease, or physical injury. And it has a continuing care exception, which permits healthcare providers to continue administering – for a limited period of time – a long-term treatment, say hormone therapy, that began before the Act's effective date.

The Act authorizes the Red Attorney General to enforce these prohibitions. It permits the relevant state regulatory authorities to impose "professional discipline" on healthcare providers that violate the Act. It creates a private right of action, enabling an injured minor or nonconsenting parent to sue a healthcare provider for violating the law. And it extends the statute of limitations for filing such lawsuits to 30 years after the minor reaches 18.

Petitioners are transgender adolescents T. Oak, John Doe, and Ryan Roe; and their parents Samantha and Brian Oak, Jane and James Doe, and Rebecca Roe. All Minor Petitioners were undergoing gender-affirming care when Red's statute took effect. All have benefitted from their care.

Petitioners sued Red State Officials, seeking to enjoin enforcement of the Act, arguing that it is unconstitutional under the Fourteenth Amendment to the U.S. Constitution. Specifically, they claimed that the Act violates the Equal Protection Clause because it discriminates based on sex and gender conformity and violates the Due Process Clause because it denies parents the fundamental right to make medical decisions for their children. The district court preliminarily enjoined enforcement of the Act.

The State appealed to the 14th Circuit, arguing the Act doesn't violate the Fourteenth Amendment. It asserted that the Act does not violate the Equal Protection Clause because it does not classify anyone on the basis of sex – *no minor* may receive puberty blockers or hormones or surgery to transition from one sex to another. According to Red, the Act also passes muster under the Due Process Clause because the U.S. does not have a "deeply rooted" tradition of preventing governments from regulating the medical profession in general or certain treatments in particular, whether for adults or their children. The 14th Circuit ruled in favor of the State of Red.

In this Court, Petitioners make the same arguments they made below, asking the U.S. Supreme Court to declare the Act unconstitutional and allow transgender youth to continue to receive puberty blockers and hormone therapy. The Supreme Court has granted the petition for certiorari and set the case for oral argument.

**B.** The case is to be decided on the merits. The issue as stated in the petition for certiorari is:

Whether Red State Senate Bill 1 ("the Act"), 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," Red Code Ann. § 68-33-103(a)(1), (1) violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, or (2) violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

### **III. DIVISION OF THE ARGUMENT:**

**A. Petitioners (Transgender Adolescents and their Parents):** The Court of Appeals is wrong and should be reversed.

**1. First Petitioner's counsel:** The Act violates the Constitution's Equal Protection Clause and requires the Court to apply heightened "intermediate scrutiny" to decide this case. That is because the Act classifies on the basis of sex on its face. Specifically, the Act treats differently a

person identified as male at birth for traits and actions it tolerates in a person identified as female at birth. For example, a person identified as male at birth could receive testosterone therapy to conform to a male identity, but a person identified as female at birth could not. That the Act prevents minors of both sexes from receiving gender affirming care is no defense because the Act still classifies on the basis of sex. In short, as the U.S. Supreme Court explained in *Bostock v. Clayton County*, it is impossible to discriminate against a person for being gay or trans without discriminating against that person based on sex. \_\_\_ U.S. \_\_\_, 140 S. Ct. 1731(2020).

A classification based on sex must satisfy heightened “intermediate scrutiny.” It must serve important government objectives, and the discriminatory means employed must be substantially related to those objectives. The state must also demonstrate an exceedingly persuasive justification for the classification; it cannot be based on assumptions about the proper roles of men and women. The Act fails this test. The Act proclaims Red’s “interest in encouraging minors to appreciate their sex, particularly as they undergo puberty.” Thus, the Act reveals its true purpose is to force boys and girls to look and live like boys and girls. In addition, the evidence establishes that gender affirming care works. It reduces rates of depression, anxiety, and suicide, which trans adolescents suffer at disproportionately higher rates. And it is not experimental: while it has evolved over time, gender affirming care has been prescribed for years, and all major medical associations agree it is appropriate care for trans and gender dysphoric youth. Even if this Court applied lower, “rational basis” scrutiny, the Act would still be unconstitutional because it allows minors to use puberty blockers and hormones for some purposes but not for gender transition.

2. **Second Petitioner’s counsel:** The Due Process Clause requires the Court to apply its highest level of scrutiny, strict scrutiny, when government violates fundamental rights. Fundamental rights are those which are deeply rooted in our nation’s history and tradition. The Supreme Court has long recognized that parents have a fundamental right to direct the care and upbringing of their children. This fundamental right includes the high duty of parents to recognize symptoms of illness and seek and follow medical advice. The Act violates this fundamental right. While a state can control parental discretion where their children’s health is jeopardized, it may not supplant parents merely because the decision involves risks. The Act violates parents’ Due Process rights by prohibiting parents from deciding whether treatment available to adults is also appropriate for their children. The Act also fails the “strict scrutiny” test. Strict scrutiny requires a higher level of proof than intermediate scrutiny. Strict scrutiny requires that the infringement must be narrowly tailored to advance a compelling state interest. Because the Act fails lower level “intermediate scrutiny” as demonstrated under the Equal Protection argument, it also fails strict scrutiny.

**B. Respondents (The State of Red):** The Court of Appeals opinion is right and should be affirmed.

1. **First Respondent’s counsel:** The Act does not discriminate on the basis of sex. Therefore, it does not violate the Equal Protection Clause or require heightened “intermediate scrutiny.” The Act does not discriminate based on sex because, no matter how they were identified at birth, the Act bans all minors from receiving puberty blockers, hormones, or surgery to transition to the other sex. Also, statutes like the Act which regulate medical procedures only one sex can undergo ordinarily cannot discriminate on the basis of sex. While the Supreme Court struck down laws conditioning marriage based on sex, it neither required heightened scrutiny nor suggested that sexual orientation discrimination is just another form of sex discrimination. In addition, the *Bostock* case dealt only with employment issues, and it used Title VII standards which differ from those applied under the Equal Protection Clause.

Because the Act does not discriminate on the basis of sex, the Court should apply lower-level rational basis scrutiny test rather than heightened intermediate scrutiny. The Act passes the rational basis test. It is rational for Red State to conclude that treating congenital conditions with puberty blockers and hormones carries less risk than using these drugs to treat gender dysphoria for the purpose of changing an individual's secondary sex characteristics, a potentially irreversible treatment. Indeed, Red's caution is appropriate given the developing, in truth still experimental, nature of these treatments on children and the debate among experts who submitted conflicting evidence to the court about how best to balance the treatments' risks and benefits.

2. **Second Respondent's counsel:** The Act neither violates the Due Process Clause nor requires the Court to apply strict scrutiny. That is because there is no deeply rooted tradition of preventing governments from regulating the medical treatments of adults or their children. To the contrary, state and federal governments have long regulated health, welfare, and the medical profession, including limiting parental freedom. This is especially true in areas where states are engaged in serious thoughtful debate about matters of medical and scientific uncertainty like gender transition treatment for minors. This debate is not yet resolved. Indeed, the same European countries that pioneered these gender transition treatments now express caution about them and have pulled back on their use. And the states are currently debating the issue: 20 states have recently passed laws like Red's Act. Democratic branches like Congress and the state legislatures are better suited to balance uncertain risks and benefits of medical technology. Neither parents nor medical associations have a constitutional right to treatments for children that a democratically elected legislature has reasonably banned.

#### IV. OUTSIDE RESEARCH:

- A. **Outside research is NOT required. It is entirely optional. Time is much better spent on understanding and refining the arguments presented than on doing outside research.** Suppress, if you can, the desire to find the "gotcha" or killer authority, statistic, or quotation. There's plenty of "ammunition" for the arguments in the two opinions you have.
- B. The problem is based on *L.W. v. Skrmetti*, 83 F.4th 460 (6<sup>th</sup> Cir. 2023). On June 24, 2024, the U.S. Supreme Court granted certiorari only on the Due Process issue. The Court has not yet set the case for oral argument.

#### V. ORAL ARGUMENT PROCEDURE:

- You will argue before a panel of three judges, usually made up of a mixture of practicing attorneys and judges who have had moot court, trial, and appellate experience. Faculty members also join some of the panels.
- Contain your argument in a manila folder or a nice folder/padfolio. It is NOT a crutch. DO NOT READ FROM IT VERBATIM. Use it for reference and to keep your place in your argument. Your folder should contain relevant facts, summaries of legal authorities or concepts, and other pertinent information.
- When you enter the room, put your name and the side you will be arguing on the blackboard. If you are in a "courtroom" without a blackboard, the judges will ask your name and the respective side you are arguing and will write it on their evaluation sheets.
- The Petitioners (here T. Oak, two other transgender youth, and their parents) always argue first. When the judges ask if you are ready to proceed, respond "Yes, Your Honor."

- The introduction both sides should use is “May it please the Court. My name is \_\_\_\_\_, and I represent \_\_\_\_\_, the [Petitioners or Respondents] in this appeal.” The Petitioners are allowed rebuttal and MUST reserve rebuttal time. Unless a judge asks you prior to the start of the round, you ask for rebuttal immediately after your introduction: “At this time, I would like to reserve [1 to 3] minutes of my time for rebuttal.” That time will be deducted from the ten minutes of your first speech.
- You will be timed by one of the judges. The timekeeper will remind you how much time you have left. EACH person gets ten minutes. This may sound like an eternity, but it will go by quickly once you get into your argument. You will get a “5 minutes” left signal card, a “2 minutes” left signal card, a “1 minute” left signal card, and a STOP card.
- When the STOP card is flashed, it means STOP regardless of where you are in your argument, but don’t stop mid-sentence. The best way to handle this is to say, “I see my time has expired. May I have a moment to conclude?” The judge will then grant you additional time quickly to finish your thought and cut to your prayer. More about the prayer later.
- Pay respect to the Court. Be deferential, but assert your client’s position. Never interrupt a judge – let him/her get the question out before you answer. Listen carefully to the question to ensure you are really answering it. Never get mad at a judge or be argumentative – be respectful and assertive. Converse with the judges – don’t run over them with a truck and call it advocacy! Start your response with a brief answer (often yes or no) and then provide an explanation; don’t reverse the order of these two items.
- Refer to each of the judges – regardless of gender, profession in the non-moot-court world, or age – as “your Honor” or “Justice (fill in the individual’s last name).”
- DON’T talk too fast. Speak clearly and in a moderate tone of voice. Don’t dance behind the lectern. It is distracting, unprofessional and makes you appear nervous and tentative. Instead, stand your ground. Appear confident and collected (even if you don’t feel it). Be calm and alert – you’ll be amazed with how much it will enhance your argument.
- Dress in a suit and tie. If you don’t own a suit, please borrow a jacket and tie from a friend or from Career Services. Don’t let lack of attire keep you from participating.

## **VI. PREPARING A SUCCESSFUL ARGUMENT:**

- An oral argument has three parts – the introduction, the body of the argument, and the prayer.
- The Petitioners may briefly state the RELEVANT facts of the case which should only last about one to two minutes. They must be fair, but they can be slanted toward your theory of the case. Don’t give facts not contained in the record. Do not be surprised if a judge waives your discussion of the facts or asks a question before you get through your facts. If it happens, answer and move on with the argument. Your focus should, however, be on the APPLICATION OF THE LAW TO THE FACTS.
- The Respondents should do one of the following: (1) accept the Petitioners’ statement of the facts; (2) make corrections in the Petitioners’ statement of facts; (3) clarify or point out any ambiguity in the Petitioners’ statement of the facts; or (4) make any necessary additions to the Petitioners’ statement of the facts. Take issue with the facts to suit your theory of the case. Be brief! DON’T ARGUE THE FACTS: ARGUE THE LAW! That said, this case demands that all litigants have an

excellent command of the relevant facts to make the most effective arguments. **DO NOT MAKE UP FACTS. YOU MUST STAY WITHIN THE PROBLEM ITSELF.**

- Road map your argument. State the issues for the court to consider in clear, concise terms. For example: “There are three reasons our client should prevail. First, . . .” **BE PERSUASIVE.** That is the whole object of an appellate argument. Tell the Court why you should win. “The Court of Appeals erred in finding for the Respondents because...” or “the ruling of the Court of Appeals should be upheld because...” (The word “erred” is pronounced so that it rhymes with “bird”).
- After you have “road mapped” your issues for argument, go back to point one and begin your analysis of each point/reason why you should win.
- When you end, offer a Prayer/Request: Tell the Court in one sentence what you want them to do for your client. “We respectfully request that this Court reverse/affirm the Court of Appeal’s decision.” After your prayer, close your folder and sit down.
- For rebuttal, do not be verbose. Only one of Petitioners’ attorneys gives a rebuttal. Your rebuttal should include one or two strong points. Listen to the Respondents’ argument closely to pick up on what the judges are questioning him about. If it favors your side, hit it hard in your rebuttal. An example might be the correction of a case that the Respondents did not analyze or apply correctly. Rebuttal is very important because it is a great way to win points.
- **EYE CONTACT IS VERY IMPORTANT!** Look directly at the judges as much as possible, especially when answering questions. This will also help you appear confident in your argument and enhance your overall advocacy style.
- The most important thing to keep in mind is that you are very familiar with your case, and you know what you are talking about. The best way to avoid feeling nervous is to prepare your argument well, think clearly, and **HAVE FUN!**
- The judges will give you oral feedback after the entire argument, including rebuttal, is complete. These helpful hints and comments will be invaluable in the next round.

## **VII. WHY SO MANY QUESTIONS?**

- The judges will ask **EVERYONE** questions about the case. The purpose is not to humiliate or confuse you. To the contrary, the judges need your help in figuring out how to decide this case. That is why they ask questions. Also, in a moot court competition, they want to determine how well you know your material, how well you can think on your feet, and how well you respond and return to the flow of your argument.
- Remember to listen to **EACH** question before you answer it. The question may not be as difficult as you think or even may be friendly to your side. If you do not hear or do not understand what a judge is asking, it is acceptable to ask him/her to repeat the question so long as you do so politely and on a limited basis. In general, however, frequent requests for repetition harm your credibility.
- Anticipate the questions you might hear and prepare for them. **BUT** don’t try to write out answers and read them back. Answer the question briefly, and then get back into your argument. Remember, **YOU** control the flow of your argument as much as possible, so don’t open yourself up to distractions and interruptions by fumbling around trying to figure out what to say next.