

Is Our Post-*Skrmetti* World Like a Post-*Dobbs* World?

Lessons from the Fight for Reproductive Rights

Mike Brickner, MA

Executive Director, ACLU of Delaware

Abstract

In June 2025, the U.S. Supreme Court ruled that Tennessee's ban on gender affirming care for minors can stand, as it did not constitute sex discrimination. This meant that the decision of whether to protect or restrict gender affirming care for minors is a decision left up to individual states, similar to how the court ruled in the landmark *Dobbs* decision. What lessons can transgender advocates take from the fight for reproductive rights, and how can transgender rights advance despite a flurry of attacks?

On Wednesday, June 18, 2025, the U.S. Supreme Court issued its ruling in *US v Skrmetti*,¹ a case out of Tennessee which tested whether states could ban gender-affirming care for minors. In a highly controversial 6-3 decision, the Court found that Tennessee's ban could remain in effect, leaving over 100,000 transgender minors in 25 states without meaningful access to gender-affirming care.²

The Court's decision was gut-wrenching, as families across the country have relied on gender-affirming care to provide support to transgender children as they navigate understanding and actualizing their gender identity. *Skrmetti* does not ban gender-affirming care for young people nationally, but rather leaves those decisions up to each individual state. For people who have followed recent Supreme Court decisions, this patchwork of access echoes the court's ruling in *Dobbs v. Jackson Women's Health Organization*,³ the 2022 case that struck down nearly 50 years of jurisprudence that held people had a constitutional right to access abortion. Similarly, *Dobbs* put the question of abortion back to the states, meaning that several states immediately moved to ban abortion, while others sought to protect and expand access.

There are differences between a post-*Skrmetti* and post-*Dobbs* world. While the decision to allow bans on gender-affirming care for minors is devastating and will have real life consequences, it did not undo other hard-won advances in transgender rights, such as non-discrimination protections in employment, housing, and public accommodations, nor did the Court bless bans on gender-affirming care for adults. As a result, transgender rights advocates are not starting from the same floor that reproductive rights advocates did after *Roe v. Wade* was overturned.

Post-*Dobbs*, many in the reproductive rights movement reassessed the strategies that had led to the overturning of *Roe*, and there are several lessons that are relevant to the current fight for transgender rights. While the path to secure full equality for transgender Americans is likely to be long and fraught, we can learn from the social movements that preceded to mitigate harm, grow grassroots support, and guarantee rights.

What the *Skrmetti* Decision Says

Despite several advancements in LGBTQ+ rights over the past two decades, the United States is experiencing a significant pushback led both by the federal government and conservative state

legislatures. Since 2000, LGBTQ+ rights advocates were able to strike down harmful laws such as “Don’t Ask, Don’t Tell”⁴ and the Defense of Marriage Act,⁵ while also winning decisions in the U.S. Supreme Court on marriage equality⁶ and recognition that LGBTQ+ people are protected by sex discrimination laws.⁷ However, over the past few years, more state legislatures have introduced and enacted anti-LGBTQ+ laws. Currently, the ACLU is tracking 598 such laws that have been introduced in 2025 alone.⁸

As a culmination of the past years of attacks on the LGBTQ+ community, the election of Donald Trump in 2024 saw new federal threats. Upon taking office, he immediately rescinded much of the Biden administration’s guidance to protect LGBTQ+ people in schools, healthcare, and prisons, and then issued executive orders ranging from declaring there were “only two sexes” to banning federal grant recipients from discussing gender identity or sexual orientation in their programming.⁹ The ACLU has filed lawsuits against many of these actions and are prevailing thus far in the vast majority of them.

This tidal wave of anti-LGBTQ+ laws and executive orders has disproportionately targeted the transgender community, which has often been ostracized and maligned with more vitriol than their LGB counterparts.¹⁰ Even within the LGBTQ+ community, there has been a long-documented tension between people fighting for acceptance of sexual orientation and gender identity, with transgender advocates having been marginalized in past advocacy campaigns.¹¹ While there have been significant steps to build solidarity and trust amongst the LGBTQ+ community members, these past wounds continue to play out in advocacy circles.

The Tennessee law banning gender-affirming care for minors was challenged by the ACLU and Lambda Legal in April 2023. Two months later, a federal district court judge in Tennessee agreed that the law was likely unconstitutional and blocked its enforcement, but the state appealed. In July 2023, the Sixth Circuit Court of Appeals reversed the judge’s decision and allowed the state to move forward. The ACLU and Lambda Legal appealed to the U.S. Supreme Court, and they accepted the case in June 2024.¹²

At the heart of the case against Tennessee’s law was the claim that it constituted sex discrimination. According to the law, minors cannot access medications for gender-affirming care. For instance, a transgender boy who wished to take testosterone could not do so. However, Tennessee law does not ban a cisgender boy from taking testosterone for another medical condition that does not relate to gender dysphoria. The attorneys for the Tennessee families and practitioners who challenged the law stated this was clearly sex discrimination because the young people were banned from accessing this treatment solely because of their status as transgender people—i.e. their sex.

In legal challenges involving accusations of discrimination, there are various levels of judicial review that courts may be required to provide as to whether a law is viable. If a court finds that the law poses some sort of harm based off a protected class, such as sex, race, national origin, disability, or religion, then they apply what is known as strict scrutiny, which is a very high bar for the government to meet to justify the law. However, if the court finds that there is not one of these fundamental rights at stake, they can apply a rational basis review, which is a much lower bar for the government to meet and they are generally granted wide discretion.

In the U.S. Supreme Court’s 6-3 decision, Chief Justice John Roberts asserted that Tennessee’s law did not discriminate based off sex because both transgender and cisgender children were forbidden from accessing these treatments for gender-affirming care. This ignores the fact that

cisgender children would never attempt to access these treatments for gender-affirming care because it is not necessary for them. It also ignores that cisgender children can have treatments such as hormone therapy that correspond to their gender assigned at birth, but transgender children cannot have hormone therapy that corresponds to their gender identity.

Instead, Chief Justice Roberts said that the laws discriminated based off age and the reason the person wanted to access the therapies. Neither of these are protected classes, which meant that the Court could apply the rational basis review that is highly deferential to government. Based off that classification, the Court found that Tennessee's law could remain in place.

The impact of the *Skrametti* decision is substantial. Gender-affirming care is supported by nearly every major medical organization,¹³ and transgender people report that it greatly benefits their mental health.¹⁴ With young people in many states unable to receive this care, they may suffer significant harm to their mental health, or their families could be forced to relocate to another state to obtain care.

Importantly, the *Skrametti* decision does not impact availability of gender-affirming care to adults, nor does it reverse other legal and legislative protections that transgender people have won in recent years.

In Delaware, gender-affirming care is available to minors. In June 2025, Governor Matt Meyer signed Executive Order #11 that extended the state's existing shield laws to gender-affirming care.¹⁵ Shield laws are those that ensure both patients and providers are protected against investigations or criminalization from law enforcement in other states or federally for healthcare received in Delaware. The Delaware General Assembly voted to codify those protections by passage of House Bill 205, which awaits the Governor's signature.¹⁶

While gender-affirming care remains legal in Delaware, its availability may be impacted by actions in other states or by the federal government. In its first months, the Trump administration has targeted organizations that support transgender people, meaning that organizations have faced potential loss of funding, investigations, and potential legal challenges.¹⁷ These attacks are meant to persuade these institutions to no longer support gender-affirming care, which can make access for the transgender community a right on paper, but not reality. Similarly, bans on gender-affirming care in other states increases the cost and burden for families seeking care, and can put an overall strain on the medical systems meant to support them.¹⁸ For advocates of reproductive rights, these challenges are nearly identical to those that patients and providers experienced in the lead up to the *Dobbs* decision, and especially post-*Roe*.

Connecting the Struggle for Trans Rights and Reproductive Rights

Make no mistake—reproductive rights and transgender rights are closely aligned and we cannot win one without the other. Both issues have the same core value: that every person should have full control over their own bodily autonomy, and that the government cannot tell someone how to live their life. While this might seem like a remarkably libertarian worldview, conservative political forces have tried to control and diminish Americans' right to control their own bodies. If both issues have the same core values, they also have the same core forces animating their opposition, namely patriarchy and Americans' rigid adherence to Victorian gender norms.

If these two issues are intertwined, then we must take lessons from the movement for reproductive rights that can help to inform and strengthen advocates' strategy to secure transgender peoples' full rights and equality.

Driving the “Wedge”

When *Roe v. Wade* was decided, it marked a watershed in American democracy where pregnant people could fully make decisions about when and how they gave birth. Almost immediately, opponents of abortion rights began its attack. While some advocates started with attempting to reverse the U.S. Supreme Court's decision immediately, the anti-abortion movement largely shifted to a strategy of slowly chipping away at *Roe*. Opponents of abortion recognized that they would likely not succeed in overturning the landmark *Roe* decision immediately, but if they found holes that they could exploit, they could erode both legal protections and public support for abortion rights.¹⁹

The easiest way for anti-abortion activists to attack abortion rights was to focus on issues that divided traditional supporters of abortion. In the decades following the nationwide recognition of a right to abortion, opponents typically focused their attacks on three key issues:

- Who was having an abortion?
- Why were they having an abortion?
- Was abortion really safe?

If we examine each of these lines of attacks, we can see some clear patterns emerge.

In terms of who was having an abortion, there were various ways anti-abortion activists focused their attack. First, they often pushed abortion bans or maze-like regulations on minors who wished to have an abortion.²⁰ By focusing on young people, this provided an insidious way for anti-abortion activists to prey on a vulnerable group of people with little political capital or influence, and undermine the core value that all people should have autonomy over their own bodies. Another group that anti-abortion activists targeted was the Black community by quoting some founders of the reproductive rights movement who espoused racist beliefs that flirted with or directly connected to eugenics. This public media campaign preyed on many Black Americans' well-founded fear of the medical community, given the United States' long history of experimentation and punitive use of sterilization, to undermine trust in institutions that provided reproductive healthcare.²¹ Finally, anti-abortion activists would routinely utilize people who expressed regret over their own abortion to advocate for limitations and bans on abortion care. By utilizing these people to speak about their own regret, advocates were able to create doubt in Americans' minds that abortion care was a positive experience, despite the vast majority of people who have received an abortion reporting that it was an empowering, affirming experience.²²

Why people have an abortion was also a common discussion point that was used by anti-abortion activists. For many years, most opponents of abortion would affirm that there could be “good” reasons for terminating a pregnancy, such as saving the life or health of the pregnant person and instances of rape or incest. However, they would also frequently invoke people who would have multiple abortions, or have abortions later in their pregnancy. These tropes would cast these people as simply “using abortion for birth control” or that they waited so long to have an abortion because they were lazy or indecisive,²³ despite the fact that research shows most later

abortion happen because of access issues, health concerns over the fetus or pregnant person, or because of domestic abuse or incest.²⁴

Finally, anti-abortion activists targeted abortion providers by enacting Targeted Regulations Against Providers or TRAP laws. These laws placed unnecessary and burdensome regulations on abortion providers that made it extremely difficult to provide care to patients. For example, abortion clinics would need to have transfer agreements with local hospitals, but other ambulatory clinics that perform other types of outpatient surgeries were not required to have such agreements. Opponents of abortion cast these TRAP laws as ways to protect abortion patients; however, abortion is one of the safest medical procedures with extremely low complication rates.²⁵ Instead, these laws created increasing doubt in the public that abortions were safe and that providers were professional and well-trained.

How Elected Leaders Responded to Attacks and What We Can Learn

For decades, abortion rights became a third rail of American politics. While the Democratic Party generally supported abortion rights, there was frequently room for anti-abortion Democrats to become elected officials, and it was infrequent for abortion rights to be proactively brought up by Democratic elected officials in campaigns. Restrictions on abortion rights were passed with Democratic support in many states. Abortion advocacy organizations such as Planned Parenthood, ACLU, NARAL, and other groups were included in the progressive ecosystem, but abortion advocacy would often be marginalized and deprioritized in progressive organizing spaces.

When people did speak about abortion publicly, it was often heavily scripted and controlled by tightly polled talking points. Much of the time, advocates were taught to utilize language that avoided using the word abortion, and sought to distance advocates from some of the very groups of people who needed abortion care that anti-abortion activists attacked. For instance, the slogan, “Safe, legal, and rare” became a rallying cry for many abortion advocates throughout the 80s, 90s, and 2000s.²⁶ However, casting abortion as something that should only happen rarely implicitly creates stigma for the procedure and alienates people who may need to access multiple abortions. This messaging buys into the trope that opponents promoted that suggests abortion is shameful and something people should avoid.

In addition, the people chosen to be storytellers about their abortion care were generally people who had harrowing stories to tell. They had a life and death medical condition, or their much-wanted pregnancy was not viable, or they were a survivor of rape or incest. To be clear, these stories are incredibly important to the overall tapestry of reasons why a person may get an abortion, but those stories were told at the expense of also telling the stories that were more mundane or at the margins. It was less frequent to hear from the person who simply knew they did not want to be a parent now, and decided to get an abortion. Stories that centered young people, low-income people, or other marginalized identities were even rarer. Prioritizing the stories of people who had sympathetic circumstances may have had some short-term utility because members of the public who were undecided on their support for abortion, or only had soft support would find these storytellers compelling. However, it traded this short-term gain for the long-term problem of portraying abortion as something one had to be worthy to access. It also stifled many people from sharing their personal abortion story with their social circles because they did not have one of the special circumstances that averted stigma.

The attacks anti-abortion activists waged should sound familiar to anyone following the struggle for transgender rights. The past several years have seen relentless attacks on the rights of young people to access gender-affirming care, similar to attacks on young peoples' right to access an abortion. Anti-transgender activists have repeatedly elevated the stories of the people who have "detransitioned" and regretted getting gender-affirming care, despite them constituting a very small minority of those who have received care.²⁷ These attacks on young people and the utilization of those who regretted receiving gender-affirming care has been combined to portray those who do seek to transition as doing so as part of some sort of fad, or because of social pressure from their peers. Neither of those reasons are supported by the testimonies of transgender people, but instead seek to undermine their ability to make decisions for themselves. Finally, the anti-transgender movement has begun to weaponize radical parts of the medical community to cast doubt on the safety and effectiveness of gender-affirming care, despite existing research, the testimonies of transgender people, and nearly every major medical association all supporting this life-saving healthcare.

If we can acknowledge that the anti-transgender playbook is remarkably similar to the anti-abortion playbook, then we must also resist making the same mistakes again. In the wake of *Skrmitti*, some pundits and elected officials have charged that transgender advocates have gone too far in their push for equality, and need to create a bigger tent of people who will support their cause. This pragmatic approach is not without some merit, as we must recognize that many Americans may not fully understand transgender rights issues, and the barrage of anti-transgender attacks have caused some to retreat from their support. But if we are to create a big tent, we have to do so effectively and in a way that will allow supporters to move the tent closer to justice, rather than further away, as we saw with abortion access.

Creating a big tent that can be used to move people to greater support of transgender rights can be done in a few ways. First, we must always lead with values that unite supporters. Abortion advocates were too often playing defense and taking too long to explain why their opponents were wrong about their assertions, which brought us further away from connecting with the underlying values that would win broad support. By focusing on the core values of autonomy, freedom, and privacy, advocates can assert powerful values that will unite voters, while also avoiding alienating members of the transgender community that opponents attempt to target.

Storytelling is also a critical part of winning public support. One of the traditions of the LGBTQ+ community is National Coming Out Day, which sees members celebrate when they formally affirmed their LGBTQ+ status with friends and family.²⁸ Oftentimes, it proved to be an important moment for the social circle of the person because they may not have known an out LGBTQ+ person, or had negative views of LGBTQ+ people. Once they knew someone they loved who was LGBTQ+, it helped to break down barriers and stigma against them. Outing oneself in more public ways comes with risk for transgender people, who rank among those most vulnerable to be attacked in hate crimes. However, for those who are comfortable to disclose their stories, these can be some of the most powerful tools towards combatting transphobia. Beyond trans people themselves, their loved ones can also be powerful messengers. In telling their stories, they need not be traumatizing or dramatic, but stories of everyday life can be highly effective in allowing others to identify with and better understand transgender people.

Threats and Opportunities for Transgender Rights

The *Skrmetti* and *Dobbs* decisions illustrate that we cannot rely on the courts alone to protect our rights: we must work to secure them in the legislature and with the public. In particular, the reproductive rights movement illustrates why we must have an affirmative, compelling vision for the future beyond simply protecting the status quo. While defending *Roe* from challenges was a worthy goal, it does not inspire activism, and it leaves advocates in a defensive position where they are constantly fending off attempts to undermine their rights. Instead, transgender advocates must take a lesson from the post-*Dobbs* abortion rights community and center their advocacy on clear values and a vision for the future that unites their base and brings in others. It has been thrilling to see ballot initiatives on reproductive rights succeed in various states, and that advocates have mostly used messaging that is abortion-forward and abortion-positive.

Many of the threats that face the transgender community are directly tied to reproductive rights. Beyond the use of shield laws, like Delaware's, states should consider significant reforms to digital privacy laws that can leave both transgender people and those seeking abortion care vulnerable. Reverse warrants are a novel tool that allow law enforcement to serve warrants to tech companies requesting information on people who use their services to access information about healthcare. For instance, a law enforcement officer could ask a cell phone carrier to produce records of anyone who was within a certain distance of an abortion clinic or gender-affirming care provider on certain dates, or they could request an internet provider send them data on anyone who searched for information on any of those healthcare services. These controversial methods are the subject of litigation, but states like Delaware can ban their use now rather than wait for the federal courts to invalidate their use.

Access to gender-affirming care mirrors the problems that have plagued abortion providers for years. As care becomes banned or threatened in various states and the federal government restricts funding, clinics in states that permit gender-affirming care will become stretched to accommodate the need and low-income people will also struggle to pay for care. In the wake of *Dobbs*, states like Oregon created a Reproductive Healthcare Equity Fund, which provides dollars to abortion providers and funds to ensure patients can retain access. Transgender advocates and their allies should adopt these same strategies to leverage state and private resources to cover potential gaps in coverage.

Lastly, now is not the time to abandon the courts. While the federal courts may have a mixed record on transgender rights, there will be cases that they will continue to rule in favor of transgender people. Most importantly, many states have parts of their constitutions that can also be used to affirm and expand the rights of transgender people in deeply meaningful ways. We must fight for freedom and equality on all fields in order to achieve victory, and we have tools to do just that.

Mr. Brickner may be contacted at mbrickner@aclu-de.org.

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