

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

L.B. and M.B., individually and on
behalf of their minor child A.B.;
C.M. and A.H., individually and on
behalf of their minor child J.M.; and
on behalf of others similarly situated,

Plaintiffs,

v.

PREMERA BLUE CROSS,

Defendant.

C23-0953 TSZ

ORDER

THIS MATTER comes before the Court on the parties' proposed stipulated judgment, docket no. 174, which was deferred pending briefing on the effect, if any, of *United States v. Skrametti*, 605 U.S. ---, 145 S. Ct. 1816 (2025). *See* Minute Order at ¶ 1 (docket no. 176). Having concluded that *Skrametti* does not alter the result in this case, the Court DIRECTS the Clerk to enter judgment in the form proposed by the parties and to CLOSE this case.

Background

By Order entered April 18, 2025, the Court ruled that plaintiffs are entitled to a declaratory judgment that the challenged medical policy of defendant Premera Blue

1 Cross (“Premera”) violates Section 1557 of the Patient Protection and Affordable Care
2 Act of 2010 (“ACA § 1557”)¹ by facially discriminating on the basis of sex. Order at
3 16–21 & 31 (docket no. 169). Premera’s various medical policies apply whenever
4 Premera makes coverage decisions, regardless of which health care plan is involved. See
5 id. at 6. The policy at issue, Premera Medical Policy – 7.01.557, does not provide
6 insurance coverage for “female to male patients” or “female to non-binary/gender neutral
7 patients” who are under “18 years of age” and seek a “mastectomy or breast reduction.”
8 See Ex. B to Hamburger Decl. (docket no. 46-2 at 4–5) (emphasis added). Another
9 medical policy, however, offers insurance coverage for “boys” (i.e., males under 18 years
10 of age) who have mastectomies to treat “gynecomastia.” See Premera Medical Policy –
11 7.01.521, Ex. E to Hamburger Decl. (docket no. 46-5 at 2–3) (emphasis added). In other
12 words, Premera’s medical policies treat minors differently with respect to insurance
13 coverage for gender-affirming mastectomies based on their natal sex, as well as their
14 transgender or cisgender status.

15 On June 13, 2025, the parties filed a proposed stipulated judgment that (i) is
16 consistent with the Court’s prior Order, (ii) awards \$25,750 in out-of-pocket expenses
17 plus \$1 in nominal damages to plaintiffs L.B. and M.B. on behalf of A.B., as well as
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20 ¹ ACA § 1557 provides, in relevant part, that “an individual shall not, on the ground prohibited
21 under . . . title IX of the Education Amendments of 1972 [(“Title IX”)] . . . , be excluded from
22 participation in, be denied the benefits of, or be subjected to discrimination under, any health
23 program or activity, any part of which is receiving Federal financial assistance.” 42 U.S.C.
§ 18116(a). By referencing Title IX, ACA § 1557 prohibits discrimination “on the basis of sex.”
See 20 U.S.C. § 1681(a).

1 \$1 in nominal damages to plaintiffs C.M. and A.H. on behalf of J.M., and (iii) defers
2 consideration of attorney’s fees and costs pursuant to 42 U.S.C. § 1988 pending
3 resolution of any appeal. *See* Prop. Stip. Judgment (docket no. 174).

4 Five days later, on June 18, 2025, the United States Supreme Court issued its
5 decision in *Skrmetti*. On the same day, Premera filed a notice of supplemental authority
6 and requested an opportunity to brief the effect, if any, of *Skrmetti*. *See* Notice (docket
7 no. 175). The Court allowed Premera to file an opening brief and plaintiffs to file a
8 response brief. *See* Minute Order at ¶¶ 1(a)–(b) (docket no. 176). Premera subsequently
9 sought and was granted permission to file (and has filed) a reply brief. On July 7, 2025,
10 the United States Department of Justice (“DOJ”) filed a “Statement of Interest,” docket
11 no. 179, which has been considered by the Court. Plaintiffs requested and were provided
12 an opportunity to respond to the DOJ’s brief, and both Premera and the DOJ were
13 allowed to file a reply, but neither has done so. *See* Minute Order (docket no. 183). The
14 question of whether *Skrmetti* has any bearing on this matter has now been fully briefed by
15 the parties and the DOJ.

16 **Discussion**

17 **A. *Skrmetti* is Distinguishable**

18 In *Skrmetti*, the Supreme Court held that Tennessee’s Senate Bill No. 1 (“SB1”),
19 Tenn. Code Ann. §§ 68-33-101 to -109 (2023), does not violate the Equal Protection
20 Clause of the Fourteenth Amendment. *See* 145 S. Ct. at 1829–32 & 1835–37. The
21 *Skrmetti* Court explained that, unless a law burdens a fundamental right or targets a
22 suspect class, the legislation is provided “wide latitude” under “rational basis” review
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1 because “the Constitution presumes that even improvident decisions will eventually be
2 rectified by the democratic processes.” *Id.* at 1828 (quoting *City of Cleburne v. Cleburne*
3 *Living Ctr.*, 473 U.S. 432, 440 (1985)). In contrast to *Skrmetti*, in this matter, plaintiffs
4 do not present a constitutional tort claim or challenge any governmental action, and
5 unlike the *Skrmetti* Court, this Court need not decide what level of scrutiny to apply.²
6 *See* Order at 19 n.8 (docket no. 169). Moreover, Premera’s medical policies are not
7 governed by the ballot box and, with respect to this litigation between individuals and
8 their health insurers, “democratic processes” play no role. Rather, Premera’s policies are
9 regulated by various laws, including ACA § 1557, which was not at issue in *Skrmetti*.

10 Not only did *Skrmetti* involve a fundamentally different type of claim than the
11 ACA § 1557 claim raised in this case, but *Skrmetti* concerned statutory language that
12 bears no resemblance to the medical policies that are the focus of this litigation. With
13 respect to minors, Tennessee’s SB1 prohibits a healthcare provider from knowingly
14 performing, offering to perform, administering, or offering to administer a medical
15 procedure “for the purpose of . . . [e]nabling a minor to identify with, or live as, a
16 purported identity inconsistent with the minor’s sex; or . . . [t]reating purported
17 discomfort or distress from a discordance between the minor’s sex and asserted identity.”

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20 ² Premera erroneously asserts that “the Supreme Court declined to address the level of scrutiny
21 question.” *See* Def.’s Reply at 2 (docket no. 184). The Court is left to wonder whether Premera
22 and its counsel actually read the decision in *Skrmetti*. According to the *Skrmetti* Court, the sole
23 question before it was “whether SB1 is subject to heightened scrutiny.” 145 S. Ct. at 1829. The
Skrmetti Court answered in the negative, *id.*, and it applied “rational basis” review to reach its
decision, *see id.* at 1835–37.

Tenn. Code Ann. § 68-33-103(a)(1) (emphasis added). SB1 applies to all minors regardless of sex.³ See Skrmetti, 145 S. Ct. at 1829. In contrast, Premera Medical Policy – 7.01.557 applies solely to “female to male” or “female to non-binary/gender neutral” minors. See Order at 1–2 (docket no. 169) (emphasis added). Regardless of whether the term “sex” is defined narrowly as “sex assigned at birth” or broadly as “gender identity,” Premera’s medical policies explicitly discriminate on the basis of “sex” in violation of ACA § 1557. See id. at 16–21.

In Skrmetti, the Supreme Court acknowledged that, just as some gender-specific terms might be permissible, certain gender-neutral wording might “mask discrimination that is unlawful.” 145 S. Ct. at 1829. With regard to SB1, however, the Skrmetti Court reasoned that the law did not “prohibit conduct for one sex that it permits for the other.” Id. at 1831. Using this test, Premera’s medical policies differ from SB1. Unlike disabilities associated with pregnancy, which only one sex can experience, see id. at 1833 (citing Geduldig v. Aiello, 417 U.S. 484 (1974), superseded by statute, Pub. L. No. 95-555, 92 Stat. 2076 (1978) (codified at 42 U.S.C. § 2000e(k))), mastectomies may be performed on both female and male adolescents for the exact same reason, namely gender affirmation. Premera’s medical policies, however, offer insurance coverage for one sex

³ Skrmetti involved only the use of puberty blockers or hormones to treat minors for various conditions, including gender dysphoria, gender identity disorder, and/or gender incongruence (as to which such medications are not permitted by SB1) or congenital defect, precocious (or early) puberty, disease, and/or physical injury (as to which prescriptions and dispensing are allowed). See 145 S. Ct. at 1826–27. The Skrmetti Court did not consider the surgical procedure at issue in this case, *i.e.*, breast reduction or mastectomy. See id. at 1827 (observing that “the plaintiffs lacked standing to challenge the law’s ban on sex transition surgery for minors”).

and not the other. Premera does what is expressly prohibited by ACA § 1557, *i.e.*, “it regulates a class of *persons* identified on the basis of a specified characteristic,” namely sex. *See id.* at 1834 n.3 (emphasis in original). In sum, nothing in *Skrmetti* undermines the validity of the Court’s Order entered April 18, 2025, docket no. 169.

B. Skrmetti Supports the Court’s Decision

Indeed, the analysis in *Skrmetti* supports the Court’s previous ruling. In *Skrmetti*, the Supreme Court reiterated the reasoning of *Bostock v. Clayton County*, 590 U.S. 644 (2020). *See* 145 S. Ct. at 1834–35. *Bostock* teaches that the “because of . . . sex” test set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1), incorporates “the traditional but-for causation standard, which ‘directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause.’” *Skrmetti*, 145 S. Ct. at 1834 (quoting *Bostock*, 590 U.S. at 656). In *Bostock*, the Supreme Court held that an employer who fires a male employee for being attracted to men, *i.e.*, for being homosexual, or who fires a employee for being transgender, engages in discrimination on the basis of sex. *See* 590 U.S. at 651–52. Such employer has used “sex” as the but-for cause of the termination, penalizing the male employee for a trait (attraction to men) that is tolerated in female employees, and the transgender employee for sexual characteristics that are tolerated in cisgender employees. *Id.*; *see Skrmetti*, 145 S. Ct. at 1835 (“sex is the but-for cause of the employer’s decision—change the homosexual male employee’s sex and he becomes a straight female whose attraction to men the employer tolerates”). Although *Skrmetti* declined to consider whether *Bostock* extends beyond the Title VII context, 145 S. Ct. at 1834, the Court is satisfied that

1 Bostock's "but-for causation" analysis is appropriately applied to ACA § 1557's "on the
2 basis of sex" standard. See Doe v. Snyder, 28 F.4th 103, 114 (9th Cir. 2022). As with the
3 discriminatory discharge in Bostock, sex is the but-for cause of an insurance coverage
4 denial under Premera's medical policies—change the juvenile's sex and she becomes an
5 adolescent boy whose request for a gender-affirming mastectomy is not subject to any
6 age restriction in ascertaining whether it is "medically necessary."

7 Notably, notwithstanding the wording of its medical policies, Premera does not
8 advance a view that mastectomies are never "medically necessary" for "female to male"
9 or "female to non-binary/gender neutral" minors. Rather, Premera has employed a list of
10 unwritten or secret exceptions pursuant to which thirty-five percent (35%) of all requests
11 for coverage of a minor's gender-affirming mastectomy have been granted, meaning that
12 the procedures were by definition deemed "medically necessary." See Order at 7–8
13 (docket no. 169). Given this record, Skrmetti suggests that Premera's medical policies
14 would not pass muster even if "rational basis" review was the applicable standard.

15 Unlike in Skrmetti, in which the State of Tennessee (i) articulated its unequivocal
16 concerns about, and goal of protecting, the health and welfare of its minors, see 145 S.
17 Ct. at 1835–36, and (ii) offered no secret exemption to SB1, in this matter, Premera's
18 objectives are inconsistent and ambiguous. Premera has fluctuated between its alleged
19 policy justifications (e.g., the insufficient maturity of minors and a dearth of
20 scientifically-sound studies) and its actual practices, through which it has acknowledged
21 the risks and dangers to transgender youth of refusing to insure gender-affirming care
22 (e.g., chest binding that causes rib or skeletal injury or respiratory compromise, and
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suicidal ideation or self-harm behaviors). See Order at 7–8 (docket no. 169). This vacillating conduct evidences Premera’s own discomfort with the blanket exclusion set forth in Premera Medical Policy – 7.01.557, and undermines any contention that what is written (as opposed to what is secretly applied) has any rational basis. Contrary to Premera’s and the DOJ’s contentions, the result in this case is consistent with Skrmetti.⁴

Conclusion

For the foregoing reasons, the Court ORDERS:

(1) The Court CONCLUDES that Skrmetti does not require any change to the Order entered April 18, 2025, docket no. 169, and hereby REAFFIRMS its decision that plaintiffs are entitled to a declaratory judgment that Premera’s Medical Policy – 7.01.557 violates ACA § 1557 by facially discriminating on the basis of sex;

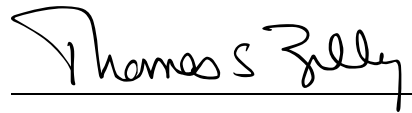
⁴ On June 30, 2025, twelve days after deciding Skrmetti, the Supreme Court vacated the decision of the United States Court of Appeals for the Fourth Circuit in Kadel v. Folwell, 100 F.4th 122 (4th Cir. 2024), vacated, --- S. Ct. ---, 2025 WL 1787687 (June 30, 2025). Premera asserts that the Court’s previous Order in this matter “turned almost entirely on the application of the Fourth Circuit’s decision in Kadel” and suggests that the Court’s Order “cannot stand now that Kadel has been vacated.” See Def.’s Reply at 5 (docket no. 184) (emphasis in original). Premera overstates the extent to which the Court relied on Kadel, and its contentions otherwise lack merit. Kadel involved consolidated appeals, one concerning the health plan for employees of North Carolina and the other relating to West Virginia’s Medicaid program. See 100 F.4th at 133–35 & 138. The plaintiffs in both matters challenged certain insurance coverage exclusions as violative of the Equal Protection Clause of the Fourteenth Amendment. See id. at 133–34. Because this case does not involve any similar constitutional tort claim, the vacatur of the Kadel Court’s decision has no impact on this Court’s earlier ruling. With respect to West Virginia’s Medicaid program, the result in Kadel also rested on the anti-discrimination mandate of ACA § 1557, see id. at 163–64, which was not the basis of any claim in Skrmetti or of the vacatur of the Kadel decision. In concluding that West Virginia’s Medicaid program violates ACA § 1557, the Kadel Court affirmed the district court’s application of Bostock, see id. at 164, and nothing in Skrmetti undermines the validity of Bostock or the extension of Bostock from Title VII to Title IX and/or ACA § 1557 claims.

1 (2) The Clerk is DIRECTED to enter judgment in the form proposed by the
2 parties, docket no. 174.

3 (3) The Clerk is further DIRECTED to send a copy of this Order and the
4 Judgment to all counsel of record, and to CLOSE this case.

5 IT IS SO ORDERED.

6 Dated this 12th day of August, 2025.

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9 Thomas S. Zilly
10 United States District Judge
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