No. 23-5080

**UNITED STATES COURT OF APPEALS**
**FOR THE TENTH CIRCUIT**

ROWAN FOWLER; ALLISTER HALL; and CARTER RAY,

*Plaintiffs-Appellants*,

v.

KEVIN STITT, in his official capacity as Governor of the State of Oklahoma; KEITH REED, in his official capacity as Commissioner of Health for the Oklahoma State Department of Health; and KELLY BAKER, in her official capacity as State Registrar of Vital Records,

*Defendants-Appellees*.

On Appeal from the United States District Court
for the Northern District of Oklahoma
No. 4:22-cv-00115-JWB-MTS (Judge John W. Broomes)

# PLAINTIFFS-APPELLANTS' SUPPLEMENTAL BRIEF IN RESPONSE TO FEBRUARY 3, 2026 ORDER

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## ARGUMENT

Plaintiffs submit this supplemental brief in response to this Court's February 3, 2026 Order, Dkt. 136, directing supplemental briefing on four issues.

### I. Plaintiffs Have Challenged Defendants' Policy of Denying Them Amended Birth Certificates Consistent With Their Gender Identity, Which the Complaint Alleges Was Motivated by the Governor.

This Court's first question asks: "Whether the Plaintiffs-Appellants' challenge is properly considered a challenge to the Oklahoma statutes and regulations or a challenge to the policy announced by Governor Stitt's Executive Order 2021-24, as described in the Second Amended Complaint (the 'Policy')."

As a threshold matter for clarity, Plaintiffs have challenged Defendants' Policy, which the complaint defines as the "policy and practice of refusing to provide transgender people with birth certificates that match their gender identity." A.20.[1] In other words, the Policy is defined by Defendants' refusal, rather than by what source of state law motivated that refusal. Plaintiffs' challenge therefore stands regardless of whether the Policy was motivated by Governor Stitt's Executive Order or if it was motivated by both his Executive Order as well as Oklahoma statutes or regulations.

That said, this case is properly considered a challenge to the Executive

[1] References to "A." are to Plaintiffs' Appendix filed on September 28, 2023. Dkt. 16.

Order, at a minimum. The Court previously recognized as much, *Fowler v. Stitt*, 104 F.4th 770, 776 n.3, 788-89 (10th Cir. 2024), and because nothing in *United States v. Skrmetti*, 145 S. Ct. 1816 (2025), touches that reasoning, it falls outside the scope of the present remand. *Infra* § IV. That reasoning was also correct. The complaint alleges that the Policy originates "from actions taken by Governor Stitt," which culminated in the issuance of his Executive Order. A.21; *accord Fowler*, 104 F.4th at 788 ("Plaintiffs are challenging a policy he set in motion"). That is supported by the fact that the amendments sought by Plaintiffs Rowan Fowler, Allister Hall, and Carter Ray were each denied by the Defendant State Registrar of Vital Statistics, in writing, on the grounds of the Governor's Executive Order. A.27, A.31-32, A.34-35. Furthermore, before the Executive Order, the state agency provided transgender people with amended birth certificates consistent with their gender identity. A.21. That supports that the cause (and, indeed, the but-for cause) of Plaintiffs' denials was the Governor's actions.

The complaint's factual allegations regarding the Governor's discriminatory intent must also be accepted as true, with all inferences drawn in Plaintiffs' favor. *See, e.g.*, *Black Emergency Response Team v. Drummond*, 737 F. Supp. 3d 1158, 1179-80 (W.D. Okla. 2024) (holding that plaintiffs plausibly alleged discriminatory intent); *Coca v. City of Dodge City*, 706 F. Supp. 3d 1265, 1273-75 (D. Kan. 2023) (holding that discriminatory intent presented factual issue); *Jumbo*

*v. Alabama State Univ.*, 229 F. Supp. 3d 1266, 1272 (M.D. Ala. 2017) ("issues involving state of mind, such as discriminatory intent, involve fact-focused questions that are often unsuitable for a Rule 12(b)(6) motion to dismiss") (cleaned up). The Governor spoke plainly about the actual motivation for his subsequent action: "I believe that people are created by God to be male or female. Period." A.22 (quoting statement made on October 21, 2021 prior to issuance of Executive Order on November 8, 2021). That statement is uniquely relevant because it was contemporaneous to when he made the decision to take the promised "action" to protect "Oklahoma values." *Id.*; *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977) (recognizing that intent can be evidenced by statements contemporaneous to when the relevant decision was made).

That the Governor's office later invoked Oklahoma's vital records statute when drafting the text of the Executive Order does not change what the Governor had already revealed as his actual motivation for his decision at the time he made it. *Cf. Speedy v. Rexnord Corp.*, 243 F.3d 397, 402 (7th Cir. 2001) ("proving that the same decision would have been justified absent a [discriminatory] motive is not the same as proving the same decision would have been made absent the motive"). The factual allegations here well surpass that the Governor's discriminatory intent was, at the very least, a "motivating factor" for his decision. *Vill. of Arlington Heights*, 429 U.S. at 266. As this Court previously recognized, Plaintiffs also

"need not allege the Policy was motivated solely by an intent to discriminate against transgender people." *Fowler*, 104 F.4th at 787 n.11.

Furthermore, regardless of how Oklahoma statutes are properly understood, *infra* § II, the Executive Order and the Governor's instructions flatly forbid the state agency from providing Plaintiffs with the amended certificates at issue. A.22-23. Thus, they stand as a barrier to which Plaintiffs have properly mounted a constitutional challenge, regardless of whether other purported barriers also exist. The Governor's barrier itself creates an equal protection injury. *See Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993) (holding that a plaintiff "need not allege that he would have obtained the benefit but for the barrier" at issue because the injury "is the denial of equal treatment resulting from the imposition of the barrier"); *Petrella v. Brownback*, 697 F.3d 1285, 1294 (10th Cir. 2012) ("It is this alleged unequal treatment that constitutes the injury."). Cisgender people seeking copies of their Oklahoma birth certificates consistent with their gender identity do not face an Executive Order blocking them from doing so. Transgender people do. Whatever else is true of Oklahoma's statutes, that executive barrier puts Plaintiffs at a disadvantage that itself gives rise to an equal protection injury.

To the extent Defendants contend—contrary to the complaint's allegations—that Oklahoma statutes motivated the Policy, Plaintiffs' challenge to

the Policy encompasses those aspects of state law as well. As noted above, Plaintiffs' challenge is to the denial that Ms. Fowler, Mr. Hall, and Mr. Ray each received, regardless of what aspect of state law purportedly motivated those denials. And the complaint also put Defendants on notice that Plaintiffs' challenge encompassed state statutes to the extent that Defendants argued that they precluded the relief sought by Plaintiffs.[2] But taking the complaint's allegations as true, as this Court did in its opinion, the Policy is a creature of the Governor's making.

## II. Prior to the Policy, Oklahoma Law Permitted the Amendment of Sex Designations on Oklahoma Birth Certificates.

This Court's second question asks: "Whether Oklahoma statutes and regulations permitted amendment of the sex designation on an Oklahoma birth certificate prior to the Policy."

Oklahoma law permitted the Oklahoma State Department of Health (OSDH) to amend sex designations on birth certificates before the Policy, and setting the

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[2] *See, e.g.*, A.23 (alleging that to the extent that Defendants contend a state statute barred Plaintiffs from accessing corrected birth certificates, "it falls within the scope of the challenged Birth Certificate Policy"); A.25 (alleging that "[r]egardless of any Oklahoma statute or regulation . . . the federal constitution independently secures the right of transgender people to correct their birth certificates to match their gender identity"); *id.* (alleging that the Policy is unconstitutional "including to the extent it rests upon any actual or asserted statutory barriers to providing transgender people with birth certificates matching their gender identity"). Any argument that this notice was somehow inadequate would not justify the district court's dismissal without leave to amend.

Policy aside, the same remains true today. That is supported by Oklahoma statutes, the orders for amendments issued by Oklahoma state courts, and OSDH's longstanding and consistent practice of accepting such orders. As illustrated by this Court's earlier opinion, however, this Court need not interpret state law to accept the complaint's well-pled allegations regarding the motivations for the Policy, *supra* § I, nor to recognize that a state policy is unconstitutional regardless of which branches of state government ultimately created it, *infra* § III.

Oklahoma's vital records statutes authorize OSDH to amend birth certificates to protect the integrity and accuracy of vital statistics. Section 1-321 provides that a birth certificate "may be amended only in accordance with this article and regulations thereunder . . . to protect the integrity and accuracy of vital statistics records." 63 Okla. Stat. § 1-321. As the complaint alleges, providing transgender people with amended birth certificates consistent with their gender identity protects the integrity and accuracy of vital statistics—and, indeed, OSDH officials agreed. A.21. Consigning a transgender woman to present a birth certificate that indicates that the holder of the certificate is "male" does not further, but rather undermines, those objectives of vital statistics. *See, e.g.*, Dkt. 18 at 48-50; *see also Chimento v. Gallagher Benefit Servs., Inc.*, 533 P.3d 748, 756 (Okla. 2023) ("Oklahoma Statutes make clear that statutory enactments are to be liberally construed to accomplish their objective."); *accord* 25 Okla. Stat. § 29. The

Oklahoma state courts that issued Plaintiffs' orders to amend the sex designation on their birth certificates did not find any legal barrier to their issuance.

Section 1-321's provision that a certificate "may be amended only in accordance with this article" does not preclude OSDH from amending the sex designation on birth certificates. 63 Okla. Stat. § 1-321(A). That section proceeds to lay out various requirements for amendments—including the conditions under which the certificate must be marked as "amended" and the information that must be endorsed on the certificate or made part of the record. 63 Okla. Stat. § 1-321(B). There is nothing incompatible, as a statutory matter, with OSDH both (1) amending the sex designation on birth certificates, as it did before the Policy, and (2) complying with Section 1-321's requirements. OSDH's amendments were thus still "in accordance with this article." 63 Okla. Stat. § 1-321(A).

That Section 1-321 lists *some* of the circumstances where a birth certificate may be amended does not mean that it purports to list *all* of the circumstances where a birth certificate may be amended. That section does not state that the handful of circumstances for amendment that it addresses—name changes, paternity determinations, and non-marital children—constitutes an exhaustive list of permissible amendments. 63 Okla. Stat. § 1-321(C)-(E). Indeed, OSDH itself does not view Section 1-321's statutorily enumerated circumstances as the complete universe of permissible amendments. *See, e.g.*, Okla. Admin. Code

310:105-3-3(c) (recognizing that an erroneously entered name on a birth certificate may be amended).[3] The legislature here charged the agency with accomplishing a general purpose—administering amendments to protect the integrity and accuracy of vital statistics; it then falls on the agency to apply that general authority across the array of specific circumstances that can arise. *See State ex rel. Oklahoma State Dep't of Health v. Oklahoma Cnty. Crim. Just. Auth.*, 571 P.3d 114, 129 (Okla. 2025) (recognizing that agency authority "may arise from application of law, fact, or a mixture of law and fact" or as a logical result of statutory authority). That is a classic agency function.

Courts elsewhere have held that similar statutory language does not constitute an exhaustive list of permissible amendments and thereby constrain the authority of the agency to amend certificates to protect the integrity and accuracy of vital records. In *MH v. First Judicial Dist. Ct. of Laramie Cnty.*, 465 P.3d 405, 407 (Wyo. 2020), the Wyoming Supreme Court analyzed a vital records statute

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[3] Like Section 1-321 itself, which does not provide an exhaustive list of permissible amendments, OSDH regulations similarly recognize that there may be other permissible amendments not expressly enumerated in its regulations. Okla. Admin. Code 310:105-3-3(e) (addressing "a change, alteration or amendment not provided for in paragraphs (a) through (d)"). While those regulations provide that an applicant seeking such a change "may" file a petition for an administrative hearing, it does not state that an applicant "must" do so nor that this constitutes the exclusive avenue for such a change. *Id.* Prior to the Policy, OSDH consistently accepted state court orders for amending the sex designation on birth certificates. A.21.

that, like the one in Oklahoma, provided that birth certificate "may be amended only in accordance with this act and regulations thereunder . . . to protect the integrity and accuracy of vital records." Wyo. Stat. § 35-1-424. While Wyoming statutes enumerated contexts where amendment was permissible (name changes, paternity determinations, and adoption, Wyo. Stat. §§ 35-1-411, 35-1-416, 35-1-424), that did not preclude a transgender woman from petitioning to change the sex designation on her birth certificate. *MH*, 465 P.3d at 407 (noting that regulation provided that any item on certificate could be changed through court order). The Wyoming Supreme Court recognized the statutory objective of maintaining "the integrity and accuracy of vital records" and held that denying the petitioner relief "would undermine the accuracy of her vital records." *Id.* at 410.

Other courts have reached similar conclusions even where statutes did not expressly address the amendments to sex designations sought by transgender people. *See In re Petition for Change of Birth Certificate*, 22 N.E.3d 707, 709 (Ind. Ct. App. 2014) (holding that amendment was permissible under statute that did not contain any "any express limitation . . . regarding gender amendments" as well as based on court's inherent equitable powers); *In re A.L.*, 81 N.E.3d 283, 289 (Ind. Ct. App. 2017); *Matter of R.E.*, 142 N.E.3d 1045, 1052 (Ind. Ct. App. 2020); *see also Matter of Childers-Gray*, 487 P.3d 96, 110 (Utah 2021) (holding that court had jurisdiction over petition even though no statute had "explicit standards or

procedures for petitions for sex change"); *In re Heilig*, 816 A.2d 68, 81-82 (Md. App. 2003) (holding that court had equitable authority to grant transgender woman's petition). Similar reasoning applies here as well, whether in interpreting Oklahoma's statutes or recognizing the equitable authority of its courts. *Cf. White v. Wensauer*, 702 P.2d 15, 16 (Okla. 1985) (recognizing court's equitable authority in property dispute despite absence of express statutory authority); *Clark v. McConnell*, 330 P.3d 1226, 1228 (Okla. App. 2014) (relying on court's inherent equitable powers in child support matter despite "statutory vacuum").

Even if there were any doubt as to whether Section 1-321 permitted the amendments at issue here, Oklahoma law would require construing state law to permit them. The Oklahoma Supreme Court has held that "[t]he legislature *adopts* an administrative construction of a statute when, subsequent to such construction, it amends the statute or re-enacts it without overriding such construction." *Oral Roberts University v. Okla. Tax Comm'n*, 714 P.2d 1013, 1016 (Okla. 1985) (rejecting agency's attempt to deviate from its prior construction of what constituted a "church" for tax exemption purposes, even where construction had not been set forth in regulation); *accord Cox v. Dawson*, 911 P.2d 272, 279 (Okla. 1996); *Branch Trucking Co. v. State, ex rel. Oklahoma Tax Comm'n*, 801 P.2d 686, 691 (Okla. 1990).

Here, OSDH has long construed Oklahoma's vital records laws as permitting

it to provide the birth certificate amendments at issue here. As the complaint alleges, OSDH consistently did so since at least 2007 (and likely longer), as publicly available sources have long documented. *See, e.g.*, Michael Boulette, *That Kind of Sexe Which Doth Prevaile: Shifting Legal Paradigms on the Ontology and Mutability of Sex*, 50 Jurimetrics J. 329, 370 n.15 (2010) (detailing verification of policy with OSDH and citing 2007 source). And this practice involved years of state court orders being issued to amend sex designations on birth certificates, like those issued to Plaintiffs.[4] A.21.

Oklahoma's rule of legislative acquiescence applies with particular force here. The legislature has not merely amended its vital records statutes since 2007 while refraining from divesting OSDH of its ability to provide transgender people with amended birth certificates consistent with their male or female gender identity; it has withdrawn OSDH's authority to provide amended birth certificates but of a *different* kind: those with a gender-neutral designation.

That carve-out, which was instituted through the enactment of SB1100 in 2022 and applies after its effective date, is narrow and specific. 63 Okla. Stat. § 1-321(H). Defendants previously argued to this Court that SB1100's use of the

[4] Indeed, this practice was sufficiently common that the Oklahoma Administrative Code also specifically contemplates that a "court order or birth certificate for gender change" may be provided to update the sex designation on a driver's license. Okla. Admin. Code 670:15-1-10(c)(6).

phrase "biological sex designation" bans OSDH from providing the amendments sought by Plaintiffs, but that is not what the statute says. As to what the statute actually prescribes or proscribes, it only states that the sex designation "shall be either male or female and shall not be nonbinary or any symbol representing a nonbinary designation including but not limited to the letter 'X.'" *Id.* That is consistent with the fact that the legislation was enacted in response to litigation concerning an individual who sought a gender-neutral designation. A.21-22. While there have been legislative proposals to expand the scope of SB1100's carve-out to encompass the binary sex-designation amendments sought here, they have not been adopted. *See, e.g.*, H.B. 3219, 59th Leg., Reg. Sess. (Okla. 2024).

Even setting legislative acquiescence to one side, a longstanding administrative construction like the one here may not be lightly discarded under Oklahoma law. That is because "great interests have grown up under it and will be disturbed or destroyed by the announcement of a new rule." *Oral Roberts Univ.*, 714 P.2d at 1015. It thus "should be disturbed for only cogent reasons, unless the construction is clearly erroneous." *Branch Trucking Co.*, 801 P.2d 686, 689 (Okla. 1990); *see also W.R. Allison Enters., Inc. v. CompSource Oklahoma*, 301 P.3d 407, 412 (Okla. 2013) (finding no cogent reason even though statute could be construed in two different ways). There are no such cogent reasons here; to the contrary, as the complaint plausibly alleges, the agency's sudden about-face here was because

of the Governor's command, which was motivated by his personal disapproval of transgender people.

Indeed, interpreting Oklahoma statutes as urged by the Governor would also run afoul of the constitutional avoidance doctrine. "A court is bound to accept an interpretation that avoids constitutional doubt as to the legality of a legislative enactment." *Fent v. Oklahoma Capitol Imp. Auth.*, 984 P.2d 200, 204 (Okla. 1999). While there is no avoiding the constitutional issues presented by the Governor's own Executive Order, additionally foisting the Governor's interpretation of state law onto Oklahoma's statutes would only needlessly enlarge the scope of the constitutional infirmity presented here.

Finally, and at a minimum, even if the Governor could show that his interpretation was one *permissible* construction of Oklahoma statutes, that would not establish that it was *mandated* by those statutes. Contrary policies of his predecessors or successors, for instance, would not be prohibited by Oklahoma statutes under such a showing. The Governor thus still bears inescapable constitutional responsibility for any construction he selected and enforced.

## III. The Policy Triggers Heightened Scrutiny Regardless of Which Aspect of State Law Motivated Its Adoption But Fails Even Rational Basis Review.

This Court's third question asks: "Whether the required level of scrutiny changes if it is the statute and/or policy that is being challenged and whether either

can survive intermediate scrutiny or a rational basis review."

Regardless of whether the Policy was motivated by the Governor's Executive Order, or both the Executive Order and state statute, the Policy triggers heightened scrutiny, although it fails even rational basis review. Thus, even if this Court were to assume without deciding that the Policy was motivated by both the Executive Order and state statute, it would not change the outcome. Under the Supremacy Clause, a state law that violates federal law is unlawful no matter which branch of state government adopted it. U.S. Const. art. VI, cl. 2.

First, the level of scrutiny does not change depending on whether an executive order or state statute is at issue. To the extent the Governor's Executive Order is at issue, it discriminates based on transgender status and sex for reasons that this Court has previously adopted and Plaintiffs have previously briefed. 104 F.4th at 788-94; Dkt. 126 at 5-14.

Alternately, to the extent that Oklahoma statutes are construed to categorically ban transgender people from accessing birth certificates consistent with their gender identity, they also discriminate on those bases as well. Under Defendants' construction of Oklahoma statutes, it is still "facially apparent" that transgender people cannot obtain what everyone else can: copies of birth certificates consistent with their gender identity. *Griffith v. El Paso Cnty., Colo.*, 129 F.4th 790, 811 n.12 (10th Cir. 2025), *cert. petition filed*, No. 25-442 (U.S. Oct.

7, 2025).

*Griffith* provides an instructive illustration. There, this Court similarly recognized that a jail housing policy that assigned inmates to housing units based solely on their genitalia facially discriminated against transgender people based on sex. *Id.* at 806-07. It reached the same conclusion about a jail commissary policy that only issued female clothing and lipstick to inmates assigned female at birth. *Id.* This Court held that this discrimination was facially apparent and, thus, no further examination of intent was necessary. *Id.* at 811 n.12. "When a transgender woman who is deemed biologically male reports to the Jail, she is denied female housing and certain commissary products; not so for women deemed biologically female. In other words, an inmate is treated differently precisely based on a determination of her biological sex." *Id.*

Here, an interpretation of Oklahoma statutes that only people assigned female at birth can obtain copies of birth certificates reflecting a female sex designation, and that only people assigned male at birth can obtain copies of birth certificates reflecting a male sex designation, also necessarily discriminates against transgender people. It does so based on both their sex and their transgender status, as but for either, they would have access to what others are afforded: copies of their birth certificates consistent with their gender identity. *See* Dkt. 126 at 5-14. Heightened scrutiny is therefore required. *Id.* at 14-17.

Heightened scrutiny would also be required even setting aside the facially discriminatory nature of Defendants' statutory construction. Whether an intent to discriminate was a motivating factor in any government action "demands a sensitive inquiry into [] circumstantial and direct evidence of intent" based on the totality of the circumstances. *Vill. of Arlington Heights*, 429 U.S. at 266. Defendants rely on SB1100 in construing Oklahoma's vital records statutes to ban the amendments sought by Plaintiffs. *See Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (recognizing that intent can be established when government action is selected or when it is reaffirmed). To the extent SB1100 is interpreted to mean that Oklahoma's vital records statutes bar all individuals from amending their sex designation to anything other than their sex assigned at birth, then the intended target for that action is clear: transgender people. The precipitating context for SB1100's enactment—OSDH's issuance of an amended birth certificate to someone whose gender identity differed from their assigned sex—also underscores the legislature was not intending to target cisgender people or change anything for them. A.21-23. The impact of the law, as construed by Defendants, falls squarely on transgender people. And the views of the Governor who solicited SB1100's adoption were already laid bare when he had expressed public disapproval of transgender people as the basis for government action. A.22; A.49 (quoting Executive Order, which called upon lawmakers to pass legislation).

Second, while the Policy requires heightened scrutiny, it fails such review because it lacks even a rational basis, regardless of whether the Policy is motivated by the Governor's Executive Order or Oklahoma statutes. The rational basis analysis is not more relaxed for state statutes than for state executive orders. As this Court recognized, a plaintiff must already negative every "conceivable" basis for a law under such review, which is an exercise that is not contingent on which branch of government is at issue. *Fowler*, 104 F.4th at 794. This Court's prior opinion holding that the Policy lacks a rational basis applies with equal force even if, contrary to the complaint's allegations, the Policy were a creature of state statute. For instance, this Court's recognition that Oklahoma's retention of original birth certificates severs any rational basis for the Policy applies equally even if Oklahoma statutes motivated the Policy. *Id.* at 795. Likewise, this Court's recognition that the Policy fails to rationally further an interest in protecting women, preventing fraud, or conserving resources continues to stand as well. *Id.* at 796-97. No matter how the Policy is analyzed, it fails constitutional scrutiny.

## IV. The Scope of the Remand Is Limited by *Skrmetti*, Which Did Not Change This Court's Prior Reasoning.

The Court's fourth question asks: "The scope of our remand following the Supreme Court's GVR order."

The scope of this Court's remand is narrow and specific: it is limited to further consideration in light of *Skrmetti.* The GVR order states in full: "The

petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United State Court of Appeals for the Tenth Circuit for further consideration in light of *United States v. Skrmetti*, 605 U.S. ___ (2025)." Dkt. 116. Thus, unless *Skrmetti* compels this Court to abandon its reasoning on any particular issue—and it does not—the issue falls outside the scope of the remand.

This Court has recognized the circumscribed scope of a remand following a GVR order. It explained that it "may not [] undertake functions that were not assigned to us by the mandate and order of the Supreme Court," which were limited to further consideration "in light of" the Supreme Court authority at issue. *United States v. Smith*, 82 F.3d 1564, 1566 n.1 (10th Cir. 1996). Other courts have also consistently refused to consider issues that exceeded the scope of a GVR order. *See, e.g.*, *United States v. Duarte-Juarez*, 441 F.3d 336, 340 (5th Cir. 2006) ("this court must confine its review to the limitations established by the Supreme Court's remand order"); *Gonzalez v. Justices of Mun. Ct. of Boston*, 420 F.3d 5, 8 (1st Cir. 2005) ("the court of appeals should confine its ensuing inquiry to matters coming within the specified scope of the remand") (quotes omitted); *Escalera v. Coombe*, 852 F.2d 45, 47 (2d Cir. 1988) ("we will not reconsider issues that are not directly implicated by the Supreme Court's [new] decision"); *Hermann v. Brownell*, 274 F.2d 842, 843 (9th Cir. 1960) ("the jurisdiction of this Court is rigidly limited to those points, and those points only, specifically consigned to our

consideration by the Supreme Court"). "This rule is grounded on sound prudential considerations. Repose is important in the law." *Kotler v. Am. Tobacco Co.*, 981 F.2d 7, 13 (1st Cir. 1992).

*Skrmetti* does not change this Court's prior reasoning. As Plaintiffs have explained, *Skrmetti* does not change this Court's holding that the complaint plausibly alleged intentional discrimination against transgender people, that such discrimination triggers heightened scrutiny, and that no rational basis supports it. Dkt. 126 at 5-21; *see also Roe v. Sjolander*, 805 F. Supp. 3d 1083, 1087 n.4 (D. Ariz. 2025) (finding *Skrmetti* "inapplicable" to case involving transgender plaintiffs seeking amended birth certificates consistent with their gender identity). And *Skrmetti* certainly has nothing to say about this Court's rejection of Defendants' argument that "Oklahoma law [] prevents Plaintiffs from obtaining amended birth certificates." *Fowler*, 104 F.4th at 776 n.3. The scope of the GVR does not permit Defendants to relitigate that issue. *See Kotler* at 12-13 (refusing to revisit issue of state law—even if court of appeals' prior analysis was "arguably in error"—because it was not implicated by intervening Supreme Court authority, which was "unrelated to any issue of state law"); *Robinson v. Ariyoshi*, 854 F.2d 1189, 1190 (9th Cir. 1988) (holding that GVR order limited further consideration only to intervening authority and did not authorize reconsideration of government's arguments regarding state law). The proceedings on remand here

are bounded by *Skrmetti*, and Defendants' arguments attempting to relitigate this appeal exceed those bounds.

## CONCLUSION

For the foregoing reasons, this Court should reaffirm its prior opinion.

Dated: February 23, 2026

Respectfully submitted,

/s/ Peter C. Renn

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## CERTIFICATE OF COMPLIANCE

This brief complies with the Court's February 3, 2026 Order, because it is no longer than 25 pages.

This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) and 10th Cir. R. 32 because it was prepared using Microsoft Word 2016 in Times New Roman 14-point font, a proportionally spaced typeface.

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system on February 23, 2026. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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**CERTIFICATE OF DIGITAL SUBMISSION**

I hereby certify that (1) all required privacy redactions have been made; (2) no paper copies of this document are required per the Court's February 3, 2026 Order; and (3) the electronic submission was scanned this document for viruses using Microsoft Defender and, according to that program, this document is virus free.

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