

## **Bodily Autonomy Fact Sheet Series: Abortion, Gender-Affirming Care, and the Fourteenth Amendment**

For over a decade, attacks on bodily autonomy rights have accelerated at both the state and federal levels. Recent Supreme Court decisions have allowed states to substantially restrict access to both abortion and gender-affirming care, which are critical bodily autonomy rights and essential forms of health care.

Abortion allows people to decide if, when, and how to have a family and it can also be health or life-saving care. [Gender-affirming care](#) is health care that supports and affirms an individual's gender identity, and for some people with gender dysphoria, it can be lifesaving care. Nonetheless, a relentless campaign to eliminate these bodily autonomy rights has culminated in new Supreme Court precedent that is carving out both from Fourteenth Amendment protections – contrary to the Fourteenth Amendment's promise of liberty and equal protection.

### ***The Fourteenth Amendment's Promise of Life, Liberty and Equality***

The Fourteenth Amendment became a part of the U.S. Constitution after the Civil War and was intended to extend the protection of civil rights equally to all Americans. Among its provisions, the Fourteenth Amendment says that a State cannot “deprive any person of life, liberty, or property, without due process of law” or “deny to any person [] the equal protection of the laws.” The Supreme Court, in the early 1900s, began to recognize the Fourteenth Amendment for what it is—a constitutional mandate that all people have the fundamental right to life, liberty, and equality. For over a century, the Supreme Court has interpreted this mandate to protect autonomous decision making and establish some of our most fundamental rights.

### ***The Fourteenth Amendment Protects Bodily Autonomy***

The Supreme Court has historically relied on the Fourteenth Amendment to protect individuals from government interference regarding choices about their bodies and most intimate relationships. The Court first interpreted the Fourteenth Amendment's protections to apply to families by finding that all parents had a fundamental right to [raise their children](#) and determine their upbringing. Later, the Court expanded family privacy protections and established the right of [married couples to use contraceptives](#) without government interference. Only a few years later, the Court extended the same right to [individuals](#). Soon after, the Court continued solidifying the right to privacy and individual decision making by establishing the fundamental right to [abortion](#) under the same doctrines of the Fourteenth Amendment. These doctrines were later used to cement protections around [consensual sex](#) and [same-sex marriage](#).

Fundamentally, the Fourteenth Amendment clearly protects a wide range of individual rights related to bodily autonomy, including reproduction, sex, and family. In so doing, the Fourteenth Amendment's protection should logically extend to abortion and gender-affirming care, two types of health care critical to individual liberty and equality. But because abortion and gender-affirming care are heavily stigmatized and subject to the same attacks from extremists, they have been systematically and unfairly carved out from these protections.

### ***Abortion & Gender-Affirming Care are Now Excluded from Fourteenth Amendment Protection***

For nearly 50 years, the Fourteenth Amendment protected the fundamental right to abortion. However, [after a decades-long effort](#) by anti-abortion extremists, the Supreme Court overturned *Roe v. Wade* and carved out abortion from the Fourteenth Amendment's protection of bodily autonomy rights. In its decision in *Dobbs v. Jackson Women's Health Organization*, the Court [strayed](#) from over a century's worth of precedent and applied a narrow standard to arbitrarily decide that the Fourteenth Amendment

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does not protect abortion notwithstanding the precedent's continued protection of contraception, parental rights, and sex.

In the last few years, politicians have begun leveraging the same playbook that has been used for decades to attack abortion to target gender-affirming care. For example, both anti-abortion and anti-transgender lawmakers promote dangerous misinformation regarding the safety and efficacy of this care that is stigmatizing and not informed by research or medical expertise. Both have also strategically attacked young people's access to care to begin the process of chipping away at these health care rights, gradually building towards outright banning and criminalizing care.

This strategy has paid dividends for the anti-trans and anti-abortion movements with the overturning of the right to abortion in *Dobbs* and this year's Supreme Court decision to further limit bodily autonomy rights in *United States v. Skrametti*. In reviewing Tennessee's gender-affirming care ban for minors – one of 26 such bans in the country – the Supreme Court held that it is not a violation of the Fourteenth Amendment's Equal Protection Clause for states to ban gender-affirming care for minors. With this constitutional protection officially out of the way, the court has laid the groundwork for states to continue to restrict rights around bodily autonomy and ban access to care.

Both abortion and gender-affirming care are rooted in the Fourteenth Amendment's promise and precedent that personal decisions regarding our bodies should be made free from government intrusion. The Supreme Court's choice to unfairly carve out necessary health care from protection under the law simply because it is disfavored by extremists threatens everyone's bodily autonomy rights and leaves the door open to further restricting other privacy and liberty rights protected under the Constitution.