## I. We can be thankful that the Court:

1. Held that the laws in Tennessee and Kentucky prohibiting medical providers from administering drugs and performing surgeries on minors to conform the objective realities of their bodies to their subjective perceptions of themselves were not unconstitutional and were enforceable.
2. Acknowledged that nothing in "the original fixed meaning of the due process [and] equal protection [clauses of the 14th Amendment] covers these claims." This means:
    a. the Court knows that federal courts have been making things up and inserting them into the 14th Amendment that were not intended at the time it was adopted *in 1868*,
    b. we can use *Dobbs* and *Bruen* from June 2022 to enact laws that allow us to argue that other made up things that should not have been inserted into the *14th* Amendment's Due Process Clause such as (i) nude dancing and drag queen shows were within the meaning of the word "speech," (ii) unborn persons were intended to be excluded from the word "person," and (iii) marriage defined exclusively and exhaustively in terms of man and woman was not to be prohibited for the sake of *only* "marriages" defined in terms of any-two-people-will-do. Don't think any of that was true in 1868—not part of our history and tradition.
3. Acknowledged that "Article III confines the 'judicial power' to 'Cases' and 'Controversies.' U.S. Const. art. III, § 2. Federal courts . . . must operate in a party-specific and injury-focused manner. [citation omitted] A court order that goes beyond the injuries of a particular plaintiff to enjoin government action against nonparties exceeds the norms of judicial power.
    a. This is a helpful acknowledgment that a court *judgment* is not a *law or even in the nature of law*.
    b. This will help an elected official refuse to extend a holding to other persons if the reasoning of a court is clearly lame (TN's AG just did that stating he would continue to enforce our drag queen law in all parts of the state other than W. TN where a federal district court held it unconstitutional).

## II. We cannot overlook the fact that the Court:

1. Made the case one of constitutional procedure or allocation of powers between the judiciary and state legislative bodies, meaning the courts continue their refusal to address what a "person" is in law and under the Constitution—no anthropological truths entered into the analysis.
    a. Doesn't mean this issue is off the table, but it was not presented by the parties and it won't be addressed until a party makes it determinative based on the way the law is drafted, or the case for the law is argued.

2. Framed the issue this way: "The threshold question is whether the Constitution is neutral about legislative regulations of new and potentially irreversible medical treatments for minors."
    a. This sounds like *Dobbs* language about the Constitution being neutral on abortion, but notice the qualifiers: "new" and "potentially" irreversible medical treatments. Query:
        i. If medical treatments become commonplace, are they now subject to judicial review as a *constitutional* right inhibiting the powers of the state to decide what they think about the treatment?
        ii. What kind of "medical treatments" stop being something left by the Constitution to a state's common law police powers and on what objective basis will that determination be made? Which ones are in and out?
        iii. If a treatment ceases to be "new," what about "irreversibility" gives the state power to limit a medical treatment, especially if what is "harmful" has nothing to do with whether humans are, *in principle*, reproductive in nature and, therefore, "health" for human beings is protecting or preserving that nature? For example, does a state have authority to regulate a tonsillectomy or hysterectomy only because they are irreversible?
3. Seemed to accept that gender and sex are different, and this will present issues down the road.
    a. The good news is that the court rejected the idea that transgender is a constitutionally protected class!
4. Ignored any question of duties that parents may owe their children in relation to protecting their ability to be reproductive beings as related to a parent's rights, leading to Point No. 5.
5. Rested the rights of parents in relation to their children on the rights that adults have.
        i. This seems to rest rights on rights, a rather abstract and undefined concept—the "rights of man!"—instead of saying rights correspond to duties a person owes to another (like a parent's rights correspond to the duties they owe their child or your right not to be maimed is because persons have a duty not to maim other people).
        ii. Query: Because adults *can* take these drugs and have these surgeries, and it may be even unconstitutional to prohibit them (who knows?), I am not sure what this portends if these treatments become more medically accepted for treatment of gender dysphoria (e.g., cease to be "new" after years of experimentation in CA and other such states).
        iii. While saying states can distinguish between adults and children, if adults have a *right* to these "treatments" and the rights of parents rest on their rights as

adults, then why can't the parent approve for the child what the parent would have a right to do for himself or herself?

1. The Court's analysis seems to beg the anthropological question of whether an adult has a right to irreversible "transgender procedures" any more than an adult has a right to assisted suicide, which SCOTUS said adults don't have a right to. What determines the difference and will determine the difference on an on-going basis as culture continues to embrace sterility (a form of human death) as a basic human value?
2. I guess the answer, at least as to children, is found in the Point 6.

6. Said States possess "constitutional *control* over parental discretion" (a scary thought) subject only to "a classic *procedural* due process form of relief," meaning right to notice that the state is going to do something to your child and a right of the parent to be heard in advance.
    a. Can command a COVID shot for a child so long as the parent has a right to be heard on why they don't want their child to have the shot?
    b. How does this affect the right of parents to know about things in public schools (gender transitioning?) if notice is given of the policy and there is a public hearing?
7. Said, "As long as it acts *reasonably*, a state may ban *even* longstanding and nonexperimental treatments for children."
    a. Can't think of a *medical* example, but what provides the parameters for "reasonable"—what is conducive to being what God created humans for or what the AMA says?
    b. Can the state ban Christian sexual counseling as a "treatment" for children with sexual issues because they think it "reasonable"?
8. Left open the possibility that if the FDA approves drugs for treatment of gender dysphoria, and especially for minors, then state law restricting those drugs could be pre-empted. Expect a political push for this and then a re-do.
9. Said it would continue to allow plaintiffs to "seek to extend the constitutional guarantees to new territory" under substantive due process.
    a. At least the Court continued to emphasize history and tradition (though that has been ignored, as noted above, when it comes to "free speech," the word "person," and the understanding of what a marital relationship is (remember, SCOTUS *had* to redefine marriage *before* it could hold there was a right for two people of the same sex to marry and to deny that right was a denial of equal protection, a jiu-jitsu move if ever there was one!)