

Case Summary: *Trump v. Orr*, No. 25A319 (U.S. Nov. 6, 2025)

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(All views expressed in this article are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

In February 2025, seven transgender and nonbinary individuals filed a lawsuit challenging the new Passport Policy implemented by the Trump administration, which required that a person’s sex designation on their passport reflect the individual’s sex assigned at birth rather than their current gender identity.¹ The policy also eliminated the option to select an “X” marker for applicants who are nonbinary, intersex, or other gender-nonconforming individuals.² The plaintiffs alleged that the policy violated the equal protection guarantee as applied to the federal government through the Fifth Amendment’s Due Process Clause. In *Bolling v. Sharpe*, 347 U.S. 497 (1954), the Supreme Court held that the Fifth Amendment contains an implied equal protection component, which means that federal actions cannot discriminate in ways that would violate equal protection if undertaken by a state. Relying on this doctrine, the plaintiffs argued that the policy unlawfully singled out transgender and nonbinary people for differential treatment. The plaintiffs also claimed that the Passport Policy violated the Administrative Procedure Act (APA), a

¹ *Trump v. Orr*, No. 25A319, slip op. at 1 (U.S. Nov. 6, 2025) (“This case concerns an Executive Branch policy requiring . . . all new passports to display an individual’s biological sex at birth.”).

² *Id.* at 3 (Jackson, J., dissenting) (“On January 22, 2025 . . . the Passport Policy now requires that all new passports reflect the holders’ sex assigned at birth.”).

law that prohibits government agencies from acting in ways that are arbitrary or capricious.³

The U.S. District Court for the District of Massachusetts found that the plaintiffs were likely to succeed on both their equal protection and Administrative Procedure Act (APA) claims, finding the Passport Policy to be arbitrary, capricious, and discriminatory.⁴ Six of the seven plaintiffs were granted preliminary injunctive relief, which would allow the individuals to receive protection from the policy, effective immediately, while the seventh was exempted because he already held a passport reflecting his gender identity.⁵

Following the injunction, the plaintiffs added five more individuals to the case, and the government appealed both the individual and class injunctions to the U.S. Court of Appeals for the First Circuit.⁶ The individual injunction applied only to one named plaintiff, while the class injunction extended relief to the broad population of transgender and nonbinary applicants affected by the Passport Policy. The Trump administration argued that the Constitution does not require the government to adopt an individual's preferred definition of sex, and that the Passport Policy should be reviewed only under a lenient standard of "rational-basis review," which asks

³ *Id.* at 3-4 ("They claimed . . . the Passport Policy violated the Equal Protection Clause . . . and . . . that it violated the Administrative Procedure Act insofar as it was arbitrary and capricious.").

⁴ *Id.* at 3 ("The District Court . . . issued a 56-page decision . . . that the plaintiffs were likely to succeed on their legal claims . . .").

⁵ *Id.* at 4 ("The District Court granted the plaintiffs' motion for class certification and extended the preliminary injunction . . .").

⁶ *Id.* at 4 ("The Government appealed . . . and the First Circuit declined to stay the District Court's preliminary injunction. . . . The Government then turned to this Court for a stay.").

whether the rule is reasonably related to a legitimate government purpose.⁷ The government further argued that the policy applied equally to both sexes and served the government’s legitimate interests in maintaining consistent and reliable identification, affirming its actions were neither arbitrary nor capricious.⁸ The government also claimed that the District Court’s injunction caused irreparable harm by interfering with the President’s authority to implement the executive policy.⁹

The Supreme Court issued a brief, unsigned order to grant a stay, granting the government’s request to temporarily pause the District Court’s injunction. After the First Circuit declined to stay the injunction, the government filed an emergency application with the Supreme Court, asking the Justices to intervene through the Court’s emergency docket, also known as the shadow docket. Stating that displaying an individual’s sex at birth on a passport does not violate equal protection, the Supreme Court decided to allow the passport policy to remain in effect as litigation

⁷ App. for a Stay of the Injunction, *Trump v. Orr*, No. 25A319, at 25 (U.S. Nov. 6, 2025) (“Under that standard, as the government made clear in its stay motion, the question is whether the challenged policy is ‘inexplicable by anything but animus’; if it can be explained by a rational basis, the inquiry is at an end.”) (citing Gov’t C.A. Stay Mot. 17).

⁸ *Id.* at 17-18 (“A policy that prohibits ‘all people’ from self-selecting a marker on their passport—and thus ‘affects every person in the country in the same way’—is not a policy that discriminates based on sex.”); *also id.* at 25 (“Indeed, the government’s briefing in the district court defended the challenged policy on the ground that the policy served an ‘interest in maintaining a consistent, historical, and biologically based definition of sex,’ including for purposes of maintaining a ‘meaningful basis for identification,’ as articulated in the Executive Order.”) (cleaned up).

⁹ *Id.* at 33 (“The district court’s classwide injunction irreparably harms the government and the public by blocking the President’s exercise of his constitutionally and statutorily conferred power to prescribe rules of the issuance of passports.”).

continues, reasoning that it is comparable to displaying a person’s country of birth, with both being “historical facts” that do not amount to unequal treatment.¹⁰

Three justices dissented from the decision to grant the stay: Justices Ketanji Brown Jackson, Sonia Sotomayor, and Elena Kagan. Justice Jackson argued that the majority’s reasoning failed to consider the policy’s discriminatory impact and that allowing it to take effect would cause immediate harm to transgender and nonbinary individuals.¹¹ She wrote that the government “offers no evidence that it will suffer any harm if it is temporarily enjoined . . . while the plaintiffs will be subject to imminent, concrete injury.”¹² The dissenting justices stated that the District Court acted properly to prevent irreparable harm and that the majority’s decision undermined the equitable balance of the case.¹³

This case is significant because it illustrates how the current Supreme Court views conflicts between gender identity rights and executive authority. By granting the stay, the Court potentially signaled its deference to the executive branch’s authority in setting policies related to sex and identification. Although the decision does not settle the issue permanently, the case will likely become a future reference

¹⁰ *Trump v. Orr*, No. 25A319, slip op. at 1-2 (U.S. Nov. 6, 2025) (“Displaying an individual’s sex at birth . . . is comparable to displaying a person’s country of birth, with both being ‘historical facts’ that do not subject anyone to differential treatment.”).

¹¹ *Id.* at 2 (Jackson, J., dissenting) (“The Government fails to appreciate the serious consequences of its policy...”).

¹² *Id.* at 2 (“The Government . . . offers no evidence that it will suffer any harm . . . while the plaintiffs will be subject to imminent, concrete injury.”).

¹³ *Id.* at 4 (“Such senseless sidestepping of the obvious equitable outcome . . . is an abdication of the Court’s duty to ensure that equitable standards apply equally. . .”).

point for lawyers in examining how courts apply equal protection in cases related to gender-identity policies.