IN THE SUPREME COURT OF THE UNITED STATES No. 25A1111 (or successor docket number)

OLYMPUS SPA; MYOON WOON LEE; SUN LEE; JANE DOE (patron); JANE DOES 1-3 (employees), Petitioners,

v.

ANDRETA ARMSTRONG, in her official capacity as Executive Director of the Washington State Human Rights Commission, et al., Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

AMICUS CURIAE BRIEF OF WOMEN'S PRIVACY AND ASSOCIATION RIGHTS ADVOCATES IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

INTEREST OF AMICUS CURIAE

Amicus curiae is a coalition of women's rights advocates, privacy scholars, and organizations dedicated to preserving single-sex spaces grounded in biological sex. Amicus has no direct financial interest in the outcome but files this brief to urge the Court to grant certiorari and correct the Ninth Circuit's erosion of core First Amendment protections for private businesses and individuals who maintain sex-based distinctions in intimate settings. Amicus respectfully submits that this case presents exceptionally important questions warranting immediate review.

SUMMARY OF ARGUMENT

The Ninth Circuit's decision permits the State of Washington to weaponize its public-accommodations law (WLAD) against a traditional Korean spa that limits its nude communal areas to biological women. By forcing Olympus Spa to admit biological males who self-identify as women (but retain male genitalia and have not undergone surgery altering their genitalia), the State compels the spa to abandon its expressive policy of biological-sex segregation, exposes female patrons and employees to unwanted male nudity in intimate spaces, and overrides the owners' religious and cultural convictions about modesty and sex.

This holding cannot be reconciled with this Court's precedents protecting freedom of expressive association (*Boy Scouts of America v. Dale*, 530 U.S. 640 (2000)), intimate association, compelled speech (*303 Creative LLC v. Elenis*, 600 U.S. 570 (2023)), and free exercise of religion. The decision below treats "gender identity" as an immutable override of biological sex in a context where biology is the entire point of the service. Certiorari is warranted because the question is recurring, national in scope, and threatens the viability of women-only spaces nationwide.

ARGUMENT

I. The Ninth Circuit's Ruling Conflicts with This Court's First Amendment Precedents Protecting Expressive and Intimate Association in Private Settings

Olympus Spa is not a generic public restroom or locker room. It is a traditional Korean *jjimjilbang*-style spa featuring nude communal bathing, body-scrub, and massage areas reserved exclusively for biological females. Patrons and employees are naked. The spa's policy—"Biological women are welcome"—is not mere commercial conduct; it is an expressive statement rooted in the biological reality of sex and the privacy interests that flow from it. The policy communicates that female patrons deserve spaces free from male genitalia, consistent with centuries of cultural and legal recognition that sex-segregated intimate facilities protect modesty, dignity, and safety.

By threatening enforcement under WLAD unless the spa admits pre-operative transgender women (biological males), the State forces the spa to associate with individuals whose presence directly contradicts and undermines its message. This is textbook compelled association prohibited by *Dale*. In *Dale*, this Court held that New Jersey could not force the Boy Scouts to retain an assistant scoutmaster whose open homosexuality would "significantly affect" the organization's expressive message about moral values. 530 U.S. at 653. Here, the presence of intact male genitalia in nude female spaces "significantly affect[s]" the spa's message that biological sex determines access. The Ninth Circuit dismissed this as mere "conduct," but that evades *Dale*'s core holding: when the government compels inclusion that alters the character of an expressive enterprise, the First Amendment is violated.

The intimate nature of the association heightens the constitutional injury. Nude spa services are the antithesis of the large, impersonal public accommodations at issue in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984). They are small-scale, highly personal, and involve unavoidable visual and physical exposure of genitalia—the very trait the spa seeks to segregate by sex. Forcing female employees to provide full-body deep-tissue massage to naked biological males (or risk losing their livelihoods) further invades the zone of intimate association this Court has long protected.

II. The Decision Below Authorizes Compelled Speech in Violation of *303 Creative*

The spa's policy is inherently expressive. Its website and communications convey a clear viewpoint: sex is binary and immutable, and women's privacy in nude settings turns on biological sex, not self-identification. Requiring the spa to admit biological males who identify as women forces it to convey the opposite message—that "gender identity" supersedes sex and that male-bodied individuals belong in women-only nude spaces. This is compelled speech, indistinguishable in principle from the website design at issue in *303 Creative*. There, this Court held that Colorado could not force a Christian graphic designer to create custom websites celebrating same-sex marriages because the message would be attributed to her. 600 U.S. at 587-88.

Here, the message is even more visceral: every time a biological male enters the nude areas, the spa is forced to "host" and facilitate an environment that endorses the state's view on gender identity. The Ninth Circuit's attempt to cabin this as neutral regulation of conduct fails. As in *303 Creative*, the regulation targets the *content* of the spa's message about sex and privacy.

III. Free Exercise Protections Are Also Implicated, and the Ninth Circuit Misapplied *Smith*

The spa's owners are conservative Christians who view sex as a God-given binary and modesty as a religious imperative. WLAD's application here is neither neutral nor generally applicable. The State has singled out the spa's biological-sex policy for investigation and threatened prosecution while tolerating other sex-based distinctions (e.g., women's shelters, sports teams, or medical facilities) when they align with gender-identity ideology. The law's "gender identity" provision was enacted precisely to reach this viewpoint. Under *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), even a facially neutral law triggers strict scrutiny when applied in a manner that burdens religious exercise based on hostility or selective enforcement. The record here—including the State's about-face on standing and its aggressive pursuit of a single pre-operative complainant—demonstrates the requisite targeting.

IV. The Question Presented Is Exceptionally Important and Recurring

This case is not an isolated dispute over one spa in Lynnwood, Washington. It is the latest front in a nationwide conflict over whether biological sex can ever define single-sex spaces once "gender identity" is invoked. Public-accommodations laws in dozens of states now include gender identity. The Ninth Circuit's logic would require every women-only gym, locker room, domestic-violence shelter, sorority, or spa to admit any male who self-identifies as female—regardless of surgery, hormones, or criminal history. Female patrons and employees lose the privacy and dignity that biological-sex segregation was designed to protect.

The decision below deepens confusion left in the wake of *Bostock v. Clayton County*, 590 U.S. 644 (2020). *Bostock* was a narrow Title VII statutory holding that did not address constitutional rights, public accommodations, or intimate spaces. Lower courts increasingly treat *Bostock* as a constitutional trump card. This Court should grant certiorari to clarify that the First Amendment still shields private actors who draw lines based on biological sex in contexts where sex matters most.

The Ninth Circuit's ruling also conflicts with the reasoning of dissenting judges in that court and with decisions in other circuits that have respected biological-sex distinctions in analogous settings. The issue has already produced multiple en banc denials, dissents, and scholarly alarm. Review is urgently needed before women's hard-won single-sex spaces become legally untenable.

CONCLUSION

For the foregoing reasons, amicus respectfully urges the Court to grant the petition for a writ of certiorari.

Respectfully submitted,
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