

No. 26-286

IN THE
Supreme Court of the United States

OLYMPUS SPA, *et al.*,

Petitioners,

v.

ANDRETA ARMSTRONG, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**AMICUS BRIEF OF WOMEN'S
DECLARATION INTERNATIONAL USA
IN OPPOSITION TO CERTIORARI**

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INTRODUCTION AND INTEREST OF *AMICUS*¹

Women’s Declaration International is a global organization of women working to advance the Declaration on Women’s Sex-Based Rights, which reaffirms women’s and girls’ sex-based rights and challenges the discrimination we experience from the replacement of the category of sex with that of “gender identity” (the Declaration).²

The Declaration comprises nine articles. Article I reaffirms that the rights of women are based on the category of sex.³ Article VIII reaffirms the need for the elimination of violence against women, and explains the importance of “the provision of single-sex services and physical spaces for women and girls to provide them with safety, privacy, and dignity.”⁴ Article VIII continues: “Whether provided by public or private entities, such single sex provisions should be allocated on the basis of sex and not ‘gender identity’, and should be staffed by women on the basis of their sex and not ‘gender identity.’”⁵

1. This brief is filed earlier than 10 days before the due date. Accordingly, the notice to counsel required by Rule 37.2 is not required. No counsel for a party authored the brief in whole or in part. No counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity, other than the *amicus curiae*, its members, or its counsel, made a monetary contribution to the preparation or submission of the brief.

2. Declaration on Women’s Sex-Based Rts. (“Declaration”).

3. Declaration Art. I.

4. Declaration Art. VIII.

5. *Id.*

Amicus is the U.S. chapter of this global organization (WDI USA). It is a nonpartisan organization that is grounded in radical feminism. We are women from every walk of life—from law and government to the hard sciences, the culture-shaping professions, and the nation-building trades. We are lesbians, straight women, and bisexual women. We are mothers and child-free women. We are women of all races, ethnicities, and religions. Our supporters generally consider themselves to be liberal, very liberal, or progressive. Of the roughly 7100 U.S. signatories to the Declaration, around 30 percent are Democrats and 34 percent are Independents (many having left the Democratic Party due to opposition to the Party’s support for “gender identity”). Seven percent are Republicans and the rest are either unaffiliated or prefer not to say.

Amicus is very familiar with matters pertaining to sex and “gender identity.” With respect to these topics, *amicus* has filed *amicus* briefs in over half of the federal Circuit Courts of Appeal and before this Court in the matters of *United v. Skrmetti*, 605 U.S. 495 (2025), *Little v. Hecox* and *West Virginia v. B.P.J.*, 609 U.S. ____ (2026), and *Gays Against Groomers, et al. v. Garcia, et al.*, No. 26-120 (2026).

In view of its work on these issues, WDI USA has a meaningful perspective to offer the Court.

SUMMARY OF ARGUMENT

A three-judge panel of the U.S. Court of Appeals for the Ninth Circuit affirmed a decision by the District Court for the Western District of Washington that the terms of a

settlement (“the Settlement”) Plaintiff Olympus Spa (“the Spa”) entered into with the Washington State Human Rights Commission (“WSHRC”) did not violate the Spa’s rights under the First Amendment. *See Olympus Spa, et al. v. Armstrong, et al.*, No. 23-4031 (9th Cir. 2025).

The Settlement required the Spa to change its “women only” admission policy, which had been based on a customer’s sex, to admit customers based on their self-declared “gender identity,” regardless of their sex. This occurred after the WSHRC ruled that the Spa’s “women only” policy violated the Washington Law Against Discrimination (WLAD), Wash. Rev. Code § 49.60 *et seq.*, which defines “sexual orientation” to include “gender expression or identity.” The same panel declined to rehear the matter, and the full Ninth Circuit declined to rehear the matter *en banc*. *See Olympus Spa, et al. v. Armstrong, et al.*, No. 23-4031 (9th Cir. 2026).

However, this case is not, and never should have been presented as being, about the First Amendment. Accordingly, *amicus* urges the Court to deny *certiorari* as to the questions currently presented.

Instead, this case is about whether women and girls are entitled to female-only spaces, exclusive of men, especially where nudity is expected and sometimes required. Or, in the words of one federal judge, it is about “swinging dicks.”⁶

That crude language appeared in a dissent to the Ninth Circuit’s decision not to rehear the matter *en banc*.

6. *Olympus Spa* at 56.

Judge VanDyke explained:

You may think that swinging dicks shouldn't appear in a judicial opinion. You're not wrong. But as much as you might understandably be shocked and displeased to merely encounter that phrase in this opinion, I hope we all can agree that it is far more jarring for the unsuspecting and exposed women at Olympus Spa—some as young as thirteen—to be visually assaulted by the real thing.

Id.

As Judge VanDyke explained, this case is about whether a state law like the WLAD prohibits a place of public accommodation from ensuring that women can be free from indecent exposure and/or voyeurism. At an even deeper level, it is about whether women and men exist as discrete sex classes.

The WLAD defines the phrase “sexual orientation” to include “gender expression or identity.” However, the District Court and the Ninth Circuit were not wrong to conclude that the spa does not have a First Amendment exemption to its terms.

For that reason, *amicus* urges this Court to deny *certiorari*.

However, if the Court is inclined to grant *certiorari*, *amicus* instead urges the Court to remand this matter to the District Court with an order to consider one or more

of the following questions, none of which was litigated in the courts below:

1. Does the WLAD violate the right of women and girls to equal protection of the laws under the 14th Amendment to the Constitution?
2. Does the WLAD violate the Supremacy Clause of the Constitution because it is preempted by Title II of the Civil Rights Act of 1964?
3. Is the WLAD unconstitutionally vague?

At some point, this Court is going to have to deal with the question of whether women and girls exist as a discrete sex class in the law. However, this case is not the vehicle for doing so, at least not at this stage. If the Court is inclined to grant *certiorari*, it should do so for the limited purpose of remanding to the District Court.

ARGUMENT

1. **The Court should not grant *certiorari* on the First Amendment questions presented in the original complaint, the amended complaint, on appeal, and in the petition for *certiorari*.**

This case is not, and never should have been presented as being, about the First Amendment. The issue that should have been resolved before any Constitutional questions were even raised, much less decided, is whether

the WSHRC has correctly interpreted and applied the WLAD to the facts of this case, which is a matter of Washington state law.

As both the District Court and the Ninth Circuit held, this case presents no novel questions of First Amendment law. More importantly, any decision this Court renders would be based on the unexamined assumption that when the Washington legislature amended the WLAD in 2006 to make sexual orientation a protected characteristic, which it defined to include “gender expression or identity,” it intended to eliminate the ability of places of public accommodations to provide single-sex services.

Rather than challenge the WSHRC’s preliminary determination that, under the WLAD, places of public accommodation that previously had been permitted to admit or segregate clients and customers on the basis of sex now engage in illegal discriminatory conduct on the basis of sexual orientation if they do not abandon sex-based policies and replace them with policies based on an individual’s self-declared “gender expression or identity,” the Spa chose to concede this point. As the Ninth Circuit repeatedly emphasized, the Spa never challenged the statute itself, or the WSHRC’s interpretation of the statute. At no point did the Spa question whether the WLAD requires the characteristic of sex to be replaced by “gender expression or identity.” The Spa litigated this case as if that was settled law, which *amicus* argues it is not.

When the WLAD was first enacted in 1949, it was primarily focused on preventing discrimination in employment based on race, creed, color, or national origin. In 1971, the legislature amended the WLAD to

include “sex” in the protections against employment discrimination. Cognizant of the argument that prohibiting discrimination on the basis of sex would also prohibit the continuation of sex-segregated spaces, the legislature included a provision that “it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex.” In 1973, the WLAD was amended to include “sex” as a protected characteristic in areas other than employment and in 1985 it was amended to add “sex” to the provisions prohibiting discrimination in public accommodations. The 1985 amendments also added a definition of sex: “sex means gender.”⁷

In 1999, the legislature made a significant amendment to the WLAD to prohibit state discrimination against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

However, the law provided exceptions. Notwithstanding the WLAD’s prohibition on discrimination on the basis of sexual orientation (including “gender expression or identity”), the WLAD’s reach is broader and includes a prohibition on discrimination on the basis of sex. *See* Wash. Rev. Code § 49.60.030(1). The WLAD goes on to provide that the section does not affect “any otherwise lawful classification” that is both “based on sex” and “necessary for sexual privacy” (among other categories not relevant here). *See* Wash. Rev. Code § 49.60.400(4)(a). “Sexual privacy” is not defined.

7. The purpose of this amendment is unclear because the legislature did not define “gender.”

Again, as it had in 1971, the Washington legislature took measures to ensure that anti-discrimination laws could not be used to undermine the long recognized and respected need for sex segregation in certain circumstances.

In 2006, the legislature again amended the WLAD, this time to expand its protections to the characteristic of sexual orientation. The amendment defined “sexual orientation” to include heterosexuality, homosexuality, bisexuality, and gender expression or identity. It further defined “gender expression or identity” as “having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.” Nothing in the language of the 2006 amendments expressed any intent on the part of the Legislature to deem maintaining sex-segregated spaces a form of gender-identity discrimination. The 2006 amendments did not repeal or change the language of the 1971 amendments permitting sex-segregated facilities. Nor did the 2006 amendments alter the language of the 1999 amendments, permitting disparate treatment based on sex to protect “sexual privacy.”

None of this was addressed in the courts below.

Moreover, this Court ruled explicitly in *Bostock v. Clayton County*, 590 U.S. 644 (2020), that in deciding that employment based on “transgender status” constitutes unlawful sex discrimination, it was not deciding the

question of whether places of public accommodation may separate by sex:

What are these consequences anyway? The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And, under Title VII itself, they say sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today. But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today. Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind.

Bostock, 590 U.S.

This case could have provided the proper avenue for determining whether places of public accommodation like Olympus Spa may maintain single-sex spaces under state public accommodations laws. However, the Spa chose not to take that course, thereby depriving the Judiciary of the opportunity to address the question. This Court should not grant *certiorari* to decide unlitigated questions.

2. **The Court could grant *certiorari* in order to remand the matter to the District Court for consideration of one or more of three other important Constitutional questions, none of which was litigated in the courts below.**

A. Does the WLAD violate the right of women and girls to equal protection of the laws under the 14th Amendment to the Constitution?

The U.S. judiciary has a long and venerable history of applying intermediate scrutiny to claims of sex-based discrimination under the Equal Protection Clause for the purpose of protecting women and girls from unfair treatment under the law. *See, e.g., United States v. Virginia*, 518 U.S. 515 (1996); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *City of Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702 (1978); *Arizona Governing Committee v. Norris*, 463 U.S. 1073 (1983); *Frontiero v. Richardson*, 411 U.S. 677 (1973).

This case law all stems from the landmark case of *Reed v. Reed*, 404 U.S. 71 (1971), where the Supreme Court held for the first time that the promise of equal protection under the Constitution applies to women. At issue in that case was an Idaho statute that expressly granted men an advantage over women in the administration of probate estates. The Idaho law stated: “Of several persons claiming and equally entitled to administer, *males must be preferred to females*, and relatives of the whole to those of the half blood” (emphasis added). *Reed*, 404 U.S. at 72 n.2 and 73.

The parties were Sally and Cecil Reed, the parents of Richard Reed, who had died intestate. Because Richard

had no spouse or children, the administration of his estate would fall to either Sally or Cecil, and because of the law's provision preferring males over females, the probate court granted the privilege to Cecil. Sally challenged that decision. This Court eventually ruled that the Idaho law unconstitutionally deprived Sally of her right to equal protection of the law on the basis of sex. In its ruling, the Court stated: "By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the Equal Protection Clause." *Id.* at 77.

The Idaho law explicitly expressed a preference for male people over female people. This Court held, rightfully, that this violated the Constitution. So-called "gender expression or identity" had nothing to do with it. If "gender expression or identity" were in fact a subcategory of sex, Sally Reed could simply have declared to the probate and higher courts that she had the right to a preference in administering Richard's estate because she "expressed herself" or "identified as" male.

The argument, as valid today as it was in 1971, was that the Equal Protection Clause protects women and girls on the basis of sex because women and girls have historically been discriminated against on that very basis. This Court explicitly ruled that sex-based discrimination was subject to legal scrutiny. The Court could now uphold this legacy by remanding this matter to the District Court to determine whether sex (or in the current case, sexual orientation) can constitutionally be redefined to include "gender expression or identity" without eliminating women and girls as a sex class.

Government entities such as the Washington state legislature and the WSHRC should not pretend that sex-

based oppression, both historical and contemporary, does not exist by simply ignoring the fact that women and girls exist as a coherent category of people.

Notably, in arguing that the Equal Protection Clause protects women and girls as a sex class, Sally Reed’s legal team (which included the late Justice Ruth Bader Ginsburg) reminded the Supreme Court that equal legal rights for women and girls need not, and constitutionally must not, come at the expense of the privacy rights of women and girls. *See* Appellant Br. at 19, n.13, *Reed*, 404 U.S.

To survive an Equal Protection challenge, a distinction based on sex must satisfy intermediate scrutiny, which requires demonstrating that the distinction is substantially related to an important government interest. *See United States v. Virginia*, 518 U.S. 515, 524 (1996); *Craig v. Boren*, 429 U.S. 190 (1976). *Amicus* would argue that the WLAD discriminates on the basis of sex by redefining sexual orientation to include “gender expression or identity” and Respondents cannot present a single government interest—let alone an important one—in obliterating the legal category of sex or allowing men to access female-only spaces in places of public accommodation. If sex is eliminated as a coherent category in law, all efforts to remedy past, present, and future sex discrimination against women by way of the Equal Protection Clause will be ineffective due to the inability to differentiate between male and female.

This Court recently ruled that sex is real for the purpose of examining sex discrimination complaints under the Equal Protection Clause. *See West Virginia*

v. B.P.J., No. 24-43, slip op. (U.S. June 30, 2026) (“The question before the Court is: Under Title IX and the Equal Protection Clause of the Fourteenth Amendment, may schools maintain women’s and girls’ sports for biological females? In other words, may schools determine eligibility for women’s and girls’ sports based on biological sex? The answer is yes.” *Id.* at 2-3. “Under this Court’s equal protection precedents, laws that classify by sex are subject to what is known as intermediate scrutiny: Sex-based classifications are permissible only when the classification is ‘substantially related to achieving an important government objective.’” *Id.* at 15.). *See also Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791 (11th Cir. 2022) (sex is real under both Title IX and the Equal Protection Clause of the 14th Amendment).

If the state of Washington, or Respondents, can demonstrate that forcing a female-only spa to accommodate men is substantially related to an important government interest, they should be invited to do so. This argument was not pled in either the original or the amended complaint. This Court has the option to remand to the District Court to consider it *de novo*.

B. Does the WLAD violate the Supremacy Clause of the Constitution because it is preempted by Title II of the Civil Rights Act of 1964?

Arguably, the WLAD is preempted by Title II of the Civil Rights Act of 1964, which does *not* prohibit discrimination on the basis of sex in places of public accommodation. Whether or not that is a good thing for women and girls is an open question.

Federal law provides that “[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination on the ground of race, color, religion, or national origin.” 42 U.S.C. §2000a(a).

This is all covered within Title II of the Civil Rights Act, which was intended to end the scourge of Jim Crow racial discrimination (Title II). Surely, the Olympus Spa is an establishment that the bill authors intended to be included as a “place of public accommodation.”

What does it mean to prohibit discrimination on the basis of sex in places of public accommodation, and why should it matter for women and girls as a sex class?

Amicus maintains that in order to be considered full human beings under the law, women must have access to places of public accommodation. That means that places of public accommodation must admit and serve women *and also* that they must be able to maintain single-sex spaces.

Feminists fought hard to enshrine prohibitions on sex discrimination in places of public accommodation throughout the 1960s and 1970s. The reason was straightforward: at that time, places of public accommodation like bars and restaurants routinely excluded women.

Writing in the *Yale Law Journal* in 2019, Elizabeth Sepper and Deborah Dinner describe an incident that allegedly occurred in 1970 (internal citations omitted):

One winter's evening in 1970, Carolyn Anderson suffered humiliation over a perfectly ordinary cocktail. Anderson planned to meet her husband at P.J. Clarke's, a New York City establishment. She was early; upon entering, she saw a familiar "RESERVED" card, a signal that women were "not wanted" at the bar. Anderson sat down at a table but, after a few minutes, approached the bar to ask for a cocktail. "From then on," Anderson explained in a letter to feminist attorney Faith Seidenberg, "the bartender subjected me to most viciously hostile treatment." She eventually left, telling the bartender she preferred her money to the drink. The treatment was not new to Anderson, but the insult stung, perhaps because she found the bartender "unusually threatening." ... Anderson decided to "educat[e] [her] self concerning [her] rights," and she asked Seidenberg, "[W]hat are the laws governing the serving of a lone woman at a commercial bar?"⁸

That one incident was not anomalous, and the answer to Anderson's question was that in 1970, only one state (Colorado) prohibited places of public accommodation from discriminating against women.

At the time, establishments like restaurants and bars routinely refused to serve women if they were not accompanied by men. "Sex segregation in both law and custom was rampant in the late 1960s. Restaurants, ranging from the expensive Whyte's Restaurant on Wall

8. Elizabeth Sepper and Deborah Dinner, *Sex in Public*, 129 YALE L.J. 78, 80 (2019).

Street to the middle-class Stouffer's Grills across the Midwest, did not admit women during lunch—considered the time for the business meetings of male executives. Often, a woman could access commerce—a room at a hotel, a coffee at a diner late at night, or a cocktail at a bar—only when accompanied by a male ‘escort.’ Eating and drinking establishments in cities across the United States posted signs, ‘No Unescorted Ladies Allowed,’ fearing prostitution and single women’s sexual immorality.”⁹

And so, feminists fought back. “Beginning in the late 1960s and through the 1970s, feminist advocacy challenged these ideologies to dismantle much of the sex segregation and exclusion that characterized public accommodations.”¹⁰ They did this mainly by persuading elected officials to add “sex” to state laws prohibiting discrimination in such places.

However, that was before anyone claimed to have a “gender identity” that is somehow different from sex. Today, under the “gender identity” (or, in the case of Washington state, “gender expression or identity”) doctrine, anyone can claim to be a member of the opposite sex, a member of no sex, and/or a member of a non-existent third sex. That has resulted in situations such as the one in this case—men are permitted to claim to be women and access places that are intended to be exclusively for women and girls.

None of this ought to be confusing, but it has become so because some people pretend that sex is not real.

9. *Id.* at 87.

10. *Id.* at 83.

The Supremacy Clause states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. Art. VI.

This Court unambiguously explained the principle that federal law is the supreme Law of the Land in *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000). There, a Massachusetts law restricted the authority of its agencies to purchase goods or services from companies doing business with Burma. The question before the Court was whether the Massachusetts law violated the Supremacy Clause, “owing to its threat of frustrating federal statutory objectives.” *Id.* at 366. The Court held that it did.

A fundamental principle of the Constitution is that Congress has the power to preempt state law. Art. VI, cl. 2; *Gibbons v. Ogden*, 9 Wheat. 1, 211 (1824); *Savage v. Jones*, 225 U.S. 501, 533 (1912); *California v. ARC America Corp.*, 490 U.S. 93, 101 (1989). Even without an express provision for preemption, we have found that state law must yield to a congressional Act in at least two circumstances. When Congress intends federal law to “occupy the field,” state

law in that area is preempted. *Id.*, at 100; cf. *United States v. Locke*, 529 U.S. ___, ___ (2000) (slip op., at 23) (citing *Charleston & Western Carolina R. Co. v. Varnville Furniture Co.*, 237 U.S. 597, 604 (1915)). And even if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute. *Hines v. Davidowitz*, 312 U.S. 52, 66—67 (1941); *ARC America Corp.*, *supra*, at 100—101; *Locke*, *supra*, at ___ (slip op., at 17). We will find preemption where it is impossible for a private party to comply with both state and federal law, see, e.g., *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142—143 (1963), and where “under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hines*, *supra*, at 67.

Id. at 372.

Numerous state laws across the country have prohibited discrimination on the basis of sex in places of public accommodation and redefined the word “sex” to include nebulous and amorphous concepts like “gender identity” and “gender expression.” See, e.g., Cal. Civ. Code § 51(e)(6) (“‘Sex’ includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. ‘Sex’ also includes, but is not limited to, a person’s gender. ‘Gender’ means sex, and includes a person’s gender identity and gender expression. ‘Gender expression’ means a person’s gender-related appearance

and behavior whether or not stereotypically associated with the person's assigned sex at birth."). *See also* N.Y. Const. Art. I, § 11 (discrimination prohibited "by any other person or by any firm, corporation, or institution, or by the state or any agency based on race, color, ethnicity, national origin, age, disability, creed, religion, or sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy").

Does a state law like the WLAD (or the California or New York provisions cited above) violate the principle that federal law is the supreme Law of the Land? *Amicus* does not purport to have an answer to that question.

The Declaration on Women's Sex-Based Rights states:

The conflation of the category of sex with the category of 'gender identity' hinders the protection of women and girls from violence perpetrated against them by men and boys. It increasingly enables men who consider that they have a female 'gender identity' to claim access to female single-sex victim support services and spaces, as both service users and as service providers. This includes specialist single-sex provisions for women and girls who have been subject to violence, such as shelters and health care facilities. It also includes other services in which single-sex provision is crucial to the promotion of the physical safety, health, privacy, and dignity of women and girls. The presence of men in female single-sex spaces and services undermines the role of these services

in protecting women and girls, and could make women and girls vulnerable to violent men who may claim a female ‘gender identity.’”¹¹

Amicus would unambiguously oppose any effort to exclude women from public life on the basis of sex. We do not wish to return to the days when women were not permitted to drink a cocktail alone at a bar. The inclusion of women and girls in public life is, in fact, precisely what single-sex spaces are designed to encourage. The entire reason that women’s separate spaces exist in the first place is that maintaining certain single-sex spaces advances women in public life.¹² Public accommodations such as Olympus Spa ought to be able to exclude men.¹³

Whether a state law like the WLAD is preempted by the Supremacy Clause by presenting a clear conflict with Title II is an important question that could be fully briefed by the parties in this matter if this Court were to grant *certiorari* for the limited purpose of remanding the matter to the district court.

C. Is the WLAD unconstitutionally vague?

To put it plainly, words have meanings, and a state cannot constitutionally legislate the plain meanings of

11. Declaration, Introduction.

12. See, e.g., Harriet Agerholm, *Single-sex toilets needed to overcome girls’ barriers to education, says Unesco*, INDEPENDENT (March 8, 2018).

13. *Amicus* would equally maintain that a nude male-only spa ought to be able to exclude women.

words out of existence. That is exactly what the state of Washington has done here.

The vagueness doctrine has traditionally been applied in the context of criminal law. *See, e.g., Johnson v. United States*, 576 U.S. 591 (2015) (“The Fifth Amendment provides that ‘[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.’ Our cases establish that the Government violates this guarantee by taking away someone’s life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” (citing *Kolender v. Lawson*, 461 U. S. 352 –358 (1983))).

However, it has been applied in the civil context as well. *See, e.g., Cramp v. Bd. of Pub. Instruction*, 368 U.S. 278 (1961) and *Baggett v. Bullitt*, 377 U.S. 360 (1964) (both striking down state laws requiring loyalty oaths in employment).

Generally speaking, “[t]he vagueness doctrine is a constitutional principle requiring that laws be written with sufficient clarity so that ordinary people can understand what conduct is prohibited and so that enforcement is not arbitrary or discriminatory.” Cornell Law School, Legal Information Institute (2026). Its sources are the Fifth and Fourteenth Amendments, which demand due process of law. This is true in both civil and criminal law.

Under Washington law, “sexual orientation” is defined to include “heterosexuality, homosexuality, bisexuality, and gender expression or identity.” Wash. Rev. Code §§ 49.60.030(1)(b), 49.60.040(27).

As addressed in Section II(b), *supra*, Washington is not alone. Numerous states have redefined words like “sex” and “sexual orientation” to include concepts such as “gender identity.” California’s and New York’s laws have already been discussed. Our society has become captured with the idea that there is such a thing as “gender identity” and, in subservience to that concept, redefined words out of existence.

The meaning of the word “sex” is unambiguous.

Reputable dictionary definitions of “sex” from the time of Title IX’s enactment show that when Congress prohibited discrimination on the basis of “sex” in education, it meant biological sex, i.e., discrimination between males and females. See, e.g., Sex, American Heritage Dictionary of the English Language (1976) (“The property or quality by which organisms are classified according to their reproductive functions.”); Sex, American Heritage Dictionary of the English Language (1979) (same); Sex, Female, Male, Oxford English Dictionary (re-issue ed. 1978) (defining “sex” as “[e]ither of the two divisions of organic beings distinguished as male and female respectively,” “female” as “[b]elonging to the sex which bears offspring,” and “male” as “[o]f or belonging to the sex which begets offspring, or performs the fecundating function of generation”); Sex, Webster’s New World Dictionary (1972) (“[E]ither of the two divisions, male or female, into which persons, animals, or plants are divided, with reference to their

reproductive functions.”); Sex, Female, Male, Webster’s Seventh New Collegiate Dictionary (1969) (defining “sex” as “either of two divisions of organisms distinguished respectively as male or female,” “female” as “an individual that bears young or produces eggs as distinguished from one that begets young,” and “male” as “of, relating to, or being the sex that begets young by performing the fertilizing function”); Sex, Random House College Dictionary (rev. ed. 1980) (“[E]ither the male or female division of a species, esp. as differentiated with reference to the reproductive functions.”).

Adams v. St. Johns Cty., 57 F.4th. See also *Tennessee et al., v. Cardona et al.*, No. 2024-cv-00072 at 1 (E.D. Ky. 2024) (“There are two sexes: male and female.”).

“Sexual orientation,” likewise, is unambiguous, and refers to an enduring pattern of emotional, romantic, and/or sexual attractions to men, women, or both sexes. *Amicus* would argue that a female-only spa such as the Olympus Spa could potentially run afoul of the WLAD’s prohibition on sexual orientation discrimination, for example, by discriminating against a lesbian patron.

The point here is that *amicus* does not believe that a state can constitutionally legislate the meanings of words out of existence. Whether state laws like the WLAD are unconstitutionally vague is an important question. This Court could remand the matter to the District Court with instructions to order the parties to submit briefing on it.

CONCLUSION

In its brief before the Ninth Circuit in this matter, *amicus* noted as follows:

In its orders granting Appellees’ motions to dismiss, the District Court repeatedly used the word “transgender” and the phrases “transgender woman,” “transgender women,” and “transgender women with male genitalia” uncritically and without definition. According to the National Institutes of Health, male genitalia consists of “the external organs (penis; scrotum; and urethra) and the internal organs (testis; epididymis; vas deferens; seminal vesicles; ejaculatory ducts; prostate; and bulbourethral glands).”¹⁴ At no point did the District Court explain how individuals with male genitalia can be a type of women. It goes without saying that women do not have any of these organs. It is truly a testament to where we are as a society today that it must be said in the context of federal civil rights litigation that women don’t have penises.

This Court has already ruled that “sex” refers to biological sex with respect to Title IX and the Equal Protection Clause. *See West Virginia v. B.P.J.*, No. 24-43, slip op. (U.S. June 30, 2026) (citing *Frontiero v. Richardson*, 411 U. S. 677, 686 (1973) (plurality opinion) (“‘sex’ is ‘an immutable characteristic’”). It need not take this case in order to decide whether sex is real.

14. National Institutes of Health, National Library of Medicine, “Genitalia, Male.”

Instead, *amicus* encourages the Court to deny *certiorari*. In the alternative, if the Court is inclined to grant *certiorari*, *amicus* would encourage the Court to do so for the limited purpose of remanding the matter to the District Court with instructions to order the parties to submit briefing on one or more of the questions explained herein.

Respectfully submitted,

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