
No. 26-286

In the
Supreme Court of the United States

OLYMPUS SPA, ET AL.,
PETITIONERS,

v.

ANDRETA ARMSTRONG, 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*

**BRIEF OF AMICUS CURIAE
FOUNDATION FOR MORAL LAW
IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICUS CURIAE¹

Amicus curiae Foundation for Moral Law (“the Foundation”) is a 501(c)(3) non-profit, national public interest organization based in Alabama, dedicated to defending religious liberty, God’s moral foundation upon which this country was founded, and the strict interpretation of the Constitution as intended by its Framers who sought to enshrine both. To those ends, the Foundation directly assists or files amicus briefs in cases concerning religious freedom, the sanctity of life, and other issues that implicate the God-given freedoms enshrined in our Bill of Rights. The Foundation has a substantial interest in this matter because it adheres to the religious conviction that God created humanity as male and female, each bearing the image of God (*imago Dei*). It also has a strong interest in ensuring that public-accommodation laws are not applied in a manner that infringes upon the constitutional protections afforded by the First Amendment: the freedoms of religion, speech, and association.

INTRODUCTION

This case presents a timely and important opportunity for the Court to reaffirm what it has already begun to restore: a jurisprudence grounded in

¹ Counsel of record for all parties received notice at least ten days prior to the due date of amicus curiae’s intention to file this brief. Pursuant to Rule 37.6, amicus curiae certifies that no party or party’s counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

the actual text and historical meaning of the First Amendment. In addressing this matter, the Court has the opportunity to clarify the legal meaning of the terms “male” and “female” as they are applied under American law and to safeguard the freedoms of religion, speech, and association for citizens holding both majority and minority religious beliefs.

The owners of Olympus Spa maintain the sincere religious belief that men and women should not be exposed to one another in states of undress outside the marital relationship. *Olympus Spa v. Armstrong*, 169 F.4th 817, 831 (9th Cir. 2026); *id.* at 838 (Lee, J., dissenting). The owners’ sincere religious belief rests on both Christian and Korean tradition: “The Spa’s rationale for its female-only policy centers on both its Korean traditions and its Christian beliefs about the separation of the sexes while in a state of undress. The cultural and Christian beliefs of the Spa’s owners on this issue are identical.” Appellants’ Reply Br. at 10, *Olympus Spa v. Armstrong*, No. 23-4031 (9th Cir. Aug. 12, 2024), 2024 WL 6466068, at *10. Consistent with those sincerely held religious convictions, they seek to preserve longstanding cultural and religious traditions regarding privacy, modesty, and the separation of the sexes in intimate settings. *Olympus Spa*, 169 F.4th at 836-38 (Lee, J., dissenting). Given the intimate nature of the services offered, the establishment serves only female patrons, employs only female staff, and restricts access to the premises to women. *Id.* The amicus asserts these traditional and Christian beliefs

not only on behalf of the Spa's owners, but on behalf of its clients as well.²

A transgender, biological male filed a complaint with the Washington State Human Rights Commission after his request to use the facilities was denied. *Olympus Spa*, 169 F.4th at 826. The Commission's investigator determined that the female-only rule violated state law and required that the spa change its entry policy, undergo training, and change the "biological women" language on its website. *Id.*; *id.* at 839 (Lee, J., dissenting). However, complying with the public accommodation law would directly violate the owners' sincerely held religious

² About 30% of South Koreans identify as Christians, making Christianity the largest religion in South Korea except for Buddhism. Of these, a large proportion are Presbyterian and Calvinist, largely because Presbyterians evangelized Korea in the 1800s. Camilla Klein, *The Shocking Truth: How Many South Koreans Are Christian and Why It Matters!*, <https://christianeducatorsacademy.com/the-shocking-truth-how-many-south-koreans-are-christian-and-why-it-matters/> (last visited Sept. 28, 2026). See also Adam Phillips, *Christian Churches in South Korea*, The Witness (Feb. 20, 2025), <https://thewitness.org/christian-churches-in-south-korea/>.

One of the authors of this brief, John Eidsmoe, bases this conclusion not only upon his research but also his personal experience teaching at Handong International Law School in Pohang, South Korea, for ten two-week stints, 2009-2019, on each of which he preached for at least one South Korean church. South Korean immigrants to the United States are also largely Christian and Protestant. Won Moo Hurh & Kwang Chung Kim, *Religious Participation of Korean Immigrants in the United States*, 29 J. for Sci. Study of Religion 19 (1990). It is reasonable to assume that many of the clients who patronize Olympus Spa hold these Protestant Christian convictions and would strongly object for religious reasons to appearing nude before a nude biological male.

beliefs and be detrimental to their business. *Id.* at 838-39 (Lee, J., dissenting).

For most of this Nation's history, consistent with the Founders' understanding of biology and the natural order, as well as the prevailing social understanding throughout society, humanity has been understood to comprise two distinct sexes: male and female. Those "[p]hysical differences between men and women" are "enduring." *United States v. Virginia*, 518 U.S. 515, 533 (1996).

The Christian faith, rooted in biblical truth, fundamentally believes that a holy separation of mankind into distinct sexes is articulated in the creation story detailed in Genesis 1, a story which provides the basis of our Faith: Creator God created all that is. *Genesis* 1; *John* 1:1-3.

Building upon that foundational principle, and while the Court may choose to defer discussion on the topic of gender, it has the opportunity here to clarify its definition of both men and women and how sincerely held religious beliefs and convictions related to those definitions may be authentically expressed in the commercial marketplace while remaining protected against governmental intrusion through the application of public accommodation laws.

SUMMARY OF THE ARGUMENT

Public accommodation laws cannot compel citizens to surrender the freedoms of speech, association, and religion that the First Amendment guarantees. Under *303 Creative*, *Hurley*, and *Dale*, when a public accommodation law and the

Constitution collide, the Constitution prevails. Washington nonetheless compelled Olympus Spa to rewrite its “biological women” entry policy, and the Ninth Circuit dismissed the burden on the owners’ faith as merely incidental.

Moreover, the belief that God created humanity as male and female is a foundational tenet of the Christian faith that necessarily governs how believers conduct their businesses. This Court’s recent decision in *West Virginia v. B.P.J.* confirms that the law may recognize biological sex. The Court should grant certiorari and confirm that the Constitution protects business owners who honor that distinction in the marketplace.

ARGUMENT

I. When Public Accommodation Laws and the First Amendment Collide, the First Amendment Must Prevail.

The *Olympus Spa* case directly presents the issue of public-accommodation laws versus the protection of the First Amendment. This Court has held that when a public accommodation law and the Constitution “collide, there can be no question which must prevail.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023) (citing U.S. Const. art. VI, cl. 2).

In *303 Creative*, this Court held that the First Amendment prohibited Colorado from forcing a website designer to create expressive designs speaking messages with which the designer disagrees. *See id.* at 602-03. This Court has long recognized the government’s “compelling interest” in preventing the

“unique evils” caused by “acts of invidious discrimination in the distribution of publicly available goods, services, and other advantages.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 628 (1984). Nevertheless, as this Court explained in *303 Creative*:

In saying this much, we do not question the vital role public accommodations laws play in realizing the civil rights of all Americans. This Court has recognized that governments in this country have a “compelling interest” in eliminating discrimination in places of public accommodation. *Roberts v. United States Jaycees*, 468 U. S. 609, 628 (1984); see also *Hurley*, 515 U. S., at 571–572. This Court has recognized, too, that public accommodations laws “vindicate the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.” *Heart of Atlanta Motel, Inc. v. United States*, 379 U. S. 241, 250 (1964) (internal quotation marks omitted).

....

At the same time, this Court has also recognized that no public accommodations law is immune from the demands of the Constitution. In particular, this Court has held, public accommodations statutes can sweep too broadly when deployed to compel speech. *303 Creative*, 600 U.S. at 590-92.

“The First Amendment envisions the United States as a rich and complex place where all persons are free to think and speak as they wish, not as the government demands.” *Id.* at 603. And the freedoms enumerated within the First Amendment are deeply intertwined. Historically and legally, this Court has recognized this interconnectedness. For instance, in cases defending expressive association, the Court noted that the right to associate for the advancement of beliefs is inseparable from the freedom of speech. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958).

This Court has repeatedly recognized that participation in the public sphere does not extinguish First Amendment freedoms. In *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995), the Court held that Massachusetts’s public accommodations statute could not be used to force veterans organizing a parade in Boston to include a group of gay, lesbian, and bisexual individuals because the parade was protected speech, and requiring the veterans to include voices they wished to exclude would impermissibly require them to “alter the expressive content of their parade.” *Id.* at 572-73. In *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), when the Boy Scouts sought to exclude assistant scoutmaster James Dale from membership after learning he was gay, the Court held the Boy Scouts to be “an expressive association” entitled to First Amendment protection. *Id.* at 656. The Court found that forcing the Scouts to include Mr. Dale would undoubtedly “interfere with [its] choice not to propound a point of view contrary to its beliefs.” *Id.* at 654. *See 303 Creative*, 600 U.S. at 585-86 (describing *Hurley* and *Dale*).

In *303 Creative*, the Court further explained:

Finally, the dissent comes out and says what it really means: Once Ms. Smith offers some speech, Colorado “would require [her] to create and sell speech, notwithstanding [her] sincere objection to doing so”—and the dissent would force her to comply with that demand. . . . Even as it does so, however, the dissent refuses to acknowledge where its reasoning leads. In a world like that, as Chief Judge Tymkovich highlighted, governments could force “an unwilling Muslim movie director to make a film with a Zionist message,” they could compel “an atheist muralist to accept a commission celebrating Evangelical zeal,” and they could require a gay website designer to create websites for a group advocating against same-sex marriage, so long as these speakers would accept commissions from the public with different messages. 6 F.4th at 1199 (dissenting opinion). Perhaps the dissent finds these possibilities untroubling because it trusts state governments to coerce only “enlightened” speech. But if that is the calculation, it is a dangerous one indeed.

. . . .

Five years ago, in a case the dissenters highlight at the outset of their opinion, the Court stressed that “it is not . . . the

role of the State or its officials to prescribe what shall be offensive.” *Masterpiece Cakeshop*, 584 U. S., at 638.

. . . .

By approving a government’s effort to “[e]liminat[e]” disfavored “ideas,” 6 F.4th at 1178, today’s dissent is emblematic of an unfortunate tendency by some to defend First Amendment values only when they find the speaker’s message sympathetic. But “[i]f liberty means anything at all, it means the right to tell people what they do not want to hear.” 6 F.4th at 1190 (Tymkovich, C. J., dissenting) (quoting G. Orwell).

. . . .

But, as this Court has long held, the opportunity to think for ourselves and to express those thoughts freely is among our most cherished liberties and part of what keeps our Republic strong. 303 *Creative*, 600 U.S. at 601-03.

And this “dangerous” calculation is a frightening prospect to the *amicus* indeed. *See id.* at 601. Together, these decisions recognize that government may not condition participation in public life upon the surrender of religious or expressive convictions.

As recounted in the Ninth Circuit opinion of the instant matter:

Courts have repeatedly recognized that where public accommodations laws impermissibly burden constitutional rights, public accommodations laws must give way. *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (enforcement action under public accommodations law unconstitutionally interfered with website designer's free expression); *Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 584 U.S. 617 (2018) (enforcement action under public accommodations law was not neutral with respect to religion); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021) (city policies were not generally applicable with respect to religion); *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000) (application of public accommodations law interfered with expressive association); *Green v. Miss U.S. of Am., LLC*, 52 F.4th 773 (9th Cir. 2022) (application of public accommodations law would interfere with beauty pageant's free speech). *Olympus Spa*, 169 F.4th at 826-27.

Collectively, this Court has held that governments impermissibly compelled speech in violation of the First Amendment when they tried to force speakers to accept a message with which they disagreed. *See 303 Creative*, 600 U.S. at 586-88. Notably, each of these matters concerned specific issues that directly impact the traditional, Biblical Christian worldview.

In *303 Creative*, the State required Smith to speak as the State mandated or “face sanctions for expressing her own beliefs, sanctions that may include compulsory participation in ‘remedial . . . training,’ filing periodic compliance reports as officials deem necessary, and paying monetary fines.” *Id.* at 589. Such was found to be an impermissible abridgement of the First Amendment’s right to speak freely. *Id.* at 602-03. Similarly, the owners of Olympus Spa have faced the threat of fines and referral for prosecution and been required to change their entry policy, undergo training, and change the “biological women” language on their website, an expression not only of their services offered, but of their free speech. *Olympus Spa*, 169 F.4th at 826; *id.* at 839 (Lee, J., dissenting); Appellants’ Reply Br. at 3. Yet “the First Amendment is no word game. And the rights it protects cannot be renamed away or their protections nullified by ‘mere labels.’” *Chiles v. Salazar*, 607 U.S. 627, 645 (2026) (quoting *NAACP v. Button*, 371 U.S. 415, 429 (1963)). As this Court explained in *303 Creative*:

The framers designed the Free Speech Clause of the First Amendment to protect the “freedom to think as you will and to speak as you think.” *Boy Scouts of America v. Dale*, 530 U. S. 640, 660–661 (2000) (internal quotation marks omitted). They did so because they saw the freedom of speech “both as an end and as a means.” *Whitney v. California*, 274 U. S. 357, 375 (1927) (Brandeis, J., concurring) An end because the freedom to think and speak is among our inalienable human rights. . . . A means

because the freedom of thought and speech is “indispensable to the discovery and spread of political truth.” *Whitney*, 274 U. S., at 375 (Brandeis, J., concurring). . . . For all these reasons, “[i]f there is any fixed star in our constitutional constellation,” *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 642 (1943), it is the principle that the government may not interfere with “an uninhibited marketplace of ideas,” *McCullen v. Coakley*, 573 U. S. 464, 476 (2014) (internal quotation marks omitted). *303 Creative*, 600 U.S. at 584-85.

Here, the Spa owners were forced to change their published admissions policy specifically to adopt new language “affirm[ing] equal access, service, and treatment for all customers ‘without regard to . . . sexual orientation or gender identity.’” *Olympus Spa*, 169 F.4th at 829. The Spa’s “alterations to its admissions practices necessitated alterations to its written policy” and to the language reflected on its website. *Id.* at 830. The Spa’s language of “biological women only” directly reflects the owners’ belief system, worldview, and choice to conduct business consistently with both, and therefore should be protected speech.

Likewise, the owners, patrons, and employees of Olympus Spa have the right to enjoy the freedom of association while participating in the services offered by the spa. The spa and its services are unique in that they observe centuries-old Korean traditions. *Id.* at 836 (Lee, J., dissenting). While the spa itself is not an

organized association with specified membership, the *amicus* would present that the tradition and nature of the spa itself inherently make it an association of like-minded individuals who distinctly observe a certain moral and cultural viewpoint. The view that women should not be subjected to a male in the nude when they themselves have not consented to the same is not an exclusively Christian viewpoint. Certain patrons, including females as young as thirteen, *id.* at 838 (Lee, J., dissenting), should be afforded protection from premature and uninvited exposure to the male anatomy imposed upon them if they wish to remain patrons of the spa, whether they be Christians such as the owners of Olympus Spa, or not.

Judge Lee's dissent reads:

One would think that the Washington Human Rights Commission would be sympathetic to the Spa's owners—members of a racial minority group who want to share their cultural heritage and provide a safe space for women and girls. Instead, it threatened prosecution for defying the state's contorted reading of its anti-discrimination law. *Id.* at 837 (Lee, J., dissenting).

“The First Amendment's Free Exercise Clause guarantees ‘the right to believe and profess whatever religious doctrine one desires,’ and proscribes ‘governmental regulation of religious beliefs as such.’ . . . The government may not ‘compel affirmation of religious belief [or] punish the expression of religious doctrines.’” *Olympus Spa*, 169 F.4th at 831-32 (citations omitted).

Curiously, in its opinion, the Ninth Circuit reasoned:

We first conclude that the Spa’s religious expression is only *incidentally burdened*. Though we recognize that the Spa’s desire to perform acts that contravene WLAD’s mandate is *motivated in part* by religious belief, the HRC’s action under WLAD does not prohibit the Spa from expressing its religious beliefs. *Id.* at 832 (emphasis added).

Since the seventeenth century, many Reformed Christians have understood humanity’s purpose as reflected in the Westminster Shorter Catechism: “Man’s chief end is to glorify God, and to enjoy him forever.” Westminster Shorter Catechism Q. 1 (1647). In First Corinthians, the church is instructed: “Whether therefore ye eat, or drink, or whatsoever ye do, do all to the glory of God.” *1 Corinthians* 10:31 (King James). Colossians reiterates: “And whatsoever ye do, do it heartily, as to the Lord, and not unto men.” *Colossians* 3:23 (King James). Such is the ultimate mandate of the Christian believer.

Thus, the Ninth Circuit has trivialized the sincerely held religious beliefs of the spa owners by its statements that their “religious expression is only incidentally burdened” and that the owners’ desire to conduct the spa services in a manner coherent with their beliefs is “motivated in part by religious belief.” *Olympus Spa*, 169 F.4th at 832. For Christians, faith is not confined to worship services or private devotion; rather, it shapes, informs, and permeates *all aspects*

of life, including one's vocation and professional activities.

The *amicus* does not seek to persuade this Court on the contours of First Amendment doctrine in the abstract. Instead, it respectfully urges the Court to recognize that for many Americans, sincerely held religious beliefs are not confined to places of worship or private devotion but permeate every aspect of life, including the operation of their business. This case presents an important opportunity for the Court to articulate the constitutional space in which religious exercise and participation in the marketplace coexist, and to clarify how those convictions, specifically those relating to the existence of only binary sexes as ordained by God, may be authentically expressed in the commercial marketplace while remaining protected against governmental intrusion through the application of public accommodation laws. The *amicus* prays that this Court recognize that sincerely held religious convictions necessarily shape the conduct of many business owners, in both their public and private lives, and that this specific belief is consequential to the Christian understanding of creation in God's divine order.

II. God's Creation of Humanity as Male and Female Is a Foundational Tenet of the Christian Faith That Necessarily Shapes the Christian Worldview and the Conduct of Daily Life.

For millions of Christians worldwide, the belief that God intentionally created humanity as male and female is not merely a peripheral theological doctrine but a *foundational conviction*, one which informs

every aspect of life. Rooted in the creation account (*Genesis* 1-2), this belief reflects the understanding that human identity, purpose, and vocation are established by divine design. Personal preference in the walk of faith is deferred. As Christ himself invited, “And he said to them all, If any man will come after me, let him deny himself, and take up his cross daily, and follow me.” *Luke* 9:23 (King James).

Accordingly, Christians view the biblical account of creation as fact and Truth. The distinction between male and female is an objective reality, which is ordained by God and is integral to His created order (*Genesis* 1:26-27, 2:18-25). If a Christian denies that God created male and female distinctly, they in essence discount the very architecture and construction of creation. And faith in the Creator God, as He is biblically defined, is the primary tenet of the Faith. As *Genesis* sets forth:

So God created man in his own image, in the image of God created he him; male and female created he them. *Genesis* 1:27 (King James).

And the Lord God formed man of the dust of the ground, and breathed into his nostrils the breath of life; and man became a living soul. . . . And the rib, which the Lord God had taken from man, made he a woman, and brought her unto the man. And Adam said, This is now bone of my bones, and flesh of my flesh: she shall be called Woman, because she was taken out of Man. *Genesis* 2:7, 22-23 (King James).

Jesus affirms and recounts the creation story in the New Testament when speaking to the Pharisees, stating: “And he answered and said unto them, Have ye not read, that he which made them at the beginning made them male and female” *Matthew* 19:4 (King James).

As Swain writes in *Thoughts on Theological Anthropology: Man as Male and Female*:

A systematic theology of human beings requires true theological and moral concepts. Because such concepts disclose the nature of reality, they enable us to think well about human beings: their natures and callings, their capacities and ends.

. . . .

“Commonality” is an anthropological concept that presents itself to us across the entire range of God’s works in relation to human beings in nature, grace, and glory. Human beings have a common nature. God created both man and woman in his image and likeness (Gen 1:26-27; 2:18-25). God named both man and woman “Adam” (Gen 5:2). Human beings are recipients of a common grace Both men and women are recipients of a common baptism (Gal 3:27-28; Eph 4:6). Both men and women are common heirs of “the grace of life” (1 Pet 3:7). Finally, human beings share a common destiny in glory. As now we

enjoy the status of being God's children by God's grace, so one day we will be fully conformed to the glorious image of Christ Jesus at his appearing (Rom 8:29; 1 John 3:2).

. . . .

God created man as male and female. In God's sovereign goodness in nature, grace, and glory, these two sexes array themselves in diverse gender-specific roles as husbands and wives, fathers and mothers, sons and daughters, brothers and sisters, roles that, in turn, have manifold applications in family, church, and society. Some of these roles involve authority-relations, others do not. All of these social relations presuppose our common humanity and are ordered to our mutual fellowship, under God and in communion with God. Scott R. Swain, *Thoughts on Theological Anthropology: Man as Male and Female*, 5 Reformed Faith & Prac., no. 1 (May 2020), <https://journal.rts.edu/article/thoughts-on-theological-anthropology-man-as-male-and-female/>.

While our nation may be fraught with heated debate on the issues of gender ideology and gender identity, the gender with which a person chooses to identify does not negate the biological sex with which they were created and born. The true, traditional Christian worldview remains steadfast. The pinnacle of God's creation, mankind, was created as two binary

sexes, male and female, for the glory of God and in the image of God (*Genesis* 1:26-27, 2:18-25). And in this manner, humanity is called to make visible the invisible Creator on the earth.

John 1:1-3 affirms:

In the beginning was the Word, and the Word was with God, and the Word was God. The same was in the beginning with God. All things were made by him; and without him was not any thing made that was made. *John* 1:1-3 (King James).

This idea is not exclusive to Protestant Christianity or its Reformed tradition. Instead, it reflects a broader consensus within historic Christianity and is expressly recognized in the *Catechism of the Catholic Church*:

2333 Everyone, man and woman, should acknowledge and accept his sexual identity. Physical, moral, and spiritual difference and complementarity are oriented toward the goods of marriage and the flourishing of family life. the harmony of the couple and of society depends in part on the way in which the complementarity, needs, and mutual support between the sexes are lived out.

2334 “In creating men ‘male and female,’ God gives man and woman an equal personal dignity.” “Man is a person, man and woman equally so, since both were created in the image and likeness of the

personal God.” *Catechism of the Catholic Church* §§ 2333-2334 (2d ed. 2000) (footnotes omitted), https://www.vatican.va/archive/ENG0015/_P84.HTM (last visited July 6, 2026).

Because Christianity teaches that faith is to permeate every aspect of a believer’s life, these convictions do not remain confined to private worship or religious observance. Rather, they necessarily extend into the manner in which Christians speak, associate with others, conduct their businesses, and ultimately interact within the public marketplace. The Christian business owner cannot simply compartmentalize their religious beliefs upon opening the doors of a business; instead, those beliefs continue to guide decisions, relationships, dealings and conduct in every sphere of life.

The Christian understanding of humanity as created male and female is therefore not merely an abstract theological proposition. It is a sincerely held conviction that shapes the believer’s conscience and informs their daily conduct. When civil law requires a Christian to affirm or facilitate conduct that directly contradicts this fundamental belief, that conflict is not merely one of personal preference or social policy, but one involving the very exercise of religion protected by the First Amendment.

Recently, this Court has made great strides in defining the roles of “male” and “female” as they pertain to Title IX, 20 U.S.C. § 1681, and female sports. On June 30, 2026, this Court issued its opinion in *West Virginia v. B.P.J.*, 609 U.S. ____ (2026), wherein the Court opined:

The term “sex” in the 1972 Title IX statute, the 1974 Javits Amendment, and the 1975 Title IX regulations cannot plausibly be interpreted to refer to anything other than biological sex. The ordinary meaning of the term “sex” at the time of enactment in the early 1970s was biological sex and not gender identity, particularly in the sports context. *See, e.g., Frontiero v. Richardson*, 411 U. S. 677, 686 (1973) (plurality opinion) (“sex” is “an immutable characteristic”). In addition, the Title IX regulations allowed separate sports teams precisely because of the biological differences between the sexes—namely, the inherent physical differences between biological women and biological men. *Id.*, slip op. at 10.

Those “[p]hysical differences between men and women” are “enduring.” *Id.*, slip op. at 2 (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)). Furthermore:

Separate sports teams for biological males and biological females are reasonable: Given the *inherent physical differences between the sexes*, allowing only biological females to play on women’s and girls’ teams can reduce the risk of physical injury and ensure fair competition. True, some might prefer a different rule allowing biological males who identify as female to participate on women’s and girls’ sports teams, at least in certain circumstances. But it was

surely “reasonable” for HEW in 1975 to draw a biological line—a line where biological males play only on male sports teams and only biological females play on female sports teams. Even in recent years, 27 States, the NCAA, the USOPC, and the IOC have all drawn the same line. *B.P.J.*, slip op. at 11 (emphasis added).

In a concurring opinion, Justice Thomas writes:

First, transgender status is not a suspect class requiring heightened equal-protection scrutiny. *United States v. Skrmetti*, 605 U. S. 495, 547–557 (2025) (BARRETT, J., concurring). . . . Because “gender dysphoria” is a mutable mental state that is the object of psychiatric treatment, it does not resemble the immutable characteristics on the basis of which our precedents have applied heightened scrutiny—race, sex, or national origin. Instead, gender dysphoria resembles other characteristics on the basis of which legislatures may classify with a merely rational basis. *See, e.g., Heller v. Doe*, 509 U. S. 312, 321 (1993) (mental illness); *Plyler v. Doe*, 457 U. S. 202, 220 (1982) (immigration status). Legislatures have many obvious rational bases to keep men who believe that they are women out of teams and private spaces reserved for women.

Second, as the Court recognizes, this case concerns “biological men” and “boys who identify as girls.” *Ante*, at 10, 27. Men and boys with gender dysphoria are not women or girls, even if they believe that they are. Sex is an immutable “biological” characteristic, *see ante*, at 10; it is binary; and “man” and “woman,” “boy” and “girl,” are the terms that correspond to adults and children of each sex. *See* A. Byrne, Are Women Adult Human Females? 177 *Philosophical Studies* 3783, 3786–3787 (2020). To use language to obscure reality—to show “indifference regarding the truth”—is to lie to the public and cease to treat our fellow citizens “as equal[s].” J. Pieper, Abuse of Language—Abuse of Power 17, 21 (1992). *B.P.J.*, slip op. at 1-2 (Thomas, J., concurring).

This Court’s decision in *West Virginia v. B.P.J.* reinforces a foundational principle which is directly relevant to this case: the Constitution does not invariably prohibit laws that recognize the biological distinction between males and females. Upholding West Virginia’s law reserving girls’ athletic competitions for biological females, the Court recognized that the law permissibly classified on the basis of biological sex to protect important interests of women and girls, including safety and competitive fairness. *B.P.J.*, slip op. at 14, 17. And the Court did not address bathrooms, locker rooms, and other sex-separated spaces, as those issues were not before it. *See id.*, slip op. at 13; *Bostock v. Clayton County*, 590 U.S. 644, 681 (2020).

Although *West Virginia v. B.P.J.* arose in the context of Title IX and school athletics, its reasoning is instructive and persuasive here. If the law may recognize the biological differences between men and women to preserve fairness and protect female athletic opportunities, then those same biological distinctions cannot simply be deemed legally irrelevant in other contexts where privacy, dignity, safety, and religious conviction are likewise implicated.

Women's-only facilities, including spaces in which women disrobe, receive intimate services, or expect bodily privacy, rest upon the same fundamental recognition that the sexes are biologically distinct. Here, the Court not only may decide the question as to spa facilities, but could extend protections to encompass all female-only facilities and intimate spaces, such as bathrooms and locker rooms.

This case, however, presents an additional constitutional frame absent from *West Virginia v. B.P.J.* Here, public accommodation laws are being invoked not simply to regulate commercial conduct, but to compel business owners whose sincerely held religious beliefs affirm the created distinction between male and female to open their female-only facilities to biological males, albeit those who "identify" as female. (See Justice Thomas's discussion of "gender dysphoria," *supra*.) Such a mandate implicates not only governmental recognition of biological reality but also the freedoms of religion, speech, and expressive association guaranteed by the First Amendment. As Justice Gorsuch observed, "As it is now, the term 'sex' was commonly understood

then to mean biological sex. *See, e.g., Webster's New World Dictionary* 1305 (2d ed. 1972).” *B.P.J.*, slip op. at 2 (Gorsuch, J., concurring). *See also Sex, Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/sex> (last visited July 5, 2026).

Accordingly, *B.P.J.* demonstrates that the acknowledgement of biological sex is not, standing alone, constitutionally suspect. Rather, the remaining question before this Court is whether the government may nevertheless compel private citizens to violate sincerely held religious convictions by requiring them to disregard those very same biological distinctions in the operation of their businesses, distinctions they believe were created by God Himself.

In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Court held that sincere religious exercise may remain protected, even in commercial settings, concluding:

Similarly, in these cases, the Hahns and Greens and their companies sincerely believe that providing the insurance coverage demanded by the HHS regulations lies on the forbidden side of the line, and it is not for us to say that their religious beliefs are mistaken or insubstantial. Instead, our “narrow function . . . in this context is to determine” whether the line drawn reflects “an honest conviction,” *id.*, at 716, and there is no dispute that it does. *Hobby Lobby*, 573 U.S. at 725.

The amicus firmly believes that “we are His workmanship, created in Christ Jesus for good works, which God prepared beforehand that we should walk in them.” *Ephesians* 2:10 (New King James Version). For the Christian, walking in those “good works” means adhering to belief in the Creation account as detailed in God’s Holy Word and the belief that God is the Creator who created all according to His divine plan. Accordingly, that means believing God ordained and divinely created two sexes, male and female. The Christian faith and worldview insists that these foundational beliefs are not merely matters of private conscience, but principles that necessarily govern every aspect of a believer’s life, including personal relationships, the operation of a business, and the manner in which business owners engage in the public marketplace.

The Court should grant certiorari and confirm that the Constitution does not prohibit, but protects, sincere religious beliefs expressed by business owners in the public marketplace.

CONCLUSION

The Foundation urges this Court to grant this petition for writ of certiorari. The owners of Olympus Spa and people of America have the right to observe their religious convictions while being business owners in the public marketplace, and the belief that God created two distinct sexes, male and female, is not a viewpoint for which American citizens should be shamed, punished, or mocked.

Respectfully submitted,

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