

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 *AMICI CURIAE*
OUR DUTY-USA, WOMEN ARE REAL, AND
DEMOCRATS FOR AN INFORMED
APPROACH TO GENDER IN SUPPORT OF
GRANTING THE PETITION**

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*¹

Our Duty-USA is a secular nonprofit with members from all fifty states who have varied political backgrounds, ethnicities, and sexual orientations but share the experience of raising former and currently trans-identified children and the knowledge that sex matters. Our Duty members advocate to protect all individuals from the harms of the transgender agenda.

Women Are Real is a nonpartisan organization that focuses on women's sex-based rights. It believes that sex matters in the daily lives of women and girls and that there are deleterious consequences in the lives of females when males who identify as women have access to female's intimate spaces, prisons and sports.

Democrats for an Informed Approach to Gender is a nonprofit organization comprised of Democratic voters who advocate for the Democratic Party's return to core liberal values. It supports the sex-based rights of women and girls in fair competition, safe play in sports, and the privacy and dignity afforded by single-sex spaces.

¹ All parties were timely notified of the filing of this brief. This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amici curiae* or their counsel has made a monetary contribution toward the brief's preparation or submission.

Amici file this brief in support of neither party but in support of granting the Petition. Amici agree with Petitioners' position that a single-sex, nude women's spa may lawfully exclude males from its facilities. Amici write neutrally for two reasons. First, Petitioner's litigation position, reflected in its entrance policy, would admit males who have undergone surgical alteration of their genitalia. Amici oppose that position. No surgical or hormonal intervention changes a person's sex. A policy that treats surgical status as the relevant line concedes, at least implicitly, that sex is mutable in some circumstances and that the attribution of one being male or female rests on merely genitalia, a premise Amici regard as both scientifically and legally unsound. Amici urge the Court to grant the Petition but to decline to adopt reasoning that would ratify a surgical-status test as an acceptable substitute for a sex-based one.

Second, the complaint underlying this action did not raise an equal protection challenge to the Washington Law Against Discrimination ("WLAD") itself. Amici believe that all intimate spaces can be separated by sex, irrespective of religious leanings or traditions. Petitioners' challenge neglected to make this available and stronger argument, and one that this Court must decide expeditiously. Amici offer the missing equal protection analysis in Part III to provide the Court with information regarding the effects of Washington's (and other states') non-discrimination statutes that include gender identity as a protected class.

This Court has occasionally expanded the scope of a case beyond the theory a party originally pressed when doing so was necessary to decide the question actually at issue. *See e.g., Citizens United v. FEC*, 558 U.S. 310 (2010) (ordering re-argument and supplemental briefing on the facial validity of a statutory provision after concluding the as-applied challenge could not be resolved without it). Amici recognize that expansion is extraordinary. *See United States v. Sineneng-Smith*, 590 U.S. 371 (2020). Amici raise the equal protection question to illustrate that the conflict between sex-based and “gender-identity”-based protections extends beyond the First Amendment. A properly pled facial challenge under equal protection will place that conflict squarely before this Court in the future. Amici encourage this Court to address the deleterious effects of state laws that elevate gender identity to a protected status on par with sex and race.

SUMMARY OF ARGUMENT

In Hans Christian Andersen’s fairy tale, *The Emperor’s New Clothes*, two swindlers convince an emperor that they can weave cloth so fine that only the most discerning can see it. His servants, too afraid to admit they see nothing, praise the invisible cloth. The emperor, unwilling to admit he sees nothing either, wears it in a public procession. The whole town plays along, until a child says plainly what the adults would not—the emperor is wearing nothing at all.²

² Hans Christian Andersen, *The Emperor’s New Clothes*, in HANS CHRISTIAN ANDERSEN: THE COMPLETE FAIRY

Amici, like that child, will be blunt, honest, and state what many are afraid to say. Amici will go beyond Judge Van Dyke's distasteful (but appropriately descriptive) language in *Olympus Spa v Armstrong*, 169 F.4th 817, 848 (2026) (Van Dyke, J. dissenting), and explain the abject harm females are experiencing nationwide. What is happening is more sinister, more insidious and more destructive than a Ninth Circuit judge's use of a four-letter word. Objective truth matters, and the harms posed by males using female's intimate spaces will continue to escalate if society keeps pretending that the emperor is not naked.

Most people would reject the notion a person, like Rachel Dolezal, who was born of two white parents, but permed her hair and spent hours in the tanning salon to identify as black, is really black.³ Most rational people would not have believed that Oli London transformed from an English man into a Korean man because he identified as transracial and then morphed into being a Korean transwoman after enduring 32 surgeries to alter his face and body.⁴

TALES 77 (Diana Crane Frank & Jeffrey Frank trans., Anchor Books 2003) (1837).

³ *Parents of NAACP Chapter President Rachel Dolezal Say She Is Not Black*, NBC NEWS (June 12, 2015), <https://www.nbcnews.com/news/nbcblk/parents-naACP-chapter-president-rachel-dolezal-say-she-not-black-n374301>.

⁴ Will Mendelson, *Influencer Oli London Explains Why He Detransitioned Back to Male, Blasts 'Hypocritical' Haters*, Fox News (Oct. 17, 2022), <https://www.foxnews.com/entertainment/influencer-oli->

Similarly, despite extreme facial modification surgery Dennis Avner, who identified as tiger, did not, in fact, become a tiger.⁵

Whether one believes God made humans male and female or recognizes that the sex of a human is determined when the sperm penetrates the egg, the result is the same, *i.e.*, humans are either male or female and one cannot become the other.⁶ The “[p]hysical differences between men and women” are “enduring.” *West Virginia v. B.P.J.*, 146 S. Ct. 2356, 2374 (2026), (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)).

As Justice Thomas said in *B.P.J.*:

[t]he class of people who claim transgender status could more accurately be described as people who are experiencing ‘gender dysphoria,’ which is not a ‘discrete group.’ . . . Men and boys with gender dysphoria are not women or girls, even if they believe that they are. Sex is an immutable ‘biological’

[london-explains-why-detransitioned-male-blasts-hypocritical-haters.](#)

⁵ *Dennis Avner aka "Stalking Cat" Found Dead; On His Time in OC*, OC WEEKLY (Nov. 2012), <https://www.ocweekly.com/?p=211851>.

⁶ “Intersex” conditions are disorders of sexual differences. They do not denote a third category of human, but represent a male or female whose reproductive system developed improperly. A. Hughes, et al., *Consensus Statement on Management of Intersex Disorders*, 91 ARCHIVES OF DISEASE IN CHILDHOOD, 554 (2006).

characteristic; it is binary; . . . and “man” and “woman,” “boy” and “girl,” are the terms that correspond to adults and children of each sex.

Id. at 2382 (cleaned up) (Thomas, J., concurring).

Women’s rights are sliding backward at an alarming pace as states redefine sex-based legal protections to include “gender identity,” a fictional, unprovable construct that can be defined only by the individual asserting it (and one that was coined by a genuine “mad scientist”),⁷ that grants males who identify as women access to spaces and protections reserved for females. Washington has erased the distinction between sex and a person’s belief about what sex they are. The boundaries between the sexes that this Court has long acknowledged are required to safeguard women’s and girls’ privacy and safety are gone. *See, U.S. v. Virginia*, 515 U.S. at 551 n.19 (“Admitting women to VMI would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living

⁷ The term “gender identity” was coined by John Money, a psychologist whose signature case involved an infant boy, Bruce Reimer, who lost his penis in a botched circumcision. At Money’s urging, Bruce’s body was altered and he was raised as a girl. Money publicly declared the child’s “reassignment” a success. In reality, Bruce never accepted a female identity and endured severe psychological trauma before eventually living as a male again and taking his own life. Money forced Bruce and his twin brother to simulate sex acts with each other as part of his “treatment.” John Colapinto, *AS NATURE MADE HIM: THE BOY WHO WAS RAISED AS A GIRL*, 86–88 (2000).

arrangements...”). If equal protection under the law means anyone can claim to be any sex, then no sex-based categories can exist at all, and sex-based protections likewise disappear.

ARGUMENT

Washington law grants people a right to be free from discrimination, *inter alia*, on the basis of sex and sexual orientation in places of public accommodation. WASH. REV. CODE §§ 49.60.030(1) and 49.60.040(29). WLAD defines “sexual orientation” to include “gender identity.”⁸ The senseless inclusion of “gender identity” not only renders the terms lesbian, gay or bisexual meaningless,⁹ but also places “gender identity” on equal footing with sex. As a result, sex-based rights are subordinated to the subjective, undefined construct of “gender identity.”

I. Females Across the Country Have Lost Their Privacy and Sex-based Rights in a Variety of Public Accommodations Because of Anti-discrimination Laws and Policies on “Gender Identity.”

Males identifying as females are invading every intimate space that had previously been designated for females. Public accommodations subject to WASH. ADMIN. CODE § 162-32-060(1) “shall allow individuals the use of gender-segregated facilities, such as

⁸ The Ninth Circuit cited this definition as then-codified at WASH. REV. CODE § 49.60.040(27). The provision has been renumbered as WASH. REV. CODE § 49.60.040(29). *See* 2024 c 161.

⁹ For example, lesbians are females attracted to females not males asserting that they are females.

restrooms, locker rooms, dressing rooms, and homeless or emergency shelters, that are consistent with that individual’s gender expression or gender identity.” Washington’s prisons house males who identify as female in female prison.¹⁰ School bathrooms are not sex-separated.¹¹ In Wyoming, sorority houses are open to males claiming to be females.¹² In California, the law requires that nursing homes assign rooms based upon gender identity.¹³

Twenty-one states, the District of Columbia and the U.S. Virgin Islands have non-discrimination laws in public accommodations based upon gender identity.¹⁴ Five additional states interpret existing

¹⁰ Genevieve Gluck, *Lawsuit Challenges Washington DOC Gender Identity Policies Citing Trans-Identified Male Assaults on Female Inmates*, REDUXX (Apr. 27, 2026), <https://reduxx.info/lawsuit-challenges-washington-doc-gender-identity-policies-citing-trans-identified-male-assaults-on-female-inmates/>

¹¹ See WASH. REV. CODE § 28A.642.010 (2026).

¹² *Westenbroek v. Fraternity*, No. 23-CV-51-ABJ, 2023 WL 5533307, at *18 n.68 (D. Wyo. Aug. 25, 2023), *appeal dismissed*, No. 23-8065, 2024 WL 2954705 (10th Cir. June 12, 2024) (dismissing for lack of jurisdiction because the district court’s order was not final). The district court chastised the plaintiff for allegations related to the trans-identified male’s state of arousal and perceived lecherous behavior as “unbefitting in federal court.”

¹³ CAL. HEALTH AND SAFETY CODE § 1439.51(a)(3) (making it unlawful for a long-term care facility to assign a trans-identified resident to a room other than in accordance with that resident’s gender identity unless the trans-identified person agrees.

¹⁴ Movement Advancement Project, *Equality Maps: Public Accommodations Nondiscrimination Laws* (2026),

prohibition on sex discrimination in public accommodations to include sexual orientation and gender identity.¹⁵

The United States is becoming a nation where the password for male entrance into the spaces where females are at their most vulnerable is the talismanic utterance of three words, “I am trans.”

A. Washington Incidents

In July 2026 a mother encountered a male with his erection viewable by others using the locker room as he showered at the Lynnwood community pool women’s bathroom. At the time of the incident, a children’s swim meet was occurring, and young girls were in the locker room.¹⁶ When confronted, he announced that he was “trans” — an *ipse dixit* that shielded him from scrutiny while he was in a state of sexual arousal around children in a public accommodation. Instead of being arrested for indecent exposure, lewd acts in the presence of a child, child endangerment, luring a child, or voyeurism he was shielded by the talisman. The spokesperson for Lynnwood’s Recreation Center responded that the

<https://mapresearch.org/equality-map/nondiscrimination-laws/#public-accommodations> (data as of Sept. 30, 2026).

¹⁵ *Id.*

¹⁶ Rachel del Guidice, *Washington Mother Says She Found Adult Male Showering in Women's Locker Room During Children's Swim Meet*, FOX NEWS (July 28, 2026), <https://www.foxnews.com/media/washington-mother-found-adult-male-showering-womens-locker-room-childrens-swim-meet>.

center follows Washington’s laws. As a concession, the Center merely installed better fitting shower curtains.

In 2022, an elderly woman, Julie Jaman, was showering at her local YMCA when she heard a male voice in the locker room. She then observed a young male employee, who identifies as a woman, watching little girls pull down their bathing suits to use the toilet. Jaman complained to the management, and she was banned from the YMCA for life.¹⁷

In 2016, shortly after WASH. ADMIN. CODE § 162-32-060(1) become effective, an adult male entered the women’s locker room at Seattle Parks and Recreation’s Evans Pool and undressed in front of a girl’s swim team and other female patrons. When confronted, the male told staff that he had a right to be there because of the new law. Seattle Parks and Recreation’s communications manager said staff did not believe the man was “transgender” but was “identifying” as a woman as a pretext to test the law.¹⁸

B. Incidents Experienced by Amici Members.

Sammy identifies as “nonbinary.” For years, he has been subjecting female members at Bay Area

¹⁷ Emma Colton, *80-Year-Old Washington State Woman Banned from YMCA After Demanding Trans Employee Leave Locker*, FOX NEWS (Aug. 8, 2022) <https://www.foxnews.com/us/washington-80-year-old-woman-banned-ymca-demanding-trans-employee-leave-locker>.

¹⁸ *Man Found in Women’s Locker Room Cites New Transgender Bathroom Rule*, KOMO NEWS (Feb. 18, 2016), <https://komonews.com/news/local/man-found-in-womens-locker-room-cites-new-transgender-bathroom-rule>.

YMCA facilities to repeated exposure to his naked body, including his penis, in the women’s locker rooms. Because California law,¹⁹ like Washington’s law, permits individuals to access sex-separated facilities based on self-declared gender identity rather than sex, Sammy was permitted to use the women’s locker room. While there, he was nude in front of young girls and women (including elderly), often for hours at a time.²⁰ The accounts below are drawn from Amici members who witnessed his conduct.

Nuchine Nobart described her encounter with Sammy in visceral terms: “I felt violated, nobody cared. I have never been in a domestic violence situation, but at that moment I felt the pain a woman must feel when violated — tears, shaking, loud, in disbelief, begging to be heard.” Kathy H.²¹ witnessed Sammy posing naked in front of a girl who was under five years old. When Kathy complained, the YMCA told her it had no authority to act because of

¹⁹ See CAL. CIV. CODE § 51. California’s equal protection act defines “sex” to include “a person’s gender,” and “gender” is defined to include “a person’s gender identity and gender expression”. CAL. CIV. CODE § 52(a) requires that males be accepted as females with a threat of legal damages that include up to treble the actual damages, uncapped emotional distress damages — trebled, but in no case less than \$4,000, plus attorney’s fees.

²⁰ Shawn Cohen, *YMCA in liberal city finally cracks down with new rules after trans woman exposed pre-op private in female locker room*, DAILY MAIL, (MAY 26, 2026) <https://www.dailymail.com/news/article-15847253/san-francisco-ymca-trans-woman-locker-room-Sammy.html>.

²¹ Some members requested anonymity due to fear of retribution from transgender activists.

California law.

Susan Pete, who is disabled, recounted an incident in which a Muslim mother, showering with her autistic daughter, encountered Sammy standing fully naked just outside the shower stalls. The child became severely distressed, wailing, and screaming. Pete never saw the mother or daughter at the facility again. Pete also witnessed Sammy sitting naked on a stool in the women's locker room with an erection and then bending over such that his anus was exposed to all nearby.

Pete's sixteen-year-old granddaughter, upon encountering naked Sammy in the women's facility, reported feeling disgusted, anxious, and upset. The experience re-traumatized her, as she had previously survived a hostile encounter with a man. The granddaughter aptly asks: "Where are the safe spaces for women?"

Elizabeth Kenny intervened when Sammy refused a request to cover himself from an elderly Asian woman who had limited English proficiency. Sammy, towering over the Asian woman as she stood bare-breasted and vulnerable, berated her in response. Ms. Kenny, who witnessed the exchange, broke down in tears afterward, could not sleep that night, and became physically ill. She was distressed both by watching an elderly woman accosted in a place she should have been safe, and by the knowledge that the YMCA had no power to intervene.

Elizabeth Cronin, who relies on specialized gym equipment due to a chronic illness, observed Sammy blow-dry his groin area while propping his leg on the

benches, positioning himself so his penis was visible to nearby women. He also used a handheld mirror to observe Cronin and other women undressing behind him, presumably to ensure that he did not miss any undressed women or their reaction to his exposed genitalia.

In response to the multiple complaints, at least one Bay Area YMCA changed its policy to limit nudity and the time spent in the locker room.²² This stop-gap solution has temporarily stopped Sammy from returning to that YMCA but does not resolve the equal protection violations created by laws that elevate “gender identity” over sex, nor does it prevent the next “Sammy”. It is the females who are asked to change their behavior in subjugation of males who believe that they are women.

Amici Tish Hyman, a lesbian and Grammy-nominated songwriter and rapper, had multiple confrontations with transgender-identified males at two Gold’s Gym locations in California. During one encounter, Hyman confronted the male, a man named Kyle Freeman, also known as “Alexis Black,” because he was watching her undress. He lashed out at her, calling her a “b*****.” Hyman changed gym locations to avoid him, but she found herself face-to-face with

²² See Stonestown Family YMCA, YMCA of Greater San Francisco, <https://www.ymcasf.org/locations/stonestown-family-ymca/facilities>; Alexandra Marshall, San Francisco YMCA Restricts Locker Room Nudity After Trans Woman Complaints, FOX NEWS (May 26, 2026), <https://www.foxnews.com/media/san-francisco-ymca-changes-locker-room-rules-after-transgender-controversy-report>.

him again while she was in the sauna. She had a third run-in with him where he was covered only by a towel while she and other women were naked. Hyman challenged him, and he claimed that “straight women want to see his d***.” When Hyman complained to management, staff responded that anti-discrimination laws prevented them from removing a person who identifies as transgender from the locker room of their choosing. Hyman later learned that Freeman had been convicted of assaulting his former wife with such ferocity that she suffered a compound fracture of her jaw.²³

Grace Hutson encountered a trans-identified male in the women’s restroom at Planet Fitness in California. Hutson noticed a tall, masculine-appearing individual exiting a shower stall wrapped only in a towel. When she later returned to the restroom, she observed a shadow beneath a stall door that clearly depicted the man masturbating. She alerted staff and the man claimed that because he is “transgender” he had a right to be in the women’s bathroom.

Hutson complained to the corporate offices and instead of protecting Hutson, its lawyer threatened her with legal action for posting a video of the lewd

²³ David Spector, *Singer Claims Transgender Woman — Who Beat Ex-Wife to a Pulp — Preyed on Her for Days in Women’s Locker Room: ‘Like a Bedroom Bully,’* N.Y. POST (Nov. 8, 2025), <https://nypost.com/2025/11/08/us-news/transgender-wife-beater-harassed-women-in-ladys-la-gym-locker-room-singer-tish-hyman-says/>.

act.²⁴ Police officials took Hutson's report but told her that they would not pursue the matter. Once again, saying the talisman "I am trans" was all it took to override a woman's need for dignity and safety.

Hutson's experience reflects a broader pattern at Planet Fitness, in which women who report or document men in women's locker rooms have their memberships terminated while the men involved do not. Since as early as 2015 Planet Fitness' policy permitting locker room usage based upon gender identity has led to multiple incidents of males who identify as transgender being present in female bathrooms while women are in vulnerable situations.²⁵

In 2015, Yvette Cormier documented a man in a Michigan Planet Fitness. In response to her complaints, management told her to wait for the male

²⁴ Patrick Reilly, *Trans Gymgoer Caught 'Masturbating' in Women's Bathroom at California Planet Fitness*, N.Y. POST (Jan. 5, 2026), <https://nypost.com/2026/01/05/us-news/trans-gymgoer-caught-masturbating-in-womens-bathroom-at-california-planet-fitness/>.

²⁵ Taylor Penley, *Planet Fitness Value Plummets \$400M After Transgender Turmoil*, FOX BUS. (Mar. 21, 2024, 11:51 AM), <https://www.foxbusiness.com/media/planet-fitness-value-plummets-transgender-turmoil>; *Woman's Gym Membership Revoked After Gender Identity Complaint*, ABC7 CHI. (Mar. 9, 2015), <https://abc7chicago.com/gym-membership-gender-identity-complaint-planet-fitness/550365>. *Woman Says Planet Fitness Canceled Her Membership After She Reported Man in Women's Locker Room*, WASH. TIMES (May 13, 2026), <https://www.washingtontimes.com/news/2026/may/13/woman-says-planet-fitness-canceled-membership-reported-man-womens/>.

to finish using the women's locker room and then canceled her membership.²⁶ In May 2026, a New Hampshire Planet Fitness canceled Judy Walcott's membership after she reported a man in the women's locker room.²⁶ Walcott reported trembling in fear as she realized a male was in the locker room with her. The Planet Fitness employees called her "transphobic" instead of removing the trans-identified male from a space in which females are undressed. When she asked for a refund for her membership, Planet Fitness called the police on her. Males looking at undressed females are "safe", but a woman asking for a refund requires police involvement.

C. Elsewhere in the Nation

Across the nation, female students and their parents are complaining about being forced to share intimate spaces with males who believe that they are females at school. These examples represent only a small percentage of the problems occurring in schools nationwide. In Massachusetts in May 2026, a third-grade female was using the toilet. A boy who claimed to be a girl peered into her stall and then pushed open the door while she was partially undressed. The young girl's father reports that she is anxious and fearful to

²⁶ Kristine Parks, *New Hampshire Woman Says Planet Fitness Canceled Her Membership After She Reported Man in Locker Room*, FOX NEWS (May 13, 2026), <https://www.foxnews.com/media/new-hampshire-woman-says-planet-fitness-canceled-her-membership-after-she-reported-man-locker-room>.

attend school.²⁷

In February 2024, a trans-identified male basketball player, “Lazuli Clark” was caught staring at a female teammate’s naked breasts and making vulgar comments.²⁸ In North Carolina, a female student informed her school board that a boy claiming to be a girl had been staring at her and other females as they changed in the girls’ locker room. Student Trista Ruck stated that she tries to avoid using bathrooms at school because the male has full access. The principal, according to Ruck, responded to her complaint by telling her that the issue was “too political to address” and that she can find another bathroom.²⁹ Schools require that females who object to males in their intimate spaces bear the consequences while the “needs” of the males are accommodated.

Nicolas Contino aka “Lilly Tino” makes a mockery of women and girls. He dresses like a little

²⁷ Rochester Third-Grader Traumatized After Alleged Peeping Incident in School Girls’ Restroom, NEW BEDFORD GUIDE (May 27, 2026), <https://www.newbedfordguide.com/rochester-third-grader-traumatized-peeping-incident-school-girls-restroom/2026/05/27>.

²⁸ Snejana Farberov, *Bearded Trans Athlete Who Hurt Rival Was Suspended from Rowing Team for Ogling Topless Girl: Report*, N.Y. POST (Apr. 3, 2024), <https://nypost.com/2024/04/03/us-news/trans-basketball-player-who-hurt-rival-was-once-suspended-for-ogling-teammate-report/>.

²⁹ Ryan King, *North Carolina School Ignored Complaints About Trans Student Staring at Girls in Locker Room: Filing*, N.Y. POST (May 13, 2026), <https://nypost.com/2026/05/13/us-news/north-carolina-school-ignored-complaints-about-trans-student-staring-at-girls-in-locker-room-filing/>.

girl and routinely films himself taking selfies in the girls' bathrooms at Disney World. He was the subject of an investigation by Florida's Attorney General.³⁰

Females are asked to change their behavior in subjugation of males who believe that they are women.³¹ Equal protection based upon sex is now

³⁰ Michelle Vecerina, *Transgender Influencer's Disney Bathroom Video Under Investigation by State of Florida*, FLA. VOICE NEWS (June 24, 2025), <https://flvoicenews.com/transgender-influencers-disney-bathroom-video-under-investigation-by-state-of-florida/>.

³¹ The customary directive to females who are distressed over males being in their intimate spaces is for the female to either be counseled to "be kind," "seek mental health treatment", or change *her* behavior by seeking out more private spaces. *E.g.* Valerie Richardson, *School District Cuts 'Mental Health' Opt-Out for Girls Seeking to Avoid Biological Boys in Locker Rooms*, WASH. TIMES (Sept. 13, 2025), <https://www.washingtontimes.com/news/2025/sep/13/school-district-cuts-mental-health-opt-girls-seeking-avoid-biological> (wherein Temecula Unified School Board considered a policy by under which students needed to assert a mental health issue in order to be permitted to use single-stall bathrooms and avoid members of the opposite who identify as transgender in their school bathrooms); Sara Higdon, *18-Year-Old Trans-Identified Male Scares Girls into Not Using Bathroom: South Carolina School Board Official*, THE POST MILLENNIAL (2024),). Paulina Dedaj, *Ex-UPenn Swimmer Testifies Before Congress on Lia Thomas Experience; Opens Up About 2016 Sexual Assault*, FOX NEWS (July 27, 2023, 12:44 PM), <https://www.foxnews.com/sports/ex-upenn-swimmer-testifies-congress-lia-thomas-experience-opens-up-2016-sexual-assault> (Female swimmers voicing concerns about undressing in front of Lia Thomas were told the arrangement was "non-negotiable" and were instead "offered psychological services to attempt to re-educate them to become comfortable with the idea of undressing in front of a male").

nugatory.

II. Many Males Who Claim a Female “Gender Identity” Are Driven by Autogynephilia, a Paraphilic Sexual Interest, Not an Immutable Characteristic.

Before this Court resolves the sex-based/ “gender identity” conflict identified below, it should understand what “gender identity” actually denotes for a substantial share of the males who assert it. Researchers have long distinguished two categories of men who come to identify as women: an exceptionally feminine homosexual male, “androphilic” and a heterosexual male who is sexually aroused by the image of himself as a woman, “autogynephilic,” (“AGP”).³² The second category is an atypical pattern of sexual arousal, not an innate sex.³³

Psychologist Dr. Ray Blanchard’s clinical data illustrates how common this is. When he first tallied the relative numbers of autogynephilic and androphilic gender-dysphoric males in 1987, autogynephiles already made up nearly 60 percent of the group; by 2010, that share had grown to roughly

³² Michael Bailey, *Questioning Sexual Identities*, REALITY’S LAST STAND (May 17, 2023), <https://www.realityslaststand.com/p/questioning-sexual-identities>.

³³ Larry Nutbrock et al., *A Further Assessment of Blanchard’s Typology of Homosexual Versus Non-Homosexual or Autogynephilic Gender Dysphoria*, ARCHIVES OF SEXUAL BEHAVIOR (April 2011), <https://pmc.ncbi.nlm.nih.gov/articles/PMC2894986/>.

75 percent.³⁴

Blanchard reached this conclusion from his work at Toronto's Clarke Institute of Psychiatry. Because many patients concealed their own arousal patterns Dr. Blanchard measured males' arousal as they listened to descriptions of presenting as a woman. Those who most strenuously denied any erotic interest in cross-dressing were frequently, on this objective physiological measure, the most aroused. The insight crystallized in a single patient, an accomplished professional who had never cross-dressed, yet whose sole sexual fantasy since childhood was of inhabiting a female body. That case revealed that women's clothing was never the true object of desire for these men. Instead, the object was the man himself, reimagined as a woman, which prompted Blanchard to coin the term "autogynephilia," from Greek for love of oneself as a woman.³⁵

Paraphilias in men rarely occur in isolation. A landmark clinical study of paraphiliac offenders found that most subjects had clinically extensive experience with several additional paraphilic behaviors beyond the one for which they were initially assessed,

³⁴ Louise Perry, *What Is Autogynephilia? An Interview with Dr. Ray Blanchard*, QUILLETTE (Nov. 6, 2019), <https://quillette.com/2019/11/06/what-is-autogynephilia-an-interview-with-dr-ray-blanchard/>.

³⁵ Helen Joyce, *The Truth About Autogynephilia*, QUILLETTE (Sept. 7, 2021), <https://quillette.com/2021/09/07/the-truth-about-autogynephilia/> (excerpted from Helen Joyce, Trans: WHEN IDEOLOGY MEETS REALITY (Oneworld Publications 2021)).

including voyeurism and exhibitionism.³⁶ That comorbidity is not an abstraction. It supplies the missing explanation for why the incidents cataloged in Part I above — men exposing themselves, masturbating, and staring at undressing women and girls in the very facilities their self-declared “gender identity” now grants them lawful access to — recur with such regularity. They are the predictable clinical signature of a population with an elevated rate of co-occurring voyeuristic and exhibitionistic arousal.³⁷ A trait related to sexual arousal is the opposite of the kind of objectively ascertainable, characteristic — like race and sex— that this Court’s equal protection doctrine has recognized as warranting heightened protection.

Joseph Burgo, who specializes in treating AGP and detransitioned males, traces a causal connection for some AGPs to adolescent exposure to “forced feminization” pornography, and describes the resulting fixation, once established, as functioning like *a highly addictive and powerful drug for men in tremendous pain*.³⁸ Researchers studying this population report that its members respond to any

³⁶ Gene G. Abel, M.D., et al., *Multiple Paraphilic Diagnoses Among Sex Offenders*, 16 J. AM. ACAD. PSYCHIATRY & L. 153 (1988), <https://jaapl.org/content/jaapl/16/2/153.full.pdf>

³⁷ Michael Bailey, *Sex Differences in Sexuality: A Key to Understanding Autogynephilia*, REALITY’S LAST STAND (Jan. 14, 2025), <https://www.realityslaststand.com/p/sex-differences-in-sexuality-a-key>.

³⁸ Joseph Burgo, *Autogynephilia and the Sexualization of Shame*, Year Zero (May 12, 2023), <https://wesleyyang.substack.com/p/autogynephilia-and-the-sexualization>.

challenge to their claimed identity with disproportionate anger directed overwhelmingly at women rather than men, because it is women whose acceptance the autogynephilic male craves. One of the diagnosis' principal chroniclers has described autogynephilia, for that reason, as *a love that would really rather we didn't speak its name*.³⁹

Not all males who identify as transgender experience AGP, but the Court need not resolve that broader debate. It is enough to recognize that “gender identity,” as asserted by at least a substantial fraction of males invoking it to enter women’s intimate spaces, is not the settled, objectively verifiable, and immutable characteristic that sex is, but a paraphilia that guarantees the outcomes Part I documents.

III. WLAD’s Protection of Both Sex and Gender Identity Creates an Irreconcilable conflict that Must be Resolved in Favor of Sex.

WLAD prohibits places of public accommodation from discriminating on the basis of both sex and “gender identity” without establishing which protection governs when the two cannot be honored simultaneously. The underlying facts in this case present an irreconcilable conflict. A single-sex, nude women's spa that admits members based on sex necessarily excludes a person of the opposite sex even when he identifies as a woman. A facility that instead admits members based on self-identified “gender identity” necessarily requires females to disrobe,

³⁹ See *Id.*

shower, toilet, and receive treatments in the presence of males. No application of the statute can vindicate both protected classes at once.

WLAD is more than a public accommodation rule that incidentally disadvantages a protected class. It protects two classes whose interests are in direct conflict, thereby creating an irreconcilable conflict. The Ninth Circuit did not confront this structural conflict but treated the matter as a routine extension of existing anti-discrimination principles to a new (mutable) class. Protection against discrimination cannot result in direct discrimination against another group. *See Ricci v. DeStefano*, 557 U.S. 557 (2009) (a case in which an employer discriminated against one class of employees to avoid a disparate-impact claim against another.)

Where a single anti-discrimination statute simultaneously protects two classes whose interests are placed in direct conflict, the judicial task is to articulate a rule for resolving that conflict, not to treat the conflict as if it does not exist. WLAD, as applied by the Commission and affirmed below, contains no such rule. The panel majority allowed gender-identity protection to prevail by default rather than by reasoned priority.

A. This Court's Recent Decisions Confirm that Sex-based Classifications Take Priority over Gender-Identity-based claims where the Two Conflict.

This Court has declined to treat gender-identity-based claims as categorically entitled to override sex-based distinctions when the two are in tension. In *B.P.J.*, this Court upheld two similar state laws that excluded trans-identified males from female sports, holding that such laws violate neither Title IX nor the Equal Protection Clause. The tension in *B.P.J.* is structurally identical to the tension the WLAD creates here, a sex-based classification set against a competing gender-identity-based claim to access historically sex-separated spaces. Sex-based protections must prevail.

Bostock v. Clayton County, 590 U.S. 644 (2020), does not compel a contrary result. The Court there addressed only the narrow question of whether Title VII's "because of sex" language reached employment terminations motivated by transgender status. It expressly declined to extend that holding to sex-segregated facilities or to applications beyond Title VII. *Id.* at 681 ("under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind"). *Bostock* does not establish, and expressly disclaims, any proposition that sex must be read identically across every anti-discrimination context, still less that gender-identity-based access claims must prevail over sex-based exclusion in intimate, nude, single-sex facilities. The

question *Bostock* left open, how sex operates in the facilities context, is the question presented here. *B.P.J.* supplies the answer. Sex-based lines may stand even where they exclude gender-identity-based claims to inclusion.

**B. Longstanding Federal
Regulatory Practice Confirms
that Sex, not "Gender Identity," is
the default classification for
intimate facilities.**

Federal law has long treated sex, not self-identified gender identity, as the operative classification for single-sex intimate facilities. Title IX's implementing regulations expressly permit recipients of federal funds to maintain separate toilet, locker room, and shower facilities on the basis of sex. 34 C.F.R. § 106.33. That regulation reflects a considered federal judgment, undisturbed for decades, that privacy and safety interests in undressing, showering, and bathing facilities are organized around biological sex rather than gender identity, because those interests turn on physical reality rather than subjective identification. WLAD's application here inverts that default without the justification federal law has always required for departing from it.

This Court has already confronted whether transgender status satisfies the criteria for heightened equal protection scrutiny, and the answer was "no". In *United States v. Skrametti*, 605 U.S. 495 (2025), Justice Barrett explained that transgender status does not constitute a suspect or quasi-suspect

class because it is not marked by the “obvious, immutable, or distinguishing characteristics” that define the classes this Court has previously protected. Heightened scrutiny, she explained, has traditionally been reserved for groups subjected to a history of *de jure* — official, legally enacted — discrimination, not merely private prejudice, and trans-identified individuals, have not demonstrated that they belong to such a group. Recognizing transgender status as a suspect class, she warned, would require courts to “oversee all manner of policy choices normally committed to legislative discretion.” *Id.* at 550–51, 553 (2025) (Barrett, J., concurring).

Justice Alito reached the same conclusion through an even more extensive analysis of what immutability requires. “Transgender status is not ‘immutable,’ and as a result, persons can and do move into and out of the class,” he explained, since a person’s gender identity may “shif[t]” over time, including through detransition. Unlike race or sex, “gender identity” is an “internal sense” that trans-identified individuals do not uniformly manifest through any obvious physical marker, and the class itself is so “diverse” and “amorphous” —that courts cannot reliably determine its membership. *Id.* at 566, 576–77 (Alito, J., concurring in part and concurring in the judgment).

Similarly, in *B.P.J.* Justice Thomas stated: “The class of people who claim transgender status could more accurately be described as people who are experiencing ‘gender dysphoria,’ which is not a ‘discrete group.’ Because ‘gender dysphoria’ is a

mutable mental state . . . it does not resemble the immutable characteristics on the basis of which our precedents have applied heightened scrutiny—race, sex, or national origin.” *B.P.J.*, 146 S. Ct. at 2382–83 (Thomas, J., concurring).

That reasoning applies with full force to the males at issue here, whose claimed female identity rests on nothing more than self-reporting, unaccompanied by any verifiable physical characteristic.

This Court’s direct guidance on the hierarchy between sex and gender identity is desperately needed.

CONCLUSION

For the foregoing reasons, Amici respectfully urge that, should the Court grant certiorari, that it considers equal protection argument set forth above.

Respectfully Submitted,

October 5, 2026

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