

No. 26-286

IN THE
Supreme Court of the United States

OLYMPUS SPA; MYOON WOON LEE; SUN LEE, JANE
DOE, PATRON; JANE DOES, EMPLOYEES 1-3,
Petitioners,

v.

ANDRETTA ARMSTRONG, EXECUTIVE DIRECTOR OF THE
WASHINGTON STATE HUMAN RIGHTS COMMISSION;
MADISON IMIOLA,
Respondents,

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

**BRIEF OF MEDICAL INSTITUTE FOR SEXUAL
HEALTH AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONERS**

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INTEREST OF AMICUS CURIAE¹

Medical Institute for Sexual Health (MI) is a nonprofit education and research institute founded in 1992 by Joe S. McIlhaney, Jr., M.D., a prominent obstetrician/gynecologist and infertility specialist. In his practice, Dr. McIlhaney observed women experiencing many harms that stemmed from their lack of accurate information about sexual health. MI was founded to address this critical need and developed into a leading provider of medically accurate, research-based sexual health information to help women (and men) lead healthier lives. MI is interested in this case because the issues involved directly connect to its central mission. By privileging “gender identity” over biological sex, Washington State denies the reality of embodied sex differences between men and women and dismisses their importance. This denial is objectively inaccurate, and enshrining applications of law based on falsehoods about biological sex harms the common good. Moreover, MI was initially founded to help women avoid harm in the sexual health context. Dr. McIlhaney co-authored a book detailing the research on the risks and harms to which young girls are subjected in the sexual health realm; its title, *Girls Uncovered*, aptly captures the issue at hand. In this case, Washington State is facilitating harms to teenage girls and women, leaving them “uncovered,

¹ Counsel of record for all parties received at least 10 days’ notice prior to the due date of amicus curiae’s intention to file this brief. *Amicus* certifies that no counsel for a party authored this brief in whole or in part and no counsel for a party or party made a monetary contribution intended to fund the preparation or submission of this brief.

unprotected, vulnerable, and naked.”² Amy E. Hamilton, Ph.D., Senior Research Fellow at MI, and Joe S. McIlhaney, Jr., M.D., contributed to this brief.

SUMMARY OF THE ARGUMENT

Women have not only the right but also the need for sex-segregated spaces. This need for sex segregation is at its highest in intimate spaces involving nudity. Washington State’s Law Against Discrimination (WLAD) destroys these spaces by forcing businesses that provide intimate services to females to admit males claiming a female “gender identity.”

For centuries, Korean spas have had female-only spaces in areas where nudity is required. Washington State now claims a biological male has a right to enter that space. Upon the male’s entrance, the women in the spa automatically become victims of non-consensual sexual exposure and experience dual violations. The women are forced to see the male’s nudity and genitalia, and they are forced to expose their nude bodies to him. Female staff members will experience additional and enhanced violations; they will be forced to give a full-body scrub to a naked male as part of spa duties performed on all customers.

The harm extends to children. Olympus Spa clients are girls as young as 13 years old who participate in the communal areas alongside the adult female patrons. Hence Washington State requires its minor females to be subjected to the presence and gaze of

² Joe S. McIlhaney, Jr. & Freda McKissic Bush, *Girls Uncovered: New Research on What America’s Sexual Culture Does to Young Women* (2011) (Kindle ed.) at 24.

nude males, which magnifies the harm and victimization. The presence of the male is the problem, regardless of his motivations, inner sense of “gender identity,” or intentions.

The relevance of women's health and safety to this case cannot be overstated. Women experience a vastly disproportionate amount of sexual violence, abuse, and harassment. A significant percentage of the female population are survivors of sexual trauma, the majority of which is perpetrated by males. For many of these women, the potential or actual presence of males will be experienced as additional trauma.

This Court has already recognized that sex-based separation—grounded in objective physical sex, bodily anatomy, and material reality, rather than subjective feelings of “gender identity,” is necessary and justified in certain instances due to the “inherent physical differences between biological men and biological women.”³ The Court further noted that “forcing women and girls to play against biological males can deter some women and girls who would otherwise participate in sports from doing so.”⁴ While that ruling concerned women’s sports, in this brief we will demonstrate that the same concerns apply in instances where women need similar legal safeguards against male inclusion: protecting women's safety, ensuring fairness, and preventing women from being deterred and deprived of using female-only spaces such as the Olympus Spa.

³ *West Virginia v. B.P.J.*, 146 S. Ct. 2356, 2371 (2026).

⁴ *Id.* at 2375.

States have a compelling interest to protect women and girls. In this case, Washington State is not only failing to protect but is also actively facilitating harm. Washington State's demands place the Olympus Spa owners in an impossible position: they must subject their all-female staff and customers, including minor girls, to the risk of non-consensual sexual exposure harms or forfeit their business and livelihood.

We urge the Court to redress this injustice and grant women the legal covering that Washington State has stripped from them.

ARGUMENT

I. Protecting women's safety requires sex-segregation in intimate spaces, most especially in spaces that require nudity.

Female-only intimate spaces separated by biological sex are needed to protect women's physical, emotional, and psychological safety. In its recent majority ruling regarding women's sports, this Court concluded that separating male and female teams by biological sex "are reasonable given the inherent physical differences between the sexes."⁵ In addition to sports, there are other situations that reasonably call for a separation by sex due to these "inherent physical differences." The subjective psychological state of a male, such as one who claims the "gender identity" of a female, does not change the objective anatomy or material reality of his male body. Intimate spaces requiring nudity are among those

⁵ *Id.* at 2372.

with the greatest need for single-sex, biological female only spaces.

A. Women are physically vulnerable to males due to objective differences between female and male bodies.

Sex-based separation exists because the physical vulnerability of females to males is important, objectively real, and materially significant. Women and men are physically and sexually distinct and different. These differences are not abstract. The average male body is larger, heavier, and has greater muscle mass and strength than the average female body.⁶ For instance, one study found that women had approximately half the upper body strength and two-thirds of the lower body strength of men.⁷ These disparities contribute to females' higher risk of experiencing physical and sexual violence and abuse.⁸

No setting requires sex-based separation to protect women's safety more than spaces involving nudity. In Korean spa venues, women's vulnerability is heightened above almost any other space, even other

⁶ Sandra K. Hunter et al., *The Biological Basis of Sex Differences in Athletic Performance: Consensus Statement for the American College of Sports Medicine*, 8 Translational J. Am. Coll. Sports Med. 1, 1–33 (2023).

⁷ A.E.J. Miller et al., *Gender Differences in Strength and Muscle Fiber Characteristics*, 66 Eur. J. Applied Physiology 254, 254–62 (1993).

⁸ Reem Alsalem (Special Rapporteur on Violence Against Women and Girls), *Sex-Based Violence Against Women and Girls: New Frontiers and Emerging Issues*, U.N. Doc. A/HRC/59/47 (2025), <https://docs.un.org/en/A/HRC/59/47>.

spaces where nudity occurs, such as changing rooms. This is because in a Korean *jjimjilbang*, nudity is not brief, incidental, or covered with a towel. Rather, nudity is required for an extended length of time in an open space with other patrons and staff present in a communal area. The spa patrons are fully nude when soaking in the communal bath. They then lie uncovered while receiving full-body scrubs and massages from the staff. This space is safe when all the patrons and staff are biological females with the same anatomy. This space becomes unsafe and a source of violation when a biological male is present.

This reality is not changed by the subjective psychological state of the male. A male who claims a female “gender identity” does not change the sex of his male body by that claim. In both sports and in the spa, what matters is the objective physical sex of the body:⁹ bodies compete in sports, and bodies soak in the communal bath and are scrubbed in the spa. This remains true even if the male has begun altering his appearance through dress, hormones, or surgeries (though the vast majority of males who identify as female do not get genital surgery).¹⁰ Fundamental features of the male body—including height, bone and facial structure, strength, and voice—persist and in most cases remain perceptible to the women around him.

⁹ Colin M. Wright, *Why There Are Exactly Two Sexes*, 54 Archives Sexual Behav. 3941, 3941–45 (2025).

¹⁰ For instance, “[t]ransgender women report bottom surgery at rates between 5–13%.” Ian T. Nolan, Christopher J. Kuhner & Geolani W. Dy, *Demographic and Temporal Trends in Transgender Identities and Gender Confirming Surgery*, 8 Translational Andrology & Urology 184, 184–90 at 188 (2019).

B. Males perpetrate a disproportionate amount of violence against women, and women experience a disproportionate amount of victimization.

Two global phenomena are relevant to this case. First, women experience a vastly disproportionate amount of physical and sexual violence, abuse, and harassment. Second, men perpetrate physical and sexual violence and abuse at vastly higher rates than women. These are not matters of opinion; they are borne out by decades of empirical data.

Consider that in recent U.S. Federal Prison data, the overall prison population was 94% male and 6% female.¹¹ For sex offenses in particular, the disparity between males and females is of similar magnitude. For instance, in a 2021 U.S. Sentencing Commission Report,¹² men accounted for 94% of sexual offenders.

The corresponding victimization data paints an equally stark picture. Nearly half of all women, almost 1 out of every 2, report experiencing sexual contact violence in their lifetimes (compared to 1 out of every 6 males).¹³ According to World Health

¹¹ Fed. Bureau of Prisons, *Statistics: Inmate Sex*, https://www.bop.gov/about/statistics/statistics_inmate_gender.jsp (last updated Sept. 12, 2026) (last visited Sept. 19, 2026).

¹² U.S. Sent'g Comm'n, *Quick Facts: Sex Offenses* (2021), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Sexual_Abuse_FY21.pdf.

¹³ Ruth W. Leemis et al., *The National Intimate Partner and Sexual Violence Survey: 2023/2024 Sexual Violence Data Brief* (Nat'l Ctr. for Inj. Prevention & Control, Ctrs. for Disease Control & Prevention 2025).

Organization data from 2023, a global average of one out of every four women experience intimate partner violence (IPV) in their lifetimes, and just over one out of every ten experienced IPV in the last year.¹⁴ Recently, data from a 2024 U.S. survey found women were more likely than men to be victims of “all forms of harassment and assault.”¹⁵ Taken together, these sources establish that violence against women is not an anomaly confined to any single country or culture — it is a pervasive, well-documented global pattern.

The trafficking context reinforces this conclusion. Globally, most sex trafficking victims are women. For instance, according to the Department of Homeland Security, 78% of sex trafficked persons in the U.S. are women.¹⁶ Earlier estimates over a two-year period found the percentage of victims in the U.S. who are women to be as high as 94%.¹⁷ These numbers underscore that women are disproportionately targeted for sexual exploitation, further

¹⁴ World Health Org., *Violence Against Women Prevalence Estimates, 2023: Global, Regional and National Prevalence Estimates for Intimate Partner Violence Against Women and Non-Partner Sexual Violence Against Women* 97 (2025).

¹⁵ Anita Raj et al., *#MeToo 2024: A National Study of Sexual Harassment and Assault in the United States* (Newcomb Inst., Tulane Univ. Sept. 2024), <https://newcomb.tulane.edu/content/metoo-research>.

¹⁶ U.S. Dep’t of Homeland Sec., *Human Trafficking Quick Facts*, <https://www.dhs.gov/human-trafficking-quick-facts> (last updated May 22, 2025) (last visited Sept. 19, 2026).

¹⁷ Duren Banks & Tracey Kyckelhahn, U.S. Dep’t of Just., Bureau of Just. Stat., *Characteristics of Suspected Human Trafficking Incidents, 2008–2010*, at 6 (Apr. 2011).

demonstrating their heightened vulnerability in nude settings where men are permitted access.

The reason for this vulnerability is straightforward: most men can physically overpower most women, and sadly some will do so.¹⁸ This physical power imbalance is one of the factors that makes sex-segregated intimate spaces — such as the Spa at issue here — so important. Sex-segregated intimate spaces provide an external barrier of protection for women and girls that increases their physical safety and reduces the risk of injury or harm.

This argument is not intended to vilify males. Rather, it is intended to demonstrate through objective data the reality of women's sex-based vulnerability and their all-too-common experiences with physical and sexual abuse. The law need not wait for more harm to materialize when the conditions that enable it are well understood and preventable through reasonable, sex-based protections in intimate settings.

C. Preventing Trauma: Without sex-segregated spaces, all women become victims of non-consensual sexual exposure.

From the data above, it is likely that on any given day, a significant number Olympus Spa patrons are sexual abuse victims. By default, Washington State's Law

¹⁸ For instance, see: Anthea McTeirnan, '46% of Women Killed by Bare Hands,' *Women's Aid Warns*, Irish Times (June 15, 2016), <https://www.irishtimes.com/news/social-affairs/46-of-women-killed-by-bare-hands-women-s-aid-warns-1.2685435>.

Against Discrimination creates a situation that potentially increases that number of victims: 100% of the women and girls present become *potential* victims of sexual exposure. And if a man does enter the spa, 100% of the women and girls who encounter him become *actual* victims of sexual exposure. The female patrons and staff are subjected to dual harms: not only are they forced to see his nudity, but they are also forced to have their nudity exposed to him without their consent.

1. The harm of unwanted seeing: The presence of a man makes all women who encounter him victims of exhibitionism.

Women are frequently victimized by being forced to see men’s genitalia against their will. “Exhibitionism” or “indecent exposure” is among the most common offenses committed by males against females. “Exhibitionism” is listed as a paraphilia in the DSM-V¹⁹ where perpetrators derive sexual pleasure from deliberately exposing their genitalia and “flashing” victims without their consent. Far from a fleeting or harmless act, exhibitionism is a form of sexual abuse inflicted upon nonconsenting individuals.²⁰

The prevalence of this abuse is staggering. Numerous studies have documented that being “flashed” is an

¹⁹ Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* 780–83 (5th ed. text rev. 2022).

²⁰ Shannon K. Clark et al., *More Than a Nuisance: The Prevalence and Consequences of Frotteurism and Exhibitionism*, 28 Sexual Abuse 3, 3–19 (2016).

all-too-common experience for women. For instance, one study of over 1,000 women found 59%²¹ and another study found 40%²² of the women being surveyed reported this type of victimization. Another pair of studies found abuse rates of one-fourth (26%)²³ to one-third (33%)²⁴ among the college-women surveyed.

These crimes are not minor “nuisance” crimes, and the research on their psychological impact makes clear why they must be taken seriously.²⁵ In one study of 72 women, almost half (48.6%) had been victims of “indecent exposure,”²⁶ with twenty percent of them victimized more than once. However, the majority (68%) of all the women surveyed, including those who had never experienced victimization, perceived exhibitionists as “dangerous.”²⁷ That even non-victims harbor this fear underscores the pervasive

²¹ Filip Szumski & Katarzyna Kasperek (2020). Encountering an Exhibitionist: The Female Victim's Perspective. *Journal of sex research*, 57(5), 610–623.
<https://doi.org/10.1080/00224499.2019.1669523>

²² Clark et al., *supra* note 20, at 10.

²³ Silvia Fraga Dominguez et al., *Frotteurism and Exhibitionism: An Updated Examination of Their Prevalence, Impact on Victims, and Frequency of Reporting*, 32 J. Sexual Aggression 1, 1–18 (2026).

²⁴ David J. Cox, *Incidence and Nature of Male Genital Exposure Behavior as Reported by College Women*, 24 J. Sex Rsch. 227, 227–34 (1988).

²⁵ Sharon Riordan, *Indecent Exposure: The Impact upon the Victim's Fear of Sexual Crime*, 10 J. Forensic Psychiatry 309, 309–16 (1999).

²⁶ *Id.*

²⁷ *Id.* at 312.

climate of threat that exhibitionism creates for women as a class.

Among actual victims, the majority of women in that study reported negative aftereffects: almost a third (28.6%) had become more afraid of sexual crimes, and almost a third also reported that the incident resulted in reducing their “freedom of movement” and “social activities.”²⁸ Another study found that 18% of women reported extreme distress as a result of their victimization.²⁹ These are not trivial or transient reactions; they represent lasting curtailments of women's autonomy, health, safety, mobility, and participation in public life.

The emotional toll varies but is uniformly negative. In one exhibitionism impact study,³⁰ “victims reported a variety of feelings”: 17% reported “being scared,” 42% reported “feeling violated,” 17% were “angry,” and 22% were “uncomfortable.” Nearly half (45%) reported being “fearful that the perpetrator wanted to cause harm.” A full 25% of women said the event had a “long-term impact,” demonstrating that this form of abuse leaves enduring psychological scars.

Given this extensive body of evidence—documenting both the prevalence and the severity of harm—the implications for Washington State's treatment of female-only spaces are deeply troubling. The risk of this victimization in female spaces is now not merely possible but unavoidable. By force of law, Olympus

²⁸ *Ibid.* at 314, 315.

²⁹ Cox *supra*, note 24, at 11.

³⁰ Fraga Dominguez *supra*, note 23 at 11.

Spa is ordered to subject its female staff and clients to risk, or in fact experience, exhibitionism to stay in business. Additionally, in spaces like the spa, the harm is compounded because everyone is nude. Women and girls victimized on the subway, for example, are clothed and can potentially move away. Here, the women are themselves unclothed, rendering them uniquely vulnerable both physically and psychologically.

2. The harm of unwanted exposure to being seen: The presence of a man deprives women and girls of their privacy and makes them victims of voyeurism.

On average, males are more stimulated and responsive to visual sexual stimuli than females, a difference clearly supported by empirical studies.³¹ This heightened visual responsiveness of men has direct consequences for how women experience and move through the world. Women frequently encounter sexual objectification by men, which is a ubiquitous and near-universal female experience.³² Objectification negatively affects all women—those who have a history of sexual abuse and those who do not.³³

³¹Heather A. Rupp & Kim Wallen, *Sex Differences in Response to Visual Sexual Stimuli: A Review*, 37 *Archives Sexual Behav.* 206, 206–18 (2008), <https://doi.org/10.1007/s10508-007-9217-9>.

³²Haley Miles-McLean et al., “*Stop Looking at Me!*”: *Interpersonal Sexual Objectification as a Source of Insidious Trauma*, 39 *Psychol. Women Q.* 363, 363–74 (2015).

³³ *Id.*

The forms this objectification takes are well documented. For instance, women experience “body evaluation” through being stared at, leered at, “catcalled,” or having their bodies commented on. This “body surveillance” can contribute to “body shame.” These experiences are said to produce “insidious trauma,” which “refers to the psychological impact that low levels of discrimination can have when experienced throughout a lifetime.”³⁴

“Voyeurism” is a paraphilia whereby one derives pleasure from viewing strangers naked and unsuspecting.³⁵ Advances in video technology have made video recordings much more common and accessible. This increased the possibility of not only being viewed, but being recorded, without consent. Keeping female intimate spaces single sex provides an external barrier against these kinds of violations.

The harms that flow from non-consensual viewing are not speculative, as we can observe from the experiences of those victimized by non-consensual recording of them in vulnerable states of undress or intimate activity. One study found victims of secret recordings were “horrified, humiliated, mortified, and extremely fearful.”³⁶ Another study reported “there is no doubt that it can cause significant harm, with

³⁴ *Id.* at 364.

³⁵ Robert I. Simon, *Video Voyeurs and the Covert Videotaping of Unsuspecting Victims: Psychological and Legal Consequences*, 42 J. Forensic Sci. 884, 884–89 (1997), <https://doi.org/10.1520/JFS14224J>.

³⁶ *Id.*

many victims describing feelings of distress, disgust, helplessness, humiliation, and a sense of violation.”³⁷

With Olympus Spa, we do not have to imagine scenarios that would be comparable. We have records of actual experiences, not hypothetical possibilities. How did the women respond when biological males with intact male genitalia accessed the spa? As Mr. Lee reported, “Every time the incident occurred, it left so many customers in shock and with fear.” The spa patrons “cried with anger” and “experienced ‘humiliation, trauma, and rage.’”³⁸ These real-world reactions mirror the harms identified in the research literature. In sum, women report remarkably consistent negative reactions and aftereffects if they are exposed to males without their consent.

Professor Jonathan Clough, in a chapter on the crime of voyeurism as privacy violation, states: “One of the most important societal benefits of privacy is that people feel that there is somewhere they can go to as a form of sanctuary, a place where they will not be observed other than by those they allow to observe them.”³⁹ Here, the women in the spa had given their consent to be nude among females. However, their privacy rights were violated by the non-consensual presence of men, and they were not “protected from arbitrary or abusive interference.”⁴⁰ This outcome illustrates the inevitable consequence of abandoning

³⁷ Jonathan Clough, Voyeurism, in *Principles of Cybercrime* 454, 454–72 (2d ed. 2015) at 457.

³⁸ App.128a.

³⁹ Clough at 457, *supra* note 37, at 15.

⁴⁰ *Id.*

single-sex protections: women’s privacy will continue to be violated and there will be harms. The spa setting collapses two distinct categories of harm, male exhibitionism and male voyeurism, into a single, inescapable experience, thus transforming a space designed as a refuge for women into one where they are compelled to endure precisely the violations from which the law should protect them.

3. These harms occur regardless of the man’s psychological state, subjectively defined “gender identity,” motivations, or intentions.

Does a male’s subjective claim of feeling he has a different “gender identity” in any way alter the objective anatomy of the male body or male genitalia the women and girls are forced to view? Not in the least. They are still forced to see the nudity of a male stranger without their consent. Their female nudity is still exposed to a male stranger. The subjective motivation of the male—sexual or otherwise—is irrelevant to the objective experience of the women and girls. The bodily presence of a biological male is the issue, and the harms occur independently of whether his intentions are criminal or benign.

Over decades, the reports of women’s experiences of sexual victimization and negative effects have not changed. For example, the authors of a recent study⁴¹ (published 2026) examining exhibitionism and frotteurism found: “Women continue to be victimised at higher rates, experience more long-term negative

⁴¹ Fraga Dominguez et al., *supra* note 23, at 11.

consequences, and report more changes in behaviour after being victimised than males who experienced victimisation.”⁴² These persistent findings underscore a clear conclusion: sex-segregated intimate spaces provide a critical safeguard from victimization and a sanctuary for females—one that should be held inviolate by biological males.

D. Sex-segregated spaces help women avoid situations that would exacerbate existing trauma and protect against re-traumatizing sexual abuse survivors.

Most females are survivors of some sort of sexual trauma or harassment. For instance, a 2024 survey found 82% of women reported being victimized by some form of verbal or physical sexual harassment or assault in their lifetimes.⁴³ According to the CDC, almost half of women in the U.S. (from 45-50%) experience some form of contact sexual violence in their lifetime.⁴⁴ The problem is especially acute among younger populations: 25% of female undergrads experience some form of sexual assault during their campus tenure.⁴⁵ This violence is not confined to the distant past. In the last 12 months alone, one in ten women reported they had experienced verbal or technological sexual abuse, and

⁴² *Ibid.* at 14.

⁴³ Raj et al., *supra* note 15, at 8.

⁴⁴ Ctrs. for Disease Control & Prevention, *About Sexual Violence*, <https://www.cdc.gov/sexual-violence/about/index.html> (last updated Dec. 17, 2025) (last visited Sept. 20, 2026).

⁴⁵ Jennifer S. Hirsch & Shamus Khan, *Sexual Citizens: A Landmark Study of Sex, Power, and Assault on Campus* ix (2020).

nearly 6% had suffered sexual violence by contact.⁴⁶ These experiences carry lasting consequences. For those victimized in the last 12 months, one study found significantly higher rates of depression and anxiety, higher rates of binge alcohol or illegal drug use, and suicidality.⁴⁷

The harm extends beyond overt acts of sexual violence. In terms of objectification, one recent study found that “particularly for women with a history of trauma, sexual objectification may be associated with experiencing more trauma symptoms.”⁴⁸ The experience of being “gazed at” may cause memories of their sexual assault and produce psychological harm.

Every woman is different, and not all suffer in the same way or to the same extent after traumatic experiences. Nevertheless, numerous after-effects are well-documented and commonly experienced by victims. For instance, some women experience a state of “hyperarousal,” which is “a high level of physiological arousal and excessive alertness to possible dangers or difficulties.”⁴⁹ Hyperarousal occurs when a trauma victim perceives a threat, which triggers an elevated heart rate, rapid breathing, and a release of neurochemicals as a

⁴⁶ Leemis et al., *supra* note 13, at 7.

⁴⁷ Raj et al., *supra* note 15, at 8.

⁴⁸ Miles-McLean et al., at 370, *supra* note 32, at 13.

⁴⁹ Agnieszka Brzozowska & Jakub Grabowski, *Hyperarousal, Dissociation, Emotion Dysregulation and Re-Experiencing—Towards Understanding Molecular Aspects of PTSD Symptoms*, 26 Int’l J. Molecular Scis. 5216, 1 (2025) at 3.

defensive preparation for “fight or flight.”⁵⁰ Some women experience Post-Traumatic Stress Disorder (PTSD), in which “hyperarousal ... automatically and uncontrollably connects with memories of traumatic events.”⁵¹ Many of these women and girls experience “emotion dysregulation” and “re-experiencing” through “intrusive memories” or “flashbacks” related to their past abuse.⁵²

Some may also experience “coupling,” where certain stimuli become connected with the traumatic event or stress responses.⁵³ Trauma therapist Dr. Janina Fischer gives the following example: “the stimulus of a male person might become associated with autonomic hyperarousal; increases in heart rate can become coupled with a sense of dread and the belief that something bad is going to happen.”⁵⁴

These clinical realities have direct implications for this case. On any given day, some of the women and girls entering the spa will undoubtedly be survivors of sexual abuse, violence, or harassment. Based on global measures, their number will not be insignificant. If we apply estimates from the CDC data, five out of every ten women walk into the spa having experienced sexual victimization in their past, and one or two out of every ten will have experienced some form of abuse within the last year. Among these

⁵⁰ Janina Fisher, *Sensorimotor Approaches to Trauma Treatment*, 17 *Advances Psychiatric Treatment* 171, 171–77 (2011) at 175.

⁵¹ Brozowska & Grabowski at 3, *supra* note 49, at 18.

⁵² *Id.*

⁵³ Fisher at 175, *supra* note 50, at 19.

⁵⁴ *Id.*

survivors, a portion of them will experience the presence of a male in an intimate space as a trigger for traumatic stress responses.

Moreover, the spa setting dramatically amplifies the risk. This is not merely a situation in which female survivors are physiologically triggered by the unexpected presence of a nude male stranger. They will be surprised to encounter this nude male stranger in what they thought was a safe female-only space. The risk of re-traumatization and real harm is not hypothetical. If a man is allowed in, he represents a clear and present threat and danger to a not insignificant number of women's and girls' emotional and psychological well-being. Yet Washington State denies these vulnerable women and girls any safe space from nude males and demands that women expose themselves to the risk of unwanted harm.

E. The presence of minors elevates the harms and victimization.

The fact that minor teen girls as young as 13 are present makes the harms described above even more egregious. Even one man in the spa makes these young girls victims of the dual harms of male exhibitionism and voyeurism. A naked male who is also seeing them in the nude can introduce confusion regarding sex and appropriate boundaries, disrupt their sense of safety, and subject them to unwanted experiences. These harms will potentially have heightened negative effects due to the girls' sensitive stage of emotional and sexual development.

A growing body of research confirms the vulnerability of minors to such experiences. Studies show that “children receive considerable amounts of unwanted attention to their sexuality and appearance.”⁵⁵ One recent study surveyed 448 young women regarding their experiences of unwanted sexual attention during childhood (UWSA). The study found “the frequency of childhood UWSA was associated with poorer academic self-esteem, physical appearance self-esteem, global self-esteem, body image, and body anxiety, after controlling for child sexual abuse.”⁵⁶ These findings underscore that even non-contact exposure to sexualized environments during childhood can cause lasting psychological harm.

The risk is compounded by the reality that, sadly, many of these minor girls will themselves already have experienced some form of sexual victimization. One 2024 study found that “[s]exual violations – harassment or assault – begin at a young age for many people.”⁵⁷ In that study, “over half of the women (56%) (compared to 18% of the men) had their first experience of sexual harassment or assault before age 18.” The same study found 20% of women first experienced sexual abuse before age 13.⁵⁸ In terms of child sexual abuse images online, 97% were of girls, according to recent findings in the UK.⁵⁹ For minors

⁵⁵ Julia M. Whealin & Jennifer L. Jackson, *Childhood Unwanted Sexual Attention and Young Women’s Present Self-Concept*, 17 J. Interpersonal Violence 854, 854–71 (2002).

⁵⁶ *Id.* at 854.

⁵⁷ Raj et al., *supra* note 15, at 8.

⁵⁸ *Ibid.*

⁵⁹ *Sexual Abuse Imagery of Girls Online at Record High Following Pandemic Lockdowns*, Internet Watch Found. (May

who have already endured sexual trauma, unwanted exposure to nude males risks re-traumatization and compounding existing harm. Given this weight of evidence, protecting minor girls is a “compelling” state interest,⁶⁰ an important duty, which Washington State has cast aside in this case.

II. Preserving fairness to women and girls requires protecting sex-segregated intimate spaces.

Women and girls are entitled to their privacy in single-sex spaces. It is unfair to force them to choose between their health, safety, dignity, and access to services and spaces they are entitled to utilize and enjoy.

A. Women and girls lose access to services and communal experiences; female spa staff lose their livelihood.

Washington State wrongly empowers any male who makes a subjective “gender identity” claim over women and girls. Female patrons unwilling to endure nude male presence must lose the spa's communal experience and healing services. Mothers, aunts, and older sisters who want to share the female spa experience with their minor relatives are forced to put them at risk of harm or forfeit the experience. Women who work at the spa must be willing to scrub the body of a naked male or lose their livelihood.

2022), iwf.org.uk.

⁶⁰ See *New York v. Ferber*, 458 U.S. 747 (1982); *Ginsberg v. New York*, 390 U.S. 629 (1968).

B. Business owners are placed in an impossible position and face the loss of their livelihood.

For five centuries, Korean spas have had female-only, single-sex spaces in areas where nudity occurs. Female staff have only ever cared for and scrubbed female bodies. Washington State now claims a biological male has a right to demand entry. This places the Olympus Spa owners in an impossible position: they must agree to subject their staff and customers (including minor girls) to non-consensual sexual exposure or be deprived of their business and livelihood.

Washington State's Law Against Discrimination (WLAD)'s acquiescence to "gender identity" places Olympus Spa, their female staff and clients under a "sword of Damocles." Even if no male currently demands accommodation, the owners, staff, and clients are under constant threat. The integrity of the female-only space remaining single-sex cannot be guaranteed. They are only one man's assertion of "female gender identity" away from being subjected to a nude male presence at the spa.

III. Preserving sex-segregated spaces is necessary for women not to be deterred from using the spa.

The mere threat of a male's presence in intimate female spaces deters women. Women experience concrete harm and tangible deprivation of safe spaces and services they would normally enjoy.

A. Research shows women change their behavior to avoid victimization.

The impacts of a sexual assault event on women's subsequent behaviors are significant. Research consistently demonstrates that sexual assault victims engage in "safety work" by changing their routines.⁶¹

In one study, two-thirds of victims reported moving unaccompanied less frequently, over a third were going out at night less often, and almost half (47%) were avoiding places similar to where the abuse occurred.⁶² Almost a third of victims in that study reported, for instance, that prior sexual assaults caused them to avoid "spaces like public transport."⁶³ In another study, victims reported impacts "on their movements/social activities...often in terms of a localized effect, that is, the restriction to their lives was limited to a particular area(s) or activity."⁶⁴

Now consider the Olympus Spa: What will women and girls do? The research predicts exactly what common sense confirms: women will change their behavior. They will avoid the spa altogether. This is the same adaptive response documented across the literature—when women are victimized by unwanted exposure on public transport, they stop using it and find alternatives. If a male is allowed in the spa, they will

⁶¹ Sarah E. Ullman, Katherine Lorenz & Erin O'Callaghan, *Risk Avoidance Strategies After Sexual Assault: A Dyadic Study of Survivors and Informal Support Providers*, 13 *Victims & Offenders* 814, 814–33 (2018).

⁶² Szumski & Kasperek at 617, *supra* note 21 at 11.

⁶³ Fraga Dominguez et al. at 8, *supra* note 23 at 11.

⁶⁴ Riordan at 314, *supra* note 25, at 11.

stop using it, imposing a lasting restriction on their freedom and well-being.

B. Women will be deprived of using the spa and similar intimate services and spaces.

Washington State's policy presents women and girls who want to enjoy a Korean spa experience with an unconscionable choice: endure the naked physical presence of any male who claims to be female or forfeit the spa entirely. There is no middle ground.

These are not mere hypothetical harms. The record demonstrates precisely what happens when this unjust policy is enforced. When a naked man was found in the spa area, the customers “fled the scene and vowed never to return.”⁶⁵ “Both the patrons and the staff made it clear that they will never use the spa again if a male is allowed access.”⁶⁶

This deprivation is analogous to the “zero-sum” dynamic this Court has recognized: a male on the team deprives a female of that position.⁶⁷ In the spa context, however, the disproportion is far more severe. One male in the spa does not displace one female—he can deprive *every* patron of the spa, *every* staff member of her employment, and the spa owners of their business. As highlighted in this Court’s ruling on female sports, this “second-order effect” of allowing males in the spa “cannot be papered over.”⁶⁸

⁶⁵ App.85a.

⁶⁶ App.35a.

⁶⁷ *W. Va. v. B.P.J.*, 146 S. Ct. 2356, 2381 (2026).

⁶⁸ *Id.* at 2374.

Researcher Sandra McNeill made a prescient observation given the issues in this case:

“Although there is no law explicitly denying women access to public places, in practice women’s freedom is restricted by men ‘who attack them, men who threaten to attack them’ and there is ‘insufficient law enforcement against these men.’”⁶⁹

What Washington State has done is worse. Here, it is not merely that the law fails to protect women from the restriction of their freedom — the law itself is the instrument of that restriction. The state has moved beyond indifference to active facilitation, using the force of law to compel women and girls to surrender the very spaces created for their safety, privacy, and well-being.

CONCLUSION

For the foregoing reasons, Medical Institute for Sexual Health requests that this Court grant the petition and reverse the Ninth Circuit ruling.

⁶⁹ Sandra McNeill, *Flashing: Its Effect on Women*, in Women, Violence and Social Control 93 (Jalna Hanmer & Mary Maynard eds., 1987) at 93. Quoted in: Riordan at 310, *supra* note 25, at 12.

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OCTOBER 5, 2026