

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 TACOMA KOREAN CHRISTIAN
CHURCH ASSOCIATION AND KOREA TIMES
SEATTLE, INC. AS *AMICI CURIAE* IN
SUPPORT OF PETITIONERS**

Jackson Maynard, Jr.	Sam Spiegelman
Marshall Casey	<i>Counsel of Record</i>
CITIZEN ACTION	SPIEGELMAN LAW GROUP
DEFENSE FUND	P.O. Box 1354
111 21st Ave. SW	New York, NY 10028
Olympia, WA	201.314.9505
	sam@spiegelmanlawgroup.com

October 5, 2026

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. PUBLIC-ACCOMMODATION LAWS MAY NOT REQUIRE A BUSINESS TO ALTER THE VERY GOODS OR SERVICES IT PROVIDES	4
A. <i>Jjimjilbang</i> Are Not Just “Spas”	4
B. Requiring Admission of Anatomical Men Strips the <i>Jjimjilbang</i> of Its Sole Purpose	10
II. COMMERCIAL RELIGIOUS ACTIVITIES ARE SUBJECT TO STRICT SCRUTINY	12
A. The Free Speech and Exercise Clauses Extend to Commercial Religious Activities	12
B. Balancing First and Fourteenth Amendment Rights Does Not Absolve States (or Courts) of Their Constitutional Obligations	16
CONCLUSION	20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>303 Creative LLC v. Elenis</i> , 600 U.S. 570 (2023).....	4, 14, 16
<i>Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.</i> , 57 F.4th 791 (11th Cir. 2022) (en banc)	17
<i>Bostock v. Clayton County</i> , 590 U.S. 644 (2020)	16, 17
<i>Boy Scouts of Am. v. Dale</i> , 530 U.S. 640 (2000)	4
<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014).....	13
<i>Church of Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , 508 U.S. 520 (1993)	8, 11, 12
<i>City of Dallas v. Stanglin</i> , 490 U.S. 19 (1989)	10
<i>Doe ex rel. Doe v. Boyertown Area Sch. Dist.</i> , 897 F.3d 518 (3d Cir. 2018)	17
<i>Downtown Soup Kitchen v. Municipality of Anchorage</i> , 406 F. Supp. 3d 776 (D. Alaska 2019)	17
<i>Emp. Div. v. Smith</i> , 494 U.S. 872 (1990).....	8, 13
<i>Farrington v. Tokushige</i> , 273 U.S. 284 (1927)	13
<i>Fla. Star v. B.J.F.</i> , 491 U.S. 524 (1989)	12
<i>Frazee v. Ill. Dep’t of Emp. Sec.</i> , 489 U.S. 829 (1989).....	8
<i>Fulton v. City of Philadelphia</i> , 593 U.S. 522 (2021).....	4, 11, 12, 15

<i>Gonzales v. O Centro Espirita Beneficente</i> <i>Uniao do Vegetal</i> , 546 U.S. 418 (2006)	12
<i>Green v. Miss U.S. of Am., LLC</i> , 52 F.4th 773 (9th Cir. 2022)	4, 17
<i>Grimm v. Gloucester Cnty. Sch. Bd.</i> , 972 F.3d 586 (4th Cir. 2020)	17
<i>Heart of Atlanta Motel, Inc. v. United States</i> , 379 U.S. 241 (1964)	16
<i>Hernandez v. Comm’r</i> , 490 U.S. 680 (1989)	8
<i>Holt v. Hobbs</i> , 574 U.S. 352 (2015)	12
<i>Kennedy v. Bremerton Sch. Dist.</i> , 597 U.S. 507 (2022)	15
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025)	15
<i>Masterpiece Cakeshop, Ltd. v. Colo. C.R.</i> <i>Comm’n</i> , 584 U.S. 617 (2018)	4, 13, 16
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923)	12
<i>NAACP v. Alabama ex rel. Patterson</i> , 357 U.S. 449 (1958)	13
<i>Olympus Spa v. Armstrong</i> , 169 F.4th 817 (9th Cir. 2026)	2, 8, 9, 10, 11, 14, 16, 18, 19
<i>Pierce v. Soc’y of Sisters</i> , 268 U.S. 510 (1925)	12
<i>Roberts v. U.S. Jaycees</i> , 468 U.S. 609 (1984)	13
<i>Tandon v. Newsom</i> , 593 U.S. 61 (2021)	15
<i>Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.</i> , 450 U.S. 707 (1981)	8, 15
<i>United States v. Skrmetti</i> , 605 U.S. 495 (2025) ..	17, 18
<i>West Virginia v. B.P.J.</i> , 146 S. Ct. 2356 (2026) ..	17, 18
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972)	7, 15

Statutes and Regulations

Cal. Civ. Code § 51(b)	19
Cal. Penal Code § 314.....	19
Wash. Admin. Code § 162-32-060	11, 18

Rules

Sup. Ct. R. 37.6.....	1
-----------------------	---

Other Authorities

D. Kessler et al., <i>Korean Sauna (Jjimjilbang) Wellness Tourism as Perceived by Westerners Living in South Korea</i> , 6 J. Tourism & Hosp. Mgmt. 93 (2018)	8
Daniel Kessler, <i>Exploring the Evolution and Significance of the Korean Jjimjilbang: Unveiling a Hidden Wellness Tradition, in Wellness Tourism in Asia</i> 199 (S.K. Kulshreshtha & E. Michopoulou eds., 2025)	9
Deena Shanker, <i>Less Than 2% of the US Population Is Jewish, So Why Is 41% of the Country's Packaged Food Kosher?</i> , Quartz (2015).....	3
Jang Eun-gyo, <i>The History of Public Bathing: From Religious Rite to Social Spaces</i> , Kyunghyang Shinmun (Dec. 11, 2015)	4–6
Jeremy Lee Quinn, <i>Exclusive: WiSpa Suspect Not Guilty on All Nine Counts of Indecent Exposure</i> , L.A. Mag. (June 1, 2025)	19
Katie Chang, <i>The Best Korean Spas to Plan a Visit to in the US</i> , The Points Guy (Apr. 8, 2024)	9

Kim Hye-soo, <i>[Weekender] Jjimjilbang: Sanctuaries of Winter Warmth</i> , Korea Herald (Dec. 13, 2018)	2, 5–6, 9
Kim Kyung-hoon, <i>How Did We Bathe?</i> , Nat'l Folk Museum of Korea (July 29, 2015)	4–5
Korean Am. Grassroots Conf., <i>Korean American Population Data</i> (2023)	9
<i>Li Ki</i> bk. X (<i>Nei Ze</i>), in 27 <i>The Sacred Books of the East</i> (F. Max Müller ed., James Legge trans., 1885)	7
<i>Mikvahs in USA</i> , Mikvah.org	3
<i>Mikveh</i> , Jewish Women's Archive (June 23, 2021)	3
Mozilla Found., <i>Privacy Not Included: Christian Mingle</i> (Mar. 15, 2024)	3
<i>Muzz Reaches 10 Million Members</i> , Global Dating Insights	3
OU Kosher, <i>The Growth of Kosher Certification</i>	3
Pew Rsch. Ctr., <i>6 Facts About South Korea's Growing Christian Population</i> (Aug. 12, 2014)	6
Pew Rsch. Ctr., <i>Facts About Koreans in the U.S.</i> (May 1, 2025)	9
Pew Rsch. Ctr., <i>Historical Overview of Pentecostalism in South Korea</i> (Oct. 5, 2006)	6
Pew Rsch. Ctr., <i>Religion Among Asian Americans</i> (Oct. 11, 2023)	6
<i>Prosecutors Charge Local Trans Woman with Indecent Exposure in Wi Spa Incident</i> , L.A.	

Mag. (Sept. 3, 2021)	19
St. Augustine, <i>The City of God</i> (Marcus Dods trans., 1871)	14
<i>Wi Spa: Person at Center of Transgender Protests Facing Indecent-Exposure Charges</i> , KABC (Sept. 3, 2021)	19

INTEREST OF *AMICI CURIAE*¹

The **Tacoma Korean Christian Church Association** (“Tacoma Churches”) is an association of Korean Christian congregations in Tacoma and the surrounding Pierce County communities. Olympus Spa operates one of its two locations in Tacoma. The Tacoma Churches have an interest in whether a religious conviction keeps its constitutional protection when a believer practices it in her business.

The **Korea Times Seattle, Inc.** (“Korea Times”) is the publisher of the Seattle edition of the *Korea Times (Hankook Ilbo)*, a Korean-language newspaper serving Washington’s Korean-American community. Its readers are the families who run and patronize the State’s Korean businesses and fill its Korean churches and heritage schools. It has an interest in how courts understand and describe the institutions of the community it serves.

Amici together represent multiple facets of Washington’s Korean-American community. They write to impress upon the Court the special role *jjimjilbang* play in their community, how it intersects with many Koreans’ sincerely held Christian beliefs, and that the Ninth Circuit’s failure to incorporate this information into its analysis fatally flaws its ruling against Petitioners.

¹ Pursuant to Rule 37.6, counsel for *amici* affirm that no counsel for any party authored this brief in whole or in part, and no person or entity, other than *amici*, their members, or counsel, made any monetary contribution to its preparation or submission. All parties received timely notice of *amici*’s intention to file.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Ninth Circuit’s erroneous ruling requiring Petitioners to admit anatomical men into their women-only *jjimjilbang* builds on the false premise that the services it provides are no different in kind from “virtually every commercial gym or massage establishment,” and that “the act of giving or receiving a Korean massage hardly contains even a ‘kernel of expression.’” *Olympus Spa v. Armstrong*, No. 23-4031, slip op. at 30–31 (“Op.”), *reported at* 169 F.4th 817 9th Cir. Mar. 12, 2026). The circuit majority’s reasoning is as incorrect as it is offensive, and conveniently ignores (if its members ever even sought to find out) that the *jjimjilbang* is not a flash in the pan. It is essential to Korean social and religious life and has been for centuries, with an early forerunner recorded in the state-sanctioned *Veritable Records of the Joseon Dynasty* (covering 1392–1863). See Kim Hye-soo, [Weekender] *Jjimjilbang: Sanctuaries of Winter Warmth*, Korea Herald (Dec. 13, 2018) (noting “[t]he origin of *jjimjilbang* can be traced back to the *Joseon* era”) (<https://www.koreaherald.com/article/1864232>).

Beyond its willful cultural ignorance, the majority below could only rule against Petitioners by lowering its standard of scrutiny to far below what a socio-religious practice as deep-rooted and sincerely held as the *jjimjilbang* merits. For over a century, this Court has protected the old-world practices of America’s immigrant communities from official efforts to bring them to heel. The decision below withdraws that protection simply because the practice here unfolds in a commercial setting instead of a purely liturgical one.

The Petition should be granted for the reasons set forth therein, but also to answer whether and to what

extent the First Amendment protects the free exercise and expression of spiritual activity practiced in a commercial context. That question is crucial to the thousands of Korean Americans who visit *jjimjilbangs* every week and wish to continue to do so undisturbed. Indeed, it is crucial to millions of Americans who pay for spiritually fulfilling services at ritual baths like Jewish *mikvehs*, use dating apps tailored to their specific religious orientation, and make faith-based moral choices in innumerable consumer-spending decisions. See, e.g., *Mikvahs in USA*, Mikvah.org (directory of 526 mikvahs in 344 American cities) (<https://mikvah.org/directory/country/us>) (last visited Sept. 20, 2026); *Mikveh*, Jewish Women’s Archive (June 23, 2021) (Jewish law directs a community of limited means to build a mikveh before it builds a synagogue) (<https://tinyurl.com/2vzpt479>); *Muzz Reaches 10 Million Members*, Global Dating Insights (Muslim marriage app) (<https://tinyurl.com/59kucejw>) (last visited Sept. 20, 2026); Mozilla Found., *Privacy Not Included: Christian Mingle* (Mar. 15, 2024) (Christian dating app with “around 15 million users worldwide”) (<https://tinyurl.com/ykce5svp>); Deena Shanker, *Less Than 2% of the US Population Is Jewish, So Why Is 41% of the Country’s Packaged Food Kosher?*, Quartz (2015) (<https://tinyurl.com/5nmpxemn>); OU Kosher, *The Growth of Kosher Certification* (more than twelve million American consumers buy kosher-certified products) (<https://tinyurl.com/mt3ycetv>) (last visited Sept. 20, 2026).

Rulings like the one below threaten the delicate balance this Court has worked so hard to strike at the fraught intersection of First and Fourteenth Amendment rights, particularly within the commercial sector. A balance that, while delicate, can

still easily resolve such obvious questions as the proper *and* improper times and places for the display of male genitalia. Pet. at 10, 12–13. *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, Ltd. v. Colo. 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).

ARGUMENT

I. PUBLIC-ACCOMMODATION LAWS MAY NOT REQUIRE A BUSINESS TO ALTER THE VERY GOODS OR SERVICES IT PROVIDES

A. *Jjimjilbang* Are Not Just “Spas”

Ritual bathing is among the oldest elements of the Korean cultural tradition and is deeply intertwined with deep-rooted, sincerely held religious beliefs. The public bath in Korea traces to the Buddhist temples of the Silla period, where monasteries built and maintained communal baths so that many could purify themselves at once. *See* Kim Kyung-hoon, *How Did We Bathe?*, Nat’l Folk Museum of Korea (July 29, 2015) (<https://tinyurl.com/mrx5v5zw>) (translation by *amici*) (last visited Sept. 19, 2026); Jang Eun-gyo, *The History of Public Bathing: From Religious Rite to*

Social Spaces, Kyunghyang Shinmun (Dec. 11, 2015) (Korean bathing culture “began with Buddhism” in the Three Kingdoms period, and the temple bath is “the forerunner of our country’s public bath”) (<https://tinyurl.com/3n6ed2d4>) (translation by *amici*).

By the fifteenth century the practice had the State’s blessing. The *Sejong Sillok*—the annals of Joseon’s greatest king—record the *hanjeungso*—sweating-houses operated under official sanction—to which the monarchy even dispatched its own physicians to treat the sick. Kim Hye-soo, *supra* (“The first mention of a *jjimjilbang* is found in the Annals of King Sejong,” which records that “doctors were selected and sent to *hanjeungso*”); Kim Kyung-hoon, *supra* (the *hanjeungso* “existed under the protection and supervision of the government” and “was used for the treatment of illness,” according to the annals of *Sejong* and *Munjong*).

Crucially, Joseon added modesty to the bathing experience. The Confucian order that governed Korea for five centuries regarded the body as something not to be shown carelessly to others, and treated separate bathing for men and women as a given. Kim Kyung-hoon, *supra* (“In the Confucian culture of Joseon, the body was not something to be shown carelessly to others.”); Jang, *supra* (in Joseon, “a Confucian society,” “it was taken for granted that men and women bathed separately”). When the modern public bath arrived—the first opened in Pyongyang in 1924 and the next in Seoul the following year—it arrived on the same communal but modest terms, as a place where one may undress among strangers but *only* of one’s own sex. Kim Kyung-hoon, *supra*. That has never changed. The modern *jjimjilbang* that swept Korea in the 1990s kept the sex-separated nude bath

at its core and added, around it, the clothed common rooms in which families and friends eat, sleep, and sweat together. Jang, *supra* (*jjimjilbang* surged in popularity from the 1990s, after which bathhouses became “a play space where people spend enjoyable time with friends and family”); Kim Hye-soo, *supra* (patrons change into cotton pajamas for the common rooms, where “people of all ages can hang out together”).

The result is an institution with no Western analog, though it is interlocked with the Christian tradition as expressed in Korean civilization. Protestant missionaries reached the peninsula in the 1880s; the country was one percent Christian in 1900, roughly three in ten Christian by 2010, and, since the 1980s, slightly less than one in five have belonged to Protestant denominations. Pew Rsch. Ctr., *6 Facts About South Korea’s Growing Christian Population* (Aug. 12, 2014) (<https://tinyurl.com/zep9knvm>); see also Pew Rsch. Ctr., *Historical Overview of Pentecostalism in South Korea* (Oct. 5, 2006) (first resident Protestant missions established in the mid-1880s) (<https://tinyurl.com/8c9vad7v>). The diaspora is more devout still: 59 percent of Korean-American adults identify as Christian, against 34 percent of Asian Americans generally. Pew Rsch. Ctr., *Religion Among Asian Americans* (Oct. 11, 2023) (<https://tinyurl.com/4asp3ewu>).

The faith Koreans embraced did not displace the Confucian modesty described above but instead absorbed it. The *Book of Rites*—the Confucian canon that ordered Joseon life—taught that men and women “should not go to the same well, nor to the same bathing-house,” and that from “the age of seven, boys and girls did not occupy the same mat nor eat

together.” *Li Ki* bk. X (*Nei Ze*), in 27 *The Sacred Books of the East* 454, 478 (F. Max Müller ed., James Legge trans., 1885) (<https://ctext.org/liji/nei-ze>).

The record describes the Spa’s owners, the Lee family, as “traditional theologically conservative Korean Christians” who, in the Petition’s words, “consider modesty between the sexes a central tenet of their religious beliefs” and hold “the religious conviction that men and women should not be present together while unclothed unless married to one another.” Pet. at 8 (citing Pet. App. 33a, 106a). Mr. Lee grounds that conviction in Scripture—Genesis 1:27, Proverbs 31:17, 1 Peter 3:7, and 1 Timothy 5:2, among other passages—and explains that “[a]ccording to our religion, man and woman are created differently”; the Spa “is designed specifically for women and our mission is to restore and rejuvenate women’s physical health as well as spiritual health.” Pet. at 8, 27 (quoting Lee Decl. at 3–4). His parents opened it after leaving Korea “in the hopes of a better life and greater religious freedom as Christians.” Pet. at 7 (citing Pet. App. 32a). For this family the sex-separated bath is not a Korean custom that happens to be run by Christians, but an integrated expression of both traditions.

Wisconsin v. Yoder asked whether “the Amish religious faith and their mode of life are, as they claim, inseparable and interdependent,” and found their way of life to be “not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living.” 406 U.S. 205, 215–16 (1972). *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah* protected Santeria—an Afro-Cuban fusion of Yoruba devotion and Catholic iconography—without pausing

to ask where the culture ended and the religion began. 508 U.S. 520, 524–25 (1993). Courts “must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim,” *Emp. Div. v. Smith*, 494 U.S. 872, 887 (1990); may not “question the centrality of particular beliefs or practices to a faith,” *Hernandez v. Comm’r*, 490 U.S. 680, 699 (1989); and must protect beliefs even when they are not “acceptable, logical, consistent, or comprehensible to others,” *Thomas v. Rev. Bd.*, 450 U.S. 707, 714 (1981). Nor need the belief track the teaching of any particular church. *Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 834 (1989). The only question the Constitution asks is whether the conviction is sincere—and no one below suggested it is not.

In the *jjimjilbang*’s bathing room, nudity is not just permitted; it is *required*. Patrons are given no robe and no towel to cover themselves. D. Kessler et al., *Korean Sauna (Jjimjilbang) Wellness Tourism as Perceived by Westerners Living in South Korea*, 6 J. Tourism & Hosp. Mgmt. 93, 94 (2018) (Korean *jjimjilbang* etiquette requires that “the customer should be completely naked when entering the hot baths, saunas, and the steam room areas”). The signature service, *seshin*, is a head-to-toe scrub administered in the open by a *ddemiri* of the same sex trained in the traditional technique. Pet. at 2, 7; Op. at 34 (Lee, J., dissenting). Girls as young as *thirteen* attend the Spa with their mothers, “participating together in this traditional cultural practice.” Op. at 60 (VanDyke, J., dissenting from the denial of rehearing en banc).

Korean women in particular treat the *jjimjilbang* as both a social and sacred space—a place of ordinary

companionship at every age. Kim Hye-soo, *supra*. And the tradition has followed the diaspora. Petitioners’ two bathhouses are among several prominent *jjimjilbang* in the United States, and they are the only ones in Washington State—where there reside nearly 100,000 Korean Americans, representing the third-largest share in the country (after Hawaii and California). See Pet. at 3, 8 (the Spa operates “the only *jjimjilbang* in Washington”); Op. at 28 (“a local business with two locations”); Katie Chang, *The Best Korean Spas to Plan a Visit to in the US*, The Points Guy (Apr. 8, 2024) (surveying prominent *jjimjilbang* in Los Angeles, northern New Jersey, greater Chicago, northern Virginia, Houston, Tampa, and San Francisco) (<https://tinyurl.com/4pzekys5>); Korean Am. Grassroots Conf., *Korean American Population Data* (2023) (compiling 2020 American Community Survey figures: 96,671 Korean Americans in Washington, the fifth-largest count of any State—by *amici*’s calculation, roughly 1.3 percent of its 7.7 million residents, a share exceeded only in Hawaii and California) (<https://tinyurl.com/yc4dya9s>); Pew Rsch. Ctr., *Facts About Koreans in the U.S.* (May 1, 2025) (an estimated two million people in the United States identified as Korean in 2023) (<https://tinyurl.com/627k6h8k>).

The *jjimjilbang* “remains substantially unstudied within Western scholarly literature”—so imagine Petitioners’ surprise when the majority below declared, with certitude but without examining the practice itself, that the family ran an ordinary spa involving zero semblance of religious expression. See Daniel Kessler, *Exploring the Evolution and Significance of the Korean Jjimjilbang: Unveiling a Hidden Wellness Tradition*, in *Wellness Tourism in Asia* 199 (S.K. Kulshreshtha & E. Michopoulou eds.,

2025) (describing the *jjimjilbang* as “a social wellness hub within modern Korean society”) (https://doi.org/10.1007/978-981-96-2867-4_13).

Without any evident research, the majority essentially compared a fifteenth-century institution rooted in Confucianism to a Planet Fitness, concluding that “the act of giving or receiving a Korean massage hardly contains even a ‘kernel of expression,’” Op. at 30–31 (quoting *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989)). Of course, the majority’s conclusion critically ignores that nude bathing is not a fixable policy of Petitioners’ *jjimjilbang*—*it is the very service itself*. Without nude bathing it loses its cultural vintage and with it, its proper right to even call itself a *jjimjilbang*.

B. Requiring Admission of Anatomical Men Strips the *Jjimjilbang* of Its Sole Purpose

Public-accommodation laws require a business to sell to all comers what it offers to some. But their constitutional ambit does not include authorizing the state to redesign the very product or service offered in order to facilitate access regardless of one’s immutable characteristics (though, as Petitioners note, the Spa has always admitted post-operative transgender women, Pet. at 10 (citing Pet. App. 107a); Op. at 34–35 (Lee, J., dissenting)).

Nor is this result a one-off. The record establishes that the Spa’s employees “will not perform services such as massages and body scrubs on naked men,” Pet. App. 142a; that its “employees and customers have made it clear that they will not return if naked individuals with male genitalia use the female-only spa,” Pet. at 13 (quoting Pet. App. 35a); that on the occasions when a person with male genitalia has

entered the women’s side, patrons “fled the scene and vowed never to return,” *id.* at 13 (quoting Pet. App. 85a); and that the Spa “fears that it will have to close its doors,” Op. at 37 (Lee, J., dissenting). A mandate whose foreseeable effect is to eliminate the accommodation for everyone—the complainant included—is not an “incidental” burden on anything. It is the abolition of the institution under the name of access to it.

Washington’s own regulations confirm that access was never the point. The Commission’s own rule presupposes that covered entities will maintain “gender-segregated facilities, such as restrooms, locker rooms, [and] dressing rooms,” including facilities “where undressing in the presence of others occurs,” and it encourages them to offer “options for privacy.” Wash. Admin. Code §162-32-060(1), (3); *see* Op. at 14. The State, in other words, has already accepted that separation in nude spaces is legitimate and that the privacy concerns it serves are real. What it forbids is narrower and stranger: drawing that line by anatomy rather than by self-identification, in the one room where anatomy is the only thing on display. That is the interest the State is actually pursuing, and under this Court’s caselaw it is the interest against which the State’s antidiscrimination statute must be measured. *Fulton*, 593 U.S. at 541 (the question is not whether the government has a compelling interest in enforcing its policies “generally, but whether it has such an interest in denying an exception” to the claimant before it); *Lukumi*, 508 U.S. at 543 (underinclusiveness is measured against the interest the government asserts).

Measured thusly, the State’s interest in reconstituting the only Korean women’s bath in

Washington cannot carry the weight the majority assigns it—especially as the majority simultaneously underweighted Petitioners’ opposing fundamental and constitutional interests. *See Fulton*, 593 U.S. at 541; *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430–31 (2006) (strict scrutiny looks “beyond broadly formulated interests” to “the asserted harm of granting specific exemptions to particular religious claimants”); *Holt v. Hobbs*, 574 U.S. 352, 362–63 (2015); *Lukumi*, 508 U.S. at 546–47 (a law “cannot be regarded as protecting an interest ‘of the highest order’ . . . when it leaves appreciable damage to that supposedly vital interest unprohibited” (quoting *Fla. Star v. B.J.F.*, 491 U.S. 524, 541–42 (1989) (Scalia, J., concurring in part and concurring in judgment))).

II. COMMERCIAL RELIGIOUS ACTIVITIES ARE SUBJECT TO STRICT SCRUTINY

A. The Free Speech and Exercise Clauses Extend to Commercial Religious Activities

The Court has long placed cultural and religious autonomy at the center of individual liberty, especially with respect to free expression, free exercise, and the understated (but by no means underrated) “right of the individual to . . . establish a home.” *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). In *Meyer*, the Court rejected the state’s wish “to foster a homogeneous people” as insufficient to justify a ban on teaching foreign languages to young schoolchildren, because “a desirable end cannot be promoted by prohibited means” and “[t]he protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue.” *Id.* at 401–02. *Pierce v. Society of*

Sisters, in turn, denied the state “any general power . . . to standardize its children.” 268 U.S. 510, 535 (1925). *Farrington v. Tokushige* applied both to Hawaii’s foreign-language schools—163 of them, nine conducted in Korean—under a statute whose “declared object” was that “the Americanism of the pupils may be promoted.” 273 U.S. 284, 291, 293–94 (1927). There the Court held that the parent “has the right to direct the education of his own child without unreasonable restrictions,” and that “the Constitution protects him as well as those who speak another tongue.” *Id.* at 298.

Individual liberty expressed *aggregately*, through community and/or corporate practice, deserves the same level of protection and with it, the same heightened standard of scrutiny. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706–07 (2014) (when rights are extended to a corporation, “the purpose is to protect the rights of” the people behind it, so that “protecting the free-exercise rights of corporations . . . protects the religious liberty of the humans who own and control those companies”); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984) (the First Amendment secures “a right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends”); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958). “Business practices that are compelled or limited by the tenets of a religious doctrine fall comfortably within” the definition of religious exercise; “not only belief and profession but the performance of (or abstention from) physical acts.” *Hobby Lobby*, 573 U.S. at 709–10 (quoting *Smith*, 494 U.S. at 877). *See Masterpiece Cakeshop*, 584 U.S. at 638–40 (Commission’s hostility toward baker’s religious objection violated the Free Exercise Clause);

303 Creative, 600 U.S. at 594 (selling one’s expression through a business does not diminish its protection).

The Ninth Circuit’s reasoning misses this point entirely, declaring, in rejecting a ministerial-exception argument, that the Spa “is not a religious institution” and that its services lack “even a ‘kernel of expression.’” Op. at 27, 30–31. Never mind that neither *Hobby Lobby* nor *Masterpiece Cakeshop* was a “religious institution,” or that the Free Speech and Exercise Clauses protect the religious expression of the persons *behind* the “institution,” not those of the institution itself.

Perhaps hedging that this Court would see right through this dodge, the majority below also held that the burden imposed on Petitioners was “incidental” to their free and religious expression because the family remains free to *say* what they believe. Pet. at 13 (quoting Pet. App. 22a). But Petitioners’ religious practice is not confined to words—no one’s is. As St. Augustine observed, “holy leisure is longed for by the love of truth; but it is the necessity of love to undertake requisite business.” St. Augustine, *The City of God* bk. XIX, ch. 19 (Marcus Dods trans., 1871). Petitioners seek to actualize their Christian faith, not merely profess it. Steeped as well in their native Korean culture, they do so by offering to their own community and curious outsiders an authentic Korean *and* Christian experience in the form of a *jjimjilbang* that accords with Christian mores on modesty and separation of the sexes.

Abstaining from actions their dogma deems sinful or immoral is as expressive of their religious beliefs as the acts of praying or almsgiving. Here, their refusal to place unclothed anatomical men among unclothed anatomical women, including girls, is as much an

expression of their Christo-Korean tenets as the physical act of bathing. “Where the state conditions receipt of an important benefit”—here, license to remain open to customers—“upon conduct proscribed by a religious faith, . . . thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect”—or, again, as here, fairly *direct*—“the infringement upon free exercise is nonetheless substantial.” *Thomas*, 450 U.S. at 717–18.

In 2025 the Court reaffirmed that a burden of *Yoder*’s character triggers strict scrutiny regardless of whether the law is neutral and generally applicable. *Mahmoud v. Taylor*, 606 U.S. 522 (2025). A law that leaves a Korean Christian family to “either abandon belief and be assimilated,” *Yoder*, 406 U.S. at 218, or close the doors of the only *jjimjilbang* in Washington imposes a substantial burden. And a law that “prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way” must satisfy strict scrutiny. *Fulton*, 593 U.S. at 534; *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525–26 (2022); *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). The commercial setting for Petitioners’ religious and cultural expression does not change their sincerity or deep-rootedness. That they exercise their faith in a context that *resembles* secular commercial activity does not make that exercise secular. Yet that is precisely what the Ninth Circuit majority tried to do, framing Petitioners’ commercial activities as “incidental” despite the fact that disrobement is central to the *jjimjilbang* experience, as well as essential to its business model. The state’s interference therewith is thus doubly

unconstitutional, even considering the apparent civil rights of the complainant, who later told reporters of never having actually visited the Spa. Op. at 62 n.5 (VanDyke, J., dissenting from the denial of rehearing en banc).

**B. Balancing First and Fourteenth
Amendment Rights Does Not Absolve
States (or Courts) of Their Constitutional
Obligations**

This Court has never discounted that there are vital constitutional interests on both sides of the fraught crossroad between religion and commerce. While it declared that gay persons “cannot be treated as social outcasts or as inferior in dignity and worth,” it also counseled that “the religious and philosophical objections” of those who disagree “are protected views and in some instances protected forms of expression” nonetheless. *Masterpiece Cakeshop*, 584 U.S. at 631. It has said that public-accommodation laws vindicate “the deprivation of personal dignity that surely accompanies denials of equal access to public establishments,” but that none are “immune from the demands of the Constitution.” *303 Creative*, 600 U.S. at 590 (quoting *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250 (1964)), 592. The Court has also expressly reserved how the guarantees of religious liberty interact with its holding that Title VII’s bar on sex discrimination reaches transgender status. *Bostock v. Clayton County*, 590 U.S. 644, 681–82 (2020).

But this reservation is more practical than philosophical. The Court simply has not had the opportunity to draw bright lines where none exist. If gender identity is, by definition, fluid, then it is, theoretically, endlessly malleable. We have seen with

ever more regularity cases of biological males and females “identifying” as the other gender in both commercial and non-commercial settings. *See, e.g., West Virginia v. B.P.J.*, 146 S. Ct. 2356 (2026) (girls’ interscholastic athletics); *United States v. Skrmetti*, 605 U.S. 495 (2025) (medical interventions for minors); *Bostock*, 590 U.S. 644 (employment); *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791 (11th Cir. 2022) (en banc) (school restrooms); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020) (school restrooms; opposite result); *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018) (school locker rooms); *Green*, 52 F.4th 773 (beauty pageant); *Downtown Soup Kitchen v. Municipality of Anchorage*, 406 F. Supp. 3d 776 (D. Alaska 2019) (women’s shelter). In the vast majority of contexts, the distinction is inconsequential. On one’s ability to perform a desk job, for example. Or to patronize a restaurant. The calculus becomes more complicated when the debate moves to public restrooms and organized sports. And modern medical and scientific capabilities have only exacerbated these debates by providing ever more advanced procedures for biological men and women who “identify” as the other gender to transform their bodies into a close resemblance.

Even under mere rational-basis review it would be hard to justify requiring a secular spa with a female-only clientele, let alone one run by Christians, to admit such obviously anatomically unqualified members. Thankfully, the test is not rational basis, yet the Commission proceeded as if it were, asking none of the hard questions one would rightly expect in this case—*e.g.*, whether the family’s religious beliefs were sincerely held, or why the business calls itself a *jjimjilbang*; or, most importantly, whether the

complainant ever even sought and was denied the services Petitioners offered.

As one dissent to the majority below noted, the Commission’s investigator “expressed little interest in discovering whether the complainant ever visited the Spa,” declared that “the time to ensure that [the complainant] does not feel discriminated against has passed,” and set a ten-day deadline. Pet. at 11–12; Op. at 36–37 (Lee, J., dissenting). Yet Washington State’s own rules show what a real balance looks like. The Commission’s own rule presupposes gender-segregated locker rooms and other facilities “where undressing in the presence of others occurs,” and it encourages covered entities to provide “options for privacy.” Wash. Admin. Code § 162-32-060(1), (3). The State thus recognizes that undressing in front of others implicates real privacy interests. The State cannot now claim that this interest evaporates in a traditional Korean bathhouse—in which undressing is not merely incidental (or even optional) but is a quintessential element of the experience itself.

This past June, the Court held that laws which “classify on the basis of biological sex” “do not classify based on gender identity or transgender status,” *B.P.J.*, 146 S. Ct. at 2378 (citing *Skrimetti*, 605 U.S. at 517), and Judge Collins explained below why the Spa’s *anatomy*-based policy easily toes this line. Pet. at 4, 15–16, 32–34.

And this is a recurrent problem, not a once-in-decades proposition, as the State argued below. See Op. at 47 n.6 (Lee, J., dissenting) (State emphasized there had been “only one instance” of such a patron “in over 20 years”). In June 2021, Wi Spa, a Korean bathhouse in Los Angeles, admitted to its women’s side a patron who identified as a woman, in apparent

accordance with California’s public-accommodation statute, Cal. Civ. Code § 51(b). Five patrons reported that the patron had moved through the women’s bath with male genitalia exposed. That patron, also a registered sex offender, was charged with five felony counts of indecent exposure—but was acquitted on every indecent-exposure count in 2025. See *Prosecutors Charge Local Trans Woman with Indecent Exposure in Wi Spa Incident*, L.A. Mag. (Sept. 3, 2021) (<https://lamag.com/?p=218556>); *Wi Spa: Person at Center of Transgender Protests Facing Indecent-Exposure Charges*, KABC (Sept. 3, 2021) (<https://tinyurl.com/3hdu3ycp>); Jeremy Lee Quinn, *Exclusive: WiSpa Suspect Not Guilty on All Nine Counts of Indecent Exposure*, L.A. Mag. (June 1, 2025) (<https://lamag.com/?p=31993>). California’s indecent-exposure statute reaches only one who exposes himself “willfully and lewdly,” Cal. Penal Code § 314—a *mens rea* quite hard to prove when state law itself permits conduct indistinguishable from its criminal iteration. Judge VanDyke’s opening line, while crude, was not wrong about what the majority’s rule delivers—state-sanctioned criminality dressed (or rather undressed) in the garb of antidiscrimination. Op. at 56 (VanDyke, J., dissenting from denial of rehearing en banc).

The Ninth Circuit’s free-exercise and antidiscrimination analyses are (correctly) repeatedly subject to this Court’s deconstruction. It is a shame one circuit produces so many erroneous rulings, but continuing to draw bright lines where they belong at least promises to place certain categories of cases beyond that familiar resort to “nuance.” Given how very unsubtle the facts involved, this case is a perfect

vehicle for the Court to draw the bright-line rule that male genitalia—again, not even biological men!—have no place around unclothed women and girls. Especially where permitting them offends more than sensibilities and undermines individual and communal rights to free and religious expression, whether articulated by words or action, and in saunas or synods.

CONCLUSION

For the foregoing reasons, and those set forth in the Petition, *amici* respectfully request that the Court grant certiorari and reverse the Ninth Circuit’s ill-considered decision below.

Respectfully submitted,

Jackson Maynard, Jr.	Sam Spiegelman
Marshall Casey	<i>Counsel of Record</i>
CITIZEN ACTION	SPIEGELMAN LAW GROUP
DEFENSE FUND	P.O. Box 1354
111 21st Ave. SW	New York, NY 10028
Olympia, WA	201.314.9505
	sam@spiegelmanlawgroup.com

October 5, 2026	<i>Counsel for Amici Curiae</i>
-----------------	---------------------------------