

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.

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

**BRIEF OF *AMICUS CURIAE*
INDEPENDENT WOMEN'S LAW CENTER
SUPPORTING PETITIONERS**

BETH PARLATO
INDEPENDENT WOMEN'S
LAW CENTER
1802 Vernon Street NW
Suite 1027
Washington, DC 20009
Telephone: (202) 807-9986

GENE C. SCHAERR
Counsel of Record
STEPHANIE L. FREUDENBERG
SCHAERR | JAFFE LLP
1717 K Street NW,
Suite 900
Washington, DC 20006
Telephone: (202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*¹

Independent Women's Law Center ("IWLC") respectfully urges the Court to grant review in this case of enormous importance to all women and girls.

IWLC is a project of Independent Women's Forum ("IWF"), a nonprofit, non-partisan 501(c)(3) organization founded by women to foster education and debate about legal, social, and economic issues. IWF promotes policies that advance women's interests by expanding freedom, encouraging personal responsibility, and limiting the reach of government. IWF also documents the experiences of individuals whose lives have been affected by consequential legal and public-policy decisions. Independent Women's Law Center supports this mission by advocating for equal opportunity, individual liberty, and the rights of women and girls.

As organizations comprised primarily of women, IWF and IWLC believe that women deserve institutions that recognize biological reality and safeguard their bodily privacy, physical security, and human dignity, which can be achieved only by maintaining sex-separated facilities. IWLC has repeatedly advocated for the preservation of sex-separated spaces where those interests are implicated, including in athletics, locker rooms, correctional facilities, and other intimate settings.

¹ This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amicus curiae* or its counsel or members has made a monetary contribution to the brief's preparation or submission. Counsel of record for all parties received timely notice of intent to file this brief.

The Ninth Circuit acknowledged “[w]ithout a doubt” that “nude spas raise unique privacy concerns absent in most other public spaces.” App.26a. IWLC writes to explain why those privacy concerns matter and why the real-world consequences of eliminating female-only intimate spaces disserve the legitimate privacy interests of women and girls.

This Court should grant certiorari and reverse the decision below.

SUMMARY

This case gives the Court a much-needed opportunity to establish a fundamental principle: Absent truly unusual, compelling reasons, women and girls should not be forced to expose their naked bodies to men. That proposition is not reasonably debatable. And yet, the decision below compels exactly this result and places the interests of a single male above the safety, privacy, and dignity of every woman and girl.

For generations, society has maintained separate showers, locker rooms, changing areas, restrooms, and other intimate facilities for men and women. These boundaries are not arbitrary. Nor are they a product of hostility toward men or anyone else. They recognize a simple biological reality: when our bodies are exposed, sex matters.

Olympus Spa was created around that understanding. Its patrons enter communal bathhouses and treatment areas knowing they will be naked, and knowing the people around them will be women. Mothers bring daughters as young as thirteen. Women receive traditional full-body scrubs while nude. For these patrons, the female-only nature of the

Spa is not incidental to the service Olympus provides: It is central to it.

Yet Washington has declared that boundary unlawful. And the Ninth Circuit acknowledged that “nude spas raise unique privacy concerns absent in most other public spaces.” App.26a. Yet it discounted those concerns because Olympus operates a commercial business, its patrons pay for services, and many women inside are strangers to one another.

But a woman’s interest in who sees her naked does not disappear because she pays an admission fee. Nor does it turn on whether she knows the other women in the room. Courts have long recognized the legitimacy of bodily privacy from members of the opposite sex. This Court has recognized that the enduring physical differences between men and women may require separate arrangements “to afford members of each sex privacy from the other sex.” *United States v. Virginia*, 518 U.S. 515, 550 n.19 (1996).

Women’s experiences demonstrate why those protections matter. Former University of Pennsylvania swimmer—and IWF ambassador²—Paula Scanlan stopped showering at her pool after a male athlete was permitted to use the women’s locker room. Brief for Independent Women’s Law Center et al. as *Amici Curiae* in Support of Plaintiffs-Appellees at 7-9, *Tennessee v. McMahon*, No. 24-5588, 2025 WL

² See Press Release, Indep. Women Press Team & Paula Scanlan, Paula Scanlan Joins Independent Women’s Forum and Independent Women’s Voice As Stand With Women Spokeswoman and Advisor (July 26, 2023), <https://tinyurl.com/29xmddu6>.

848197 (6th Cir. Mar. 18, 2025), ECF No. 76. She hurried while changing, covered herself with a towel, buried her head in her locker, and ultimately suffered recurring nightmares involving vulnerability and men entering private spaces. *Ibid.* Another female swimmer resorted to changing in a single-stall restroom rather than undressing beside a male. *Ibid.* The male athlete remained in the women's locker room. *Ibid.* The women changed their behavior.

Olympus Spa's patrons face the same fundamental choice. When a male previously entered the Spa's female-only nude areas, women felt rage and shame. They left. The Spa refunded their money. They never returned. The burden did not disappear. It fell on the women. That is what happens when a female-only intimate space ceases to be female-only. Women cover themselves. Women avoid showers. Women retreat to bathrooms. Women leave. And women lose spaces created to protect their privacy in the first place.

The First Amendment questions presented by Petitioners warrant this Court's review. But in considering them, the Court should not lose sight of the women and girls—throughout the Ninth Circuit at least—who will lose important privacy protections if the decision below is allowed to stand.

ARGUMENT

I. Women and Girls Have A Legitimate Interest In Bodily Privacy from the Opposite Sex

Sex-separated intimate spaces exist for a reason. Women have a legitimate interest in undressing,

bathing, showering, sleeping, and receiving intimate services outside the presence of men. That interest does not reflect hostility toward anyone. It arises from the biological differences between men and women and the uniquely vulnerable circumstances in which the human body is exposed.

The Ninth Circuit recognized as much. “Without a doubt,” the court acknowledged, “nude spas raise unique privacy concerns absent in most other public spaces.” App.26a.

And the record illustrates just how intimate Olympus Spa is. Olympus Spa provides traditional Korean spa services rooted in centuries of Korean culture. App.126a-127a. Nudity is not incidental to those services. It is inherent in them. *Ibid.* Patrons are nude in communal bathing and sauna areas and while receiving traditional full-body scrubs. *Ibid.* Women bring their daughters, including girls as young as thirteen. App.33a (Lee, J., dissenting), 63a (VanDyke, J., dissenting from denial of rehearing en banc).

Olympus Spa is therefore unlike the ordinary public accommodation. The State is not simply requiring a business to sell the same product to an additional customer. Its mandate changes the conditions under which every woman and girl inside the Spa must expose her body.

And the law has long recognized that biological sex matters in such circumstances. In *United States v. Virginia*, this Court emphasized that the “[p]hysical differences between men and women” are “enduring.” 518 U.S. 515, 533 (1996). And even while holding that Virginia could not exclude women from the Virginia Military Institute, the Court expressly recognized the

propriety of separate arrangements necessary “to afford members of each sex privacy from the other sex.” *Id.* at 550 n.19.

Moreover, a woman’s interest in bodily privacy does not disappear at the entrance to a commercial establishment. Women entering locker rooms generally do not know every other woman inside. Women entering restrooms do not select who occupies the neighboring stall. Female athletes do not choose every woman who will undress beside them. Yet women can enter those spaces with a basic expectation: they are female-only spaces. That expectation allows women to expose their bodies in circumstances in which they otherwise might not. Olympus Spa operates on precisely that understanding.

The Ninth Circuit nevertheless emphasized that Olympus patrons “purchase commercial services” and generally do not select the strangers with whom they share the facility. App.26a-27a. But the fact that the women are strangers makes sex-based privacy more important, not less. A woman need not know the woman showering beside her to be comfortable undressing in a women’s locker room. She need not interview every patron before entering a women’s spa. The sex-based boundary itself supplies the privacy protection.

Nor does money change the equation. A woman does not surrender her bodily privacy because she paid to enter a locker room, gym, sauna, or spa. There is no commercial exception to female privacy. The intimate nature of Olympus Spa makes that principle particularly important. Women do not merely change

clothes before receiving services there. They remain naked while using communal facilities and receiving the services themselves.

For girls as young as thirteen, the implications are even more obvious. A thirteen-year-old girl entering a women's spa with her mother should not have to accept that an adult male may be naked beside her or observe her naked body as the price of participating in the experience. That is a deeply personal invasion of the boundary that female-only spaces exist to protect.

II. Women's Experiences Show What Is Lost When Female-Only Spaces Cease to Be Female-Only

When female-only spaces cease to be female-only, women bear the consequences. Women experience those consequences while standing naked in locker rooms and showers. They experience them when deciding whether to expose their bodies. And when sex-based boundaries disappear, it is women who must decide whether to surrender their privacy or remove themselves. Their stories deserve to be heard.

A. Olympus Spa's patrons sought a place where women could be naked among women

For the women who visit Olympus Spa, female privacy is essential. App. 126a-128a. It is the reason the Spa works. The traditional Korean spa experience requires women to expose their bodies in ways that would be unthinkable in most public places. App.126a-127a. They bathe communally. *Ibid.* They use saunas together. *Ibid.* They receive full-body scrubs while completely naked. *Ibid.* Mothers share the experience

with their daughters. App.33a (Lewis, J., dissenting), 63a (VanDyke, J., dissenting from denial of rehearing en banc). And—until this case—the Spa’s customers understand that everyone around them will be female. See App. 127a-128a.

The record shows what happens when that expectation is broken. On occasions when males have gotten past the Spa’s entrance procedures and appeared naked inside, women reacted with rage and shame. App.128a. The Spa refunded their money. *Ibid.* The women never returned. *Ibid.*

Their reaction should not be dismissed. These women entered a female-only facility and consented to being naked in front of other women. They did not consent to being naked in front of men. That distinction matters.

Washington’s rule effectively tells those women that they may continue to use Olympus Spa, but only if they surrender the expectation that made them willing to undress there in the first place. But women should not have to choose between surrendering their bodily privacy and leaving a space created for them. Yet that is precisely the choice Washington’s rule imposes.

And Olympus’s customers and employees have said they will not return if the Spa admits naked persons with male genitalia. App.35a (Lee, J., dissenting). The Spa fears that the result will be closure. *Ibid.* And that’s because the State’s rule changes the very nature of the space Olympus Spa provides. Women who came to the Spa knowing they could undress, bathe, and receive intimate treatments only in the presence of other women can no longer rely

on that assurance. The State has put the burden on women: sacrifice your bodily privacy or leave.

B. Paula Scanlan’s experience demonstrates that women bear the burden when women’s privacy disappears

IWF ambassador Paula Scanlan knows what happens when a female-only intimate space ceases to be female-only. Paula was a member of the University of Pennsylvania women’s swim team.³ In the fall of 2019, when Paula and her teammates first learned that a male swimmer would be joining their team,⁴ the women’s primary concern was not competitions, roster spots, or fairness. It was the locker room. See Brief for Independent Women’s Law Center et al. as *Amici Curiae* in Support of Plaintiffs-Appellees at 7-9, *Tennessee v. McMahon*, No. 24-5588, 2025 WL 848197 (6th Cir. Mar. 18, 2025), ECF No. 76.

The coaches assigned the 6’4” male swimmer a locker inside the women’s room. *Ibid.* Paula nervously asked her coach for an accommodation to place her locker as far away as possible. *Ibid.* But that did not help her teammates, several of whom were forced to undress next to a male 18 times a week for an entire year because of random locker assignments. *Ibid.*

Nor did the distance solve the problem for Paula. The first time she entered the locker room to change

³ Tr. of High Noon with Inez Stepman: *Paula Scanlan—A UPenn Swimmer Speaks Out About the Truth of Sex Differences* (High Noon Podcast, Episode 107, June 21, 2023), Indep. Women, <https://tinyurl.com/57hwfzw9>.

⁴ *Ibid.*

that season, her stomach churned with unease. *Ibid.* Having shared locker rooms with hundreds, if not thousands, of girls before, she had never felt this invasiveness. *Ibid.* One of Paula's teammates simply could not expose her body in the way she was being asked to. *Ibid.* Rather than expose her naked body beside a male, she began changing in a single-stall restroom. *Ibid.* The male remained in the women's locker room. *Ibid.* The woman removed herself.

Paula was forced to change her behavior too. Swimmers typically shower and change clothes after practice. Paula could no longer bring herself to shower at the pool. *Ibid.* Instead, she put up her soaking wet hair and walked home, even during the northeastern winter. *Ibid.* When she had to change, she did it as quickly as possible. *Ibid.* She covered herself with a towel. *Ibid.* She buried her head inside her locker, attempting both to avoid seeing the male body in the women's locker room and to shield as much of her own body as possible. *Ibid.* Sometimes she would hear a masculine voice behind her and instinctively jump. *Ibid.*

Then came the nightmares. At least once a week, Paula would wake in a sweat after dreams involving assault, vulnerability, and men invading private spaces. *Ibid.* They often came before early-morning practices, when she knew she would soon return to the very locker room that had made her feel so exposed. *Ibid.*

Paula's experience shows what happens when an institution eliminates the boundary of a female-only intimate space. Her need for bodily privacy did not disappear. Instead, Paula was forced to change her

behavior. She stopped showering. She hurried while changing. She covered herself. Her female teammate retreated to a restroom. The burden fell on the women.

Olympus Spa presents the same problem in an even more intimate setting. A swimming locker room is a place athletes pass through before and after competition. At Olympus Spa, women remain naked in communal areas and receive intimate services while nude. App.126a-127a. Girls as young as thirteen participate alongside their mothers. App.33a (Lewis, J., dissenting), 63a (VanDyke, J., dissenting from denial of rehearing en banc). Women's bodily privacy matters in a locker room, and it matters here.

III. Female-Only Spaces Protect Women Without Requiring Them to Justify Their Need for Privacy

Nor should a woman have to explain *why* she does not want to undress in front of a man. For example, she should not have to reveal a history of sexual assault or establish that she would suffer psychological harm. She should not have to wait until a man enters an intimate space and then object to his presence. And a young girl should not have to explain why she does not want an adult male to see her naked. That is the value of female-only spaces. They protect women's privacy without requiring women to ask for that protection individually.

Olympus Spa provides such a space. Its female-only policy establishes the boundary before a woman enters. A patron need not know who else will be there, investigate the other patrons, disclose personal experiences, or request an accommodation. She knows that when she undresses, bathes, and receives

intimate treatments, the people around her will be women.

The law has long recognized the privacy interests served by sex-separated intimate spaces. See, *e.g.*, *United States v. Virginia*, 518 U.S. at 550 n.19 (recognizing arrangements necessary “to afford members of each sex privacy from the other sex”); *Faulkner v. Jones*, 10 F.3d 226, 232 (4th Cir. 1993) (recognizing “society’s undisputed approval of separate public rest rooms for men and women based on privacy concerns”). And that assurance matters to all women. Women enter intimate spaces with different histories, beliefs, and vulnerabilities. Some are survivors of sexual violence. Some hold religious beliefs requiring modesty in the presence of men. Some participate in cultural traditions in which communal bathing among women is customary. Some are young girls visiting Olympus Spa with their mothers. App.63a. None should have to establish a special reason for wanting bodily privacy from the opposite sex.

Washington’s rule reverses that presumption. An institution’s female-only boundary can no longer provide women with the assurance that they will undress only in the presence of other women. Instead, the burden falls on each woman and girl to decide what to do when that assurance is gone.

Female-only spaces exist so that women do not have to make that choice. They establish the boundary before a woman’s privacy is compromised, not after. Washington should not be permitted to dismantle that protection and then leave women and girls to bear the consequences. And for that reason, and the others

articulated in the dissents and in the petition, the Ninth Circuit's decision allowing Washington to apply its corrosive policy should be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted, and the decision below reversed.

Respectfully submitted,

GENE C. SCHAERR

Counsel of Record

STEPHANIE L. FREUDENBERG

SCHAERR | JAFFE LLP

1717 K Street NW, Suite 900

Washington, DC 20006

Telephone: (202) 787-1060

gschaerr@schaerr-jaffe.com

BETH PARLATO

INDEPENDENT WOMEN'S

LAW CENTER

1802 Vernon Street NW

Suite 500

Washington, DC 20009

Telephone: (202) 807-9986

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