No. _____ 26-5987

ORIGINAL

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

roxanne ujhelyi szakacs,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA FOURTH DISTRICT COURT OF APPEAL

PETITION FOR A WRIT OF CERTIORARI

roxanne ujhelyi szakacs

Petitioner, Pro Se

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QUESTIONS PRESENTED

1. Whether the Equal Protection Clause of the Fourteenth Amendment permits a State to apply a facially sex-neutral criminal statute to punish a woman for the non-lewd exposure of her breasts in a public place when comparable exposure by a man is lawful, and the sex-based distinction appears nowhere in the statutory text.

2. Whether a State may constitutionally apply a generally worded disorderly-conduct statute to punish otherwise lawful, non-lewd conduct based on the objections or reactions of third parties, where the resulting prohibition operates differently according to sex.

PARTIES TO THE PROCEEDING

Petitioner Roxanne Ujhelyi Szakacs was the defendant in the County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, and the appellant in the Florida Fourth District Court of Appeal.

Respondent State of Florida was the plaintiff in the trial court and the appellee in the Florida Fourth District Court of Appeal.

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

State of Florida v. Roxanne Ujhelyi Szakacs, County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Case No. 50-2024-MM-007132-AXXX-MB, judgment entered April 3, 2025.

Roxanne Ujhelyi Szakacs v. State of Florida, Florida Fourth District Court of Appeal, Case No. 4D2025-1280, decision entered May 7, 2026; motion for written opinion and certification denied June 23, 2026; mandate issued July 20, 2026.

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OPINIONS BELOW

The Florida Fourth District Court of Appeal affirmed Petitioner's convictions per curiam without a written opinion on May 7, 2026. The decision is unpublished and is reproduced in the Appendix at App. 1.

Petitioner timely filed a motion for written opinion and certification on May 21, 2026. The Fourth District Court of Appeal denied that motion on June 23, 2026. The order denying the motion is reproduced at App. 2.

The judgment of the County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, entered April 3, 2025, is unpublished and is reproduced at App. 3.

JURISDICTION

The Florida Fourth District Court of Appeal entered judgment affirming Petitioner's convictions on May 7, 2026. App. 1. On May 21, 2026, within fourteen days of that judgment, Petitioner filed a motion for written opinion and certification of a question of great public importance. The motion requested, among other relief, that the Fourth District withdraw its per curiam affirmance, issue a written opinion, and address the constitutional questions presented by the application of Florida's disorderly-conduct statute. App. 9–17. The Fourth District denied that motion on June 23, 2026. App. 2. The mandate issued July 20, 2026.

Petitioner submits that, because the timely May 21 motion requested withdrawal of the judgment sought to be reviewed, the June 23, 2026 order denying that motion is the operative order for purposes of Supreme Court Rule 13.3. This petition is filed within 90 days of that order.

This case presents a federal constitutional question under the Equal Protection Clause of the Fourteenth Amendment concerning the application of Florida Statutes § 877.03 to Petitioner's conduct.

Article III, § 2 of the United States Constitution extends the judicial power of the

United States to cases arising under the Constitution and provides for the appellate jurisdiction of this Court. Congress has authorized this Court to review qualifying final judgments of state courts presenting federal questions through 28 U.S.C. § 1257(a).

Accordingly, this Court has appellate jurisdiction under Article III, § 2 of the United States Constitution and 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

"No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

Florida Statutes § 877.03, entitled "Breach of the peace; disorderly conduct," provides:

"Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

Town of Palm Beach Ordinance No. 2-81, adopted February 10, 1981, § 2, governing regulations regarding dress, provides, in pertinent part:

"It shall be unlawful for any person to appear in any public place in the Town of Palm Beach without the upper part of his or her body covered. This section shall not apply to private property or public bathing beaches and the immediate vicinity of public bathing beaches."

Florida Statutes § 877.03 is reproduced at App. 4. Town of Palm Beach Ordinance No. 2-81 is reproduced at App. 5–8.

STATEMENT OF THE CASE

This case arises from Petitioner roxanne ujhelyi szakacs's prosecution following her topless presence on a beach in the Town of Palm Beach, Florida, on August 18, 2024. The constitutional question ultimately presented on appeal concerns Florida's use of its facially sex-neutral disorderly-conduct statute to impose criminal liability upon a woman for exposing her breasts when comparable exposure by a man is not prohibited.

A. The August 18, 2024 Beach Encounter

More than four decades before the events giving rise to this case, the Town of Palm Beach adopted Ordinance No. 2-81 on February 10, 1981. Section 2 generally prohibited a "person" from appearing in a public place without the upper part of his or her body covered, but expressly provided that the requirement "shall not apply to private property or public bathing beaches and the immediate vicinity of public bathing beaches."

The ordinance defined "person" or "individual" to include "a male or female" and defined the "vicinity of public bathing beaches" as within 150 feet of an ocean beach.

The ordinance also stated that the Town's regulation of attire was not intended to "define or impose any moral code" or otherwise impair or restrict individual rights not governed by general law. App. 5–8.

On August 18, 2024, Petitioner was on the beach with a friend and was topless. At trial, the State itself described the location as "the beach behind the Tideline Hotel" and told the jury that responding officers encountered Petitioner there with her breasts exposed. The officers asked Petitioner to put on her top, and she complied.

Tania Villatoro, a manager at the Tideline Hotel, testified that one hotel guest brought Petitioner's toplessness to her attention and asked her to do something about it. Villatoro approached Petitioner and asked her to put on a top or move away, and Villatoro called the police. When the prosecutor specifically asked whether "[t]he defendant being topless on the beach" affected Villatoro's "peace and quiet," Villatoro answered yes.

Petitioner maintained that she had been doing nothing unlawful. Representing herself at trial, she explained in opening statement that when Villatoro approached her, Petitioner asserted a constitutional right to be topless "just like any other woman; just like any other man," and told Villatoro to call the police because Petitioner did not believe she was doing anything wrong.

The encounter did not end when Petitioner covered herself. The State told the jury that after Petitioner put on her top, officers sought her name and continued to detain her while attempting to identify her. The State later emphasized that an officer told Petitioner she was not free to leave and that the investigation remained ongoing.

The encounter ultimately resulted in Petitioner's arrest. The initial allegation concerned indecent exposure. That charge was subsequently dismissed, and Petitioner proceeded to trial on disorderly conduct, resisting an officer without violence, and giving a false name while arrested or detained. The trial court identified those three charges to the jury at the outset of trial.

B. Petitioner's Pretrial Constitutional Objections

Proceeding pro se in the trial court, Petitioner challenged the legal premise underlying the encounter before trial. In a written Motion to Dismiss filed in September 2024, she asserted that exposing her chest was not itself a crime and argued that the subsequent charges flowed from the officers' original indecent-exposure determination. App. 19.

Most significantly for the federal question presented here, the written motion expressly invoked "Equal rights under law" and asserted that Petitioner's rights had been violated "based on my gender." App. 20.

Although Petitioner did not present the constitutional challenge in the same terms later developed by appellate counsel, while proceeding without counsel she placed into the trial-court record both the underlying objection—that her

toplessness was not unlawful—and the contention that the treatment she received implicated equal rights based on gender. App. 19–20.

C. The State's Theory at Trial

At the March 2025 jury trial, the State relied upon Florida Statutes § 877.03. The jury was instructed that disorderly conduct could be established if Petitioner committed an act that corrupted public morals, outraged the sense of public decency, or affected the peace and quiet of persons who witnessed the act.

In presenting the disorderly-conduct charge, the State identified Petitioner's toplessness as the relevant act.

During argument on Petitioner's motion for judgment of acquittal, the prosecutor relied upon Villatoro's testimony that her "peace and quiet was affected by her witnessing this act," as well as the reactions of other persons, to establish disorderly conduct. The State also relied upon Officer Badolati's testimony that people were looking at the encounter and that it appeared to have caused a scene.

The connection became still more explicit in closing argument. The prosecutor asked the jury:

"So how do we know that the defendant's actions that day of not having her top on affected the peace and quiet of those around her?"

The prosecutor then pointed to the complaint received by Villatoro and her resulting interaction with Petitioner, arguing that this established the statutory peace-and-quiet element beyond a reasonable doubt.

The State likewise relied upon Petitioner's toplessness in defending the legality of the police investigation underlying the resisting charge. The prosecutor argued that Officer Badolati "responded to the scene because a woman was topless and he started his investigation," and maintained that the officer was therefore engaged in the lawful execution of a legal duty because "a crime had been committed."

In rebuttal, the State again characterized the conduct that prompted police intervention as something warranting the instruction: "Hey, you can't do that. Please put a top on." The State argued that Petitioner's conduct affected the peace and quiet of others and potentially corrupted public morals.

Petitioner continued to contest that premise. In closing, she argued that "just because something bothers someone does not make it unlawful." She also argued that nowhere in the governing law did it state that women could not be topless and invoked equal rights, asserting that women could "do the same things."

The jury nevertheless found Petitioner guilty of disorderly conduct, resisting an officer without violence, and giving a false name while arrested or detained. The trial court entered judgment on the three convictions on April 3, 2025. App. 3.

D. The Federal Question on Direct Appeal

With counsel on direct appeal, Petitioner expressly presented the Equal Protection question to the Florida Fourth District Court of Appeal. Point II of her Initial Brief was entitled:

"Florida's disorderly conduct statute is unconstitutional as applied to Appellant."

App. 21.

The brief argued that Petitioner's constitutional right to equal protection had been violated because she was "prosecuted, convicted, and sentenced for an act that men across Florida are freely permitted to do." App. 21.

Appellate counsel recognized that Petitioner's pro se trial-court arguments were not framed in the same terms as the constitutional argument developed on appeal, and identified the trial-court materials through which Petitioner had challenged the unequal

treatment of female toplessness. The Initial Brief specifically identified the trial-court materials asserting that Petitioner's equal rights had been violated based on gender. App. 21–22.

The Initial Brief expressly invoked the Equal Protection Clause of the Fourteenth Amendment and Article I, § 2 of the Florida Constitution and argued that application of § 877.03 to Petitioner's female toplessness constituted gender-based discrimination. App. 24–25. It further argued that the facial neutrality of § 877.03 did not end the Equal Protection inquiry and invoked this Court's heightened-scrutiny jurisprudence governing sex-based classifications. App. 27–37.

The American Association for Nude Recreation ("AANR") also participated as amicus curiae in the Fourth District proceedings. Its amicus brief independently addressed the equal-protection implications of differential treatment of female toplessness and urged the court to hold that female toplessness, where comparable toplessness by a male is permissible, does not by itself constitute disorderly conduct under Florida law.

The State responded on both preservation and merits grounds. It argued that the as-applied challenge had not been preserved, but alternatively argued that Florida's disorderly-conduct statute was not unconstitutional as applied to Petitioner.

Petitioner replied that the substance of the Equal Protection issue had been placed before the trial court and further challenged the State's defense of the sex-based treatment under the governing constitutional standard.

On May 7, 2026, the Fourth District Court of Appeal affirmed Petitioner's convictions per curiam without a written opinion. App. 1. Petitioner timely filed a motion for written opinion and certification on May 21, 2026. That motion expressly identified the Equal Protection Clause of the Fourteenth Amendment, gender-based enforcement, and the constitutional application of Florida's disorderly-conduct statute to female toplessness. App. 9–17. It requested that the Fourth District withdraw the per curiam affirmance, issue a written opinion, and certify one or more questions of great public importance. Id. The Fourth District denied the motion on June 23, 2026. App. 2. The mandate issued July 20, 2026.

This petition followed.

REASONS FOR GRANTING THE PETITION

I. Courts are divided over whether sex-based restrictions on female toplessness satisfy the Equal Protection Clause.

The courts of appeals have reached conflicting conclusions in applying heightened Equal Protection scrutiny to sex-based restrictions on female toplessness.

The Tenth Circuit concluded that such differential treatment likely violates the Equal Protection Clause. *Free the Nipple–Fort Collins v. City of Fort Collins*, 916 F.3d 792 (10th Cir. 2019). There, Fort Collins prohibited women, but not men, from exposing their breasts in public. Applying the heightened scrutiny required for sex-based classifications, the Tenth Circuit affirmed a preliminary injunction against enforcement of the restriction.

The Tenth Circuit rejected the proposition that physiological differences between male and female breasts, standing alone, justified the differential treatment. Instead, the court examined whether the distinction perpetuated stereotypes concerning women and their bodies. It concluded that the plaintiffs had demonstrated a strong likelihood of success on their Equal Protection claim and upheld the injunction against enforcement of the female-only restriction.

The Fourth Circuit subsequently reached a contrary conclusion. In *Eline v. Town of Ocean City*, 7 F.4th 214 (4th Cir. 2021), that court considered an ordinance that permitted men to expose their breasts in public while prohibiting women from doing so. Although the court recognized that the classification was sex-based and therefore subject to heightened scrutiny, it held that protecting "public sensibilities" constituted an important governmental interest and that Ocean City's restriction was substantially related to that interest.

The disagreement is substantive. The Tenth Circuit regarded a female-only toplessness prohibition as likely perpetuating the very sex-based stereotypes that heightened scrutiny is designed to expose. The Fourth Circuit, relying upon its earlier decision in *United States v. Biocic*, 928 F.2d 112 (4th Cir. 1991), concluded that government may protect prevailing public sensibilities concerning exposure of the female—but not male—breast.

The disagreement within Eline itself further demonstrates the constitutional importance of the issue. Chief Judge Gregory, concurring in the judgment because he considered himself bound by circuit precedent, questioned whether "public sensibilities" can constitutionally justify sex discrimination. He explained that permitting differential treatment because it reflects community sensibilities risks reducing heightened scrutiny to deference toward the very social expectations

that produced the classification.

This conflict matters directly here. Florida's prosecution of Petitioner rested upon the proposition that exposure of a woman's breasts could offend public morals, outrage public decency, or affect the peace and quiet of observers in a manner sufficient to support criminal liability under Florida Statutes § 877.03. The statute itself, however, makes no distinction between women and men and contains no reference to breasts or toplessness. App. 4.

Petitioner's case therefore presents the underlying constitutional conflict in an especially consequential form. Unlike *Free the Nipple–Fort Collins* and *Eline*, this case does not involve a municipal ordinance expressly defining female breasts as nudity. Florida instead imposed criminal liability through a facially sex-neutral disorderly-conduct statute. Florida's highest court has construed that statute specifically "to prohibit adult females from appearing in public places, including Florida's public beaches, with openly exposed breasts." *Moffett v. State*, 340 So. 2d 1155, 1156 (Fla. 1976). Petitioner challenged the resulting differential treatment on direct appeal under the Equal Protection Clause. App. 21–37.

The division among the courts therefore reaches beyond the wording of particular nudity ordinances. It concerns a fundamental Equal Protection question: whether government may impose different criminal consequences

upon women and men for comparable bodily exposure based upon traditional understandings of public morality, decency, or sensibility.

This Court's review is warranted to resolve that conflict and to determine whether those considerations provide the "exceedingly persuasive justification" the Constitution requires for differential treatment based on sex.

II. This case presents the additional question whether a facially sex-neutral criminal statute may be construed and enforced to create a sex-based prohibition absent from its text.

This case presents a problem distinct from the express sex classifications considered in many female-toplessness cases. Florida Statutes § 877.03 does not prohibit female toplessness. It does not mention women, men, breasts, nudity, or toplessness. Its text applies generally to conduct that corrupts public morals, outrages public decency, affects the peace and quiet of others, or otherwise constitutes a breach of the peace or disorderly conduct. App. 4.

Yet Petitioner was prosecuted and convicted under that facially sex-neutral statute after the State identified her exposure of her breasts as the conduct satisfying those general statutory terms. The prosecution asked the jury how

Petitioner's "actions that day of not having her top on" affected the peace and quiet of those around her and relied upon an observer's objection to Petitioner's toplessness to establish that element. App. 23.

The resulting constitutional problem is significant. The Legislature did not expressly enact a criminal prohibition declaring that women, but not men, must cover their breasts. The sex distinction challenged here instead arises through the construction and application of general statutory language. Florida's own highest court has construed § 877.03 as reflecting a legislative intent "to prohibit adult females from appearing in public places, including Florida's public beaches, with openly exposed breasts." *Moffett v. State*, 340 So. 2d 1155, 1156 (Fla. 1976). Nearly fifty years later, Petitioner was prosecuted under that same facially sex-neutral statute after the State identified her female toplessness as conduct supporting criminal liability.

The Equal Protection Clause is not concerned solely with classifications appearing expressly on the face of legislation. This Court has long recognized that a law "fair on its face and impartial in appearance" may nevertheless implicate Equal Protection when government applies it so as to produce an unlawful classification. *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886). This case does not require the Court to extend Yick Wo's particular factual holding concerning intentionally discriminatory administration. The more immediate question is

whether a State may avoid the constitutional scrutiny ordinarily applicable to a sex classification when the classification is supplied through authoritative construction and application of facially neutral criminal language rather than appearing expressly in the statutory text.

That question is particularly important in the criminal context. If neutral concepts such as "public morals," "public decency," or "peace and quiet" may be construed to impose a sex-specific prohibition without confronting the constitutional justification for the resulting distinction, the heightened scrutiny ordinarily applicable to governmental sex classifications risks turning on where the classification is written rather than how state law actually operates.

This Court's sex-discrimination cases require a demanding justification for differential governmental treatment based on sex. The State must demonstrate an "exceedingly persuasive justification," showing that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to achieving those objectives. *United States v. Virginia*, 518 U.S. 515, 531, 533 (1996). The justification must be genuine rather than hypothesized or invented in response to litigation, and it may not rest upon overbroad generalizations concerning women and men. Id. at 533–34.

Those principles have special force where public reaction to female bodily

exposure becomes part of the mechanism producing the differential treatment. Here, the State relied upon the reaction of observers to Petitioner's uncovered breasts as evidence that her conduct affected their peace and quiet. If prevailing expectations require women, but not men, to cover their breasts, allowing objections generated by that expectation to supply the basis for criminal liability risks converting the social expectation itself into the means by which the sex distinction is enforced.

The circumstances of this case illustrate the problem. The Town of Palm Beach had enacted an attire ordinance generally requiring a person's upper body to be covered, but that ordinance expressly exempted "public bathing beaches and the immediate vicinity of public bathing beaches." The ordinance used sex-neutral language and defined "person" to encompass both males and females. App. 5–8. Petitioner was nevertheless convicted of disorderly conduct under Florida's separate statute after the State relied upon her toplessness and the reactions it generated. App. 3.

The constitutional question therefore cannot be reduced to whether Florida may punish disorderly conduct generally. Nor does Petitioner contend that the Equal Protection Clause prevents States from prohibiting genuinely lewd or independently disruptive conduct on equal terms. The question is whether a State may construe and apply a facially sex-neutral criminal statute so that otherwise

non-lewd bodily exposure carries a criminal consequence for a woman when comparable exposure by a man does not.

That question has consequences beyond toplessness. Equal Protection safeguards would be substantially weakened if government could accomplish through authoritative construction and application of facially neutral criminal language a sex distinction that would require constitutional justification if written expressly into the law.

This case provides the Court an appropriate opportunity to make clear that constitutional scrutiny turns on the substance and operation of governmental classification, not merely whether the classification appears on the face of the statute.

III. Florida's reliance on public morals, public decency, and third-party reactions raises an important question under this Court's sex-discrimination jurisprudence.

This case presents an important question concerning whether public morality, public sensibilities, and third-party reactions may supply the basis for differential criminal treatment according to sex.

Petitioner's disorderly-conduct conviction was not predicated upon fighting or brawling. Nor did the State identify physical injury, property damage, or independently lewd conduct resulting from Petitioner's toplessness. Instead, the prosecution relied upon the provisions of Florida Statutes § 877.03 concerning conduct that corrupts public morals, outrages public decency, or affects the peace and quiet of persons who witness it. App. 4.

The State's theory made the role of public reaction explicit. Villatoro testified that a hotel guest complained about Petitioner's toplessness and asked her to do something about it. When the prosecutor specifically asked whether "[t]he defendant being topless on the beach" affected Villatoro's "peace and quiet," Villatoro answered yes.

The prosecution then relied upon that reaction to establish disorderly conduct. During argument on Petitioner's motion for judgment of acquittal, the prosecutor emphasized Villatoro's testimony that her "peace and quiet was affected by her witnessing this act." In closing argument, the State again asked the jury: "So how do we know that the defendant's actions that day of not having her top on affected the peace and quiet of those around her?" The prosecutor relied upon the complaint concerning Petitioner's toplessness and Villatoro's resulting interaction with Petitioner as evidence satisfying the statutory requirement. App. 23.

Florida's own decisions recognize limits on the reach of § 877.03. In *Gonzales v. City of Belle Glade*, 287 So. 2d 669 (Fla. 1973), the Florida Supreme Court reversed disorderly-conduct convictions after concluding that the defendants' conduct amounted to no more than annoyance to those around them. The court explained that § 877.03 "requires more than the creation of a mere annoyance." Id. at 670. The Florida Supreme Court subsequently reiterated that limitation in *State v. Saunders*, 339 So. 2d 641 (Fla. 1976).

Florida law has also recognized, in the related but distinct context of indecent exposure, that nudity alone does not necessarily establish lewd conduct. In *Goodmakers v. State*, 450 So. 2d 888 (Fla. 2d DCA 1984), the court reversed the indecent-exposure conviction of a man found completely nude in a public place because the circumstances did not establish the lewd or lascivious exhibition required by the statute at issue. Id. at 891. *Goodmakers* did not decide whether the conduct could have supported liability under § 877.03. Its narrower relevance here is that Florida law itself distinguishes mere bodily exposure from independently lewd conduct.

Against that background stands *Moffett v. State*, 340 So. 2d 1155 (Fla. 1976). There, the Florida Supreme Court affirmed § 877.03 convictions arising from topless sunbathing by two women on a public beach. Although § 877.03 contains no

express reference to women, breasts, or toplessness, the court concluded that the Legislature intended the statute "to prohibit adult females from appearing in public places, including Florida's public beaches, with openly exposed breasts." Id. at 1156.

Moffett therefore supplies an important part of the constitutional setting rather than resolving the federal question presented here. Its construction of § 877.03 expressly identifies "adult females," while the statutory text itself contains no sex classification. Nearly fifty years later, Petitioner's prosecution demonstrates the continuing significance of that construction: the State again relied upon a woman's exposed breasts and the reactions of observers in seeking criminal liability under the same facially sex-neutral statute.

Public reaction, however, does not occur in a social vacuum. What members of the public regard as shocking, indecent, offensive, or disruptive may itself reflect longstanding expectations concerning how women and men are supposed to appear and behave.

This Court's sex-discrimination decisions require government to justify differential treatment based on sex rather than merely accept the social expectations underlying it. A sex-based classification requires an "exceedingly persuasive justification," and the justification must be genuine and substantially

related to an important governmental objective. *United States v. Virginia*, 518 U.S. 515, 531–33 (1996). Government may not rely upon overbroad generalizations concerning women and men. Id. at 533–34; *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724–26 (1982).

Those principles have particular force when the asserted disorder results from the social expectation producing the differential treatment itself. If members of the public expect women, but not men, to cover their breasts, a woman's departure from that expectation may predictably generate objection. If that objection then supplies the disorder necessary to criminalize her conduct, the reasoning becomes circular: the sex-based expectation produces the objection, and the objection becomes part of the justification for enforcing the sex-based expectation.

That reasoning threatens to invert heightened scrutiny. Rather than requiring government to supply an independent justification for differential treatment based on sex, it permits prevailing attitudes concerning the sexes to provide their own justification.

The circumstances of this case make that problem concrete. The Town of Palm Beach had enacted an upper-body-covering ordinance, yet expressly exempted public bathing beaches and their immediate vicinity. App. 5–8. Petitioner was on

the beach. She nevertheless faced criminal liability under Florida's general disorderly-conduct statute after a complaint concerning her toplessness prompted intervention.

Petitioner also complied when officers instructed her to put on her top. The exposure ceased. Yet the encounter continued, and the State subsequently relied upon the original toplessness and the reactions it generated to support the disorderly-conduct prosecution.

Petitioner does not contend that the Constitution prevents Florida from punishing violence, fighting, threats, genuinely lewd conduct, or independently unlawful disruption without regard to sex. Nor does this case require the Court to determine whether every governmental regulation of public nudity violates the Constitution.

The question is narrower: whether a State may use public morals, public decency, or third-party reaction to transform otherwise non-lewd bodily exposure into criminal disorder where the resulting rule operates differently according to sex.

The interaction among Florida's own precedents demonstrates why that question warrants review. *Gonzales* recognizes that § 877.03 requires more than mere annoyance. *Goodmakers*, in the distinct context of indecent exposure, recognizes

that nudity alone does not necessarily establish lewd conduct. Yet *Moffett* construed the facially sex-neutral language of § 877.03 specifically to prohibit "adult females" from exposing their breasts on public beaches. Petitioner's prosecution demonstrates that the consequences of that nearly fifty-year-old construction remain concrete.

The Equal Protection Clause requires constitutionally sufficient justification for differential governmental treatment based on sex. This Court should determine whether public morals, public decency, or third-party discomfort with a woman's otherwise non-lewd bodily exposure can supply that justification when comparable exposure by a man does not itself carry the same criminal consequence.

IV. This case presents an appropriate vehicle for resolving the questions presented.

This case provides a concrete vehicle for resolving the constitutional questions presented. Petitioner's disorderly-conduct conviction rests upon the application of Florida's facially sex-neutral § 877.03 in a prosecution in which the State expressly identified her toplessness as conduct supporting the offense. The substance of Petitioner's Equal Protection objection also appeared in the proceedings below.

The relevant facts are straightforward and substantially established by the State's own theory at trial. Petitioner was topless on a public beach. A complaint concerning her toplessness led to an encounter with a hotel manager and then law enforcement. Petitioner covered herself when instructed to do so. In prosecuting the disorderly-conduct charge, the State nevertheless expressly relied upon her "not having her top on" and the reactions of observers as evidence supporting the offense.

The federal constitutional objection did not originate in this Court. Proceeding pro se before trial, Petitioner filed a written motion challenging the legal premise underlying the encounter. That motion asserted that exposing her chest was not itself unlawful. App. 19. Most significantly, it expressly invoked "Equal rights under law" and alleged that Petitioner's rights had been violated "based on my gender." App. 20.

Petitioner continued to press the substance of that objection at trial. In opening statement, she maintained that she possessed the constitutional right to be topless "just like any other woman; just like any other man." When the State relied upon the reactions of others to her toplessness, Petitioner disputed the proposition that another person's objection could transform otherwise lawful conduct into a crime. In closing argument, she again invoked equal rights and maintained that women could "do the same things."

Petitioner's appointed appellate counsel then presented the federal issue expressly to the Florida Fourth District Court of Appeal. Point II of the Initial Brief was entitled, "Florida's

disorderly conduct statute is unconstitutional as applied to Appellant." App. 21. The brief argued that Petitioner had been "prosecuted, convicted, and sentenced for an act that men across Florida are freely permitted to do." Id. It specifically identified the trial-court materials through which Petitioner had asserted that her equal rights were violated based on gender. App. 21–22.

The Initial Brief then expressly invoked the Equal Protection Clause of the Fourteenth Amendment and argued that the application of § 877.03 to Petitioner's female toplessness constituted gender-based discrimination. App. 24–25. It further argued that the facial neutrality of § 877.03 did not end the constitutional inquiry and invoked the heightened scrutiny governing sex-based classifications. App. 27–37.

The State had a full opportunity to address that federal constitutional claim. It argued that Petitioner's as-applied challenge had not been adequately preserved and, alternatively, defended the challenged application of § 877.03 on the merits. Petitioner replied that her pro se motions and trial-court arguments had placed the substance of the Equal Protection objection before the trial court.

The Fourth District thereafter affirmed Petitioner's convictions per curiam without a written opinion. App. 1. The unexplained affirmance does not disclose whether the court accepted the State's preservation argument, rejected Petitioner's constitutional claim on the merits, or relied upon another basis for affirmance.

Petitioner acknowledges the State's preservation argument because this Court's review must rest upon the record actually presented below. But the record demonstrates considerably more than a federal theory devised for the first time on certiorari. Before appeal, Petitioner had challenged the legality of treating her toplessness as criminal conduct and expressly invoked equal rights based on gender. App. 19–20. At trial, she also compared her treatment with that of men. Appellate counsel subsequently presented that controversy as an as-applied Fourteenth Amendment challenge. App. 21–37.

That history distinguishes this case from one in which the federal question first appears in a petition for certiorari. The equality objection was placed before the state courts, and the State itself litigated both preservation and the constitutional merits before the Fourth District.

Resolution of the Questions Presented also does not require this Court to resolve disputed historical facts concerning the conduct at the center of the constitutional claim. The relevant issue arises from the State's own application of § 877.03 and its articulated trial theory. The statute is facially sex-neutral. The prosecution identified Petitioner's toplessness as conduct supporting disorderly conduct. And Florida precedent has construed the same statute to prohibit "adult females" from exposing their breasts on public beaches.

The case presents that issue in the setting of an actual criminal conviction rather than a pre-enforcement challenge. Petitioner was subjected to the State's criminal process and convicted of disorderly conduct under § 877.03. The trial court's judgment is reproduced at App. 3. The constitutional question therefore concerns an application of state criminal law that has already occurred, not speculation about how a law might be enforced in the future.

The municipal ordinance further clarifies the setting in which the federal question arose. Palm Beach's upper-body-covering ordinance expressly exempted "public bathing beaches and the immediate vicinity of public bathing beaches." App. 5–8. Petitioner's disorderly-conduct conviction, however, arose under Florida's separate and facially sex-neutral § 877.03. App. 4. The constitutional question therefore focuses directly on the State's application of that statute to Petitioner's conduct.

Finally, the absence of a written opinion below does not diminish the importance of the federal question. Petitioner's May 21, 2026 motion expressly identified the Equal Protection Clause of the Fourteenth Amendment, gender-based enforcement, and the constitutional application of Florida's disorderly-conduct statute to female toplessness. App. 9–17. It requested withdrawal of the per curiam affirmance, issuance of a written opinion, and certification of one or more questions of great public importance. Id. The Fourth District denied that motion. App. 2.

The resulting final state-court judgment leaves the federal constitutional issue without a written explanation from the Fourth District. That circumstance does not itself resolve the State's preservation contention, but neither does it alter the record showing that the substance of Petitioner's equality objection appeared below and that the Equal Protection claim was expressly presented on direct appeal. App. 19–37.

This case accordingly presents a concrete and consequential vehicle for deciding whether a State may construe and apply a facially sex-neutral disorderly-conduct statute so that otherwise non-lewd bodily exposure carries a criminal consequence for a woman when comparable exposure by a man does not.

The Court should grant the petition.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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Petitioner, Pro Se