

No. _____

In the Supreme Court of the United States

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

PETITIONERS,

v.

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

RESPONDENTS.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Olympus Spa is a Christian, family-run, Korean bathhouse or *jjimjilbang*. It provides an intimate environment exclusively for women and girls. Its mission is to restore women’s physical and spiritual health through Korean customs that require complete nudity in communal areas and during full-body scrubs administered by female employees. The owners hold the religious conviction that men and women should not be unclothed together unless married to each other. So the Spa admits only female patrons.

A male who identifies as a woman sought to use the Spa’s communal area with nude female patrons as young as 13. The owners cited their female-only entrance policy and declined. But the State of Washington said that policy violated its public-accommodation law by excluding based on “gender expression or identity.” A sharply divided Ninth Circuit affirmed dismissal of the Spa’s lawsuit, holding the First Amendment did not protect the *jjimjilbang* from fines and prosecution, presenting two questions:

1. Whether applying Washington’s law to force a Christian, all-female *jjimjilbang* to admit males violates the Free Exercise Clause under *Tandon v. Newsom*, 593 U.S. 61 (2021) (per curiam), and *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238 (2025), or associational freedom under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).

2. Whether a policy that differentiates based on anatomy discriminates “based on gender identity or transgender status.” *West Virginia v. B.P.J.*, 146 S. Ct. 2356, 2378 (2026) (citing *United States v. Skrmetti*, 605 U.S. 495, 517 (2025)).

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, Petitioners make the following disclosures: None of the Petitioners issue stock, and none has a parent or publicly held company owning 10% or more of the corporation's stock. No Petitioner has a stock ticker symbol.

STATEMENT OF RELATED CASES

Olympus Spa v. Armstrong, No. 22-CV-00340-BJR. U.S. District Court for the Western District of Washington. Judgment entered November 15, 2023.

Olympus Spa v. Armstrong, No. 23-4031. U.S. Court of Appeals for the Ninth Circuit. Judgment entered May 25, 2025, and amended March 12, 2026.

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OPINIONS BELOW

The Ninth Circuit order amending its opinion filed May 29, 2025 (reported at 138 F.4th 1204) and denying rehearing and rehearing en banc is reported at 169 F.4th 817 and reproduced at App.1a–103a. The district court order dismissing the amended complaint with prejudice is reported at 2023 WL 7496382 and reproduced at App.104a–120a. The district court order dismissing the complaint with leave to amend is reported at 675 F.Supp.3d 1168 and reproduced at App.121a–174a.

JURISDICTION

The Ninth Circuit entered its judgment May 29, 2025. The order amending the opinion and denying rehearing and rehearing en banc was entered March 12, 2026. This Court extended the time to file a petition to August 9, 2026; this petition is timely filed. The Court has jurisdiction under 28 U.S.C. 1254(1). Lower courts had jurisdiction under 28 U.S.C. 1331 and 28 U.S.C. 1291.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Relevant statutes, regulations and related materials are reprinted at App.175a–197a.

INTRODUCTION

For over two decades, Sun Lee and his family have shared a piece of Korean heritage with the people of Washington State. They own Olympus Spa, which offers traditional *jjimjilbang* treatments rooted in centuries of Korean culture: communal steam rooms, warm soaking pools, and the ancient practice of *seshin*, a full-body scrub performed by employees called *ddemiri* in an open communal space where all patrons are fully nude. Because nudity is not incidental but central to the services the Spa provides, and because the Spa's owners hold sincere Christian convictions that men and women should not be unclothed together outside of marriage, Olympus Spa has always admitted only female patrons and hires only female employees.

That policy protected the privacy of women and girls for more than 20 years. Then, in 2020, a single complaint—from a person with no record of ever having visited the Spa—set Washington State's enforcement machinery in motion. Resolving that its views on gender identity must override a centuries-old cultural practice and deep religious conviction, the State turned its enforcement power against a Korean family's small business. The Washington State Human Rights Commission threatened to refer the Spa to the Attorney General for prosecution and gave the family ten days to change its policies or close. A family of Christian immigrants—who fled Korea hoping for greater religious freedom—now stand to lose their livelihood or the ability to practice their faith because the State of Washington insists on dictating that males who identify as women be admitted into a female-only nude spa.

The Ninth Circuit affirmed the dismissal of the Spa’s free-exercise claim by holding that the Washington Law Against Discrimination (WLAD) is neutral and generally applicable and that it survives rational-basis review. That holding defies *Tandon v. Newsom*, 593 U.S. 61 (2021). The WLAD is not generally applicable because it categorically exempts “any institute, bona fide club, or place of accommodation, which is by its nature distinctly private.” Wash. Rev. Code § 49.60.040(2). So a private athletic club, a fraternal lodge, or a members-only bathhouse may have the Spa’s exact policy under the WLAD. As four Ninth Circuit judges who voted for en banc review observed, this structural feature triggers strict scrutiny—a standard Washington cannot satisfy given that the State has no compelling interest in forcing a small, Christian spa to expose its female employees and nude female patrons to nude males. And as those same judges noted, the WLAD’s separate religious-institution exemptions likewise violate the neutrality principle under *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238 (2025).

The Ninth Circuit also failed to uphold this Court’s First Amendment association precedent. The Spa is a cultural institution—the only *jjimjilbang* in Washington—founded to transmit and preserve centuries-old Korean communal bathing traditions in an intimate, sex-separated setting, consistent with its owners’ cultural and religious heritage. Akin to *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), the Spa’s mission of spiritual renewal and cultural expression qualifies it as an expressive association, and the forced inclusion of nude males impairs the association’s mission.

Finally, Washington cannot nullify the Spa’s free-exercise and associational rights through an atextual reading of the WLAD. As Judge Collins explained in dissent from denial of rehearing en banc, the Spa’s entry policy does not turn on “gender identity”—it differentiates based only on *anatomy*. The Spa doesn’t care about a patron’s gender identity or expression. Under this Court’s decisions, such a policy classifies based on “biological sex”—not gender identity. *B.P.J.*, 146 S. Ct. at 2378 (citing *Skrimetti*, 605 U.S. at 517). And federal courts should not accept the construction of a state law that stretches the text beyond its terms to burden a federal constitutional right. *E.g.*, *Fulton v. City of Philadelphia*, 593 U.S. 522, 538–40 (2021). At a minimum, then, the Court should summarily reverse and hold that a classification based on biological sex is not discrimination based on gender identity or expression.

In sum, this case is an ideal vehicle for review. The questions are cleanly presented and preserved, and there are no factual disputes. The Ninth Circuit’s decision badly misreads this Court’s precedents. And in so doing, it deepens multiple conflicts and creates a constitutionally intolerable outcome. Certiorari is warranted.

STATEMENT OF THE CASE

I. Statutory background

Washington's Law Against Discrimination, Wash. Rev. Code § 49.60 *et seq.* (WLAD) prohibits denial of "the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement." *Id.* § 49.60.030(1)(b). In addition to categories like race and sex, the WLAD was amended in 2006 to cover "sexual orientation," *id.* § 49.60.030(1), which Washington defined to include "gender expression or identity," *id.* § 49.60.040(29). The Washington Human Rights Commission enforces the WLAD. *Id.* § 49.60.120.

Although Washington claims a compelling interest in prohibiting discrimination wherever it occurs, the WLAD has two significant loopholes. First, the WLAD exempts from its protections "any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations." Wash. Rev. Code § 49.60.040(2). So, if a *jjimjilbang* operated as a private club or as part of an Asian-interest sorority rather than as a public business, it would be free to exclude male patrons, no questions asked.

Second, the WLAD exempts any "bona fide religious or sectarian institution" that operates or maintains "any educational facility, columbarium, crematory, mausoleum, or cemetery." *Ibid.* That means if a Christian university offered a Korean studies major that included a course teaching and practicing the traditions of a Korean, women-only, nude spa, that too would be outside the WLAD's scope.

The Commission has issued interpretive guidance that demonstrates the limitations of the WLAD’s religious exemptions: “a church or other religious entity in the activity of conducting worship services is not a place of public accommodation, and neither are religious educational institutions. However, other church-sponsored activities, such as a soup kitchen or public bake sale, might be considered a place of public accommodation.” *Guide to Sexual Orientation & Gender Identity & the Washington State Law Against Discrimination* at 8, Wash. State Hum. Rts. Comm’n (Nov. 19, 2024), perma.cc/AVW8-H2W5.

II. Factual background

A. Description of a *jjimjilbang*

Korean spas are unfamiliar to Americans. But they are not new, predating Washington’s public-accommodation law by many centuries. Someone who seeks this experience steps into a venue, called a *jjimjilbang*, that incorporates hundreds of years of cultural tradition reaching back to the Choson dynasty (1392–1910). This traditional Korean-spa therapy focuses on rejuvenating the body and spirit through treatments, massages, and full-body scrubs called *seshin*. App.31a–32a.

Culturally, a *jjimjilbang* is not an individual experience; it is shared with others. Following long-standing tradition, Korean spas require their patrons to be fully nude in communal saunas and bathhouses. App.105a–106a. Patrons undergo deep-tissue scrubbing of their entire bodies in an open area filled with other unclothed participants. App.31a–32a. Given this intimate environment, Korean spas separate patrons and employees by sex.

Unlike other spas, *jjimjilbang* patrons are not given robes or towels for covering up, nor is nudity optional. App.31a–32a. Patrons must remain fully nude to receive traditional Korean spa services like *seshin*. After soaking in a warm pool, a patron is scrubbed head to toe to promote spiritual renewal and holistic health. *Seshin* is performed by *ddemiri*—individuals who are trained in the Korean art of body scrubbing using traditional techniques. *Ddemiri* scrub patrons all over their bodies for prolonged periods and therefore must be the same sex as the patrons. App.32a, 127a. As Sun Lee, Olympus Spa’s president, explains, “the Korean body scrub has been always served by the same gender over hundreds of years. A service provider never serves a Korean body scrub to an opposite-sex customer.” Sun Lee Decl. at 4, *Olympus Spa v. Armstrong*, No. 2:22-cv-00340-BJR, Dkt. No. 22-1 (hereinafter “Lee Decl.”). Mixing the sexes would transform a culturally authentic *jjimjilbang* into something else entirely and would violate the Spa’s religious beliefs. *Id.* at 3.

B. Olympus Spa’s mission

Sun Lee is a first-generation Korean American whose parents opened Olympus Spa after fleeing Korea to the United States in the hopes of a better life and greater religious freedom as Christians. The family yearned to preserve Korean tradition and culture—and to share their heritage with the larger community. App.32a.

The Lee family’s business has been a success. “Non-Koreans have flocked to Olympus Spa to learn and experience this Korean cultural tradition—an ode to America’s melting pot culture.” *Ibid.*

Olympus Spa is not just for adults. Girls as young as 13 visit the Spa for *seshin* and to enjoy the steam rooms. *Ibid.* For their protection, the Spa's entry policy ensures an intimate, safe, and private experience. Mr. Lee believes the Spa has a responsibility to safeguard young girls' privacy. App.33a.

Mr. Lee explains that the Spa's "cultural heritage and ... beliefs are an integral part of who we are," and that preserving that culture matters because it "continues to be reduced and marginalized." Lee Decl. at 4. Because the Spa hosts the only Korean bathhouses in the State, opening its facilities to both sexes would mean that the family's "heritage and beliefs will be lost." *Ibid.* For hundreds of years, the Korean body scrub has been "served by the same gender"—"never ... to an opposite-sex customer." *Ibid.* To force the Spa to admit a male patron among its female patrons and employees, Mr. Lee says, discriminates against the family's very "ethnicity and creed." *Ibid.*

C. The Spa owners' religious beliefs

Beyond preserving privacy for female patrons and employees and preserving cultural heritage, the Spa's female-only entry policy reflects the owners' religious beliefs. The owners are "traditional theologically conservative Korean Christians." App.33a. They consider modesty between the sexes a central tenet of their religious beliefs. *Ibid.* And they hold the religious conviction that men and women should not be present together while unclothed unless married to one another. App.106a. "According to our religion," Mr. Lee testified, "man and woman are created differently. Our spa is designed specifically for women and our mission is to restore and rejuvenate women's physical health as well as spiritual health." Lee Decl. at 3.

It would violate the owners' faith to compel female employees to perform *seshin* on fully nude male patrons. App.33a. And the Spa's "employees aver that they 'will not perform services such as massages and body scrubs on naked men,'" even if those males identify as women. App.142a.

Recognizing that "[w]omen are in a vulnerable position when they are unclothed," the Spa's owners are also theologically compelled to maintain the space as a female-only space where women and girls "feel their privacy and rights are respected." App.63a. Thus, Olympus Spa does not admit males with male genitalia—no matter their gender identity—into its female-only, nude spaces.

D. The complainant

"I did it! I got the main naked lady spa in the area to change their policies and allow all self-identified women access regardless of surgery and genitals." App.65a. So exclaimed a social-media post of a male who identifies as a woman.

He accomplished this by filing a complaint with the Washington Human Rights Commission, claiming "I went to [the] spa for services." Wash. Hum. Rts. Comm'n Compl. at 2, 8, *Olympus Spa v. Armstrong*, No. 2:22-cv-00340-BJR, Dkt. No. 22-2 (hereinafter "Comm'n Compl."). "[The] [o]wner denied me services and stated that transgender women without surgery are not welcome because it could make other customers and staff uncomfortable." *Ibid*. This complaint landed on the desk of Madison Imiola, a Commission investigator who sent the complaint to the Spa owners and demanded a written response. *Id.* at 7.

After receiving the Commission's order, Mr. Lee checked with management and found no record of a visit by the complainant during the month in question. App.133a. In written correspondence to the investigator, Mr. Lee explained the "cultural underpinnings" of the services offered at Olympus spa." App.131a. He further summarized a law permitting dress and grooming standards for businesses. *Ibid.* And he invoked state and local criminal laws such as public indecency and lewd conduct, emphasizing the concerns with an adult male exposing his genitalia to women and girls as young as 13. *Ibid.*

Mr. Lee also noted the female-only policy's exception for "postoperative [male-to-female] transsexuals"—males who have removed their genitalia. App.107a. The policy doesn't care about any prospective patron's identity, only anatomy.

Mr. Lee ended his response with a bit of exasperation: "[I]n the current environment of frequent and often brutal attacks on Asian Americans, this complaint feels like another attack on an Asian-owned business trying to offer and preserve a culturally genuine health therapy for women, in a safe setting." Comm'n Compl. at 12.

Mr. Lee's letter was not well received. The investigator concluded that the evidence "supports that your company's 'biological women' policy is not compliant with [the WLAD] ... which prohibits discrimination on the basis of gender identity in places of public accommodation." Comm'n Compl. at 15.

While acknowledging that the policy “focuses on the genitals of patrons,” the investigator insisted that the Spa was conditioning access to its “facilities based on [patrons’] gender identity.” App.132a. Allowing fully nude female patrons while excluding a nude male who identifies as a woman, the investigator reasoned, “is clearly discriminatory and violates the WLAD.” Comm’n Compl. at 16. Unless the Spa agreed to enter a settlement, the investigator threatened to “prepar[e] the case for referral to the Attorney General’s Office for prosecution.” App.35a.

Mr. Lee responded by reiterating that the Spa had no record or even recollection of the complainant coming to the Spa. Comm’n Compl. at 18. He offered that if the complainant “could give more information or the name(s) of who was spoken to we may be able to better assist in ensuring that no person, especially [the individual], feels discriminated against.” *Ibid.*

Again ignoring that the visit may never have happened, the investigator responded impatiently: the “time to ensure that [the complainant] does not feel discriminated against has passed[,]” because a complaint for discrimination has already been filed. App.35a. “Additionally,” the investigator added, the Commission “has already identified that Olympus Spa’s ‘biological women’ entry policy is not compliant” with the WLAD, “which prohibits discrimination on the basis of gender identity in places of public accommodation.” Comm’n Compl. at 20. The public-accommodation law “does not use genitals to define gender identity.” App.132a.

Betraying the disconnect between the WLAD's prohibitions and the Spa's policy, the investigator declared: "Olympus Spa's 'biological women' policy focuses on the genitals of patrons rather than allowing transgender women to access your facilities based on their gender identity." *Ibid.* Accordingly, the Commission brought a charge against the Spa because the Spa was in "active violation" of the WLAD for "maintaining a 'biological women only' entry policy," App.111a, which on its face discriminated against males who identify as women and desire to share a space with nude females as young as 13, App.116a. "[N]ow is the time," the investigator threatened, to enter into a settlement "within ten business days" or be referred for prosecution. Comm'n Compl. at 20.

Based on this warning—and left with no other option—Mr. Lee was compelled to sign a settlement agreeing to change the Spa's entry policy and notice and undergo anti-discrimination training in exchange for not being prosecuted. App.35a. But Mr. Lee insisted that the agreement include language that the Spa retained the right to challenge the WLAD as applied to the Spa's all-female-patron practices. App.6a.

That reservation-of-rights clause was crucial—the Spa may have to shut down if it must permanently allow males to share facilities with nude female patrons. The Spa has already had "numerous incidents where a male entered" the Spa dressed as a woman, undressed in the locker room, "and went into a pool area." Lee Decl. at 2. "Every time the incident occurred, it left so many customers in shock and with fear." *Ibid.* The women "cried with anger." *Ibid.*

Naturally, a male exposing himself to nude women and girls as young as 13 “can be a threat” to those females. *Ibid.* And the consequences to female patrons are substantial. When a person with male genitalia accessed the facility, women experienced “humiliation, trauma, and rage.” App.128a. The Spa had to refund money to the patrons—who “fled the scene and vowed never to return.” App.85a. These incidents “tremendously damaged [the Spa’s] reputation,” causing “loss in financial opportunities and extreme psychological, mental, and even physical pain.” Lee Decl. at 2. The Spa’s “employees and customers have made it clear that they will not return if naked individuals with male genitalia use the female-only spa.” App.35a. And admitting male patrons in the nude female spa violates the Spa’s religious beliefs. Lee Decl. at 4. Accordingly, the Spa sought relief from the federal courts.

E. Proceedings below

The Spa filed a First Amendment challenge to this application of the WLAD. Respondents moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6). The district court held that the Spa had standing and denied the 12(b)(1) motion. But it granted the 12(b)(6) motion, concluding that the First Amendment did not protect the Spa.

A divided Ninth Circuit panel affirmed. The panel majority later issued an amended opinion, and the court denied rehearing en banc over the dissents of five judges. The panel majority rejected the Spa’s free-exercise claim because the WLAD is neutral and generally applicable and “imposes only incidental burdens on religious expression.” App.22a. And because the WLAD’s exceptions for private clubs do not

differentiate between secular and religious activities, the majority found *Tandon* distinguishable. App.22a.

Next, the majority rejected the Spa's claims to both intimate and expressive association. The majority first held that a for-profit business can never be an intimate association. App.24a–25a. Similarly, the Court held the Spa “is also not an expressive association,” but simply a business that “offer[s] a service for which patrons pay.” App. 27a–29a. The majority based its conclusion on the Spa's lack of “stable membership” or “expressive activity,” notwithstanding the considerable cultural expression and association that takes place in a *jjimjilbang*. App.27a–29a.

Judge Lee dissented, concluding that “Washington has now rolled back the clock in protecting women and girls by bizarrely citing the very law that safeguarded their rights for decades.” App.45a. “Now, women and girls as young as 13 years old must lay naked alongside individuals with exposed male genitalia” and female Spa employees must choose between their livelihood and providing “full-body deep-tissue massage[s] to naked” males. *Ibid.* “Asian Americans in Washington have historically lacked political clout,” App.46a, Judge Lee concluded, yet Washington “exerted the full force of state power to bully members of a politically weak minority group,” App.48a; accord App.46a–47a n.6.

Regarding the denial of en banc rehearing, Judge McKeown doubled down on her *Tandon* analysis in the panel-majority opinion. App.52a–56a. She also chastised the dissenters from the denial of en banc rehearing for invoking this Court's unanimous decision in *Catholic Charities*, which issued days after the original panel opinion. App.56a.

There were three separate dissents from denial of en banc rehearing. Judge Tung, joined by three additional active judges, would have held the WLAD's application to the Spa was subject to and failed strict scrutiny under *Tandon* because Washington allows private clubs to engage in the same activity as the Spa without threat of prosecution. App.89a–95a. He criticized the panel majority for claiming waiver when in fact the Spa raised the issue in its complaint, district-court briefing, and appellate briefing and observed that the panel “addressed the argument on the merits resulting in an erroneous holding that warrants review.” App.91a n.1.

Judge VanDyke wrote separately. He agreed that the WLAD is “underinclusive on its face’ and is not generally applicable” because of the statute’s exception for “private institutes, clubs, places of accommodation, and fraternal organizations.” App.72a. “And though the majority insists that private clubs can *never* be comparable to public accommodations,” he continued, “it is notable that they cannot cite a single case to support that extreme proposition.” *Ibid*. In addition, Judge VanDyke would have held the “WLAD’s express discrimination between religious practices is proscribed by the Supreme Court’s unanimous decision in *Catholic Charities*.” App.76a. After all, the WLAD “exempts only a small set of formal and orthodox religious practices while excluding” all the rest, including the Spa’s. App.78a.

Judge Collins would have reversed because the Spa’s policy does not implicate the WLAD. “[I]t is undisputed and indisputable that Olympus Spa does not care whether a potential patron has any particular real or perceived ‘gender identity,’ nor does it care

whether a patron’s gender identity does or does not match ‘the sex assigned to that person at birth.’” App.101a. Rather, “[t]he Spa cares only whether the person has male genitalia. That is not ‘discrimination because of’ ‘gender identity.’” *Ibid.* “Indeed, under the panel majority’s reading of WLAD, the Spa cannot ignore gender identity but instead *must take it into account*,” allowing only males *who identify as women* to access the Spa’s female-only areas. App.102a. “It is a little Orwellian,” Judge Collins observed, “to assert that a ‘law against discrimination’ based on a characteristic should be construed to *require* differential treatment based on that characteristic.” *Ibid.*

REASONS FOR GRANTING THE PETITION

“[T]he Ninth Circuit has relegated religious liberty to a second-class right. In case after case, [the] court has condoned governmental interference with the rights of the religious to practice their faith as they believe.” *Union Gospel Mission of Yakima v. Brown*, __ F.4th __, 2026 WL 1758172, at *1 (9th Cir. June 18, 2026) (Bumatay, J., dissenting from grant of rehearing en banc). As only one recent example, this Court had to correct summarily the Ninth Circuit’s holding that parents have no free-exercise right to know about and opt their children out of secret social gender transitions at public schools. See *Mirabelli v. Bonta*, 607 U.S. 492, 496–97 (2026) (per curiam).

The Ninth Circuit has an equally poor track record of protecting women-only spaces. Just this past Term, in *Hecox v. Little*, this Court had to correct the circuit’s refusal to uphold a state law that protected safety and fairness in women’s sports by ensuring that female athletes did not have to compete against males. 104 F.4th 1061 (9th Cir. 2024).

This case perpetuates both of those Ninth Circuit failings. Under this Court’s precedents, the Constitution protects the Spa owners’ religiously motivated desire to keep a male out of a space reserved for female patrons as young as 13 years old. The decision below conflicts with that precedent, and that alone warrants review.

So does the conflict deepened by the Ninth Circuit’s First Amendment association holding. In narrowing the right’s scope to exclude organizations providing services to the public—like the Spa—the Ninth Circuit joined the Washington Supreme Court in a split with the Second Circuit. And by second-guessing the Spa’s own understanding of its expression, the court defied this Court’s decision in *Boy Scouts of America v. Dale*.

But the Spa also prevails for a more basic reason. Federal courts should not accept the construction of a state law that stretches the text beyond its terms to burden a federal constitutional right. *E.g.*, *Fulton v. City of Philadelphia*, 593 U.S. 522, 538–40 (2021). Yet that is precisely what the Ninth Circuit did here. A policy that classifies individuals based on anatomy does not discriminate “based on gender identity or transgender status.” *B.P.J.*, 146 S. Ct. at 2378 (citing *Skrametti*, 605 U.S. at 517). Because the Spa’s entrance policy excludes patrons based solely on their anatomy, not their identity, it does not implicate the WLAD at all. The Court could summarily reverse on that basis.

I. The decision below flouts this Court’s Free Exercise jurisprudence and deepens confusion over general applicability by excusing exemptions that apply to both secular and religious conduct.

Five years ago, this Court drew a bright line: strict scrutiny applies “whenever [laws] treat *any* comparable secular activity more favorably than religious exercise.” *Tandon*, 593 U.S. at 62. That rule resolves this case: the WLAD’s “exemptions permit secular private clubs to refuse service to a person who claims a sex different from his actual sex, while a business motivated by religion (such as the business here) and engaged in the same activity is subject to a penalty.” App.90a–91a (Tung, J., dissenting from denial of rehearing en banc).

Instead, the Ninth Circuit held that the WLAD’s private-club carveout “appl[ies] equally to secular and non-secular aggregations,” so “this is not a situation where a comparable secular activity is treated more favorably than religious exercise.” App.22a (citation modified). So if an *exemption* treats religious and non-religious actors the same, the entire law is generally applicable—no matter how the law treats comparable religious conduct *outside* the exemption.

That rule conflicts with *Tandon*, which instructed lower courts to ask the opposite question: whether shielded secular conduct is treated more favorably than comparable religious conduct *outside* the exemption (*i.e.*, religious conduct actually governed by the law). *Tandon*, 593 U.S. at 62. The government cannot legislate its way around *Tandon* by drawing an exemption’s borders to exclude the very comparison the Free Exercise Clause demands.

Applying the Ninth Circuit’s rule to the facts in *Tandon* illustrates the error. Because California’s household gathering limit in *Tandon* was facially neutral, *Tandon v. Newsom*, 517 F. Supp. 3d 922, 975 (N.D. Cal. 2021), the Ninth Circuit’s test here would have upheld that law. In fact, that is exactly what the Ninth Circuit did in *Tandon*: it reasoned that because “the gatherings restrictions apply equally to private religious and private secular gatherings,” there was no First Amendment violation. 992 F.3d 916, 922 (9th Cir. 2021). This Court rejected that approach, lamenting that it was “the *fifth time* the Court ha[d] summarily rejected the Ninth Circuit’s [free exercise] analysis.” *Tandon*, 593 U.S. at 64 (emphasis added). The Court instructed that “[i]t is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue.” *Id.* at 62.

A sixth correction is now necessary. The correct inquiry is whether *any* secular conduct is exempt while comparable religious conduct is regulated. The answer here is yes. A private club may turn a patron away for any secular reason, while the *jjimjilbang* may not turn him away for a religious one. That a hypothetical private religious club could also claim the carveout changes nothing. “Where, as here, a comparable secular activity is treated more favorably than religious exercise, strict scrutiny applies.” App.92a (Tung, J. dissenting from denial of rehearing en banc).

The Ninth Circuit’s error is not isolated. Other lower courts are also misreading *Tandon* in the same way. Consider two examples involving the same state law. The District of Maryland recently considered the General Conference of Seventh-Day Adventists’ challenge to Maryland’s Fair Employment Practice Act (MFEPa), which prohibited the Conference from hiring only co-religionists. Like the Spa, the Conference invoked *Tandon*, pointing to the MFEPa’s private-club exception. The District Court rejected that argument with reasoning identical to the Ninth Circuit’s: the private-club exemption “applies regardless of whether the organization is religious or secular.” *General Conf. of Seventh-Day Adventists v. Horton*, 787 F. Supp. 3d 99, 120 (D. Md. 2025), appeal docketed, No. 25-1735 (4th Cir. argued Mar. 17, 2026) (citing *Kim v. Board of Educ. of Howard Cnty.*, 93 F.4th 733, 748 (4th Cir. 2024)). Like the Ninth Circuit, the court read the *Tandon* test to be satisfied whenever an *exemption* applies to both secular and religious conduct.

In another Maryland case, a federal district court adopted the same reasoning regarding the MFEPa’s small-employer exemption. There, the question was whether *Tandon* applied when Catholic Relief Services (CRS) sought a religious exemption from the MFEPa’s requirement to provide benefits in violation of CRS’s religious beliefs about marriage. The court rejected CRS’s argument because “a religious employer of fewer than 15 employees ... would be exempt from MFEPa in the same manner as would be a secular employer with fewer than 15 employees.” *Doe v. Catholic Relief Servs.*, 779 F. Supp. 3d 545, 565 (D. Md. 2025), appeal docketed, No. 25-1569 (4th Cir. argued Mar. 17, 2026).

So lower courts are routinely reading *Tandon* out of existence when facing these kinds of exemptions. The result is that Washington can force a Christian Korean bathhouse to admit male patrons in the communal area with nude female patrons as young as 13 and compel its female employees to provide full-body massages to exposed nude males.

While the panel’s analysis turned on the private-club exemption’s facial neutrality, the en banc court fractured over the antecedent question—whether a private club could be a *Tandon* comparator at all. Under this Court’s test, whether two activities are comparable “must be judged against the asserted government interest that justifies the regulation at issue.” 593 U.S. at 62. A law is not generally applicable if, measured against that interest, it treats any secular conduct more favorably than comparable religious exercise. *Ibid.* Nevertheless, seven Ninth Circuit judges asserted that the Spa need not be compared to private clubs because the private-club exemption applied “equally to secular and non-secular aggregations.” App.22a. Four dissenting judges recognized that “[w]here, as here, a comparable secular activity is treated more favorably than religious exercise, strict scrutiny applies.” App.92a (Tung, J., dissenting from denial of rehearing en banc).

Tandon already rejected a similar public/private distinction. There, the Court reversed the Ninth Circuit for “erroneously reject[ing]” a set of “comparators simply because this Court’s previous decisions involved public buildings as opposed to private buildings.” 593 U.S. at 64. The Court directed lower courts to consider “the asserted government interest,” *not* the actor’s public or private character. *Id.* at 62, 64.

Measured against Washington’s proclaimed interest, the private-club carveout is at least relevant. The WLAD declares that discrimination against “*any* of its inhabitants” is “a matter of state concern” because “such discrimination ... menaces the institutions and foundation of a free democratic state.” Wash. Rev. Code §§ 49.60.010, 49.60.040(29) (emphasis added). “That asserted interest is categorically expressed without qualification for where the discrimination occurs.” App.93a (Tung, J., dissenting from denial of rehearing en banc). A private club and a *jjimjilbang* that both prohibit males who identify as women from being in the same room as nude women and girls have the same effect on that interest. See *Fulton*, 593 U.S. at 534 (no general applicability where a law “prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way”). Yet the State exempts the secular club and prosecutes the Christian small business.

The problem is that a state “could always say that its statutory exceptions are what delineate the ‘asserted government interest,’ so that any activity falling outside those exceptions would never be ‘comparable.’” App.94a (Tung, J., dissenting from denial of rehearing en banc). And that loophole is particularly threatening because lower courts often defer to governments in framing their asserted interests. See *Spivack v. City of Philadelphia*, 109 F.4th 158, 175 (3d Cir. 2024) (reading *Tandon* to compel “deference to how the government characterizes its own interests”); *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1178 n.5 (9th Cir. 2021) (adopting school district’s broad formulation of its interest to find its vaccine policy generally applicable).

Compounding the problem, the Ninth Circuit also failed to apply this Court’s intervening decision in *Catholic Charities*. There, this Court unanimously confirmed that the First Amendment treats “any state-sponsored denominational preference”—such as differentiating between entities based on how they practice their faith—as suspect. 605 U.S. at 241; see *Larson v. Valente*, 456 U.S. 228, 244–46 (1982).

The WLAD draws just such a line, exempting only some religious entities from its public-accommodation regime—entities that appear more formally religious than the Spa. Beyond private clubs, the WLAD exempts “any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution.” Wash. Rev. Code § 49.60.040(2). The Commission’s own guidance confirms that “worship services” and religious “educational institutions” fall outside the WLAD, while “other church-sponsored activities, such as a soup kitchen or public bake sale,” may not. App.75a (VanDyke, J., dissenting from denial of rehearing en banc).

To shelter the formal worshiper while penalizing the informal one prefers one religion over another. “[S]uch arbitrary line-drawing, which protects only certain religious exercises” does not cure a law’s lack of general applicability; it confirms it. App.95a (Tung, J., dissenting from denial of rehearing en banc). The WLAD thus “single[s] out” some religious exercise for unequal treatment. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 538 (1993).

The question recurs far beyond the Spa. The Ninth Circuit acknowledges that religious-institution carve-outs are “very common” in public-accommoda-

tion laws. App.52a. Yet it now treats such carve-outs as reinforcing neutrality. See, *e.g.*, *Tingley v. Ferguson*, 47 F.4th 1055, 1085 (9th Cir. 2022). That is the opposite of what *Catholic Charities* holds. And only this Court can correct the error.

Nor does the Spa’s commercial character make a difference; the entities in *Catholic Charities* also performed services that “could be provided by organizations of either religious or secular motivations,” yet the denominational preference still triggered strict scrutiny. 605 U.S. at 246 (citation modified). Yet again, this Court needs to course-correct the Ninth Circuit.¹

Correcting the Ninth Circuit’s error here does not create an automatic religious exemption to the WLAD. Washington is always free to amend its law to eliminate exceptions that treat secular conduct better than indistinguishable religious conduct, like the private-club exemption does. Washington can also try to show that the private-club exemption covers conduct that is *not* comparable to the activity in which the Spa engages. See *Tandon*, 593 U.S. at 62 (strict scrutiny only triggered by “comparable secular activity”). Finally, Washington can attempt to satisfy strict scrutiny. But Washington should not be relieved of its burden of proof simply because the private-club exemption applies to secular and religious clubs alike, as the Ninth Circuit held. The Court can correct the Ninth Circuit’s doctrinal error without unsettling public-accommodation law more broadly.

¹ If the Ninth Circuit is right, then the Court should reexamine its precedents. See *Fulton*, 593 U.S. at 543 (Barrett, J., concurring); *id.* at 545 (Alito, J., concurring).

II. The Ninth Circuit's dismissal of the Spa's First Amendment associational claim contravenes this Court's precedent and deepens an entrenched conflict.

The Ninth Circuit's expressive-association holding also conflicts with this Court's precedents. The court declared that the *jjimjilbang* could not be an association because it is a business open to the public and because its practice of ancient Korean rituals aimed at spiritual renewal are "commercial services" that "hardly contain[] even a 'kernel of expression.'" App.28a–29a (quoting *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989)). That's wrong for two reasons. First, it contravenes *Boy Scouts of America v. Dale*, 530 U.S. 640, which says courts must defer to a group's account of its own expression. Second, it joins the Washington Supreme Court in erroneously limiting associational freedom to membership organizations formed for an expressive purpose, deepening a split with the Second Circuit. Certiorari is necessary to resolve this conflict.

A. The decision below cannot be reconciled with this Court's precedent.

The Constitution protects the "right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). "According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity." *Ibid.* That right is not reserved for advocacy groups—it belongs to any organization engaging in "activities protected by the First Amendment." *Id.* at 618. So an organization that uses communal activities to "transmit ... a

system of values”—even indirectly or “by example”—“engages in expressive activity.” *Dale*, 530 U.S. at 649–50.

That describes Olympus Spa. Its mission is to help its patrons achieve spiritual renewal and to pass on Korean cultural values and traditions through the practice of centuries-old rituals. That its patrons pay a fee for those rituals does not diminish their expressive nature or spiritual benefits. The Boy Scouts, too, charge a fee, *Scouting Costs 101*, ScoutSmarts, perma.cc/LA5F-SBTK (estimating costs of \$250 to \$600 per year)—more than the Spa’s all-day pass, *Day Pass Menu*, Olympus Spa, perma.cc/X8SK-GEX6 (\$53). And neither the corporate form nor a profit motive strips expression of First Amendment protection. *303 Creative LLC v. Elenis*, 600 U.S. 570, 594 (2023); *Pacific Gas & Elec. Co. v. Public Utils. Comm’n of Cal.*, 475 U.S. 1, 8 (1986).

The Ninth Circuit disagreed. Brushing aside Olympus Spa’s mission and centuries-old Korean tradition, the court likened the *jjimjilbang* to an everyday “commercial gym or massage establishment.” App.28a. It summarily declared that *seshin* and the Spa’s other ancient rituals lack “even a kernel of expression” and are “not ... designed to ‘transmit ... a system of values,’” dismissing the *jjimjilbang*’s stated mission of promoting women’s health and spiritual renewal as bearing “at best a tenuous relationship to ... beliefs.” App.28a–29a.

This judicial second-guessing of Olympus Spa’s self-understanding conflicts with *Dale*. There, this Court instructed courts to “give deference to an association’s assertions regarding the nature of its expression” and “what would impair its expression.”

530 U.S. at 653. It's not for the Ninth Circuit to decide that a Korean bathhouse's ancient rituals carry too little meaning to count; the Spa's reasonable explanation of its spiritual and expressive purpose controls.

The Spa's website explains that the organization promotes women's "physical" and "spiritual health." *About Us*, Olympus Spa, perma.cc/VC75-AV8K. It does so through energy rooms, saunas, and whirlpools, plus a reading room, meditation room, and tea ceremony classes. *Ibid.* All spaces require nudity. And as Mr. Lee elaborates: "According to our religion, man and woman are created differently." Lee Decl. at 3. "Women are in a vulnerable position when they are unclothed and/or having treatment while unclothed and we seek to ensure that they feel their privacy and rights are respected. This is a biblical principle from 1 Peter 3:7, 1 Timothy 3:1–7, 1 Timothy 5:2, Phillipians [*sic*] 4:3, Genesis 1:27, Proverbs 31:17, Philipians [*sic*] 2:3 and more." *Id.* at 4. The Spa's values about males and females are particularly important because, as a place of physical and spiritual renewal, the Spa is also "a healing place for victims of sexual assault, especially by men." *Id.* at 3.

The Spa also promotes a message of "protect[ing] the weak and defenseless." *Id.* at 4. It does this by protecting female minors' "well-being mentally and physically" from "either half or fully undressed males approaching them." *Ibid.* That belief flows "from both a cultural and creed based stance." *Ibid.*

Like in *Dale*, the Spa's inculcation of values that lead to physical and spiritual wellness is "expressive activity." 530 U.S. at 649–50. And the forced inclusion of nude males in the Spa's activities would "significantly burden" the Spa's desire to protect and promote

women and girls. See *id.* at 653. In *Dale*'s words, the presence of a male in the Spa's nude, female-only community would send "a distinctly different message" than the presence of a nude female. *Id.* at 656.

Indeed, the Boy Scouts' protected expression—routine wilderness activities—are no more inherently communicative than *seshin*, meditation rooms, and cultural classes. Yet this Court found the Boy Scouts' activities expressive because they were the means through which the organization transmitted its values. Just as the Boy Scouts sought to communicate its values of being "morally straight," *id.* at 649–50, Olympus Spa seeks to share and demonstrate fidelity to Korean tradition and the benefits of communal spiritual renewal while inculcating women's physical and spiritual health. The distinguishing feature in *Dale* was the transmission of values, not the medium—and certainly not the absence of payment. Accord *Board of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 548 (1987) (First Amendment protected club's service activities perpetuating its values of "humanitarian service, high ethical standards," and "good will").

Here there is a synergy of beliefs between Christian convictions and the Korean *jjimjilbang* as to males and females. These beliefs are expressed to the public through the Spa's website, which stated that "biological women are welcome." App.5a, 107a, 127a. As explained in the pleadings, this language conveys to the public the viewpoint that "biological women are females and distinct from males." Am. Compl. at 19, *Olympus Spa v. Armstrong*, No. 2:22-cv-00340-BJR, Dkt. No. 24-1. Sun Lee elaborates that "[a]ccording to our religion, man and woman are created differently.

Our spa is designed specifically for women and our mission is to restore and rejuvenate women's physical health as well as spiritual health." Lee Decl. at 3. Turning to culture, he writes that the "Korean traditional Spa means it provides female separately at their comforts [*sic*]." Therefore, "anyone who enters our spa *understands* that we operate our spa in Korean style" *Id.* at 4 (emphasis added).

Despite this, the Ninth Circuit discerned no kernel of expression in the Spa's operation. App.28a–29a. But Washington's investigator was not so confused. She viewed the website's statement—"biological women are welcome," App.5a—as a clear message about the nature of the Spa's association. Indeed, the clarity of the Spa's message was evidenced by the fact that the investigator gave the Spa the option of self-censorship or prosecution. App.35a.

Contrast *City of Dallas v. Stanglin*, 490 U.S. 19. The dance hall there was considered a mere "social association" because its dancing was purely "recreational." *Id.* at 25. Although the dance hall was a business, not a formal membership organization, that was not determinative. Contra App.28a–29a. Rather, it was the business's failure to articulate any values it sought to instill in its patrons. *Ibid.*

As the State's sole *jjimjilbang*, forcing Olympus Spa to accommodate nude male patrons "significant[ly]" affects the Spa's transmission of its values and poses an existential threat to its existence. *Dale*, 530 U.S. at 648. Without this Court's intervention, Olympus Spa will be forced to close, and this vital aspect of Koren culture will cease to be shared in the Evergreen State. Such an extreme impact on its association cannot be justified.

B. The decision below deepens a conflict over whether the associational right applies beyond membership groups formed for an expressive purpose.

The Ninth Circuit’s decision also conflicts with its sister circuit’s application of this Court’s precedents. The question dividing the lower courts is clean and recurring: whether the freedom of First Amendment association is confined to private membership groups formed for an expressive purpose and excludes entities that exist to provide services to the public. The Second Circuit says no. The Washington Supreme Court says yes, joined now by the Ninth Circuit, cementing a 2–1 divide.

Start with the Second Circuit. In *New Hope Family Services, Inc. v. Poole*, 966 F.3d 145 (2d Cir. 2020), that court considered the associational claim of an adoption agency challenging a public-accommodation law that required the agency to work with same-sex and unmarried couples, contrary to the group’s expression of its religious values regarding marriage and family. The state argued that the claim failed as a matter of law because the agency is not a membership organization and its primary purpose is providing adoption services to the public, not religious expression. The Second Circuit disagreed, holding that the expressive-association right is not limited to membership organizations “expressly constituted for that purpose,” as *Dale* requires only that an organization “engage in some form of expression.” *Id.* at 178–79 & n.31.

Because the agency purported to convey “a system of values about life, marriage, family and sexuality” through the services it provided to the public, it was

recognized as an expressive association—even though its services were not in themselves inherently expressive. *Id.* at 178. And because the law would make “associat[ing] with [the agency] ‘less attractive’ for those who would otherwise” seek to participate in the agency’s expression, including its employees, the Court sustained the agency’s claim that the law significantly impaired its expression. *Id.* at 179 (citing *Rumsfeld v. FAIR*, 547 U.S. 47, 68–69 (2006)).

The Washington Supreme Court has held the opposite. In *State v. Arlene’s Flowers, Inc.*, 441 P.3d 1203 (Wash. 2019), the court rejected an expressive-association claim brought by a floral artist challenging the WLAD. In so doing, the court limited the freedom of expressive association to “private organizations, defined by particular goals and ideologies.” *Id.* at 1236. Distinguishing a “business’ customer service” from protected expression, the court categorically rejected that a “commercial enterprise, open to the general public” could bring an expressive-association claim. *Id.* at 1235–36. See also *Matter of Gifford v. McCarthy*, 137 A.D.3d 30, 42 (N.Y. App. Div. 2016) (holding that a wedding business was not an expressive association because it was organized for “the purpose of making a profit through service contracts with customers,” not for “specific expressive purposes”) (citation modified).

The Ninth Circuit deepened the split here. The court rejected Olympus Spa’s First Amendment association claim because the Spa is not a membership organization but is a service provider like New Hope. App.28a–29a.

In reaching this conclusion, the Ninth Circuit embraced the same categorical divide—between a service provider and a membership organization—as the Washington Supreme Court. *Ibid.* Both decisions conflict with the Second Circuit’s *New Hope* decision.

This 2–1 conflict is entrenched and will not be resolved without this Court’s intervention. In fact, the Second Circuit recently reaffirmed its position in *Slattery v. Hochul*, 61 F.4th 278 (2d Cir. 2023). There, it applied *New Hope*’s reasoning to sustain the expressive-association claim of a pregnancy resource center—an organization that transmits its values and beliefs about the sanctity of human life through its provision of prenatal services to the public. *Id.* at 290. Only this Court can resolve the split. It should grant the petition and do so.

III. The Spa does not discriminate based on gender identity or expression.

Per this Court’s decision in *Skrmetti*, the Spa should also prevail for a more fundamental reason: it does not discriminate based on gender identity or expression. As Judge Collins explained in his dissent from the denial of rehearing en banc below, “the Spa’s policy is that no person with male genitalia is allowed into the Spa, precisely due to its all-nude environment,” though the Spa will admit “post-operative transgender women.” App.99a. Given this fact, it is impossible to say that the Spa’s anatomy-based policy discriminates because of gender identity or expression, as this Court has now held repeatedly. *Skrmetti*, 605 U.S. at 517; *B.P.J.*, 146 S. Ct. at 2378 (“[T]he laws do not classify based on gender identity or transgender status”; “[t]he laws classify on the basis of biological sex.”).

A federal court owes no deference to a State’s construction of a law when that reading stretches the text beyond its terms to burden a federal constitutional right. This Court has repeatedly said so. In *Fulton*, the Court declined to accept the City’s view that a religious foster-care agency was a “public accommodation” subject to its antidiscrimination ordinance; it construed the ordinance’s reach for itself, explaining that although courts “ordinarily defer to lower court constructions of state statutes,” they “do not invariably do so,” and that “[d]eference would be inappropriate here.” 593 U.S. at 538–40.

Moore v. Harper states the principle in general terms: federal courts, while “mindful of the general rule of accepting state court interpretations of state law,” must “temper[] such deference when required by [their] duty to safeguard limits imposed by the Federal Constitution,” lest a State “read state law in such a manner as to circumvent federal constitutional provisions.” 600 U.S. 1, 35–36 (2023). A State “may not sidestep” a constitutional guarantee “by disavowing” the meaning of its own enactments, and a reviewing court remains “bound to decide for [itself]” what the law in fact reaches. *Id.* at 35. That’s why this Court in *Chiles v. Salazar* reaffirmed that constitutional protections “cannot be renamed away or their protections nullified by ‘mere labels’” and refused to credit Colorado’s atextual, after-the-fact reading of its counseling-censorship statute. *Chiles v. Salazar*, 146 S. Ct. 1010, 1023–26 (2026) (citation omitted).

Those principles resolve this case. Washington’s officials construe the WLAD’s reference to “gender expression or identity”—language that appears only within the statutory definition of “sexual orientation,”

Wash. Rev. Code § 49.60.040(29)—to reach Olympus Spa’s anatomy-based entry policy, then invoke that construction to violate religious liberty and freedom of expression that the First Amendment protects. Under this Court’s precedent, that self-serving reading is owed no deference.

The Spa does not care about a prospective patron’s gender identity or expression. “[T]he *only* factor at play is the possession of male genitalia”; “there is no sense in which a person’s ‘transgender’ status can be said to be a ‘substantial factor’ in Olympus Spa’s admissions policy.” App.100a (Collins, J., dissenting from denial of rehearing en banc).

The panel majority wrongly assumed that the Spa’s policy “denies entry to preoperative transgender women whose ‘gender identity’ or ‘appearance,’ as defined in WLAD, differ from *the physical traits* associated with postoperative or cisgender women.” App.10a (emphasis added). But the WLAD says nothing about a patron’s “physical traits.” See Wash. Rev. Code § 49.60.040(29). And the majority’s logic conflicts directly with this Court’s admonition that laws which classify based on biological sex “do not classify based on gender identity or transgender status.” *B.P.J.*, 146 S. Ct. at 2378; accord *Skrmetti*, 605 U.S. at 517–19 (same as applied to a law that classified based on age, sex, and medical diagnoses).

Perversely, “under the panel majority’s reading of WLAD, the Spa cannot ignore gender identity but instead *must take it into account*.” App.102a (Collins, J., dissenting from denial of rehearing en banc). Summarily reversing for this reason would resolve this dispute.

IV. This case is an ideal vehicle to resolve these important conflicts of authority.

Like its recent decisions in *Mirabelli* and *Hecox*, the Ninth Circuit’s opinion below is egregiously wrong and continues “an alarming trend” of that court’s disregard of this Court’s precedents. See *Yakima*, 2026 WL 1758172, at *1 (Bumatay, J., dissenting from grant of rehearing en banc). “[T]he Ninth Circuit has made clear that it will subordinate religious liberty ... whenever its judges decide that the right simply isn’t worth it.” *Ibid.* As Judge Tung put it here, while the WLAD “purports to protect any Washington resident from so-called gender-identity ‘discrimination,’ the State’s prohibition exempts some secular organizations and certain religious ones—it just does not exempt the small business in its exercise of its religious beliefs here. How is that at all a ‘neutral law of general applicability?’” App.89a (quoting *Employment Div., Dep’t of Human Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990)). It’s not.

It cannot be that Washington can force Christian, Korean business owners to allow nude males to share facilities with nude female patrons as young as 13 and require female employees to provide full-body scrubs to nude men. This Court’s precedents demand a different result. And even more fundamentally, the Ninth Circuit’s ruling defies this Court’s recent holdings about the difference between sex and gender identity/expression. It is simply not true that classifying based on anatomy is discrimination based on gender identity or expression.

The Court should grant the petition or summarily reverse.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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