

IN THE SUPREME COURT  
OF THE  
STATE OF OREGON

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Dinker

v.

Donker

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SUPREME COURT DOCKET NO. 04-12

Appeal to the Supreme Court  
from the  
Multnomah County Superior Court  
Docket NO. S 1009-03

BRIEF OF *AMICUS CURIAE*

**--Musicians for Equal Opportunity--**

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## **Interest of Amicus**

Musicians for Equal Opportunity (MEO) is a non-profit organization focused on supporting demographics who face mass stereotyping and/or discrimination that inhibits their chances of success in a music career. We aim to promote artists facing these issues in all fields of music with an emphasis on performing artists because we believe that they will have the most impact throughout all musical fields.

## **Summary of Argument**

While concerts exclusively featuring female artists are currently successful in working to fill a necessary gap in male and female musicians, they will ultimately become degrading for female artists' credibility and well-being. There are much more effective steps to avoid segregation of sex that is already well on its way to becoming a reality.

## **ARGUMENT**

### **Introduction**

There is a massive underrepresentation of women in all musical fields. As of 2019, Only 30% of performing musicians are female, a far higher ratio than the meager 6% of producers that are female<sup>1</sup>. Partially as a result of this, all female/mixed gender acts at major music festivals are similarly unbalanced at 70/30 all male to all female/mixed gender ratio<sup>2</sup>. This directly impacts all female artists because they are less likely to have major opportunities that help their career as shown by HoneyBook's freelance artist gender pay gap study which concluded that "women [musicians] earn 38 cents to the male dollar."<sup>3</sup> Performing musicians

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<sup>1</sup> Women in Music (2019). THE STATS. Retrieved from <https://www.womeninmusic.org/stats.html>

<sup>2</sup> "Tracking the Gender Balance of This Year's Music Festival Lineups." Pitchfork, May 2018, [pitchfork.com/features/festival-report/tracking-the-gender-balance-of-this-years-music-festival-lineups/](https://pitchfork.com/features/festival-report/tracking-the-gender-balance-of-this-years-music-festival-lineups/).

<sup>3</sup> "2019 Gender Pay Gap Report - Rising Tide." *Rising Tide*, 5 Dec. 2019, [www.honeybook.com/risingtide/2019-gender-pay-gap-report](https://www.honeybook.com/risingtide/2019-gender-pay-gap-report).

overall are only estimated to make \$20,000 - \$25,000 a year<sup>4</sup>, not to mention the thousands of additional dollars it can easily cost in musical expenses. The ongoingly belittled opportunities for female musicians are overall detrimental to the success of female musicians and has been an unending cycle for hundreds of years. There needs to be more direct action taken to allow for the success of female music careers.

### **A. Stereotypes for women in music discourages them from going into the field**

There are many blatantly sexist and restrictive stereotypes that affect women pursuing all musical careers, but especially those in performance due to the nature of it. These issues show up in classical music extremely bluntly. In the words of Jessica Duchen on CBC Radio, “[female classical musicians are] too often judged for their appearance, rather than their talent” and they face pressure “to look sexy onstage and in the photos.”<sup>5</sup> In addition to the sexual pressures women face, they are also restrained to certain activities, instruments, performing contexts, rituals, ceremonies, and so on. There are similar cases for men but the consequences tend to be lesser than those women face.<sup>6</sup>

In addition to the former matters that may discourage women from coming into music careers at all, there are also physical threats that stand against female musicians. A survey by The U.K. Musicians Union found that 52% of respondents had experienced sexual harassment in their line of work.<sup>7</sup> Naomi Pohl, deputy general secretary at the Musicians’ Union said, “[s]urvivors are often unable to speak out because the consequences for their career or personal life are devastating.” Because many musicians work freelance and their jobs directly depend on the satisfaction of their fans, we could expect these numbers to be significantly higher. According to The Equal Employment Opportunity Commission, 70% of women victim to sexual harassment do not take direct action to stop these attacks and simply avoided their harasser, denied, or downplayed the harassment.<sup>8</sup> This is no news as Laraine Porter’s work on the historical treatment of female cinema musicians brought light to Ursula Bloom’s personal

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<sup>4</sup> Inaugural Music Industry Research Association (MIRA) Survey of Musicians Executive Summary (2018)

<sup>5</sup> Duchen, Jessica. “Live Radio | CBC Listen.” *CBC Listen*, 2020

<sup>6</sup> Koskoff, E. (2014). Gender, Power, and Music. In E. Koskoff (Eds.), *A feminist ethnomusicology : writings on gender and music* (pp. 76-89). Urbana : University of Illinois Press.

<sup>7</sup> King, Ashley. “Report — Nearly Half of All Musicians Face Sexual Harassment on the Job.” *Digital Music News*, 23 Oct. 2019, [www.digitalmusicnews.com/2019/10/23/sexual-harassment-music-industry/](http://www.digitalmusicnews.com/2019/10/23/sexual-harassment-music-industry/)

<sup>8</sup> Skolnick, Rochelle. “Sexual Harassment Archives - International Musician.” *International Musician*, 26 Nov. 2018, [internationalmusician.org/tag/sexual-harassment/](http://internationalmusician.org/tag/sexual-harassment/)

accounts in which, “[She] described being sexually harassed by men who would sneak up to the stage and attempt to molest her from behind the curtains.”<sup>9</sup> There is a long standing issue with the normalization of mistreatment of women in general but while many of them are in more recent times being encouraged to speak on the matter, musicians rely far too heavily on the support of others to take risks like that.

Another roadblock for female musicians comes in the form of genre stereotypes. The music that an artist wants to create may not lead to commercial success because they don’t fit the stereotypical image of that genre. I will be focusing on the most popular styles of music in the United States at this time: Hip hop, Pop, and Rock.<sup>10</sup>

Rock music was originally created by men, predominantly for men as evident by the major themes of the music in its current and especially early days. During this time period, sexist ideas were all but normalized and so it would only make sense that some of those same ideas would cross over to the music. “Music, unlike many other forms of media, is a direct expression of ideas. For this reason it provides a wealth of information about women since they most often are the subject of songs. [Because of this,] women and the roles they play, or are expected to play, in society have been characterized by men.”<sup>11</sup> This control that men have over rock makes it extremely difficult for women to make it in the style because they have to make a choice to either give up their dignity and maybe even happiness by appealing to men and continuing these expectations for women or give up a large portion of their commercial success by going against the established ideas. This creates a losing situation for most every woman trying to make a career in rock music, however, we must always keep in mind that not every single woman absolutely hates the ideals rock bestows upon them. That group is a minority of women as “79 percent say they are concerned about how girls and women are shown in gender-stereotyped roles in [media].”<sup>12</sup>

Although rock advertises mens expectations for women with little input from women, rap takes a much more directly disrespectful approach as well as having a major gender imbalance. Rap has been around for decades and “in the late 1980s and early 1990s there were more than 40 women signed to major labels,” but in the early 2010s, when rap really started to

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<sup>9</sup> Porter, Laraine. “The ‘Missing Muscle’: Attitudes to Women Working in Cinema and Music 1910–1930.” *Popular Music and Society*, vol. 40, no. 5, 25 July 2017, pp. 499–517, 10.1080/03007766.2017.1348669. Accessed 26 Jan. 2020.

<sup>10</sup> Watson, Amy. “Music Album Consumption in the U.S. by Genre 2018 | Statistic.” Statista, Statista, 2018, [www.statista.com/statistics/310746/share-music-album-sales-us-genre/](http://www.statista.com/statistics/310746/share-music-album-sales-us-genre/)

<sup>11</sup> Zealand, New, and Emily Nett. “Women and Rock Music 1 Deborah Harding.” *Atlantis*, vol. 10, no. 1, 1984, [journals.msvu.ca/index.php/atlantis/article/download/4451/3690/0](http://journals.msvu.ca/index.php/atlantis/article/download/4451/3690/0).

<sup>12</sup> WATCHING GENDER How Stereotypes in Movies and on TV Impact Kids’ Development. 16 Aug. 2017.

compete with rock for the top genre in America, “there were just three.”<sup>13</sup> It may just be a coincidence that as rap became more mainstream, female rappers were dropped from their labels but keep in mind that as rap became more popular, the focus shifted heavily to men. A major characteristic of rap is the use of extremely vulgar language when compared to most styles of music. Amongst this language is the word ‘bitch’, which has two major meanings in rap. It can either refer to a woman or to insult a man by comparing him to a woman. Although the inclusion of vulgar language in everyday life has become much more common in recent years, there is undoubtedly a misogynistic meaning behind the use of this word.

Jay-Z is one of the most important and popular rappers of all time and “109 out of 217 [of his] songs contain the word ‘Bitch.’”<sup>14</sup> However, since the birth of his daughter he has actually made a decent amount of music focused on women's issues. This goes to show it is not as often the individual, but the surrounding culture that decides what choices they make when it comes to creating music. Before his daughter, Jay-Z didn't have an excuse to go against the majority mindset of rap. This majority is largely responsible for the sexist lyrics because in most styles of rap, you have to sell yourself as fearless and tough. It is due to these expectations of the artist that women have trouble making a career. Not only do a large group of rap fans have a dwindling amount of respect for women in general, but many fans also have a hard time believing that women are fearless and tough enough to earn their credibility in the style because they have an image in their head of what women are like based on music. It should be obvious why it is so difficult for women to have successful careers “in an industry that makes millions off of disrespecting and objectifying women.”<sup>15</sup>

Lastly we have pop. Although some of the following information is still applicable to earlier generations of pop, for the purpose of this brief, pop will refer to the pop of the 21st century. The purpose of pop in the music industry is to appeal to the lowest common denominator of people and to make as much money as possible doing so. Without a doubt, pop is the most equally opportunistic genre across gender in the list covered here. That being, there are still objectifying ways in which women are treated not only in the musician aspect, but the consumer aspect as well. In order to fully understand the role that certain pop music plays in the

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<sup>13</sup> Nielson, Erik. “NPR Choice Page.” Npr.Org, 4 Mar. 2014, [www.npr.org/sections/codeswitch/2014/03/04/285718351/where-did-all-the-female-rappers-go](http://www.npr.org/sections/codeswitch/2014/03/04/285718351/where-did-all-the-female-rappers-go). Accessed 1 Feb. 2020.

<sup>14</sup> Suddath, Claire. “How Many Jay-Z Songs Contain the Word ‘bitch?’ We Counted.” TIME.Com, Entertainment, 2012, [entertainment.time.com/2012/01/18/how-many-of-jay-zs-songs-contain-the-word-bitch/](http://entertainment.time.com/2012/01/18/how-many-of-jay-zs-songs-contain-the-word-bitch/). Accessed 2 Feb. 2020.

<sup>15</sup> Samhita, Mukhopadhyay (2016). “Nikki Minaj and Sexism in the industry”. [feministing.com](http://feministing.com). Center for Sex & Culture. Retrieved 2016-12-07.

world, we have to understand the way teenage girls are raised. Growing up, “Sixty percent [of girls admitted] they feel unattractive.”<sup>16</sup> and there is little parents can do to stop this, if they are aware of it at all. So there are tons of insecure teenage girls that don’t have an outlet to feel better, what better money making opportunity? This is where the music comes in. In the greater realm of pop, there are people who work to surgically create songs to perfectly complement the target audience that society gives to them, in this case, insecure teenage girls. These songs are handed to a hand-picked group of attractive, young gentlemen in order to once again appeal to the target audience and make a massive profit. The quintessential song of this variety is “What Makes You Beautiful” - One Direction (2011) being quite possibly the most obvious example of this type of song. It was a massive double platinum hit having been on the Billboard Hot 100 chart 34 weeks.<sup>17</sup> The major issue with these types of songs is the intent. They were not made to help women find content and happiness in their appearance and build their self respect, but to exploit them by creating an insincere voice that is crafted to be as general as possible in order to attract the largest audience and to be as void of actual help. This is to subconsciously encourage listeners to replay them over and over to attempt to fill a gap in their self esteem that society has left in them. What Makes You Beautiful in particular actually encourages low self esteem. This music, designed and perfected by lyrical scientists for women, has infinitely more to do with making profits than do with actually supporting women.

Likely due to the above reasoning, pop has always been male dominated, less than rock and rap but still significantly male dominated. The industry has learned that young, insecure, and impressionable teenage girls will dedicate ungodly amounts of their lives to these pop images and so the pop industry, for obvious profit reasons, continues to value that image over less successful demographics because of the cult-like passion teenage girls commonly exhibit for these artists.<sup>18</sup> This creates demand for male musicians which is filled and leaves few female artists an opportunity to be a pop artist. Because of this continued supply and demand between teenage girls and pop labels, there is a multi-generational idea of males being musicians and females being listeners leading female musicians away from pursuing music as a career, as they are not encouraged by society to do so.

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<sup>16</sup> Zetlin, Minda. “Do You Think You’re Pretty? For Too Many Women, the Answer Is No.” Inc.Com, Inc., 27 Dec. 2018, [www.inc.com/minda-zetlin/girls-self-image-confidence-jennifer-aniston-dumplin-beauty.html](http://www.inc.com/minda-zetlin/girls-self-image-confidence-jennifer-aniston-dumplin-beauty.html).

<sup>17</sup> “Top 100 Songs | Billboard Hot 100 Chart.” Billboard, 2018, [www.billboard.com/charts/hot-100](http://www.billboard.com/charts/hot-100).

<sup>18</sup> Gaffney, Adrienne. “The Business of Fandom: How Teenage Girls Predict the Future of Culture.” *Billboard*, 13 Sept. 2017, [www.billboard.com/articles/news/lifestyle/7964650/teenage-fangirls-predict-future-success](http://www.billboard.com/articles/news/lifestyle/7964650/teenage-fangirls-predict-future-success). Accessed 3 Feb. 2020

Music is a historically male dominant activity throughout all of human history and the sexist effects that it has had on society are detrimental to the success of women looking to pursue a career in music.

## **B. The lack of female representation in music majorly contributes to the continuation of the issue**

The issue of women's representation in music has not resolved or seen a large amount of change for something that has been occurring for so long. We have established that women are underrepresented in music and face a lot of challenges when it comes to having a successful career, but what is causing this issue to continue on while so many other women's issues are seeing change to some degree?

To begin, we must go back to the beginning and look at the differences in how boys and girls are raised and how they see the world while their brain is first developing. Children tend to grow up on the music that their parents like. Usually, that music is made by men because historically, popular music is made by men. The heroes of each generation of music that will live on forever are, also mostly men, so much so that even women who arguably have more impact on music are often overlooked in favor of men. "[J]azz history has been memorialized in ways that 'invisibilize' women as productive cultural citizens. Despite evidence of jazzwomen's existence, the perception of jazz as a lineage of male geniuses overshadows community efforts that included both men and women and obscures the multiple entrances and long careers of [many female musicians]."<sup>19</sup> With overwhelmingly male heroes across all music, it is no surprise why men are far more likely to pursue music as a career. Additionally men are often encouraged to try music by their parents, likely because they want to see their son grow up to be the next musical hero. It seems that "[e]very 13-year-old boy, was handed an electric guitar [growing up]"<sup>20</sup> and young women are left out of learning music. This is the vicious cycle that for hundreds if not thousands of years has been one of the main causes of the underrepresentation of women in music.

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<sup>19</sup> Tucker, S. (2017). Jazz History Remix: Black Women from "Enter" to "Center". In P. K. Maultsby & M. V. Burnim (Eds.), *Issues in African American music : Power, Gender, Race, Representation* (pp. 256-269). New York, NY ; Abingdon, Oxon : Routledge.

<sup>20</sup> Andrews, Travis. "What's It Like to Be a Woman in Rock Today? The Question Is Part of the Problem." *The Washington Post*, 11 Sept. 2019, [www.washingtonpost.com/lifestyle/style/whats-it-like-to-be-a-woman-in-rock-today-the-question-is-part-of-the-problem/2019/09/11/238a892e-ae1f-11e9-bc5c-e73b603e7f38\\_story.html](https://www.washingtonpost.com/lifestyle/style/whats-it-like-to-be-a-woman-in-rock-today-the-question-is-part-of-the-problem/2019/09/11/238a892e-ae1f-11e9-bc5c-e73b603e7f38_story.html). Accessed 3 Feb. 2020.

“Inspiration propels a person from apathy to possibility, and transforms the way we perceive our own capabilities.”<sup>21</sup> Women need to see more amazing women playing amazing music. One issue that faces women’s exposure to great women musicians is how much social media plays in people’s exposure to everything. With nearly 80% of the population owning a social media profile,<sup>22</sup> we can expect that most people experience a significant portion of their entertainment through those networks. Additionally 90% of social media users claimed they do a music related activity on social media.<sup>23</sup> The problem with social media is how far people are willing to go to get recognition. The answer in the case of many female musicians is objectifying themselves. There is absolutely no shortage of social media users that will go to any length of self exposure to get attention, however that line of work only really appeals to one audience. What seems to be becoming more common is women, who do not know how to play an instrument, using music to reach a wider audience with their modeling. As someone working to create a platform for themselves on social media, it only makes sense to try to appeal to two of the most widely consumed forms of content: music and Instagram breasts. This process takes the focus away from music and puts it on women exploiting their bodies. The problem isn’t that some women like to show off their bodies, it is the impression that it leaves on female musicians. It reinforces the idea that women have to act sexy in order to have a successful career and it sets up the next generation of female musicians to not focus on music, but to focus on appealing to men. Another issue with ‘Instagram breast’ musicians is that they get tons of attention. The average female instagram influencer receives five times more likes per post than the average male influencer.<sup>24</sup> The multiplication of music and sex appeal means that users are much more likely to see a post by a woman using her body as content than a post by a woman using her music as content. “There are women musicians who refuse to play on their looks... the ones who do tend to be more materially successful.”<sup>25</sup> So in addition to having to fight the stigma that

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<sup>21</sup> Kaufman, Scott. “Why Inspiration Matters.” Harvard Business Review, 23 July 2014, [hbr.org/2011/11/why-inspiration-matters](http://hbr.org/2011/11/why-inspiration-matters).

<sup>22</sup> “U.S. Population with a Social Media Profile 2018 | Statista.” Statista, Statista, 2018, [www.statista.com/statistics/273476/percentage-of-us-population-with-a-social-network-profile/](http://www.statista.com/statistics/273476/percentage-of-us-population-with-a-social-network-profile/).

<sup>23</sup> Crupnick, Russ. “Music Scores A Gold Record on The Social Media Charts | MusicWatch Inc.” Musicwatchinc.Com, 6 Aug. 2018, [www.musicwatchinc.com/blog/music-scores-a-gold-record-on-the-social-media-charts/](http://www.musicwatchinc.com/blog/music-scores-a-gold-record-on-the-social-media-charts/).

<sup>24</sup> “Who Runs The World? Female Instagram Users Get Five Times More Likes on Average than Men.” Hopper HQ Instagram Scheduler, 13 Mar. 2017, [www.hopperhq.com/blog/runs-world-female-instagram-users-get-five-times-likes-average-men/](http://www.hopperhq.com/blog/runs-world-female-instagram-users-get-five-times-likes-average-men/). Accessed 3 Feb. 2020.

<sup>25</sup> Koskoff, E. (2014). Gender, Power, and Music. In E. Koskoff (Eds.), *A feminist ethnomusicology : writings on gender and music* (pp. 76-89). Urbana : University of Illinois Press.



women have to use their bodies to be successful on social media, they also have to compete directly with sex appeal which makes it more difficult for actual music made by women musicians to be found by users. "As women, we get moulded into something that we don't necessarily want to be"<sup>26</sup> which discourages women from trying to make careers in music because they don't want to be seen as sex objects, but as musicians.

If female musicians want to be able to have creative freedom and opportunities to make careers for themselves in music, all forms of media need to stop advertising 'Instagram breast' musicians and start advertising actual female musicians as well as more families need to encourage their daughters to pursue music as they would a son. The cycle of lacking inspiration will not end if all that women have to look up to is an overwhelming supply of evidence that suggests they will not have a successful career as a musician without selling out their bodies.

### **C. Female only concerts do not solve the issue**

There is no issue with female only concerts in a vacuum, in fact, they are incredibly helpful in creating inspiration for future generations of women to feast on. However, concerts of this nature have a lot of drawbacks in the greater music scene and much more needs to be done in order to achieve opportunity for the success of female musicians.

Female only concerts were originally created out of necessity so female musicians could find work. They had "[t]o break down this apparent employment barrier, [so] women created their own opportunities by founding and organizing all-female orchestras."<sup>27</sup> This not only creates an outside perception that women are not good enough musicians to play with men, but it also had negative effects on the women in these groups being largely turned away by sexist, but well respected, musicians of the time. Over time, sexism started to be commonly met with backlash so female musicians began to make it into groups that they likely would've been turned away from had sexism still been socially acceptable. Because female inclusion in music became more common, these female only concerts would shift to be more politically oriented, focusing on creating an outlet for music made by women, for women.

The following section is inspired by a workshop held by Camila Meza, a Chilean jazz guitarist, where there was a significant portion of time dedicated to her personal experience as a female musician. The issue that arises for female musicians invited to participate in these types of concerts is questioning whether they were invited based on musical merit, or because they are

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<sup>26</sup> Youngs, Ian. "Pop Music's Growing Gender Gap Revealed in the Collaboration Age." BBC News, 19 Feb. 2019, [www.bbc.com/news/entertainment-arts-47232677](http://www.bbc.com/news/entertainment-arts-47232677). Accessed 3 Feb. 2020.

<sup>27</sup> "Women Orchestral Conductors in America: The Struggle for Acceptance—A Historical View from the Nineteenth Century to the Present - College Music Symposium". 21 September 2015. Archived from the original on 21 September 2015.

a woman. It leads women to believe that they don't succeed. This sort of insecurity is especially prevalent in musicians who are exclusively invited to women only events, as they may feel they aren't musically capable enough to play at "regular events." According to Camila, there have been notable female musicians who refuse to attend such events because they feel it objectifies the woman and undermines the music. These women aim to show that a woman can have a successful music career without having to use any female exclusive resources, despite the challenges they may face. They are truly a testament to the power and endurance of women.

A large part of this issue comes down to concert bookers. In 2018, only 19% of acts across 19 major music festivals were female.<sup>28</sup> Another study showed that only 37 out of 308 music festivals from all over the world were headlined by female groups.<sup>29</sup> Not only does this lack of women give the impression that men are superior musicians, but it also puts women musicians into a political position. The focus starts to shift towards the women and away from the music, and while artists are absolutely allowed to use their platform to bring light to issues like this, a woman playing music should not have to be a political statement.

## CONCLUSION

This issue will take time to resolve. We need to be inclusive and celebratory of music made by women because those women will go on to inspire future generations to create music. Additionally, music venues must be legally held accountable for sexual assault to protect the women who must currently face it at every show. This will also help bring more women into music because it will be a much safer and reliable career for women than it is now. If these actions are taken, we will hopefully see a significant rise in females working in all musical fields and female musicians will be treated as musicians.

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<sup>28</sup> Salam, Maya. "Why Music Festivals Need More Beyoncés." The New York Times, 26 Apr. 2019, [www.nytimes.com/2019/04/26/arts/music/beyonce-coachella-women-festivals.html](http://www.nytimes.com/2019/04/26/arts/music/beyonce-coachella-women-festivals.html).

<sup>29</sup> Sherlock, Pete, and Paul Bradshaw. "Festivals Dominated by Male Acts, Study Shows, as Glastonbury Begins." BBC News, 22 June 2017, [www.bbc.com/news/uk-england-40273193](http://www.bbc.com/news/uk-england-40273193).