



- [about](#)
- [authors](#)
- [comments policy](#)
- [radical perspectives \(lots of links\)](#)
- [resources](#)
- [guidelines for submissions](#)
- [contact](#)

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[Frequently Asked Questions about Brennan & Hungerford's UN submission re: 'gender identity' legislation](#)

by Undercover Punk

Cathy Brennan and **Elizabeth Hungerford's** responses to frequently asked questions about their [submission to the United Nations regarding 'gender identity' legislation and the erosion of sex-based legal protections](#). These are not necessarily the views of the Hub, nor statements of the "radical feminist party line."

1. Where's the evidence of harm? You have not demonstrated the harm that has come to females in states that have adopted 'gender identity' legislation!

Anecdotal evidence is not needed to legitimize our criticisms about overbroad definitions of 'gender identity.' Here is our point: **male** persons have cross-dressed in order to gain access to sex-segregated spaces with the specific intent to harm females. This has happened. Many times. That's all we need to know. Where a harm is foreseeable, it is potentially *preventable*. And if not actually preventable, then at least we can create a *public policy* against it. That is the purpose of law. Females, in particular, need laws. For example, a restraining order is just a piece of paper that could not possibly *protect* a body from attack, but we still need laws that prohibit stalking behavior. Similarly, in our [UN submission](#) we argue that:

Females require sex-segregated facilities for a number of reasons, chief among them the documented frequency of male sexual violence against females and the uniquely female consequence of unwanted impregnation resulting from this relatively common form of violence. Public policy, therefore, rationally permits sex segregation in certain settings where a reasonable expectation of privacy exists.

As such, we take specific issue with overbroad legislative language and the foreseeable harm to women that can arise from the refusal to make any legal distinction between sex and 'gender identity' in the context of sex-segregated spaces. We advocate for legal screening of unfettered *male* access to sex-segregated *female* spaces on the basis of a purely self-reported 'gender identity,' expression, or appearance. We propose that this be done by requiring *medical* evidence.

2. Why should anyone listen to two feminist lesbians about trans anything?

We're female. Females are 50% of the human population. Our concerns come from a specifically *female* point of view (not a libertarian or a trans-centered one). Our arguments stress the need for sex-segregated spaces. We believe that females have a right to these spaces, free from males. When cross-dressing males, who have *not* sought medical treatment and/or who do *not* intend to transition, demand access to sex-segregated spaces on the vague basis of a feminine 'gender identity,' that is an infringement on **our** rights. So this is not a hate-mongering, ignorant, or disingenuous attempt to deny trans people anything. We seek to protect women's right to sex-segregated spaces free from non-trans males.

3. Transgender vs transsexual

Many, many people have asked about our views of pre-ops and post-ops. Let's review the suggested language in footnote [xxix] to our [UN submission](#):

We support the following definition of "gender identity" – a person's identification with the sex opposite her or his physiology or assigned sex at birth, which can be shown by providing evidence, including but not limited to medical history, care or treatment of a transsexual medical condition, or related condition, as deemed medically necessary by the American Medical Association.

The definition says nothing about surgery, or pre-op or post-op status. It simply says *treatment of a transsexual medical condition*. People of trans experience require medical treatment to physically transition to the sex opposite their assigned-at-birth sex. This means a female-to-male trans person will want to obtain testosterone, which he can only do legally with medical intervention. This also means that a male-to-female trans person will want to obtain estrogen, which she can only do legally with medical intervention. In other words, our definition of 'gender identity' covers all people of trans experience who are dedicated to transitioning and therefore rely on medical professionals to aid their transition.

4. Panty Checks! Papers at the Bathroom Door!

No. Nothing is going to allow panty checks, or violate the Fourth Amendment (which doesn't even apply), or require papers at the bathroom door! The 'gender identity' legislation we are talking about, and have cited to, is relevant to civil rights causes of action for *discrimination*.

In most states it is not a crime, or even a statutory violation, to enter the bathroom designated for the sex opposite one's own. This will not change.

No one can stop you from using whatever sex-segregated facility you want. We are simply arguing that no one should have an actionable right in court to claim that 'gender identity' discrimination trumps sex in *sex-segregated spaces* without some serious gating on the definition of 'gender identity.'

5. But 'gender identity' has never been used by a trans person as a criminal defense!

Of course not. It's a claim of *discrimination*. Which falls under civil rights causes of action. It has nothing to do with criminal responsibility. 'Gender identity' is not a criminal defense like "self-defense" or "insanity." It is an assertion of discrimination based on the possession of certain traits (i.e., race, sex, class, gender identity).

We want to limit the class of people who can assert a claim of 'gender identity' discrimination to people who are on the path to transitioning.

6. Why do you want to deny trans people employment and housing?

We don't. Anti-discrimination laws cover dissimilar situations that should not be grouped together for the purpose of civil rights protection. From the *female* perspective, sex-segregated public accommodations are fundamentally different from employment decisions, housing access, credit, education, and "truly public" public accommodations (like going to the movies or eating at a restaurant). As explicitly stated in our Communication to the United Nations, we have no problem with protections based on 'gender identity' in employment or housing. See footnote [xxiii]:

This communication expresses no concern or grievance with laws that ban discrimination in employment or housing based on "gender identity." We support full access to employment and housing opportunities unfettered by irrational discrimination.

In fact, Cathy Brennan supported and aggressively lobbied for Maryland House Bill 235, which included a very broad definition of 'gender identity' that would have banned discrimination in employment, housing, and credit.

7. Why are you denying me my "civil rights/human rights"?

If, by "civil right" or "human right," you are referring to the right to access to sex-segregated public accommodations, all people can use the sex-segregated space reserved for their biological sex. If you are harassed because of it, you can sue for sex discrimination! And we will support you.

Further, limiting the scope of the definition of 'gender identity' does not mean we believe people of trans experience are subhuman and/or undeserving of both civil and human rights. Far from it. We simply want to limit the rights of males who do not intend to medically transition from demanding access to women's sex-segregated spaces on the basis of 'gender identity.' Accordingly, we object to the use of 'gender identity' as a replacement for sex in the absence of a meaningful definition that requires medical evidence. We believe it is irresponsible of women's and GLBT organizations to continue to ignore this problem.

8. You sound like the religious right – therefore, you are wrong. Also, exaggerating threats is the radical religious-right's game.

Analogies can be useful intellectual short-cuts, but they can also be very misleading. We are not wrong merely because some "undesireable" people's views partially overlap with ours. Let's get more specific. Here we have an analogy between our concerns for female safety and the scare tactics of the religious-right. The religious right seeks to create public hysteria by painting *all* trans people as freaks, deviants, and sexual predators who pose a serious threat to their Way of Life. They do this because they are desperate to protect the sanctity of hetero-normativity and its rigid gender roles. We, on the other hand— as females and lesbians— are not invested in those conservative power structures. Instead, our arguments are narrowly focused to address protection of females from *male* predation in sex-segregated spaces. Further, we are not "exaggerating threats." We take specific issue with overbroad legislative language and the foreseeable harm to women that can arise from the refusal to make any legal distinction between sex and

'gender identity.'

The Radfem Hub has a woman-born-woman and female-identified commenting policy (both!). If you are not able to comment at the Hub but have a respectful question or concern, please email Cathy Brennan at [bugbrennan\[.\]gmail.com](mailto:bugbrennan[.]gmail.com) and/or Elizabeth Hungerford at [elizabeth.hungerford\[.\]gmail.com](mailto:elizabeth.hungerford[.]gmail.com).

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Posted on August 15, 2011 at 2:13 am in [FAAB/MAAB](#), [gender/jendah](#), [guest post](#), [law/legislation](#), [LGBTIAOQLOLWTF](#), [politics](#), [rape](#), [trans](#) | [RSS feed](#) | [Respond](#) | [Trackback URL](#)

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19 Comments to “Frequently Asked Questions about Brennan & Hungerford's UN submission re: 'gender identity' legislation”



1.

[Mary Sunshine](#)

[August 15, 2011 at 5:20 pm](#)

Abundantly clear. Another expression of the generosity of your time, efforts, and expertise; what a welcome relief. My thanks to you.



2.

[m Andrea](#)

[August 15, 2011 at 7:33 pm](#)

Thank you for yet another fresh breath of sanity! 😊 And I think it's important to point out that while there may be no current law against a man being in the women's restroom, it's also not explicitly legal for men to be in there. Right now, a man caught in a women's restroom would be under close scrutiny, as well he should be. Why would he need to go in there at all?

But if the version of the law preferred by transfolk is allowed to stand, then it indeed would be legal for any straight man to hang out in the women's restroom. Which would make it incredibly easy for pervy pedos to have a happy funtime. NORMAL people gronk that the issue is primarily one of personal safety and privacy immediately, without any further explanation.

And notice who are the only people who object to safer spaces for women. Really, please do notice. The only people who object to safer spaces for females are those people who have never experienced unwanted groping harassment etc by a man, and who then claims to not understand why segregated spaces are necessary. So we're talking about a slut who never says no or a female who is perceived by men as being too unfuckable to bother with, or a pervert desiring to expand his hunting ground. Because literally NO ONE ELSE would say "oh yes, of course straight men should get to hang out in the women's changing room".



3.

[m Andrea](#)

[August 15, 2011 at 7:49 pm](#)

And perhaps it's a good strategy, instead of even talking about the

transgendered at all, to introduce the subject by just asking people, "well, do YOU think it's a good idea TO ENCOURAGE men and teenage boys to hang out in the women's changing area?" Who in their right mind is going to say yes???

Most people are not as stupid as the average internet funfem. And now that I think about it, the funfems on the internet are probably as shouty and as disproportionately trying to represent themselves as the (false) majority, as the transgendered themselves. Realistically, they're probably a very small minority. When it comes time to go to the bathroom, males and females have been voluntarily segregating themselves by sex for thousands of years. I don't think that's gonna change anytime soon.



4.

[FCM](#)[August 15, 2011 at 9:08 pm](#)

So we're talking about a slut who never says no or a female who is perceived by men as being too unfuckable to bother with, or a pervert desiring to expand his hunting ground.

haha. and since the first 2 things dont exist, except in the minds of men, we have our obvious answer: misogynist men who believe the first 2 exist, and pervs.



5.

[yttik](#)[August 16, 2011 at 4:07 pm](#)

Thank you for that letter. You spoke for me. That's a letter that is respectful and compassionate towards trans. There's nothing in there about denying anybody human rights, just the opposite.



6.

[FCM](#)[August 16, 2011 at 7:15 pm](#)

re: making analogies between the radfem position and the religious right...trans (and all men) only care about the RESULT being limited or restricted access to women, be it female bodies or female spaces. they dont care at all about the REASONING behind it, and the FACT that radfem reasoning is woman-centered and seeks to prevent men harming women, in the way only men can. whereas religious-right reasoning is completely different, and ultimately benefits men in OTHER ways, which allegedly "leftist" men (and trans!) dont dispute or resent at all, like religion normalizing PIV for example. and making women second class citizens to men.

the focus on — and bemoaning — the RESULT ONLY, and not differentiating the reasoning at all, of limiting or restricting access to women in this case is more proof that transwomen arent really women at all, but men. duh.



7.

[Noanodyne](#)[August 16, 2011 at 10:42 pm](#)

Excellent Q & A — this makes the ideas very clear and should be more than enough for just about anyone who actually WANTS to understand what you're saying. And useful for when we show it to people and they still refuse to get why this is important for

females — they can simply be left out of the grown-up discussion and we can work with those who want to understand and move forward.



8.

zeph

[August 17, 2011 at 1:19 am](#)

"Further, we are not "exaggerating threats." We take specific issue with overbroad legislative language and the foreseeable harm to women that can arise from the refusal to make any legal distinction between sex and 'gender identity.'"

Very clear and precise, thanks for all your excellent work in this important area.



9.

womononajourney

[August 17, 2011 at 1:25 am](#)

Thanks again for all the work you have put into this. I stand behind you.

Do you think you'll end up getting a response from the U.N.? I have no idea how these things work.



10.

ehungerford

[August 17, 2011 at 5:00 pm](#)

@FCM, thank you for expanding on the absurdity of the religious right/radfem analogy! It's a very common means of discrediting female-centric arguments and I completely agree with your analysis.

It reminds me of all the work you did on Dworkin's Right Wing Women: if we don't understand the *reasoning*, we cannot truly understand the *result*.

Here, by limiting the scope of 'gender identity' protections to people who are medically trans-itioning, the RESULT that we seek is (the assurance of) SAFETY from predatory males seeking easy access to women's sex-segregated spaces. The result that the religious right seeks, on the other hand, is to reinforce heteronormative purity. The religious right has a larger AGENDA that is only partially served by limiting access to sex-segregated space. As you note, conservative reasoning:

ultimately benefits men in OTHER ways, which allegedly "leftist" men (and trans!) dont dispute or resent at all, like religion normalizing PIV for example. and making women second class citizens to men.

THIS is *their* ultimate goal. Ours is the opposite. It is a significant and meaningful difference that is purposefully ignored when this tired analogy gets trotted out over and over again by lazy people who REFUSE to undertake nuanced analysis. It is also an attempt to shame us; to elicit knee-jerk emotionally-motivated back-tracking on our part. We have solid reasons for our argument. These cheap shots don't phase me.

Along the same lines, for anyone who remains unconvinced, here is a less controversial example that may be easier to relate to: I agree with neocons and (some) religious people that public policy/laws should favor environmental protection over business profiteering. Does that mean we ALL hold the same political

views? NO. They are trying to serve GOD (or even long-term economics). I want to save the EARTH. Different. BIG difference.



11.

ehungerford

[August 17, 2011 at 5:22 pm](#)

@WOAJ, thanks for asking. It's unlikely that we'll ever hear anything from the UN about our submission.

But still, this was a valuable articulation of women's concerns about unregulated male intrusion into our sex-segregated spaces. We've obviously generated a LOT of (internet) discussion about 'gender identity' and I hope that will be considered "progress" in and of itself. We have to keep pushing these issues, though, because women are currently LOSING sex-based legal protections. They are being overwritten with the term 'gender.' This is not going to stop by itself. WE have to stop it.



12.

KatieS

[August 17, 2011 at 5:32 pm](#)

Elizabeth, I also think that having this faq and the original document might be helpful if we see other online discussions. We can cut and paste and cite these two articles. Or perhaps to forward to our local newspapers and legislators when appropriate. It would be great to have quick links to them, perhaps at the top of your blog, so they can be found easily.

In general, there's a wealth of information on some of these sites, and any way to make sure they stay accessible will help us spread the word so our rights do not get taken away.



13.

FCM

[August 17, 2011 at 6:50 pm](#)

Yes EH good point: the "result" looks very different from a female centric perspective. From a male centric one, all they see is restricted access to women. Lefty liberal dickwads and trans alike, this is what they see, from their perspective as men. Male identified women manage to see things men's way too. Big surprise, being that they are so far up men's asses! They are seeing out of men's eyes, instead of their own.



14.

FCM

[August 17, 2011 at 6:53 pm](#)

Or to put it another way, female safety versus female slavery. THAT'S what's different about the radfem versus religious right RESULT for us.



15.

FCM

[August 17, 2011 at 7:01 pm](#)

And it should bother ALL women that trans and trans politickers don't care about that distinction. It's kinda important.



16.

FCM

[August 17, 2011 at 7:09 pm](#)

* trans and trans politickers AND LEFTY LIBERAL MEN. Can't forget them! The fucking assholes!



17.

[ehungerford](#)

[August 17, 2011 at 8:33 pm](#)

female safety versus female slavery

@FCM, exactly!! From the female perspective, this is CRITICAL. Only from the MALE perspective would this make no difference. It's very, very sad to me how many WBW are unable or unwilling to make this distinction because they are so blinded by identification with males and male interests.

And it should bother ALL women that trans and trans politickers don't care about that distinction.

Yes. Yes, it should! It bothers me VERY much.

On the other hand, we have received support from several transsexual women regarding the reasonable nature of our submission. I am grateful for this. Just as not all WBW support the female point of view, you don't have to be a WBW to support female safety.



18.

[Cathy Brennan](#)

[August 17, 2011 at 8:53 pm](#)

I cannot overemphasize the sentiment expressed above. As many of you know, I fully support rights banning discrimination based on gender identity in employment, housing, and "truly public" accommodations. It is critical, though, to recognize that females have a rational interest in preserving sex-segregated space, free from potential male predation. Many women of transsexual history share this concern, as well. We have solidarity of interest – that is, an interest in protecting female safe space – rather than solidarity of "identity" per se. It is only in working to promote common interests that we can effect political change, as organizing around identities weakens – rather than strengthens – our abilities once everyone starts to peel off based on identity groups.



19.

[feistamazon](#)

[August 18, 2011 at 11:29 am](#)

Personally I'd like to see most bathrooms for wbw only, and then have a neutral facility for others. Instead they're making at least single stall bathrooms for both genders, and then I gotta go pee after men have messed it up. We DO need to feel safe in vulnerable single sex spaces for females, and free from predators, including drag queens or men imitating women. Also, it really bothers me that mtf's are also appropriating rape crisis centers too, with their low voices, male energy even if disguised as females or feminine appearing, most do NOT pass as female in any capacity. Perhaps there needs to be centers that are trans specific as well. I don't want 'gender identity' meaning 'whatever you feel you are in your head' replacing 'sex' and diminishing that as women, Lesbian, Butch Dyke, Female, straight, whathaveyou replaced by 'gender identity' and completely watered down to meaningless, while bio female womyn of all stripes still get victimized and discriminated against by men of all stripes, even those who consider themselves 'formerly male'.

-FeistyAmazon

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
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