WOMIN - Susan Smith, 11 September 2025

Good morning and thank you for inviting me to speak today.

I am one of the directors of For Women Scotland, alongside Marion Calder and Trina Budge, the organisation which won a landmark ruling against the Scottish Government in the Supreme Court in April of this year which established that sex in the Equality Act 2010 means biological sex. I want to talk to you about this case and why it was so important that we got this clarity in the law. Before I begin, I want to make a note about language. I believe that obscure language contributes to a lack of understanding. When I refer to men/women male/female, I am talking about a person's sex. This is not done to upset, but simply so that I do not spend the greater part of this presentation on definitions.

So why Scotland and why did a case which involved an obscure piece of legislation have such seismic consequences? The roots of go back decades, although, in the last ten years the fight has ramped up between a material understanding of the scientific reality of sex - and all the social, economic and political rights and implications flow from that - and what I will call gender identity ideology - the belief that biologic sex is trumped by a highly subjective sense of self and that women are and have been subject to discrimination and disadvantage not because of the physical reality of their sexed bodies but because of ill-defined feelings, personal preferences, and, I regret to say, some very regressive, sexist stereotypes about what men and women are and should be.

I don't want to dwell too long on the distant past (and if you are interested I urge you to read this book), but it's important to note that the campaign to chip away at

sex-based protections in law was long planned. A few years ago, a report by the legal firm Dentons was uncovered which set out that moves to get self-identification of sex into law should be attached to wider, more popular social changes, should be done under the radar, and, initially, targeted at smaller countries where political & policy capture was more achievable. A classic example of this is Ireland where self-ID was bolted on to equal marriage and abortion rights. Before people were aware, there were very violent male sex offenders in the women's prison in Limerick.

In Scotland, unlike in the rest of the UK, gender identity ideology was embedded in LGB organisations early on. In 2015, when Stonewall had only just taken up this particular baton, Scottish Trans Alliance gave evidence to the Westminster Women's and equalities committee arguing that schedule 9 of the EA, the Genuine occupational Requirement which enables employers to reserve a job for women - for example in a rape counselling service - should be removed and replaced with a requirement specifically for trans individuals. Already, Scottish Trans was offering training in the women's sector and they had succeeded in ensuring that applicants to the government violence against women fund had to have a trans inclusion policy.

James Morton the CEO of STA was also behind prison service policies which allowed self-id saying "We strategised that by working intensively with the Scottish Prison Service to support them to include trans women as women on a self-identification basis within very challenging circumstances, we would be able to ensure that all other public services should be able to do likewise."

As for those in power, there was embarrassment that Scotland had been slow to act on gay rights - homosexuality was not decriminalised until 1980 & - & Self ID was presented as the next civil rights movement.

So, by Jan 2018, when the Gender Representation on Public Boards Act passed, gender identity ideology was well established but the process had also been subtle. Most MSPs were completely unaware of a ticking time bomb which had been slipped into this legislation and it passed almost unnoticed. Our organisation was not even in existence, but my co-director, Trina Budge, had picked up the devil in the detail which was, eventually, to lead us into a five year battle through the courts.

In retrospect the story of this Bill is a study of hubris and overreach although at the time it felt like a nail in the coffin of women's rights. The purpose of the Bill was ostensibly to ensure 50:50 representation of women on public boards. But what was meant by women? To date, STA had relied on creating enough confusion around the interplay of the Equality Act & the Gender Recognition Act (which allowed a person with gender dysphoria to change a birth certificate) to claim that those with a certificate (GRC) had full rights as the opposite sex but as you couldn't know who had one, self ID should be the default. Scottish Trans, however, wanted something more concrete in law. James Morton, therefore, proposed to the committee that the definition of "woman" should include "a person with the protected characteristic of gender reassignment who is living in the female gender and does not include a person with the protected characteristic of gender reassignment who is not living in the female gender." and this found favour with the 6 members of the committee. The amended definition offered little guidance on what constituted a "living in the female gender" beyond pronouns. To add insult to

injury, appointing people did not even have to check or ask for evidence that Steve really had committed to “living as” Mary.

Challenges to legislation are time limited and we thought we’d missed the opening. Lobby groups were already citing the act as setting a precedent for self-ID so when the government consulted on implementation in 2020 we had to take the opening to challenge the Act. We believed that, by conflating 2 protected characteristics, the Scottish Government had acted beyond their competence. Initially we lost in the Outer House, in 2022, the Inner House of the Court of Session - the highest civil court in Scotland- ruled in our favour. The judgment stated that the protected characteristic of sex refers to a male or a female and that “provisions in favour of women must, by definition, exclude those who are biologically male”.

This SHOULD have been far more impactful than it was. Although it was a Scottish court, the ruling was persuasive for the rest of the UK and established that policies based on self-declaration of sex were not lawful.

So it was hugely frustrating that most organisations - including the government - continued to ignore it and to allow biological males to access spaces reserved for women solely on their say-so. Following our win, male murderers & sex offenders remained in women’s prisons and Edinburgh Rape Crisis was headed by a trans identified man who said that raped women should “reframe their trauma” if they objected to this male presence.

The Gov then did something which, at the time, we found frustrating and concerning but, in retrospect, proved to be a second terrible error on their part. They were supposed to strike out the faulty definition. Instead, they added a new

one – “woman” was to include any male with a GRC who had changed his birth certificate to “female”.

The timing was interesting. The Gov were steering Sturgeon’s pet project of gender reform through parliament. We repeatedly asked Ministers and civil servants what rights they thought were conferred by a GRC. In public, the excuse was that it was a simple admin change, only important for documents like marriage certificates, and making no difference to access to single sex services. But now the Court had exploded the idea that identity trumped sex, the Government was seemingly arguing for what we called Schrodinger’s GRC, something that made no difference to access to services when discussed in parliament, but all the difference in the world when in court.

When we took the decision to return to court it was with the knowledge that this would be a far more difficult case to argue. Indeed, our brilliant KC Aidan O’Neill was initially dubious. Most lawyers focused on section 9(1) of the Gender Recognition Act which said that gaining a GRC meant a “person’s gender becomes for all purposes the acquired gender.”

However, Trina believed that if sex was not understood to be consistent in the Equality Act it would make a mockery of the legislation - not least the sections on pregnancy and maternity which referred exclusively to women. She pointed out that section 9 (3) of GRA should apply which said that “Subsection (1) is subject to provision made by this Act or any other enactment or any subordinate legislation.” In other words a GRC changed your “gender” in law, except when - for good reason - it didn’t.

It was a stroke of genius and she soon persuaded our legal team.

Sadly, the Scottish Courts did not share our opinion and decided that the same word in an Act could, indeed, have a different definition in different parts of the act although this did not have to be explicitly set out. This would have led to an almost impossible situation where legislation which referred to men or women would be constantly open to challenge.

Even the Scottish Government's lawyers decided this was a bit too Alice in Wonderland and later argued in the Supreme court that women in possession of a GRC which changed their "certificated sex" to male were not covered by maternity provisions. This would have had an impact elsewhere, for example, pregnant women with a GRC would no longer have been covered by the abortion act.

The Equality and Human Rights Commission realised the insanity of this reading but, nevertheless, they agreed with it. Their argument in court was that the law was a mess - a highly unsatisfactory state of affairs which would have meant Parliament knowingly created a legal absurdity. They recommended a beleaguered Westminster should sort the mess out, something I imagine they were very keen to avoid and I think many there are grateful to us and the Supreme Court for sparing them that!

I know there were some on our side who were dubious about us fighting this case, but we felt that after all the obfuscation, lies and evasions about what a GRC did we needed clarity - we wanted no more slippery attempts to change law by stealth.

Thankfully, having listened to arguments about pregnant men and definitions of lesbians (sometimes 2 women, sometimes a man and a woman, sometimes 2 men) the Supreme Court decided that any reading of certificated sex made the Act unworkable and not only for women. The SG had already conceded that the cohort without a GRC did not have the right to services, spaces or protections for the opposite sex and this, as the judges correctly identified, created a two-tier category in Gender Reassignment as well as making a mockery of sex-based rights.

Sadly, in the wake of the ruling, there has been a great deal of misinformation - much of it deliberate. The "rights" which some groups argued they possessed were never conferred by law and had been the result of a steady encroachment and campaigns of misdirection. It has also become horribly apparent that compromise was never on the cards for some who continue to argue that the law should be defied. They are not content that GR is and remains protected and that adaptations should be made for trans individuals, but continue to demand an access-all-areas pass to women's spaces, sports, and services.

When we set out on this journey, we wanted a serious, grown-up discussion about the collision of rights - JC to address - about protections to ensure that loopholes would not enable predators to take advantage of self ID, about the impact on data collection (AS addressed) and service provision, how to account for sex in medical trials and treatment, and how to monitor male violence against women. I now see that the reason our opponents were unwilling to have this discussion is because there is no logical, rational or scientific basis for gender identity ideology. However, such is the continued power and influence of these groups in Scotland that the Gov continues to drag their heels over implementing the ruling and,

yesterday we announced that we will return to the courts to get orders to quash unlawful guidance in schools and prisons.

As my friend, former leader of Scot Labour, and fellow board member at Beira's Place Johann Lamont said in one of her last speeches to Parliament, "If members think that those definitions [of men and women] are wrong or are up for debate, say so, and we can have that debate." There is a reason redefining women was done quietly and behind closed doors because the internal contradictions of the activists crumble at the first breath of logic. In any open, honest debate you have to be able to marshal facts and evidence. No policies made in the dark can withstand the light of truth, science and the law.