

U.A. Resolution # 3

Adoption of an Inclusive Restroom, Locker Room, and Gender-Specific Facility Usage Policy

November 3, 2015

1 **Sponsored by:** Ulysses Smith, Employee; Ranking Member, University Assembly

2
3 **On Behalf Of:**

4 **UA Campus Welfare Committee; Brian Patchcoski, Associate Dean of Students/Director,**
5 **LGBT Resource Center**

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7 **Whereas,** The University’s Equal Education and Employment Statement declares that no person
8 shall be discriminated against based on “sex, sexual orientation, gender identity or
9 expression”; and

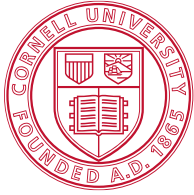
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11 **Whereas,** The 2011 Employee Survey and the 2013 PULSE Survey showed that 8.2% of staff
12 and 8.8% of undergraduate students, respectively, identified as gay, lesbian, bisexual,
13 questioning, or not specified; and

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15 **Whereas,** On July 1, 2014, President Obama signed Executive Order 13672, On LGBT
16 Workplace Discrimination, prohibiting federal contractors and subcontractors from
17 discriminating on the basis of sexual orientation or gender identity, effective April 8,
18 2015; and

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20 **Whereas,** The Office of Federal Contract Compliance Programs (OFCCP) has stated, “Under the
21 Final Rule, contractors must ensure that their restroom access policies and procedures do
22 not discriminate based on the sexual orientation or gender identity of an applicant or
23 employee. In keeping with the federal government’s existing legal position on this issue,
24 contractors must allow employees and applicants to use restrooms consistent with their
25 gender identity...”; and

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27 **Whereas,** On April 1, 2015, the EEOC ruled in *Lusardi v. McHugh* that the Department of the
28 Army violated Title VII by denying a transgender woman access to the common female
29 facilities; and

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31 **Whereas,** In its ruling, the EEOC stated, “Title VII prohibits discrimination based on sex
32 whether motivated by hostility, by desire to protect people of a certain gender, by gender
33 stereotypes, or by the desire to accommodate other people’s prejudices or discomfort...”;



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34 and

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36 **Whereas**, The EEOC further stated, “Nothing in Title VII makes any medical procedure a
37 prerequisite for equal opportunity (for transgender individuals or anyone else). An agency
38 may not condition access to facilities – or to other terms, conditions, or privileges of
39 employment – on the completion of certain medical steps that the agency itself has
40 unilaterally determined will somehow prove the bona fides of the individual’s gender
41 identity...”¹; and

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43 **Whereas**, The U.S. Department of Justice has stated, “Under Title IX, discrimination based on a
44 person's gender identity, a person's transgender status, or a person's nonconformity to sex
45 stereotypes constitutes discrimination based on sex. The term 'sex' as it is used in Title IX
46 is broad and encompasses gender identity, including transgender status...Prohibiting a
47 student from accessing the restrooms that match [their] gender identity is prohibited sex
48 discrimination under Title IX. There is a public interest in ensuring that all students,
49 including transgender students, have the opportunity to learn in an environment free of
50 sex discrimination.”²; and

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52 **Whereas**, The Student Assembly passed R.69: Making Campus Buildings Accessible in Spring
53 2011, and R.21: Availability of Accessible Gender-Neutral Bathrooms and Locker
54 Rooms on Campus in Fall 2011, both in support of creating accessible, gender-neutral
55 facilities; and

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57 **Whereas**, The University Assembly passed Resolution 2: Availability of Accessible Unisex
58 Restrooms and Locker Rooms on Campus in Fall 2011, proposing design standards for
59 universal restrooms, which was subsequently made effective June 30, 2015; and

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61 **Whereas**, Design and construction standards neither cover, nor include policies, protocols, or
62 procedures regarding the usage of any facility; therefore be it

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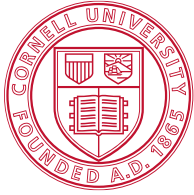
64 **Resolved**, The University adopt a formal policy or written statement that allows all University
65 community members (including visitors) to use the restroom or other applicable facility
66 that corresponds to their gender identity, without a letter or other burdensome items from
67 a therapist or doctor or proof of transition-related services and procedures; and

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69 **Be it Further Resolved**, Options for redress should this policy or statement be violated be made

¹ *Tamara Lusardi v. John M. McHugh, Secretary, Department of the Army*, 0120133395 (U.S. Equal Employment Opportunity Commission April 1, 2015).

² Brief for *Deirdre Grimm v. Gloucester County School Board*, 4:15cv54 (U.S. District Court for the Eastern District of Virginia Newport News Division June 29, 2015).



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70 clear and available to all constituents, and

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72 **Be it Further Resolved,** The Division of Infrastructure Properties & Planning revise the design
73 and construction standards by the conclusion of the Spring 2016 semester to include
74 recommendations for consistent signage for all universal facilities, as well as other
75 facilities including restrooms, locker rooms, changing rooms, and showers consistent
76 with ADA design standards³; and

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78 **Be it Further Resolved,** All existing single-occupancy or single-stall facilities in all Cornell-
79 owned buildings on the Ithaca campus be converted from gender-specific to all-gender
80 facilities, where not in conflict with building code or law, by the beginning of the Fall
81 2016 semester; and

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83 **Be it Finally Resolved,** The University update all applicable webpages to detail this policy or
84 statement and provide a map of universal restroom locations around campus that is made
85 available to the public.

³ U.S. Department of Justice. (2010). *2010 ADA Standards for Accessible Design*. Washington, D.C.: U.S. Department of Justice.