

To: [REDACTED]

From: PRISM

Subject: Recommendations Regarding Gender Neutral Restrooms at GSU

## EXECUTIVE SUMMARY

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**Problem statement:** There have been isolated conflicts exacerbated by the lack of gender-neutral restrooms on GSU campuses, and problems arising from individuals attempting to police who may use which restrooms. By “policing” in this document, we mean anyone taking it upon themselves to bully, harass, threaten or otherwise exclude any person from using a public restroom.

The policy of the University System of Georgia (USG) is that every building should have at least one gender-neutral restroom. This is not the case on the Atlanta campus, and PRISM has been unable to locate any gender-neutral restrooms on Perimeter College campuses.

The purpose of gender-neutral restrooms cannot be to segregate gender or sexual minorities away from the restroom they judge to be most closely aligned with their gender identity. Such segregation, if adopted as GSU policy, would qualify both as sex discrimination and as disparate treatment under federal law. Rather, gender-neutral restrooms provide a safe space for trans\* people<sup>1</sup> who elect to use them, as was acknowledged in 2016 by GSU Associate Vice President and Dean of Students Darryl Holloman:

*“These restrooms really help to provide choice for students because you don’t want to say the trans restrooms are just for trans students, right? They are an opportunity that if people feel uncomfortable or unsafe that they have safe spaces that they can utilize.”* (“[Gender-inclusive restrooms](#),” StudentAffairs.GSU.edu, published Nov. 21, 2016)

Individuals who do not wish to share restroom space with trans\* people are not entitled to special accommodations solely on that basis. However, single-stall restrooms effectively amount to a workable, non-coercive alternative for such individuals.

### Recommendations to address this issue:

1. A consistent, cultural expectation should be communicated and reinforced across the University that the decision of what restroom an individual uses is solely a personal one. It is not possible for others to police restroom usage, and therefore no one should attempt to police restroom usage.
2. GSU should put in place and publicize a formal procedure for hearing and responding to community member complaints about restroom accessibility. Had such a procedure previously existed, adequate numbers of single-stall and gender-neutral bathrooms might presently be available. (Note: it is worth discussing what role PRISM might play in supporting the needs of the University and our students. Human Resources would be the most logical avenue for faculty and staff who encounter issues.)

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<sup>1</sup> Here we have used the starred term *trans\** as an informal shorthand to describe persons who identify as transgender, persons who have a nonbinary gender or no gender, gender non-conforming persons who may be targeted for anti-trans discrimination on the basis of their self-expression, and others.

3. Separately, a program needs to be initiated to ensure that there is at least one gender-neutral restroom in each building on all campuses. In larger facilities, more than one should be provided.
4. The locations of single-stall and/or gender-neutral bathrooms on all campuses should be specified with exact locations (e.g., room numbers or clear directions, not just “1st floor”) in online restroom maps provided by GSU.
5. Existing HR policies and employment laws are sufficient to deal with issues which may arise in an altercation over who is in a restroom. The attempt to create policies that segregate individuals into specific accommodations are impractical and frequently discriminatory. We are pleased that GSU has avoided going down that path, and we encourage that approach. We do feel, however, it is incumbent upon the University to communicate to all stakeholders that the decision on what restroom to use is strictly a personal one and not subject to policing.

## BACKGROUND

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1. 

Per the [GSU Multicultural Center website](#), there are only 10 gender-neutral restrooms on the downtown campus. (Note that another document on the school website says there may be as many as 16. This is not clearly documented or easy to locate.) No information is available on restroom facilities on the other campuses.

### **2. Human rights as a basis for sustainable restroom access policy**

Were we to provide a summary of the legislative and political context for equity issues related to gendered restroom access, we might begin in 1852 with the earliest public flushing toilets available in Britain, which were typically restricted to men:

*women never travelled much further than where family and friends resided. This is often called the ‘urinary leash’, as women could only go so far as their bladders would allow them. This lack of access to toilets impeded women’s access to public spaces as there were no women’s toilets in the work place or anywhere else in public.* (C. Elphick, Historic-UK.com, [“The History of Women’s Public Toilets in Britain”](#))

But such a summary is beyond the scope of this document, and not required for the present purposes. We believe current and future policy disputes over restroom access can be resolved based solely on a modern understanding of fundamental human rights.

President Biden’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (EO 13988) articulates several such rights:

*Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports. Adults should be able to earn a living and pursue a vocation knowing that they will not be fired, demoted, or mistreated because of whom they go home to or because how they dress does not conform to sex-based stereotypes. People should be able to access healthcare and secure a roof over their heads without being subjected to sex discrimination. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. ([Executive Order 13988](#), WhiteHouse.gov, Jan. 20, 2021)*

Although the above excerpt from EO 13988 may be viewed by some as controversial, surely there is little dispute that every person has the right to be treated with respect and dignity and the right to live without fear. These latter rights have been internationally codified under the general heading of “[the right to bodily integrity](#),” which includes:

- the right to personal security (UN General Assembly, *Universal Declaration of Human Rights*, 1948, Art. 3),
- the right not to be subjected to cruel or degrading treatment or punishment (*ibid.*, Art. 5), and
- the right to protection of one’s mental integrity (UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 2006, Art. 17).

The meanings of these rights are plain. Their implications for policy are clear. But the patchwork of conflicting local ordinances, state statutes and federal case law governing restroom access in Metro Atlanta over the course of the Obama and Trump administrations can hardly be said to form a clear and coherent policy.

The resulting legal ambiguity is cruel in its effects on trans\* people: one is never certain whether or for how long one’s rights will be protected. Such ambiguity can lead to extremely serious mental health consequences, including suicide, as the following anecdote illustrates.

*Michele Hutchison, a pediatric doctor in Arkansas, testified in front of the state Senate last Monday, March 22, that just after the [anti-trans Arkansas Save Adolescents From Experimentation] bill passed the House, there were “multiple kids in our emergency room because of an attempted suicide, just in the last week.” (J. Yurcaba, NBC News, “[Arkansas passes bill to ban gender-affirming care for trans youth](#),” Mar. 29, 2021)*

An easily understood, unambiguous policy premised on the institution’s core values rather than on shifting legislative, political, and judicial outcomes will not only communicate a message of respect and inclusion to the GSU community—it may well save community members’ lives.

### **3. Why single-stall, gender-neutral restrooms are needed**

PRISM recognizes that trans\* and gender-diverse people have historically confronted, and continue to confront, degrading social treatment, ostracization from their communities of origin, identity erasure, pathologization in academic literature, hypersexualized stereotypes, dehumanizing work environments, cruel institutional policies, the never-quite-not-felt threat of physical violence by [cis het](#) male attackers, ubiquitous Othering, courts sympathetic to the “[trans panic defense](#),” and legislation that is sociopathically indifferent to its detrimental impact on trans\* people’s well-being and safety. We therefore understand why many transgender people prefer to use single-stall restrooms, particularly

those who unkindly describe themselves as “not [passable](#)” (warning: link contains hate speech). They do so in order to secure their right to be free from abuse, based on a rational assessment of risk.

On the other hand, we have not seen any evidence-based rationale for compelling any subset of trans\* people to use any particular type of restroom, gentlemen’s, ladies’, or gender-neutral, single-stall or multi-stall. In particular, we reject the unfounded assumption that trans women are more likely than cis women to attack other occupants of the ladies’ room. There has never been such an incident at GSU, and in fact the reverse is true: threatening behavior comes rather from those attempting to police the use of women’s restrooms.

Practically speaking, the focus and intent of much anti-trans\* bathroom legislation is to police who can be present in women’s restrooms. But laws requiring people to use the restroom of the gender assigned at birth fail to contemplate that there are transgender men who would then be required to use women’s restrooms.

Ultimately, providing single-user, gender-neutral restrooms accessible to all is seen as a logical, compromise solution. Recognizing the time and expense that solution requires does make the need for a clear and consistent campus policy more compelling.

#### **4. Impact of anti-trans\* environment on persons lacking white and/or economic privilege**

We cannot emphasize strongly enough that anti-trans\* sentiment disproportionately impacts people of color as well as working-class individuals of all racial and ethnic backgrounds.

Of the names read at the 2019 Transgender Day of Remembrance vigil at Atlanta City Hall, which commemorates the lives of transgender persons murdered in the U.S. during the previous twelve months, [90% of the slain](#) were trans women of color and/or Native American trans women.

We also note that any policy which conditions restroom access on one’s current genital configuration or physical appearance is undeniably economically regressive. Less wealthy people are less able to afford multiple gender-affirming surgeries (each costing between \$3,000 and \$50,000), facial depilation, hormone therapy, gender-appropriate clothing, fees to amend name and gender in government records, etc. PRISM is not aware of any healthcare plan in the U.S. which fully covers the costs of gender transition.

#### RECOMMENDATIONS

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The Department of Labor’s (DOL) Occupational Safety and Health Administration (OSHA) “requires that all employers under its jurisdiction provide employees with sanitary and available toilet facilities, so that employees will not suffer the adverse health effects that can result if toilets are not available when employees need them.” The core principal that OSHA articulates is that “All employees, including transgender employees, should have access to restrooms that [correspond to their gender identity](#).” While we of course advocate for faster creation of adequate, gender-neutral restrooms in all GSU facilities, those facilities serve to provide comfort to people who do not wish to share spaces with

gender and sexual minorities. We believe that the University should make a stronger statement in policy manuals and on its websites.

Hence, we recommend adopting a policy statement that accomplishes the following:

- Remind faculty, staff, students, community members of the need to support the rights of all people—including trans\* people—and that diminishing those rights runs contrary to the values of the University. An individual’s gender identity or expression is one such right, which must be respected.
- As such unless an individual has a preference for another option, all faculty, staff, students and guests of the University have the right to use the restroom and locker room consistent with their gender identity or gender expression.
- School leaders should do their best to address the needs of the University community and should provide a private facility, such as a single-occupancy restroom or changing station, or privacy curtains for any individual who feels uncomfortable in the restroom or locker room.
- Lastly, we believe that University leaders should ensure that all incidents of discrimination, harassment or violence are thoroughly investigated and that appropriate actions are taken.

## REFERENCES

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The Occupational Safety and Health Administration “Best Practices, A Guide to Restroom Access for Transgender Workers.”

<https://www.osha.gov/sites/default/files/publications/OSHA3795.pdf>

Cambridge University Behavioral & Public Policy Journal “Gender Neutral Bathrooms, A New Framework and some Nudges”

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National Association of Secondary School Principals, “Position Statement: Transgender Students.”

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