



FAQ about NJ's County Committee Seats & Gender ID Requirements

What is a County Committee? In NJ, both Republicans and Democrats select candidates for endorsement on their “line” through a process that involves electing local representatives at the neighborhood or voting district level (in some cases, they are at-large). These representatives serve in this capacity at both the municipal and county level and are responsible for nominating candidates up and down the ballot for office in their party’s primary (i.e, candidates in “the Regular Democratic Party” and the “Regular Republican Party”). County Committee members vet and nominate candidates for office from people running for President of the United States to City Council. At the municipal level, these representatives also have certain statutory responsibilities under NJ law, including to recommend partisan candidates to a municipal governing body in the event of a vacancy. While County Committee may not be a well-known position, the representatives are extremely powerful.

How are the Committee members chosen? In most cases, County Committee members are nominated by the municipal chairperson and they run unopposed. There are often vacancies, and parties in many places have struggled to fill all of their seats. In other cases, challengers who want to see change in the party or leadership or bring new ideas nominate themselves and run “off-the-line” (and often far away on the ballot. That’s a FAQ for a different time). Usually very few people vote for Committee, so it is an accessible way for newcomers to get involved and for long-serving party members to contribute. Only registered Democrats can vote for Democrats, and only registered Republicans can vote for Republicans. (Unaffiliated aka “independent” voters can become registered with a party simply by showing up on Primary Day and participating with one party.)

Who can serve as a Committee member? Who cannot? NJ’s law says primary party voters can choose one man and one woman per voting district for their party. This rule was included in the 1947 NJ constitution, along with a rule requiring that the chair and vice chair of each county party must be of the opposite gender from each other. In 1947, it was very important to ensure that the major political parties included women, who had only won the right to vote 27 years earlier. Under the law now, two women are forbidden from running and serving together. Additionally, non-binary and transgendered candidates cannot serve because they may not identify as a man or a woman.

Is the Gender ID rule universally applied and supported? NO. In 1997, Burlington County Assignment Judge Wells examined the same law, N.J.S.A. 19:5-3, and struck down the opposite gender-requirement for county chairs and vice-chairs. As Judge Wells explained over two decades ago: “While it is apparent that the statute’s likely intent at the time of its passage was the remedial goal of assuring equal representation in top political party leadership of the two genders, that purpose has been largely subsumed by the pronouncements of both federal and state law striking down gender-based discrimination... In fact, while N.J.S.A. 19:5-3 was once enacted to protect women, it can now be argued that it serves to bar them from at least 50 per cent of the seats available for top leadership. So while at one time the law may have been viewed as salutary to equalize opportunity between the genders in the political forum and to encourage women’s involvement in politics, such a law now has an effect opposite to its original design.”

In fact, County Clerks in six counties do not enforce the gender ID rule, relying on Judge Wells’ Burlington County ruling. For many years, clerks in Cape May, Cumberland, Hunterdon, Mercer, and Passaic have listed the office on the ballot without regard for gender. Voters in these counties can vote for two County Committee members, in much the same way NJ voters choose two Assembly members. The two candidates with the highest vote count win, regardless of gender. In Essex County, the ballot says “Committeeman” and “Committeewoman” but people have been appointed by at least the Democratic Party chair to serve in these

roles regardless of gender. NJ's case law prohibits the enforcement of the gender ID rule. Judge Wells did not limit his ruling to the chair and vice-chair positions. He explained: "Clearly, taking N.J.S.A. 19:5-3, the Supreme Court's pronouncement in *Eu*, and the policy in this State against discrimination together, N.J.S.A. 19:5-3 is rendered unconstitutional and invalid." As the Mercer County Clerk explained to NJ Spotlight, "It is unconstitutional to require the seats be filled by gender. There is still a statute that says it should be one male and one female. But there is case law...Most of us [clerks] are relying on that. But all counties are not the same. Some do still use the statute." Notably, the NJ Office of Attorney General has also publicly advised that Judge Wells' Burlington County case should be followed universally to apply to all County Committee races.

What is the impact in these places? In these places, people have been serving together regardless of gender for quite a while. No one has appealed the Judge Wells decision, and no challenge has been made to the practices in these counties. There is no basis to believe women have been harmed by the lack of gender ID enforcement. Instead, more women have run for office and more women have won and served. A review of the data from the Democratic Party committee lists available online indicate that more women are serving as County Committee members in these counties. The more women can run, the more women can win.

What is the status of the law? In April 2019, eight women and a non-binary candidate filed to run for Committee as part of the Central Jersey Progressive Democrats (CJPD) in Middlesex County. The candidates and CJPD sued the Middlesex County Clerk Elaine Flynn for enforcing the gender identity rule when she would not let them run as Committee members. The eight women were four slates of two candidates per district, who were otherwise prevented from running together; the non-binary candidate was outright barred from running unless they chose a gender identity. The Court ruled for the candidates, issuing emergent relief that allowed them to run without regard to gender identity. Judge Jacobson cited the Burlington County decision and the outright bar on non-binary candidates, as in conflict with NJ's other laws against discrimination. Winning emergent relief like that is a very high bar, and is usually only granted when plaintiffs are likely to prevail on the merits of the case in the long term. The case is proceeding now through the courts for a final resolution.

Women now have a guarantee of half the seats. Couldn't changing the law mean fewer women running and serving? Even with half of the seats set aside for women on the Committee level, NJ's political bosses are almost exclusively male. In many cases, the women who are serving are doing so because a man chose them to fill a spot. Allowing two women to run together means that more women can run and serve. Parties could adopt their own rules to balance Committees, like requiring that every district have at least one woman. Party rules, however, are different than the state law. As a matter of state law, the question is whether voters may vote for "committeeman" and "committeewoman" rather than "committee persons." Whether the parties want to nominate for election two candidates who happen to be a man and a woman is a separate question. Both Judge Wells in the Burlington County case and Judge Jacobson in the CJPD case have ruled with the plaintiffs regarding the discriminatory and unconstitutional nature of the sex quota. The state cannot help parties select candidates with a gender identity requirement any more than it could help with a racial one. As fewer counties enforce this rule, we expect that more and more people will run. Parties can always adapt their own rules, but the question in the CJPD case is whether the machinery of the state can be used to prescribe candidacy selection on account of sex.

The gender ID rule was once a floor set by the parties and enforced by the state, but it is now a ceiling for women and a closed, locked door for some LGBTQIA individuals. We can smash the ceiling, open the door and let everyone participate in democracy, regardless of their gender.