

# LAMBDA INDEPENDENT DEMOCRATS

OF BROOKLYN

## Response to the Request for Invitation for Public Comments to the Kings County Democratic Task Force on Gender Discrimination and Representation

December 1, 2020

### A. Executive Summary

Lambda Independent Democrats of Brooklyn (LID) has evaluated the nine proposals drafted and distributed by the Kings County Democratic Task Force on Gender Discrimination and Representation (“Task Force”) chair Aaron Maslow.<sup>1</sup> LID has evaluated each proposal, summarized, made comments and indicated whether such proposal is to be strongly recommended, recommended, not recommended or discouraged.

In guaranteeing inclusion of gender nonbinary persons, LID’s policy calls for the dismantling of barriers to participation.<sup>2</sup> Such barriers, as discussed below, include mandatory caps on participation by gender nonbinary people and the disclosure of a person’s gender. Rules that impose such requirements impose a hardship on gender nonbinary persons, particularly in the realm of privacy, security and safety.

### B. Nonbinary Persons in Politics

It is too easy to say that the status quo<sup>3</sup> was developed at a time when “there were no gender nonbinary people” or “they weren’t thinking about that in those days.” While the latter may be true, the former is not. Gender nonbinary and non-conforming persons have been acknowledged as extant since the Middle Ages.<sup>4</sup> The development of rules categorically prohibiting gender nonbinary from engaging in politics is a categorical erasure of their existence.

### C. Summary of LID’s Position

The scope of LID’s comment is limited to the prima facie merits of each proposal as evaluated in light of the policies adopted by LID. This comment does not address the potential that the proposals, or any such amendments to the County Committee’s rules crafted by this Task Force, are preempted by local or state law or, further, unconstitutional. Consideration should be given to the extent that any rule adopted may be, on its face, potentially preempted. Though there may be legal arguments standing for the principle that a party has a right to self-association which cannot be limited by statute,<sup>5</sup> the rights of gender nonbinary people to participate in local politics shouldn’t exist under a question mark. The possibility that a rule crafted to include nonbinary people could be litigated presents its own barriers to inclusion, and gender

---

<sup>1</sup> Lambda Independent Democrats of Brooklyn, established in 1978, is Brooklyn’s only LGBTQ political organization.

<sup>2</sup> <https://lidbk.com/platform>

<sup>3</sup> “Status Quo,” where indicated, shall mean the current rule structure which allows for only persons gendered male or female to run for County Committee seats.

<sup>4</sup> [https://nonbinary.mirabeze.org/wiki/History\\_of\\_nonbinary\\_gender](https://nonbinary.mirabeze.org/wiki/History_of_nonbinary_gender)

<sup>5</sup> *New York State Bd. Of Elections v. Lopez Torres*, 552 U.S. 196 (2008); *California Democratic Party v. Jones*, 530 U.S. 567 (2000); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208 (1986); *Democratic Party of United States v. Wisc. Ex rel. La Follette*, 450 U.S. 107, 122 (1981).

nonbinary people may choose not to participate knowing that their newly found rights could be stripped by a court of law. As such, the Task Force should endeavor to create rules that comply with local, state and federal laws.

The status quo also requires men and women running to identify their gender on their designating petitions. For many people, this is not a problem. However, for persons who, for a variety of reasons, may not wish to express their gender in a public manner, this “outing” imposes a barrier to participation in politics. In particular, many gender nonbinary people may not wish to submit their gender to public disclosure, such as a petition, in order to protect themselves and their privacy. We believe these barriers disproportionately impact transgender and gender nonbinary persons.

In general, LID also disfavors proposals that would limit the number of nonbinary people who may serve in a given electoral or assembly district.

Broadly, the majority of the proposed amendments lump candidates into three categories by gender: male, female and gender nonbinary. We are loath to use such categories. LID believes that gender is a spectrum, with gender identities being unique and very private to each individual.

As such, categorizing is problematic and can be difficult to do. However, in order to accurately provide comment on these proposals, this document treats male, female and gender nonbinary each as a single “category.”

To the extent that the proposals use the term “gender fluid,” it is assumed that the drafters will change this term to “gender nonbinary.” As such, this comment shall use the term “gender nonbinary” in place of the term “gender fluid” where it appears on each proposal.

LID has ranked each proposal presented by Chair Maslow as Strongly Recommended, Recommended, Not Recommended or Discouraged.

#### **D. LID Comment and Position on Proposals**

##### **Proposal 1 — Discouraged**

Proposal #1 would maintain the status quo but add an “at-large” position for gender nonbinary persons. The proposal creates at-large seats numbering three percent of the number of county committee seats in a given assembly district.

By creating a limited separate category, this proposal puts a cap on the number of gender nonbinary people who may serve in a given assembly district. Such a ceiling is considerably lower than the number of seats allotted to persons who identify as male or female.

For example, if an Assembly District contains 100 county committee seats, the status quo would mandate occupancy of these seats by 50 men and 50 women. Under this proposal, 3 seats would then be created for gender nonbinary people. Objectively, this is grossly disproportionate as it places a very low cap on the number of gender non-conforming people who may serve in each assembly district. Indeed, any such percentage, no matter how high, would do so. This proposal also requires self-identification of gender. Therefore, this proposal is strongly discouraged.

##### **Proposal 2 — Not Recommended**

Proposal #2 would create an individual seat each for male, female and gender non-binary people. In four-person districts, the fourth seat would be “open competitive,” meaning that there is no restriction

based on gender for this fourth seat; a three-person district would be comprised of seats limited only to one man, one woman and one nonbinary individual, while 2-person districts would be open competitive to all gender identities.

While this proposal promotes an entry for gender nonbinary people while preserving a seat for women, it also requires gender non-binary persons to publicly designate their gender. The ceiling it places on men, women and gender-non binary persons does not account for the aforesated diversity of the full spectrum of gender, particularly among gender non-binary persons. It forces all gender non-binary people into one category. Accordingly, it is not recommended.

### **Proposal 3 — Not Recommended**

This proposal is applicable only to instances where there is a primary. Contestants must provide a gender designation on their petition. In the event that there are fewer petitioners than, or as many as, there are seats, all petitioners are declared elected. In the event of a primary, the designation will not appear on the primary ballot.

In the event of a primary, this proposal functions as follows:

- In two-person districts, the election is essentially open competitive if all candidates identify as the same gender. In races where there is more than one candidate from any of the three gender categories, the top two of the three finishers are elected.
- In three-person districts, seats will go to the top finishers from each category. In the event that there are candidates from only two categories, the top finisher of each shall be elected with the third seat going to the next highest finisher, regardless of gender.<sup>6</sup>
- In four-person districts, in the event that candidates come from all three categories, the top finisher from each category shall be elected, and the fourth candidate elected shall be the next highest finisher from any category.<sup>7</sup>

This proposal has merit in that it promotes some degree of anonymity while promoting an equal opportunity for people from each category to win a seat. However, it requires people to “out” themselves on their petitions — petitions that are viewed and signed by voters living in the district. Persons from any given category may not wish to publicly disclose their gender in such a way and, as such, may be deterred from running.

Because of this potential deterrence, this proposal is not recommended.

### **Proposal 4 — Not Recommended**

Proposal 4 provides a preference for gender nonbinary persons in that, in the event of a primary for any given electoral district, the top-performing gender non-binary person is guaranteed a seat. The remaining seats are allotted based on the highest-finishing candidates without regard to gender (e.g, in a two-person district, two gender non-conforming persons run along with one female; the highest-performing

---

<sup>6</sup> Meaning that there could be at most two people from one given category elected; e.g., where there have been four petitioners, one being female and three being gender non-conforming, the female candidate will be elected along with the top two gender non-conforming finishers

<sup>7</sup> Meaning that there will be two persons from one category elected in such a district; e.g., in the event that there is one male candidate, one gender non-conforming candidate and two female candidates, the composition of the electoral district shall be one male, one gender-non conforming person and two female persons.

gender non-conforming person is automatically elected; then, the highest ranking of the other two is elected, which supports the possibility that such district may consist of two gender-non binary persons).

Though meritorious for promoting the inclusion of gender non-binary persons, the persistence of requiring disclosure of gender poses a barrier to participation. This proposal would also force female candidates to run against male candidates separately from gender non-binary candidates, and as such promotes a degree of inequality in that two out of three categories are forced to run against one another while the other is not.

#### **Proposal 5 — Not Recommended**

This proposal extends the preference given to gender non-conforming persons in proposal #4 to female candidates in the event of a primary. As such, in any given district, the top female and gender non-conforming person will be elected first, with any remaining districts going to the other top finishers.

While this proposal is meritorious for offering protections to both non-binary persons and women, it continues to present the issue of disclosure and self-identification and is therefore not recommended.

#### **Proposal 6 — Strongly Recommended**

This proposal would eliminate any reference or preference to any gender category, allowing persons of all categories to run against each other with the highest-performing candidates being elected consistent with the size of the district.

This proposes no limitations on the category of persons who may represent a given district. This would permit a district to be represented by more than 50% women or gender nonbinary people.

By eliminating the barriers to gender, candidates do not need to identify their gender on their designating petitions or ballots. There are no barriers to participation. LID firmly believes that this proposal would lead to greater and freer participation of gender non-binary individuals within the County Committee and the Kings County Democratic Party writ large.

#### **Proposal 7 — Recommended**

This proposal similarly eliminates any reference or preference to any gender category. This proposal then goes further by adding “at-large” positions for a number of underrepresented categories.<sup>8</sup>

Though this proposal has merit in that it removes barriers and prevents gender identity disclosure for open competitive seats, candidates for the “at large” gender nonbinary seats still would have to disclose their gender.

#### **Proposal 8 — Discouraged**

This proposal sets aside a preference category for women and creates at least one open competitive seat. No preference is set aside for men or gender nonbinary persons. As such, gender nonbinary people are forced to compete with men running for county committee. This proposal also requires the disclosure of one’s gender. As such, this proposal is discouraged.

#### **Proposal 9 – Not Recommended**

---

<sup>8</sup> Based on information provided by Chair Maslow, creation of additional categories beyond gender identity is outside of the scope and mandate of this Task Force.

This proposal is similar to proposal #8, but would allow all genders to run for the open competitive seat. Though creating more equity than #8, it still places a cap on the equal participation of gender nonbinary individuals. It also requires disclosure. As such, this proposal is not recommended.