

“Social justice should be the underlying goal of all humanity.”

-Alan V. Lowenstein, Institute Founder



Testimony of Nuzhat Chowdhury
New Jersey Institute for Social Justice
In Support of A5343

New Jersey Assembly State and Local Government Committee
Monday, December 18, 2023

Chairman Verrelli, Vice-Chair Swain and members of the Committee:

Thank you for the opportunity to submit this testimony.

My name is Nuzhat Chowdhury, and I am a Senior Counsel in the Democracy and Justice Program at the New Jersey Institute for Social Justice (the “Institute”). The Institute uses cutting-edge racial and social justice legal advocacy to empower people of color by building reparative systems that create wealth, transform justice and harness democratic power—from the ground up—in New Jersey. We work to build and strengthen a robust and inclusive democracy by advocating for reforms that make voting and democracy more accessible, and through election protection efforts, such as social media monitoring during primary and general elections.

We submit testimony to support the intent of A5343, which would change the deadline for unaffiliated mail-in voters to declare their political party before a primary election. This bill seeks to fix a gap in the law created in N.J.S.A. 19:23-45, or former bill A3820 from last session, which was signed into law in July 2022. However, in its attempt to address the existing problem, A5343 also creates additional confusion for unaffiliated mail-in voters.

I. Unaffiliated Voters and Voting by Mail Are Integral to a Strong New Jersey Democracy

In New Jersey, unaffiliated voters numerically rival their partisan counterparts. As of May 2022, there were over 2.3 million unaffiliated voters, making up 36.6% of the state electorate.¹ While party affiliation does not impact voting in general elections, individuals are barred from voting in primary elections if they are not registered with a specific political party. This means that 36.6% of the state’s voting population must declare a political party by state deadlines in order to be eligible to vote during primary elections.

¹ Joey Fox, *N.J. unaffiliateds continued registration rise in April*, New Jersey Globe, May 3, 2022, <https://newjerseyglobe.com/voters/n-j-unaffiliateds-continued-registration-rise-in-april/>.

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Unaffiliated voters who choose to vote-by-mail must additionally meet state requirements to request mail-in ballots before the appropriate deadlines.

Voting by mail has become fundamental to making New Jersey’s democracy more accessible to more voters. The option to vote by mail is both popular and practical; not only does it allow voters who have health concerns or time constraints on Election Day to participate safely, some voters—such as voters with disabilities or older voters—rely on it to be able to vote at all. In fact, of the roughly 1.76 million New Jerseyans who cast votes during the general election this past November, 26.9%—or more than one quarter—of those voters chose to vote –by mail.² This is a 5% increase from 2021 and 2022—and we expect that number to continue to rise in the upcoming 2024 presidential primary and general elections.

Vote-by-mail is here to stay. This reality makes it vital to ensure that unaffiliated voters are able to vote by mail as easily as affiliated voters.

II. Former Bill A3820 Creates an Unfair Two-Tier System for Unaffiliated Mail-In Voters

In July 2022, Governor Murphy signed into law former bill A3820, which complicated the process for unaffiliated voters to vote by mail during primary elections. A3820 changed the previous system by prohibiting unaffiliated mail-in voters from receiving mail-in ballots for primary elections. Where before, unaffiliated mail-in voters would be sent mail-in ballots for both parties for upcoming primary elections, A3820 barred this. Now, unaffiliated voters must first be sent a political party affiliation declaration form by their municipal clerk or the county commissioner of registration. The declaration form must be returned 55 days before the primary election. Unaffiliated voters must then wait additional time to be sent the appropriate mail-in ballot if they are already signed up to receive mail-in ballots or wait even longer if they need to first apply for mail-in ballots and then be sent the appropriate one. Affiliated voters who are signed up to receive mail-in ballots, on the other hand, are sent the mail-in ballot from the outset; they do not need to submit any forms ahead of time and they do not need to go through any additional step before voting.

This legislation in effect created an unfair two-tier system where unaffiliated voters face a different voting process than affiliated voters.

The new—and current—system leaves unaffiliated voters with significantly less time to make a decision about their party or candidates of choice; it forces them to choose what party to register with, sometimes before candidates are even declared. The current system also forces unaffiliated voters to go through extra steps before voting, unlike their affiliated counterparts.

We appreciate that the current bill, A5343, at least attempts to fix the 55 day deadline problem.

² Nikita Biryukov, *Little by little, perpetual vote-by-mail list reshapes New Jersey’s off-year elections*, [New Jersey Monitor](https://newjerseymonitor.com/2023/11/30/little-by-little-perpetual-vote-by-mail-list-reshapes-new-jerseys-off-year-elections/), Nov. 30, 2023, <https://newjerseymonitor.com/2023/11/30/little-by-little-perpetual-vote-by-mail-list-reshapes-new-jerseys-off-year-elections/>.

III. The Current Bill A5343 Would Fix Gaps Left by A3820, but Create New Problems for Unaffiliated Mail-In Voters

A5343 would allow unaffiliated voters to submit their party declaration form and vote by mail up until the in-person deadline to apply for all mail-in ballots, instead of 55 days in advance. It would also allow unaffiliated voters to declare a party and cast a provisional ballot in-person on the day of the primary election.

This simple change helps close the deadline gap between unaffiliated and affiliated voters. By giving them more time to make decisions, this change would also likely encourage more unaffiliated mail-in voters to declare a party and vote in primary elections.

However, the suggested language of A5343 also creates additional confusion for unaffiliated mail-in voters. Currently, A5343 would require unaffiliated mail-in voters who are newly requesting a mail-in ballot for the primary election to send or deliver two different forms to two different offices: first, the party affiliation form to the municipal clerk or the county commissioner of registration, and second, the application for the mail-in ballot to the county clerk. For voters delivering these forms in person, these two offices may not even exist in close physical proximity to one another. This additional wrinkle in the procedure may also confuse voters who need to address and send these forms to two different offices by mail.

Unaffiliated mail-in voters already have to navigate voting with an extra step; A5343's fix would add yet another hurdle to cross before voting. This may make the entire process so needlessly complicated and onerous that it disheartens these voters from voting altogether.

We therefore strongly urge this committee to amend the language of A5343 to allow unaffiliated mail-in voters to send and deliver both forms to only the county clerk's office.

Further, while we generally support the intended fixes that motivate A5343, this bill does not change the unfair two-tier system that was created by A3820 in July 2022. Unaffiliated voters still must take a burdensome additional step before voting in a primary election, unlike affiliated voters. This extra step may discourage the 36.6% of the state electorate it applies to from bothering to vote in primary elections at all.

The solution to this problem is simple: the legislature should repeal the two-tier system put in place in 2022 and return to the previous method of automatically mailing unaffiliated mail-in voters their party affiliation form and mail-in ballots from both parties.

IV. Conclusion

With the upcoming 2024 elections and more and more New Jersey voters choosing to vote-by-mail, it is imperative that New Jersey create equal opportunities for all voters to participate in democracy. A5343 offers a necessary temporary fix, but we urge the legislature to address the

bigger problem.

We urge you to repeal the unfair two-tier system created under N.J.S.A. 19:23-45, or former bill A3820, and return to the previous system of mailing primary ballots, so that unaffiliated and affiliated voters can once again vote by the same process during primary elections.

Thank you.