

“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 Opposition to S4142
New Jersey Senate Judiciary Committee
Thursday, February 20, 2025

Chair Stack, Vice Chair Singleton, and members of the Committee:

Board of Trustees

Paulette Brown, Esq.

Chair

Robin A. Lenhardt, Esq.

Vice Chair

Kenneth Y. Tanji

Treasurer

B. John Pendleton, Jr., Esq.

Secretary

Ryan P. Haygood, Esq.

President & CEO

Douglas S. Eakeley, Esq.

(Immediate Past Chair)

John J. Farmer, Jr., Esq.

(Past Chair)

Paul J. Fishman, Esq.

Michael D. Francis, Esq.

Jerome C. Harris, Jr.

Rev. Timothy Adkins-Jones

Sandra King

John H. Lowenstein, Ph.D.

Diana DeJesus-Medina

James McQueeney

Patricia Nachtigal, Esq.

Darrell K. Terry, Sr.

Martin Vergara II

Nina Mitchell Wells, Esq.

Antoinette Ellis-Williams, Ph.D.

Gary M. Wingens, Esq.

Zulima V. Farber, Esq. *(Emerita)*

Roger A. Lowenstein, Esq. *(Emeritus)*

Theodore V. Wells, Jr., Esq. *(Emeritus)*

Founders

Alan V. and Amy Lowenstein*

Founding Board President

Nicholas deB. Katzenbach, Esq.*

Founding Board Vice President

Hon. Dickinson R. Debevoise*

*deceased

60 Park Place, Suite 511

Newark, NJ 07102-5504

ph. (973) 624-9400

fax (973) 624-0704

email: justice@njisj.org

www.njisj.org

do social justice.

My name is Nuzhat Chowdhury, and I am the Director of the Democracy & Justice Program at the New Jersey Institute for Social Justice (the “Institute”). The Institute works to build and strengthen an inclusive, multiracial democracy by advocating for reforms that make voting and democracy more accessible.

By now, we all know the impact that New Jersey’s primary ballot design has had on New Jersey voters. For years, the county line has suppressed voter turnout by fueling voter disillusionment and distrust in the integrity of New Jersey’s democratic process.¹ Seeing uncompetitive primary races² and a lack of meaningful choices, voters, especially Black and other voters of color, have come to believe that election results in New Jersey are a foregone conclusion.³ Among Black and other voters of color, New Jersey has earned a reputation as a state where “[p]arty insiders, elected officials, and power players”—not the voters—“pick our representatives for us.”⁴

After years of being beholden to the county line, the District Court and Third Circuit decisions in *Kim v. Hanlon* has finally given us the opportunity to create a fair and impartial primary ballot in New Jersey. Ballot design reform comes at a crucial time when many voters feel uncertain about the future of our democracy. We can no longer allow New Jersey’s bad primary ballot to disenchant voters and suppress their voice and vote.

As we look to design a new ballot, the question we should ask is how can we be the *most* voter friendly—not what can we get away with?

S4142 still tries to get away with too much, and without any public feedback before the vote. The bill incorporates features that will once again lead to the creation of unfair ballots.

Because New Jersey voters deserve a clean and simple ballot, without workarounds to create unconscious bias, the Institute opposes S4142.

In addition to allowing bracketing of joint petition candidates and retaining an outdated manual draw system, the current language of the bill also

introduces unnecessary number-letter markers and removes best practices around font requirements. Taken together, the bill allows for the creation of a ballot that can be used to influence voters, as opposed to a neutral, impartial and fair ballot that allows voters to choose their candidates without interference.

The Institute therefore strongly urges the Committee to consider the following changes to S4142 before allowing its passage.

First: As we have consistently insisted—in both our *amicus* briefs in the *Conforti v. Hanlon* and *Kim v. Hanlon* cases and in previous testimony on ballot design reform—any new ballot design must eliminate bracketing for all elections. Experts in both the *Conforti* and *Kim* cases have presented significant evidence on the negative impact that bracketing has on voter choice. New Jersey’s new primary ballot design should aim to be neutral, which includes not grouping any candidates together, even if they have filed a joint petition.

Joint candidates who have received the same endorsement will be identifiable as such to voters by the matching slogans next to their name. There is no reason to create a mini-bracket within a new ballot design that purports to follow court orders to abolish the bracketing of the county line. Doing so, even on a smaller scale, violates principles of ballot neutrality.

We strongly urge this Committee to reconsider the provisions allowing bracketing of joint petition candidates.

Second: Design and ballot formatting elements should remain uniform and consistent throughout the state so that ballots do not promote the same kind of ballot design bias found in the county line, and so that ballots do not continue to compromise voter choice and create voter confusion.

There is no reason for this principle to be violated for joint petition candidates. And there is no reason to not have good ballot formatting requirements, such as consistent fonts and font sizes, for voter accessibility.

We therefore strongly urge this Committee to adopt the good ballot formatting requirements that were originally in A5116.

Third: To create a fair and impartial ballot, any new ballot design must be free of all extraneous symbols and indicators. Voters are smart enough to read names and slogans on a ballot and understand endorsements easily. Adding numbers and letters next to a name, such as this bill requires in section 2(6), adds an inappropriate thumb on the scale, and allows the same sort of campaigning through ballot design that the county line was guilty of. This is no less true for the design being office blocks instead of rows. At the end of the day, it is the job of an incumbent candidate—not the ballot—to make sure their constituents know they are currently serving them.

Therefore, we strongly urge this Committee to eliminate the letter and number markers required by section 2(6) of the current bill.

Finally: In 2025, there is simply no reason for New Jersey to continue an outdated and onerous manual ballot draw procedure, especially when it cannot guarantee neutrality.

The entire ballot draw process should be modernized and simplified. All counties should be required to conduct an electronic, randomized draw, and county clerks should be required to rotate the names of candidates after the initial draw, to counteract any “primacy” advantages given to the first candidate drawn. These changes would allow for more efficient, quicker ballot draws that are consistent in method across the state and would help eliminate unintentional ballot positioning biases.

We strongly urge this Committee to modernize and randomize the ballot draw to help make the process fairer overall.

The first step to counteracting the widespread voter disillusionment and distrust in New Jersey is to give voters a fair and impartial ballot that allows them to truly vote the way *they* intend.

Thus, on behalf of New Jersey voters, the Institute opposes S4142. We strongly encourage this Committee to incorporate the abovementioned improvements and vote no on the current version of the bill.

Thank you.

¹ In general, voter disillusionment and frustration leads to lack of trust in the government, the electoral system, and voting, which in turn leads to low rates of voter engagement. See *Why voting-eligible citizens sat out the 2020 election*, PUBLIC WISE RESEARCH (June 10, 2022), <https://publicwise.org/publication/why-voting-eligible-citizens-sat-out-the-2020-election/>.

² In 2021, only 10% of New Jersey’s legislative positions were contested in the primaries. Two years later, after redistricting, that percentage of contested primaries in the state increased only minimally—to 11.3%, one of the lowest percentages in the country. Colleen O’Dea, *Will the new Legislature be any more diverse than the last?*, N.J. SPOTLIGHT NEWS (Jan. 9, 2024), <https://www.njspotlightnews.org/2024/01/how-diverse-is-njs-221-legislature/>.

³ The skepticism is warranted. No incumbent state legislator on the county line has lost a primary in New Jersey since 2009, and only two incumbent congressional legislators on the county line have lost a primary in the state in the last 50 years. JULIA SASS RUBIN, *TOEING THE LINE: NEW JERSEY PRIMARY BALLOTS ENABLE PARTY INSIDERS TO PICK WINNERS*, N.J. POL’Y PERSPECTIVE (June 29, 2020), <https://www.njpp.org/publications/report/toeing-the-line-new-jersey-primary-ballots-enable-party-insiders-to-pick-winners/>. In the last 20 years, only 3 of 209 incumbent legislators in competitive primaries who ran on the county line in all of the counties in their districts have lost their primaries. It is nearly impossible for an incumbent to lose when running on the line. *Id.* Further, the county line gives candidates, on average, a 38-percentage point advantage over candidates who are not on the line. This advantage, in primary elections with low voter turnout and narrow margins, is nearly insurmountable. Colleen O’Dea, *Understanding the party line in NJ*, N.J. SPOTLIGHT NEWS (Dec. 4, 2023), <https://www.njspotlightnews.org/2023/12/understanding-the-party-line-in-nj/>.

⁴ Charlene Phelps & Joe Marchica, *How can we fix New Jersey’s fixed primary elections?*, N.J. MONITOR (Mar. 11, 2022), <https://newjerseymonitor.com/2022/03/11/how-can-we-fix-new-jerseys-fixed-primary-elections-opinion/>.