

"Social justice should be the underlying goal of all humanity."
-Alan V. Lowenstein, Institute Founder



Testimony of Henal Patel
New Jersey Institute for Social Justice
In Opposition to A5116
New Jersey Assembly Select Committee on Ballot Design
Thursday, December 12, 2024

Chairman Wimberley, Chairman Barlas, and members of the
Committee:

My name is Henal Patel and I am the Law & Policy Director 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

This legislation comes at a crucial time when many voters feel uncertain about the future of our democracy. We can no longer allow bad ballot design to disenchant voters and suppress their voice and vote.

As my colleague, Nuzhat Chowdhury, testified at this Committee's first hearing on ballot design, the question we should be asking ourselves, then, is how can we be the *most* voter friendly—not what can we get away with?

While the Institute appreciates that A5116 creates a better ballot design than the county line, the bill, as written, falls short of creating a neutral ballot.

New Jersey voters deserve a ballot that is clean and simple, without embellishment or workarounds to create unconscious bias. A5116 does respect this principle in multiple ways: it follows court orders to create office block ballot design, explicitly eliminates physical spaces between candidate names—the design phenomenon colloquially referred to as "Ballot Siberia"—and explicitly prohibits what used to be ballot position placement by pivot point candidate. We also appreciate that, despite

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 McQueney

Patricia Nachtigal, Esq.

Darrell K. Terry, Sr.

Martin Vergara II

Nina Mitchell Wells, Esq.

Antoinette Ellis-Williams, Ph.D.

Gary M. Wingsen, 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.

discussions of adding such indicators, the bill does not allow for a designation for incumbency or physical bracketing.

These are all significant improvements on the county line and we appreciate this Committee for listening to the feedback provided by the public over the course of the last month and for recognizing the reality of Judge Quraishi's court order.

That being said, there are certain provisions that the Institute opposes and we strongly urge the Committee to reconsider.

First: As we have consistently insisted—in both our *amicus* brief in the *Kim v. Hanlon* case and in previous testimony in front of this Committee—any new ballot design should not allow for any grouping/association on the ballot. Experts in both the *Conforti* and *Kim* cases have presented significant evidence on the negative impact that grouping has on voter choice. New Jersey's new primary ballot design should aim to be neutral, which includes not grouping any candidates together.

This includes not grouping candidates who 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 go further than that. Doing so, even on a smaller scale, violates principles of ballot neutrality.

Second: We strongly recommend modernization of the ballot drawing system, with automated and randomized draw. These improvements would allow for more efficient, quicker ballot draws that are consistent in method across the state and would help eliminate unintentional ballot positioning biases.

Third: Slogans are unnecessary, and voters deserve a neutral ballot. However, if slogans are going to be included, there must be consistency for all candidates. The language of the bill, as written, is at best ambiguous, and at worst intentional in creating separate slogan rights for candidates. We oppose this language and urge you to reconsider these provisions.

Finally: We commend this bill for including good ballot formatting requirements; all ballots should have consistent fonts and font sizes for voter accessibility. We do request that these provisions be required for all ballots, not just the primary election ones. Ballots should be consistent in all elections.

Our recommendations draw on best practice guidance from ballot design experts and the U.S. Election Assistance Commission in order to create a fair and neutral ballot that is designed to make it more likely that voters are able to vote the way *they* intend. Thus, on behalf of New Jersey voters, the Institute strongly encourages this Committee to incorporate the abovementioned improvements into A5116.

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/>.

NEW JERSEY

POLICY PERSPECTIVE

TESTIMONY OF PETER CHEN, SENIOR POLICY ANALYST, NEW JERSEY POLICY PERSPECTIVE BEFORE ASSEMBLY SELECT COMMITTEE ON BALLOT DESIGN IN OPPOSITION TO A-5116 DECEMBER 12, 2024

New Jersey Policy Perspective (NJPP), a statewide nonpartisan nonprofit think tank focused on economic, social and racial justice, has long advocated for fair ballots in the state, including multiple reports on the harmful influence of the “county line” on primary election choices.

NJPP testified in November at one of this committee’s public hearings, along with countless other members of the public, candidates for office, and concerned groups. The overwhelming majority of the comments focused on one key request – that this committee not propose any legislation that would put a thumb on the scale for a particular candidate, through visual cues, bracketing, asterisks or other marks.

A-5116 fails in this key regard – doing exactly what advocates and federal courts have demanded that the legislature not do. NJPP urges the committee to vote no on A-5116, to go back to the drawing board and listen to the voices of the public hearings, and to build a bill that removes favoritism from the democratic process, rather than return to the failed policies that have undercut New Jersey’s democracy and have been struck down as unconstitutional.

In light of that overview, I would like to highlight key sections that must be changed or eliminated from the bill if it is to meet the goals of the committee to promote fairness and democratic values in our state’s primary elections:

1. Eliminate prohibitions on the use of the term “Democrat” or “Republican” unless the candidate is endorsed by the county party organization (Proposed R.S. 19:23-17c)

County parties do not have a monopoly on the names of political parties. Municipal parties exist, as do other factions and groups associated with political parties. That is the reason primary elections exist at all; it is reasonable to assume that all candidates running in a closed primary are running as members of the political party associated with that election, regardless of whether the particular county party committee endorses them or not. Allowing one candidate or set of candidates to announce themselves with the word “Democrat” or “Republican” sends an obvious signal to voters that this candidate aligns with their party affiliation, while implying that others do not.

NEW JERSEY POLICY PERSPECTIVE

2. Eliminate de facto bracketing of candidates being treated as “one name” for an office with multiple seats up for election (Proposed R.S.19:23-18; R.S.19:23-24d)

The bill proposes in one breath to eliminate “bracketing” while simply recreating bracketing by another name (“associating”) by treating multiple candidates running under the same slogan as functionally one candidate, with one ballot placement and one ballot draw. This undermines the notion of allowing voters to freely choose multiple candidates for multiple offices. Not infrequently, voters choose candidates in races with multiple offices with different endorsements and backgrounds. This change would eliminate that possibility.

3. Eliminate prohibitions on use of other candidates for office in slogans (“Team Smith”) (Proposed R.S.19:23-17d)

Given that any other name may be used as part of a slogan, it is unclear why other candidates for other offices are excluded from potential slogans or endorsements. Extra prohibitions on speech should be considered carefully, especially when there does not seem to be a strong interest in prohibiting any other names in slogans or endorsements.

4. Introduce computerized randomization as a requirement for all ballot draws rather than the anachronistic drawing of cards from a box (Proposed R.S.19:23-24b)

Given the bill’s stated goals of “ensuring timely and orderly election processes,” the anachronistic drawing of names out of a box is, however quaint, nowhere near as secure and efficient as randomized computer draws, which can easily draw random assignments of ballot placement across multiple offices. There is simply no reason to maintain this system, especially because computerized randomization also makes randomization by municipality or precinct much easier to implement.

5. Include more features to improve usability of the ballot such as visual instructions and ballot testing on potential voters, especially voters with lower educational attainment, voters whose first language is not English, or voters who have visual impairment. (n/a)

As mentioned in my November testimony, the ballot design is more than just ensuring a lack of bias in candidate placement and visual identification. Given the history of ballot-related errors, such as the infamous butterfly ballot in the 2000 presidential election in Florida, I urge the legislature to consider running tests on sample ballots with the proposed features to ensure that members of the public, especially those with backgrounds or conditions that may require more assistance, are able to complete the ballots as they desire. Such testing is considered a best

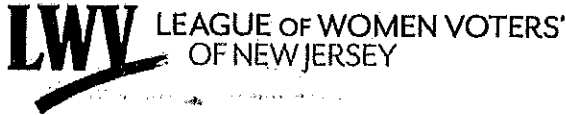
NEW JERSEY POLICY PERSPECTIVE

practice for ballot design, and yet no provision for testing is included here. Rather than simply report on implementation after the fact, encouraging ballot testing would reveal potential confusion or ballot design shortcomings before the problems arose in real time.

* * *

In sum, despite important steps in the direction of clean office block voting without advantages to any particular candidate, A-5116 immediately backtracks by including special benefits for county-party-endorsed candidates and limits on voter and candidate choice by reviving bracketing and limiting slogans.

NJPP strongly urges that the committee return to the drawing board and propose legislation that would advance the aims listed in the bill.



**Assembly Select Committee on Ballot Design
December 12, 2024
Opposition to A5116**

My name is Jesse Burns, Executive Director of the League of Women Voters of New Jersey. The League of Women Voters of New Jersey again renews our calls for a fair and equitable ballot design. The legislation introduced fails to meet the standards that we called for during the public hearings and therefore, we must oppose A5116.

The League asked for a handful of reforms for this committee's consideration. We are glad to see a commitment to designing a clear office block ballot without unnecessary design elements such as asterisks, physical brackets, bolding, highlighting, and so on.

However, the League of Women Voters of New Jersey is concerned that several other critical reforms were not incorporated in this legislation. Specifically, we asked for ballot neutrality including randomization or rotation of candidates by voting precinct, an automated computerized system to conduct draws, no grouping or bracketing of candidates, and the elimination of endorsements and slogans on the ballot. Multiple experts and members of the public offered testimony agreeing with these best practices in ballot design.

We also asked for, and I will quote directly from our previous testimony, that any "proposed legislation should reflect the will of the voters and be shared with the public with ample notice and opportunity to comment on the legislation." While I do appreciate that this hearing today is discussion only, with additional votes scheduled next week, this is not ample notice.

This committee had an opportunity to put forward both a fair ballot and a fair process and we are disappointed in this outcome today. I am sure that many NJ voters feel the same way as our members.

The League of Women Voters of New Jersey opposes this legislation and asks this committee to amend this bill to better reflect the testimony heard during the public hearings.

Testimony presented by:

Jesse Burns, Executive Director, League of Women Voters of New Jersey

FAIR BALLOT HEARING – DECEMBER 12, 2024

Submitted by Jill LaZare, President of NOW-NJ (908) 451 – 8981

Good Afternoon, my name is Jill LaZare

I am an attorney and the President of the New Jersey Chapter of
The National Organization for Women

I want to thank the committee for giving me the opportunity to speak

So, we are at a pivotal time in NJ election history and all of You have an opportunity to make a
real difference in our state

By drafting a bill that, in keeping with the Federal District Court's decision, designs a fair ballot a
fair ballot that may be perceived by some, or many, if not all of you, as being against your own
self interest

But that perception, accurate or not,

In the end, does not matter

Because, the reality is that you cannot predict what may happen tomorrow

You can only do the right thing today

For the betterment of our state

For the betterment of New Jerseyans

And You know what the right thing is - - to design a

Ballot that is clear and unobstructed

A Ballot With candidates running for the same office in one block, their names organized in the
block by random selection.

Without the attempt to coopt votes by including brackets, superfluous slogans, descriptions, or
nonsensical machinations, included in an attempt to retain power.

Ballots free from the miasma of the stench of political bosses.

You have the opportunity to have a legacy far more important . . . of being a legislator who
worked to stop the corruption for which New Jersey is known.

After the hearing I last spoke at, one of the committee people responded to my saying that you
all should do the right thing with, "but what is the right thing?" and I thought about that, and
My response, is if you are unable to discern what is the right thing, you really don't belong in
our legislature in the first place.

So please, do the right thing, it is, after all, what you were elected to do for us, your
constituents, the people of New Jersey.

Thank you



Christopher J. Durkin
Christopher J. Durkin
Essex County Clerk
Secretario del Condado de Essex

Elección Primaria Democrática, martes, el 4 de junio de 2024, Condado de Essex, New Jersey

Official Mail-In Ballot

Democratic Primary Election, Tuesday, June 4, 2024
County of Essex, New Jersey

Papeleta Oficial de Voto-por-Correo

511 South Orange 6

Democratic

Choice for President and Delegates to the Democratic National Convention 15th Delegate District Vote for President in an electoral vote for all affiliated delegates and alternates. Vote for One Selección para Presidente y Delegados a la Convención Nacional Democrática 15º Distrito de Delegados Votar por Presidente es un voto electoral por los delegados y alternates afiliados. Votar por Uno	Joseph R. Biden, Jr. Essex County Democratic Committee, Inc. Delegates Julio Ayone Jr. Shannon Ly Orlie Sara de Paula Anthony R. Nolas Alternate Laverica Meyer	1A ☐
For United States Senator Six Year Term Vote for One Para Senador de los Estados Unidos Termino de Ses Años Votar por Uno	Andy Kim Essex County Democratic Committee, Inc. Laurence HANIM People's Health First Patricia CAMPOS-MEDINA Pro-Democratic Democrats	1A ☐ 1B ☐ 1C ☐
For Member of the House of Representatives 11th Congressional District Two Year Term Vote for One Para Miembro de la Casa de Representantes Distrito Congresional 11 Termino de Dos Años Votar por Uno	Mikie SHERILL Essex County Democratic Committee, Inc. Mark De LOTTO New Leadership, Better Ideas, Meaningful Change.	1A ☐ 1B ☐
For Sheriff Three Year Term Vote for One Para Alguacil Termino de Tres Años Votar por Uno	Amitr JONES Essex County Democratic Committee, Inc. Gary NASH Democrats United for Change and Integrity	1A ☐ 1B ☐
For Registrar Five Year Term Vote for One Para Registrador Termino de Cinco Años Votar por Uno	Juan M. RIVERA, Jr. Essex County Democratic Committee, Inc.	1A ☐
Personal Choice - Selección Personal ☐		

For Members of the County Committee Two Year Term Vote for Two Para Miembros del Comité del Condado Termino de Dos Años Votar por Dos	Regan WHITE Essex County Democratic Committee, Inc. Lawrence HIRSCH Essex County Democratic Committee, Inc. Joann GAUGHAN Fair Ballot Democrats Deborah ALESSANDRO Fair Ballot Democrats	1A ☐ 1B ☐ 1C ☐ 1D ☐
Personal Choice - Selección Personal ☐		

For Members of the County Committee Two Year Term Vote for Two Para Miembros del Comité del Condado Termino de Dos Años Votar por Dos	Regan WHITE Essex County Democratic Committee, Inc. Lawrence HIRSCH Essex County Democratic Committee, Inc. Joann GAUGHAN Fair Ballot Democrats Deborah ALESSANDRO Fair Ballot Democrats	1A ☐ 1B ☐ 1C ☐ 1D ☐
Personal Choice - Selección Personal ☐		

For Members of the County Committee Two Year Term Vote for Two Para Miembros del Comité del Condado Termino de Dos Años Votar por Dos	Regan WHITE Essex County Democratic Committee, Inc. Lawrence HIRSCH Essex County Democratic Committee, Inc. Joann GAUGHAN Fair Ballot Democrats Deborah ALESSANDRO Fair Ballot Democrats	1A ☐ 1B ☐ 1C ☐ 1D ☐
Personal Choice - Selección Personal ☐		

For Members of the County Committee Two Year Term Vote for Two Para Miembros del Comité del Condado Termino de Dos Años Votar por Dos	Regan WHITE Essex County Democratic Committee, Inc. Lawrence HIRSCH Essex County Democratic Committee, Inc. Joann GAUGHAN Fair Ballot Democrats Deborah ALESSANDRO Fair Ballot Democrats	1A ☐ 1B ☐ 1C ☐ 1D ☐
Personal Choice - Selección Personal ☐		

FOR INSTRUCTIONS, PLEASE SEE BACK

PARA INSTRUCCIONES, POR FAVOR VEA EL REVERSO