

# The End of the Line: Abolishing New Jersey’s Antidemocratic Primary Ballot Design

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“A poor guy might be a good candidate, but he doesn’t have a  
chance unless he’s on the line. That’s kind of the way it is.” -  
Former Salem County Deputy County Clerk Paul Reed<sup>1</sup>

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\* CEO & President; Law and Policy Director; and Senior Counsel, Democracy and Justice Program, respectively, of the New Jersey Institute for Social Justice, a leading racial justice advocacy organization. Founded almost a quarter of a century ago by Amy and Alan V. Lowenstein and a group of visionaries steeped in the Civil Rights Movement, the Institute’s mission is to empower Black people and other people of color by building reparative systems that create wealth, transform justice and harness democratic power from the ground up.

We thank our Institute colleague Laurie Beacham, Chief Communications and Marketing Officer, for her work on this Article. We are honored to serve beside Laurie and a talented team of creative advocates, whose unwavering commitment to moving our country closer to its articulated ideals for Black people and other people of color is equally inspiring and humbling.

<sup>1</sup> Michelle Caffrey, *Party Lines: Candidate Placement On Ballot A ‘Puzzle’ For South Jersey County Clerks*, NJ.COM (June 1, 2014), [https://www.nj.com/gloucester-county/2014/06/party\\_lines\\_ballot\\_placement\\_a\\_puzzle\\_for\\_county\\_clerks\\_can\\_have\\_big\\_impact\\_on\\_primary\\_elections.html](https://www.nj.com/gloucester-county/2014/06/party_lines_ballot_placement_a_puzzle_for_county_clerks_can_have_big_impact_on_primary_elections.html) [<https://perma.cc/9C3M-649D>].

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## I. INTRODUCTION

Democracy in New Jersey is designed—and often decided—by an antidemocratic line. In most places in America, primary ballots list each office with the names of the candidates running for that office underneath or beside it.<sup>2</sup> In New Jersey, however, primary ballots are designed differently. Chairs from county branches of both major political parties decide the design of the ballots by grouping their endorsed candidates together in the same column or row to give them maximum visibility.<sup>3</sup>

This party-endorsed column or row of candidates is called the “county line.”<sup>4</sup> In New Jersey, candidates awarded the county line gain, on average, a 35 percent advantage at the polls effectively an insurmountable advantage that almost always guarantees wins for these candidates.<sup>5</sup> New Jersey stands alone as the only state in America that uses this design on its primary ballots.<sup>6</sup> The consequences of this antidemocratic engineering are devastating for non-endorsed candidates, who, placed in other rows and columns that are often far away from the main line to minimize their visibility, face certain defeat.<sup>7</sup> Indeed, no incumbent state legislator on the county line has lost a primary in New Jersey since 2009,<sup>8</sup> and only two congressional incumbents on the county line have lost a primary in the state in the last fifty years.<sup>9</sup>

The impact of the county line is particularly harmful for Black people and other people of color as well as women in New Jersey, who remain grossly underrepresented in the state legislature. Although New

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<sup>2</sup> See 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/>.

<sup>3</sup> See Brett M. Pugach, *The County Line: The Law and Politics of Ballot Positioning in New Jersey*, 72 RUTGERS U. L. REV. 629, 631 (2020).

<sup>4</sup> *Id.*

<sup>5</sup> See Julia Sass Rubin, *Does the County Line Matter? An Analysis of New Jersey’s 2020 Primary Election Results*, N.J. POL’Y PERSPECTIVE (Aug. 13, 2020), <https://www.njpp.org/publications/report/does-the-county-line-matter-an-analysis-of-new-jerseys-2020-primary-election-results/> [https://perma.cc/K4VJ-39FB]; see also David Wildstein, *2021 Was The Year of the Line*, N.J. GLOBE (June 9, 2021), <https://newjerseyglobe.com/campaigns/2021-is-the-year-of-the-line/> [https://perma.cc/ZG4V-RU9U].

<sup>6</sup> Rubin, *supra* note 5.

<sup>7</sup> See Wildstein, *supra* note 5.

<sup>8</sup> Sass Rubin, *supra* note 5.

<sup>9</sup> Sass Rubin, *supra* note 5.

Jersey is one of the most racially diverse states in America,<sup>10</sup> the county line ensures that its elected representatives do not reflect that racial diversity and underrepresent women. Although people of color are nearly a majority of the population,<sup>11</sup> both the New Jersey Assembly and the State Senate are over seventy percent white.<sup>12</sup> Likewise, women account for only 30.8 percent of the state legislature,<sup>13</sup> although they make up more than half of the state's population.<sup>14</sup> This disproportionate representation is attributable to the political party chairs—overwhelmingly white and male—who determine the candidate endorsements for the county line. In 2023, more than two-thirds of Democratic county party chairs in New Jersey are men, and more than 71 percent are white.<sup>15</sup> Similarly, more than 85 percent of Republican county party chairs in the state are men, and more than 90 percent are white.<sup>16</sup>

As this article argues, New Jersey's fixed election design diminishes voting power, particularly of Black and other voters of color, and ensures that the state's elected officials—from city council members to state senators to members of Congress—are accountable to party chairs rather than to voters.

The resulting underrepresentation of Black and other people of color in the state legislature has led to the present-day reality, where elected officials rarely lose elections even as they fail to address this sobering truth: by design, Black and other people of color in New Jersey confront some of the worst racial disparities in America. It has led to a failure to address New Jersey's staggering racial wealth gap, wherein the median net individual wealth for non-Hispanic white people in New

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<sup>10</sup> Kaia Hubbard, *The 10 States with the Most Racial Diversity*, U.S. NEWS & WORLD REP. (Aug. 19, 2021), <https://www.usnews.com/news/best-states/slideshows/the-10-most-racially-diverse-states-in-the-us>.

<sup>11</sup> See *QuickFacts New Jersey*, U.S. CENSUS BUREAU (July 1, 2022), <https://www.census.gov/quickfacts/fact/table/NJ/PST045222#PST045222>.

<sup>12</sup> Colleen O'Dea, *NJ's Incoming Legislature: More Diverse, But Not Diverse Enough?*, NJ SPOTLIGHT NEWS (Jan. 3, 2022), <https://www.njspotlightnews.org/2022/01/nj-2022-legislature-diversity-men-women-black-hispanic-asian-white/>.

<sup>13</sup> *Women in New Jersey Government*, RUTGERS U.: CTR. FOR AM. WOMEN & POL. (Apr. 28, 2021), <https://cawp.rutgers.edu/sites/default/files/resources/nj.pdf>.

<sup>14</sup> QuickFacts, *supra* note 11.

<sup>15</sup> See *New Jersey Democratic Parties by County*, N.J. DEM. PARTY, <https://www.njdems.org/your-party-county-parties/> (last visited Apr. 9, 2023).

<sup>16</sup> See *Counties*, N.J. REP. PARTY, <https://www.njgop.org/leadership/counties/> (last visited Apr. 9, 2023).

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Jersey is \$103,500 compared with just \$4,900 and \$2,300 for Black and Latino/Latina people, respectively.<sup>17</sup>

As one of America's wealthiest states, New Jersey's challenge is not one of resources. Those elected under the current system are charged with the responsibility of spending billions of dollars in taxpayer money on a state budget that exceeds forty-four billion dollars annually.<sup>18</sup> County governments spend nearly seven billion dollars annually,<sup>19</sup> and state agencies like joint insurance funds, spend billions more.

The problem is not one of resources, but of New Jersey's chosen and often corrupt systems. In New Jersey, although there are plenty of resources to make key investments in Black and other communities of color,<sup>20</sup> under the county line and primary election system, people are not the priority of elected officials—party chairs, political parties, and politics are. Under intense political pressure from party machinery, the New Jersey Legislature makes substantial investments in lucrative contracts to politically connected engineering, insurance, and law firms, to name a few.<sup>21</sup> In the process, Black and other communities of color continue to suffer from disinvestment.

This does not have to continue.<sup>22</sup>

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<sup>17</sup> *Making the Two New Jerseys One: Closing the \$300,000 Racial Wealth Gap in New Jersey*, N.J. INST. SOC. JUST., at 8 (Feb. 2022), [https://assets.nationbuilder.com/njisj/pages/689/attachments/original/1679924762/Two\\_New\\_Jerseys\\_By\\_the\\_Numbers\\_Data\\_Brief\\_3.23.23-compressed.pdf?1679924762](https://assets.nationbuilder.com/njisj/pages/689/attachments/original/1679924762/Two_New_Jerseys_By_the_Numbers_Data_Brief_3.23.23-compressed.pdf?1679924762); Ryan P. Haygood & Andrea McChristian, *Repairing the Cracks of Structural Racism and Building a New Foundation: The Fight for Racial Justice in the Garden State*, 48 LITIGATION J. at 46, 47 (2022), [https://www.americanbar.org/content/dam/aba/publications/litigation\\_journal/summer-2022/fight-for-racial-justice-garden-state.pdf](https://www.americanbar.org/content/dam/aba/publications/litigation_journal/summer-2022/fight-for-racial-justice-garden-state.pdf).

<sup>18</sup> See *New Jersey State Fiscal Brief*, URB. INST. (Mar. 2022), <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-fiscal-briefs/new-jersey> [<https://perma.cc/7WL2-B8GF>].

<sup>19</sup> This number was calculated through publicly available county budget information for 2022 on NJ county websites (on file with author).

<sup>20</sup> Sue Altman, Ryan Haygood & Jesse Burns, *Democracy in New Jersey is Tainted*, NJ.COM, <https://www.nj.com/opinion/2021/02/democracy-in-new-jersey-is-tainted-opinion.html> (last updated Feb. 15, 2023).

<sup>21</sup> *Id.*

<sup>22</sup> New Jersey has made substantial strides in the struggle to make the promise of democracy real, following the powerful advocacy of the Institute and its partners. Since 2018, for example, the state has passed automatic and online voter registration, enacted early in-person voting, expanded vote-by-mail, restored voting rights to people on parole and probation, and ended prison gerrymandering. It's time to add ending the county line to these democracy-expanding measures. See Julia Manchester, *New Jersey Lawmakers Pass Automatic Voter Registration Bill*, THE HILL (Apr. 12, 2018), <https://thehill.com/homenews/state-watch/382956-new-jersey-lawmakers-pass-automatic-voter-registration-bill/>; see also *New Jersey Assembly Passes Early In-Person*

New Jersey's county line cannot be understood apart from the deep history of democratic exclusion from which it emerged, nor can it be fairly discussed independent of the Institute and its partners' advocacy to build an inclusive democracy in America, including pursuing landmark litigation that will ultimately lead to the county line's abolition.

To this end: *first*, this Article will examine New Jersey's deep history and enduring impact of the democratic exclusion from which the county line emerged; *second*, it will discuss the history, modern-day use, and impact of the county line; and, *finally*, it will address the legal challenges to the county line and the current challenge that will lead to its abolition.

## II. NEW JERSEY'S HISTORY OF DEMOCRATIC EXCLUSION AND THE COUNTY LINE IN CONTEXT

The history of how racist Southern legislatures built political regimes that excluded Black people, other people of color, and women is well understood.<sup>23</sup> What is less known is that this history of exclusion also took root deeply in New Jersey; New Jersey has been called the "slave state of the North."<sup>24</sup>

At its founding as a colony, New Jersey provided English settlers with 150 acres of land and an additional 150 acres for every enslaved African person they brought with them into the colony.<sup>25</sup> By 1830, over two-thirds of the northern enslaved Black population resided in New

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*Voting Bill*, INSIDER N.J. (Mar. 1, 2021), <https://www.insidernj.com/press-release/new-jersey-assembly-passes-early-person-voting-bill/>; *Governor Murphy Signs Voting Reform Package to Strengthen New Jersey Elections*, STATE OF N.J.: OFFICE OF THE GOVERNOR (July 28, 2022), <https://www.nj.gov/governor/news/news/562022/20220728c.shtml>; Kelly Mena, *NJ Restores Voting Rights to 80,000 on Parole or Probation*, CNN (Dec. 19, 2019), <https://www.cnn.com/2019/12/19/politics/new-jersey-voting-rights-felons-phil-murphy/index.html>; *New Jersey Governor Signs Bill Ending Prison Gerrymandering*, PRISON POL'Y INITIATIVE (Jan. 21, 2020), <https://www.prisonersofthecensus.org/news/2020/01/21/nj-signed/>.

<sup>23</sup> See *1844 No More*, N.J. INST. SOC. JUST. (2017), <https://www.njisj.org/1844nomorereport2017>.

<sup>24</sup> Julia Martin, *Slavery's Legacy is Written All Over North Jersey, If You Know Where to Look*, NORTHJERSEY.COM, <https://www.northjersey.com/story/news/essex/montclair/2021/02/28/american-dream-paramus-nj-part-north-jersey-slavery-legacy/4212248001/> (last updated Jan. 4, 2023, 4:29 PM).

<sup>25</sup> Haygood & McChristian, *supra* note 17, at 47.

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Jersey.<sup>26</sup> In 1844, New Jersey's Constitution limited voting to only white men and denied voting rights to people with criminal convictions.<sup>27</sup>

Additionally, New Jersey opposed the Emancipation Proclamation<sup>28</sup> and was the last northern state to abolish slavery.<sup>29</sup> Following the Civil War, the state refused to ratify the U.S. Constitution's Thirteenth<sup>30</sup> and Fifteenth Amendments,<sup>31</sup> also known as the Reconstruction Amendments, and rescinded its initial ratification of the Fourteenth Amendment.<sup>32</sup> It was eventually one of the last states in the nation to ratify the amendments. In fact, New Jersey did not officially reinstate its ratification of the Fourteenth Amendment, which gives Black people equal protection under the law, until April 2003.<sup>33</sup>

After slavery formally ended, New Jersey developed the "cottage system,"— an early form of sharecropping that took hold in the state— which denied Black people opportunities to own land and build wealth.<sup>34</sup> The state has carried this system of denying Black New Jersey

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<sup>26</sup> *Expanding Access to Housing Wealth for Black New Jerseyans*, N.J. INST. FOR SOC. JUST., May 2022, at 24, [https://assets.nationbuilder.com/njisj/pages/689/attachments/original/1651592853/Black\\_Homeownership\\_Matters\\_Report\\_5.3.22\\_web.pdf](https://assets.nationbuilder.com/njisj/pages/689/attachments/original/1651592853/Black_Homeownership_Matters_Report_5.3.22_web.pdf).

<sup>27</sup> Under the state's first written Constitution, all "inhabitants . . . of full age" were initially permitted to vote, as long as they met property and residency requirements; however, in 1807, New Jersey passed a law limiting the franchise to white male citizens over 21 years of age. New Jersey was the first state in the Northeast to limit the franchise to white residents this way. *See 1844 No More*, *supra* note 23, at 1.

<sup>28</sup> *See* Emily Hawke, *An Anomalous Case of Southern Sympathy: New Jersey's Civil War Stance*, 7 GETTYSBURG COLL. J. OF THE CIVIL WAR ERA 35, 35–36 (2017).

<sup>29</sup> New Jersey finally abolished slavery legally on January 23, 1866, months after the declaration of freedom in Texas. JAMES J. GIGANTINO II, *THE RAGGED ROAD TO ABOLITION: SLAVERY AND FREEDOM IN NEW JERSEY, 1775–1865* 3, (2014) [<https://doi.org/10.9783/9780812290226>]; Noelle Lorraine Williams, *New Jersey, The Last Northern State to End Slavery*, N.J. HISTORICAL COMM'N (2021), <https://nj.gov/state/historical/his-2021-juneteenth.shtml> [<https://doi.org/10.9783/9780812290226>].

<sup>30</sup> KENNETH R. THOMAS & LARRY M. EIG, *CONG. RSCH. SERV., NO. 112-9, INTERIM EDITION: ANALYSIS OF CASES DECIDED BY THE SUPREME COURT OF THE UNITED STATES TO JUNE 26, 2013*, 30-31 n.5–6 (2013).

<sup>31</sup> *Id.* at 33 n.7.

<sup>32</sup> *Id.* at 32 n.6.

<sup>33</sup> Although the state passed a measure to ratify the Fourteenth Amendment in 1866, the state legislature rescinded the ratification in early 1868. As a result, the state did not officially ratify the amendment until April 2003. *See Constitutional Amendments*, N.J. DEP'T OF STATE (last visited Oct. 11, 2023), <https://www.nj.gov/state/archives/docamendments.html>; *see also* Matt Arco, *No Sugarcoating N.J.'s History with Slavery from Murphy at Juneteenth Event*, NJ.COM (June 20, 2022), <https://www.nj.com/politics/2022/06/no-sugarcoating-njs-history-with-slavery-from-murphy-at-juneteenth-event.html>.

<sup>34</sup> The cottage system was where some free Black people lived on former slaveholders' properties and provided labor in exchange for shelter, food, and

residents access to property and wealth through the 20th century and into today through measures, such as racially restrictive covenants, the exclusion of Black soldiers from the GI Bill, redlining, predatory lending, and other discriminatory practices that divest resources from New Jersey's Black communities while conferring benefits on its white residents.<sup>35</sup>

Before the Institute's 1844 No More Campaign<sup>36</sup> advocacy with other supporters, New Jersey denied the right to vote to more than 100,000 people because of criminal convictions on their records, when Black people represented more than half of those impacted.<sup>37</sup> Indeed, "owing to population increases, prior to 2020, more Black people in New Jersey were disqualified from voting because of a prior conviction than were prohibited from voting in New Jersey prior to the passage of the Fifteenth Amendment."<sup>38</sup>

This disparate impact on Black political power was a direct result of New Jersey's decision to connect the fundamental right to vote to its criminal justice system—a system in which a Black adult is twelve times more likely to be incarcerated than a white adult.<sup>39</sup> This is the worst racial disparity in America.<sup>40</sup>

New Jersey's decision to disenfranchise those with criminal convictions imported the staggering racial disparities from the criminal justice system into the political process for people on probation and parole. This racial disparity in the political process continues to exist for people currently in prison. It continues to accomplish what now-

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equipment. *Erasing New Jersey's Red Lines*, N.J. INST. FOR SOC. JUST., Apr. 30, 2020, at 8, [https://d3n8a8pro7vhmx.cloudfront.net/njsj/pages/689/attachments/original/1588358478/Erasing\\_New\\_Jersey's\\_Red\\_Lines\\_Final.pdf?1588358478](https://d3n8a8pro7vhmx.cloudfront.net/njsj/pages/689/attachments/original/1588358478/Erasing_New_Jersey's_Red_Lines_Final.pdf?1588358478) [hereinafter *Red Lines*].

<sup>35</sup> *Red Lines*, *supra* note 34, at 2, 8–11.

<sup>36</sup> In 2017, the New Jersey Institute for Social Justice, along with its partners, launched the 1844 No More Campaign to restore the right to vote for people on probation and parole in New Jersey. After years of advocacy, in December 2019, Governor Phil Murphy signed into law voting rights restoration for 83,000 such New Jerseyans who had previously been denied the right due to the 1844 New Jersey state law. See generally Jake Girard, *New Institute Report, Erasing NJ's Red Lines, Ties Generations of Housing Discrimination to Gaping Racial Wealth Gap in the Garden State and Offers Policy Recommendations* (Apr. 30, 2020), N.J. INST. FOR SOC. JUST., [https://www.njsj.org/new\\_institute\\_report\\_erasing\\_nj\\_s\\_red\\_lines\\_ties\\_generations\\_of\\_housing\\_discrimination\\_to\\_gaping\\_racial\\_wealth\\_gap\\_in\\_the\\_garden\\_state\\_and\\_offers\\_policy\\_recommendations](https://www.njsj.org/new_institute_report_erasing_nj_s_red_lines_ties_generations_of_housing_discrimination_to_gaping_racial_wealth_gap_in_the_garden_state_and_offers_policy_recommendations).

<sup>37</sup> See *1844 No More*, *supra* note 23, at 9.

<sup>38</sup> See Haygood & McChristian, *supra* note 17, at 48.

<sup>39</sup> See *U.S. Criminal Justice Data, State-by-State*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/research/us-criminal-justice-data/#map>; see generally Haygood & McChristian, *supra* note 17, at 48.

<sup>40</sup> See Haygood & McChristian, *supra* note 17, at 48.

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prohibited poll taxes, grandfather clauses, and literacy tests explicitly once sought to do—disproportionately exclude Black people from voting.<sup>41</sup>

It was against this backdrop of democratic exclusion that New Jersey’s primary ballot and county lines emerged.

### III. HOLDING THE LINE AGAINST DEMOCRACY: NEW JERSEY PRIMARY BALLOT

By design, New Jersey’s primary ballot is antidemocratic.

The primary ballot in New Jersey is uniquely structured to empower political parties and their political candidates of choice, to the detriment of Black and other minority voters. Since the county line design substantially benefits party-backed candidates over others, the most important strategic move that a political candidate can make, leading up to a primary election, is to garner the support of their party chair—not the voters. This shift in priority diminishes the importance of voters to candidates; it also binds candidates to the existing political machinery. Candidates who cannot, or do not, wish to garner the support of party chairs are unlikely to win and may feel less compelled to run.<sup>42</sup>

This dilutes the voting strength of Black and other voters of color by ensuring party control over primaries and empowering incumbents—largely white and male—over new, diverse challengers.

This is not a malfunction of the system but is, as discussed, the entire point.

#### *A. New Jersey’s Primary Endorsement Ban and the Evolution of the County Line*

The New Jersey county line originated, in part, in response to a 1930 legislative ban on endorsements from political parties prior to primary elections.<sup>43</sup> The Primary Endorsement Ban (“the Ban”) was “designed to prevent party organizations from interfering with the right of voters to decide which candidates they wanted to nominate at a primary.”<sup>44</sup> The law aimed to restrict the amount of political party

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<sup>41</sup> See generally Haygood & McChristian, *supra* note 17, at 49.

<sup>42</sup> See, e.g., Daniel Israel, *Chiaravalloti Ends Re-Election Bid*, HUDSON REP. (Apr. 19, 2021), <https://hudsonreporter.com/2021/04/19/chiaravalloti-ends-re-election-bid/>.

<sup>43</sup> See N.J. STAT. ANN. § 19:34-52 (2020), *invalidated by* Batko v. Sayreville Democratic Org., 860 A.2d 967 (N.J. Super. Ct. App. Div. 2004).

<sup>44</sup> Pugach, *supra* note 3, at 634.



influence on primary elections. After it passed, however, the Ban was challenged in court<sup>45</sup> and even suspended by the state legislature.<sup>46</sup>

Although the Primary Endorsement Ban technically remained good law, by the 1980s, New Jersey courts weakened the strength of its protections. In *Moskowitz v. Grogan*<sup>47</sup> and *Gillen v. Sheil*,<sup>48</sup> New Jersey courts re-interpreted existing state laws regarding how candidates could be featured together on a ballot.<sup>49</sup> The courts created a new requirement that allowed county clerks to award preferential ballots to joint county candidates and those bracketing with them.<sup>50</sup> This laid the path for the current county line design. But where New Jersey courts began the re-introduction of the party-political machine into ballot design, the U.S. Supreme Court helped solidify the rest of the system.

In 1989, the U.S. Supreme Court looked at a California state law that, similar to New Jersey's Primary Endorsement Ban, prohibited the state's political parties from endorsing candidates ahead of a primary election.<sup>51</sup> In *Eu v. San Francisco County Democratic Central Committee*,<sup>52</sup> the Supreme Court used a balancing test to determine whether California's primary endorsement ban infringed on freedom of speech and freedom of association rights under the First and Fourteenth Amendments.<sup>53</sup> The Court ultimately found that California's prohibition directly affected "core political speech," which was "no less critical before a primary than before a general election."<sup>54</sup> The Supreme Court rejected the government's argument that the Ban was necessary to allow California to "preserv[e] stable governments and avoid[] voter confusion" and ruled that the law burdened free speech and associational rights.<sup>55</sup>

While the New Jersey Primary Endorsement Ban remained in effect, the *Eu* decision undermined the principles that animated the initial passage of the law—the importance of safeguarding primaries

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<sup>45</sup> See *Cavanagh v. Morris Cnty. Democratic Comm.*, 297 A.2d 594, 597–99 (N.J. Super. Ct. Ch. Div. 1972).

<sup>46</sup> See Act of Apr. 10, 1975, ch. 67, 1975 Acts of the Legislature of the State of New Jersey 120 (suspending Primary Endorsement Ban from April 10, 1975, until February 1, 1977).

<sup>47</sup> 243 A.2d 280 (N.J. Super. Ct. App. Div. 1968), *cert. denied* 242 A.2d 379 (N.J. 1968).

<sup>48</sup> 416 A.2d 935 (N.J. Super. Ct. Law Div. 1980).

<sup>49</sup> *Moskowitz*, 243 A.2d at 283; *Gillen*, 416 A.2d at 937.

<sup>50</sup> See Pugach, *supra* note 3, at 637.

<sup>51</sup> *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 216 (1989).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 222.

<sup>54</sup> *Id.* at 222–23.

<sup>55</sup> *Id.* at 226, 229; Pugach, *supra* note 3, at 641–42.

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from party interference and control. After *Eu*, the state statute was largely ignored in practice, until 2004, when a New Jersey Appellate Court declared the Ban unconstitutional.<sup>56</sup>

New Jersey's Primary Endorsement Ban, while imperfect, "functioned like a dam that held back the county political machines from corrupting a fair process for nominating primary candidates."<sup>57</sup> The decision in *Eu* "opened up the floodgates"<sup>58</sup> for New Jersey's present day antidemocratic system, where democracy is overwhelmingly influenced—if not nearly entirely controlled by—political party organizations.

#### *B. The New Jersey County Line Compared to Other Ballot Designs*

As previously mentioned, New Jersey stands alone as the only state in America to use this type of county line to design its primary ballots. In nearly every county, clerks and the chairs of both major parties' design ballots by grouping their endorsed candidates together in the same physical column or row to give those candidates maximum visibility on the ballot.<sup>59</sup>

In most places in the country, however, primary ballots are organized around the office being sought, not the party-endorsed candidates for that office.<sup>60</sup> These ballots list each office and clearly group the candidates running for that office underneath or beside the position title.<sup>61</sup> For example, all candidates running for Senator or Governor would be listed below or to the right of a heading that explicitly states "Senator" or "Governor." Each office bloc is then clearly set apart from the next contested office bloc by some physical marker, such as a thick line or shaded box.<sup>62</sup> This ballot design, seen below in Figure 1, makes it clear which candidates are competing for which office by visibly organizing the candidates into groups by position sought, and by separating the two contests using a thick black line and a grey box around the position title. It is simple to read, even at a glance. Each position is easily identifiable, and each candidate appears as a legitimate option under the electoral position up for vote.

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<sup>56</sup> *Batko v. Sayreville Democratic Org.*, 860 A.2d 967, 972 (N.J. Super. Ct. App. Div. 2004).

<sup>57</sup> Pugach, *supra* note 3, at 646.

<sup>58</sup> Pugach, *supra* note 3, at 646.

<sup>59</sup> Pugach, *supra* note 3, at 630–31, 637.

<sup>60</sup> Pugash, *supra* note 3, at 631; *see also* Suzi A. Ragheb, *How New Jersey Political Parties Rig the Ballot*, PRINCETON U. J. PUB. & INT'L AFF.: ANNOTATIONS BLOG (June 23, 2021), <https://jpia.princeton.edu/news/how-new-jersey-political-parties-rig-ballot>.

<sup>61</sup> *See* Rubin, *supra* note 5.

<sup>62</sup> *See infra* Figure 1.

Figure 1: Cook County, Illinois, 2018 Democratic primary election ballot

<b>Governor &amp; Lieutenant Governor</b>	
Gobernador y Teniente Gobernador	
<b>Vote for One / Vote por Uno</b>	
1 JB Pritzker & Juliana Stratton	←
2 Chris Kennedy & Ra Joy	←
3 Daniel Biss & Litesa E. Wallace	←
5 Bob Daiber & Jonathan W. Todd	←
6 Tio Hardiman & Patricia Avery	←
7 Robert Marshall & Dennis Cole	←
<b>Attorney General</b>	
Abogado Fiscal	
<b>Vote for One / Vote por Uno</b>	
8 Pat Quinn	←
9 Renato Mariotti	←
10 Scott Drury	←
11 Nancy Rotering	←
12 Kwame Raoul	←
13 Jesse Ruiz	←
14 Sharon Fairley	←
15 Aaron Goldstein	←
	← <b>write-in</b> voto por escrito

In 19 of New Jersey's 21 counties,<sup>63</sup> on the other hand, the ballot is organized not by electoral position being sought but by the group of candidates that the county party has endorsed.

This difference is because in New Jersey, political parties are given the ability to nominate candidates for primary elections and to elect members to serve for party office at the state, county, and municipal levels.<sup>64</sup> County committees for each political party can nominate, endorse, and influence the placement of candidates on primary ballots.

<sup>63</sup> Salem County and Sussex County are the only two counties in New Jersey that do not use the county line design for primary elections. Instead, in these two counties, candidates are designated around the electoral positions being sought, like the ballots used in every other state in the country. See Rubin, *supra* note 2.

<sup>64</sup> See N.J. STAT. ANN. § 19:5-1.

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Once the county party has endorsed a slate of candidates, these candidates are grouped together under one slogan in an act that is known as “bracketing.”<sup>65</sup> Once bracketed, the entire group of candidates is organized on the ballot in a vertical or horizontal line—not by office sought, as in other states, but by mere association with the other party-endorsed candidates.<sup>66</sup> This is what is referred to as the “county line.” Additionally, the county line is almost always headed by the most well-known candidate.

Candidates in New Jersey who are not endorsed by a county party, on the other hand, are considered “unbracketed” and will not be listed with the candidates who are grouped together on the county line. These unbracketed candidates may be relegated far to the right (or further to the bottom) of the ballot, often termed “Ballot Siberia.”<sup>67</sup>

Figure 2 below is an example of the county line endorsed by the Democratic Party. This primary ballot from Monmouth County, New Jersey, includes U.S. House of Representatives candidate Stephanie Schmid in a vertical line with presidential candidate Joseph Biden, U.S. Senate candidate Cory Booker, county clerk candidate Angela Andez-Anderson, and candidates for the Board of Chosen Freeholders (now referred to as “Commissioners”), Michael Penna and Moira Nelson.

Despite the density of names on this line, none of the names grouped together in the first column of the ballot are competing for the same electoral position. Stephanie Schmid, for example, is running for office against Christine Conforti and David Applefield, who are listed far to the right of the vertical line of party-endorsed candidates. At a glance, the ballot does not make this clear.

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<sup>65</sup> Pugach, *supra* note 3, at 630.

<sup>66</sup> Pugach, *supra* note 3, at 630.

<sup>67</sup> See First Am. Compl. 18, Conforti v. Hanlon, Case No. 3:20-CV-8267 (D.N.J., Jan 25, 2021), ECF No. 33, <https://www.democracymocket.com/wp-content/uploads/2022/06/33-2021-01-25-First-amended-complaint.pdf>.

Figure 2: Monmouth County, New Jersey, 2020 Democratic primary election ballot<sup>68</sup>

Office Title	Democratic	Democratic	Democratic	Democratic	Democratic	Personal Choice
<b>Choice for President and Delegates to the Democratic National Convention</b> Seventh Delegate District A vote for President is an automatic vote for all affiliated Delegates and Alternate Delegates. Vote for One	Joseph R. BIDEN Monmouth County Democrats Delegates: Mary FOSTER, SCAGLE, Michael DUPONT, Joseph LIBITTI, AARONSON Alternate Delegate: Edward ZEPFICH		Bernie SANDERS Bernie 2020: Not Me, Us Delegates: Joel E. SCHWARTZ, Katherine TROGLIANO, Anna Maria VICKY, Dan WION Alternate Delegate: Angus MCCULLAID			<input type="checkbox"/> <small>write in (use #11 in pencil)</small>
<b>For United States Senate</b> Vote for One	Cory BOOKER Monmouth County Democrats	Lawrence HAMM Not Me, Us				<input type="checkbox"/> <small>write in (use #11 in pencil)</small>
<b>For U.S. House of Representatives</b> Six Cong. District Vote for One	Stanhannie SCHMID Monmouth County Democrats			Christine CONFORTI Monmouth County Democrats for the People	David APPLEFIELD Families in Healthcare, Schools, Local Businesses	<input type="checkbox"/> <small>write in (use #11 in pencil)</small>
<b>For County Clerk</b> Vote for One	Angela AMBEZ-ANDERSON Monmouth County Democrats					<input type="checkbox"/> <small>write in (use #11 in pencil)</small>
<b>For Members of the Board of Chosen Freeholders</b> Vote for Two	Michael PENNA Monmouth County Democrats	Angelica ASHFORD Not Me, Us				<input type="checkbox"/> <small>write in (use #11 in pencil)</small>
	Moir Nelson Monmouth County Democrats	Lucille BENFANTI Not Me, Us				<input type="checkbox"/> <small>write in (use #11 in pencil)</small>

Similarly, Figure 3 below shows a Democratic primary ballot from Camden, New Jersey, during a non-Presidential election year. In this ballot, all candidates in Column 1 are associated together on the county line, despite almost all running for different offices.

Confusing voters further, multiple candidates from the Board of Commissioners are on the county party line together, despite technically running as opponents for the same office. Additionally, multiple candidates for the Member of Council are also listed together in Ballot Siberia, despite running as opponents for the same office as Shaneka Boucher. Overall, the contest boundary lines are murky, leaving voters unclear about which candidates are running for each position.

<sup>68</sup> See Rubin, *supra* note 2.

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Figure 3: Camden County, New Jersey, 2019 Democratic primary election ballot<sup>69</sup>

OFFICE TITLE TITULO DE OFICINA	COLUMN 1 COLUMNA 1	COLUMN 2 COLUMNA 2	COLUMN 3 COLUMNA 3	COLUMN 4 COLUMNA 4	WRITE-IN POR ESCRITO
Members of the General Assembly (Vote for Two) Miembros de la Asamblea General (Vote Por Dos)	Camden County Democrat Committee, Inc. William W. SPEARMAN				
	Camden County Democrat Committee, Inc. William F. MOEN, JR.				
County Clerk (Vote for One) Secretario del Condado (Vote Por Uno)	Camden County Democrat Committee, Inc. Joseph RIPA			Built A New Camden County Mohammad KABIR	
				Democrat of Camden County Steve MARGULIS	
Member of the Board of Chosen Freeholders Unexpired Term (Vote for One) Miembro de la Junta de Legisladores del Condado Termino No Vencido (Vote Por Uno)	Camden County Democrat Committee, Inc. Melinda KANE			Democrat of Camden County Kyle NASH	
Members of the Board of Chosen Freeholders (Vote for Two) Miembros de la Junta de Legisladores del Condado	Camden County Democrat Committee, Inc. Edward T. MC DONNELL	Progressive Democrats for Change Randall J. MC GINNIS, JR.	Real Progressive Democrats for Camden County Amanda SEMPLE		
	Camden County Democrat Committee, Inc. Carmen G. RODRIGUEZ	Progressive Democrats for Change Steven PANARELLO	Real Progressive Democrats for Camden County Jason A. WITTE		
Member of Council (Vote for One) Miembro del Consejo Municipal (Vote Por Uno)	Camden County Democrat Committee, Inc. Shaneka BOUCHER			Democrat of Camden County Yancey BOWMAN	
				This is The Time and Go Tina ISRAEL	
				Break The Chains For Change For Sherita G. MARSHALL	

In both primary ballot examples, while the candidates on the county line are visually distinct and easy to find, the physical space between candidates outside and inside Ballot Siberia makes the latter candidates substantially harder to find. Moreover, these candidates may appear less important or less legitimate than the candidates grouped together near the front.<sup>70</sup> This makes a significant difference to voters.

Bracketed candidates are also further advantaged by association with more high-profile names in a way that candidates in Ballot Siberia are not. In Figure 2, for example, U.S. House of Representatives candidate Stephanie Schmid is substantially better off by being listed in a line with U.S. presidential candidate Joseph Biden and U.S. Senate candidate Cory Booker, two very well-known names in larger races.<sup>71</sup>

Figure 3, on the other hand, shows how challenging the organization of the line can make it to vote for a candidate. Both the General Assembly and Board of Commissioners races confusingly have multiple names on the county line. In this case, voters were allowed to select two candidates for each office. It is easy to see, however, how a voter selecting straight down the line could invalidate their entire ballot by choosing multiple candidates if the instructions did not specifically allow for them to do so. In fact, voters in New Jersey are so conditioned to mark their ballots for everyone on the county line such that

<sup>69</sup> GGCNJ Resolution to Establish a Fair Ballot, GOOD GOV'T COAL. OF N.J. (last visited Apr. 11, 2023), <https://ggcnj.org/betterballotsnj/resolution/>.

<sup>70</sup> See First Am. Compl., Conforti v. Hanlon, *supra* note 67.

<sup>71</sup> See Pugach, *supra* note 3, at 655.

undervotes, resulting from accidental invalidation, are a chronic problem across the state.<sup>72</sup>

Overvotes and undervotes due to voter confusion disproportionately impact Black and other people of color,<sup>73</sup> especially in places like Camden, where they make up over 90 percent of the city's population.<sup>74</sup> This is also true broadly in New Jersey, where people of color will soon become a majority of the population.<sup>75</sup>

### 1. Positional Bias and the Impacts of the County Line on New Jersey Voters, Particularly Black and Voters of Color, and Democracy

"It has been well-documented that when choosing between a set of visually presented options, a significant percentage of people will demonstrate a bias toward choosing the first option."<sup>76</sup> This phenomenon, referred to as "positional bias," also applies to voters deciding which candidate to choose on a ballot.<sup>77</sup> Candidates who are listed first on a ballot enjoy a substantial advantage compared to candidates who are listed further down the ballot.<sup>78</sup> One study found that the advantage candidates gained by being listed in the first position on a ballot exceeded the winner's entire margin, "suggesting that the ballot position would have determined the election's outcome if one candidate had held the top spot in all [voting] precincts."<sup>79</sup> Federal

<sup>72</sup> See Rubin, *supra* note 2.

<sup>73</sup> In her report, Julia Sass Rubin found, for example, that the Democratic Congressional District 2 (CD2) primary in 2020 likely resulted in a 20% undervote. CD2 is a plurality district comprised of 35% people of color. See Rubin, *supra* note 2.

<sup>74</sup> In Camden, Black people comprise over 41% and the Latinx community makes up 51% of the city's population. *QuickFacts: Camden City, New Jersey*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/camdencitynewjersey/IPE120219#IPE120219> (last visited Apr. 11, 2023).

<sup>75</sup> See Tennyson Donyéa, *Incoming N.J. Senate leadership team the most diverse in state history*, WHYY (Jan. 10, 2022) <https://whyy.org/articles/incoming-n-j-senate-leadership-team-the-most-diverse-in-state-history/>; 2020 Census Information, N.J. State League of Muns. (last visited Oct. 12, 2023), <https://www.njlm.org/384/2020-Census-Information> [<https://perma.cc/X2HY-BKU4>] (stating that the "white alone" population of New Jersey is 55 percent).

<sup>76</sup> See, e.g., First Am. Compl., *Conforti v. Hanlon*, *supra* note 67, at 21–22 (citing Joanne M. Miller, *The Electoral Effects of Ballot Design: An Executive Summary*, Compl., Exhibit B, *Conforti v. Hanlon*, Case No. 3:20-CV-8267 (D.N.J., Jan 25, 2021), ECF No. 33-2.).

<sup>77</sup> See Matthew Wills, *Ballot Position: It Matters*, JSTOR DAILY (Aug. 29, 2016), <https://daily.jstor.org/ballot-position/>.

<sup>78</sup> *Id.*

<sup>79</sup> See Jonathan GS Koppell & Jennifer A. Steen, *The Effects of Ballot Position on Election Outcomes*, 66 J. OF POL. 1 (Feb. 2004) [<https://doi.org/10.1046/j.1468-2508.2004.00151.x>].

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courts have also recognized that positional bias caused by ballot design laws can unfairly influence voters enough to burden the right to vote.<sup>80</sup> In other words, what position candidates are listed in can significantly impact the outcome of a vote.

In New Jersey, the county line capitalizes on positional bias to give party-endorsed candidates at least a thirty-five percent advantage over candidates who are not on the county line.<sup>81</sup> Professor Julia Sass Rubin's study of the 2020 New Jersey primary election, published by New Jersey Policy Perspective (NJPP), found that New Jersey's primary ballot design significantly impacted election outcomes by steering voters toward specific candidates.<sup>82</sup> Data from both 2020 Democratic and Republican primary races suggested that being on the county line provided candidates with a considerable advantage, particularly to those candidates who were not already known incumbents.<sup>83</sup> The results also showed that a candidate's share of the total vote varied by as much as fifty percentage points—based on whether they were on the county line.<sup>84</sup>

As parties tend to endorse incumbents and since incumbents tend to be white and male, that power is kept within the hands of the two major political parties and incumbent candidates who are not representative of the state's population.<sup>85</sup> To this point, another analysis, conducted by the Communication Workers of America, found that no state legislative incumbent on the county line had lost a primary election in New Jersey between 2009 and 2018.<sup>86</sup> Further, in congressional elections, only two incumbents have lost a primary in New Jersey in the last fifty years.<sup>87</sup> In those two cases, the unsuccessful

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<sup>80</sup> See *McLain v. Meier*, 637 F.2d 1159, 1167 (8th Cir. 1980) (holding an “incumbent first” ballot statute unconstitutional because the ballot design “burden[ed] the fundamental right to vote possessed by supporters”); *Nelson v. Warner*, 477 F. Supp. 3d 486, 509 (S.D. W.Va. 2020) (concluding that West Virginia's ballot ordering statute “burden[ed] the individual plaintiffs’ right to vote” by “systematically awarding the highly beneficial first ballot position to candidates based solely on their political party.”)

<sup>81</sup> See Rubin, *supra* note 2.

<sup>82</sup> See Rubin, *supra* note 2.

<sup>83</sup> See Rubin, *supra* note 5.

<sup>84</sup> See Rubin, *supra* note 5.

<sup>85</sup> See Sophie Nieto-Munoz, *N.J. Lawmakers Brag of Leading a Diverse State. But Legislature is Overwhelmingly White*, N.J. MONITOR (July 27, 2021), <https://newjerseymonitor.com/2021/07/28/in-2021-new-jerseys-legislature-is-still-overwhelmingly-white/>.

<sup>86</sup> Rubin, *supra* note 5 (quoting Francisco Diez, *The Likely Advantages of the Line*, COMM. WORKERS OF AM. ANALYSIS (July 29, 2019)).

<sup>87</sup> Rubin, *supra* note 5.



congressional candidates lost to other party-endorsed incumbents on the county line for that election over them.<sup>88</sup>

In addition to positional bias, the 2020 NJPP study found that county line ballots contributed to voter confusion, resulting in substantial overvotes and undervotes.<sup>89</sup> In one congressional Democratic primary election, almost twenty percent of New Jersey voters did not cast a vote for the U.S. Senate race, and in another primary, more than thirty-two percent of voters selected too many candidates for the House of Representatives.<sup>90</sup> In these cases, voter disenfranchisement was likely due to confusion stemming from the county line design. In the primary election with thirty-two percent overvoting, for example, the ballot included two candidates for the House of Representatives on the county line; this led almost a third of those who voted to select both candidates and disqualify their ballots.<sup>91</sup>

The impact of ballot design influencing voters<sup>92</sup> to select certain candidates over others is felt most by Black and other voters of color. Black and other candidates of color—particularly those who are not incumbents or party picks—are disadvantaged by the current system to an extent where it is often practicably impossible for them to run competitively and be elected at all. Often, this means that diverse candidates will not even attempt to run for office. The burden of these less racially diverse, less competitive races is borne by voters who have the choice of candidates taken from them.<sup>93</sup>

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<sup>88</sup> Rubin, *supra* note 5.

<sup>89</sup> Rubin, *supra* note 5.

<sup>90</sup> Rubin, *supra* note 5.

<sup>91</sup> More than 32% of those who voted in the 4th Congressional District's Democratic primary for the House of Representatives selected both candidates Conforti and Schmid, since both were on the county line but running for the same office. Rubin, *supra* note 5.

<sup>92</sup> Ballot design doesn't just influence voters—it determines elections. During the 2000 U.S. Presidential election, Palm Beach County, Florida utilized a "butterfly ballot," in which officials spread all 10 presidential candidates and their running mates across two pages. The election came down to Florida, and Florida's electoral votes came down to this one county, which President George W. Bush won by just 537 votes. A subsequent study of the election concluded that over 2,000 Democratic voters mistakenly voted for Pat Buchanan, a third-party far right candidate, because of the confusing design. In other words, the poor design of Palm Beach's butterfly ballot may have cost Al Gore the entire presidency. See Caroline Sullivan, *How Ballot Design Impacts Election Results*, DEMOCRACY DOCKET (May 19, 2022), <https://www.democracydocket.com/analysis/how-ballot-design-impacts-election-results/>; Jonathan N. Wand et al., "The Butterfly Did It: The Aberrant Vote for Buchanan in Palm Beach County, Florida," 95 THE AM. POL. SCI. REV. 793, 795 (Dec. 2001), <https://www.jstor.org/stable/3117714?seq=1> [<https://doi.org/10.1017/S000305540040002X>].

<sup>93</sup> See, e.g., Br. of Amici Curiae The League of Women Voters of N.J. & Salvation & Social Justice In Opposition to Defendants' and Intervenor's Mot. To Dismiss, Conforti v.

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In fact, New Jersey’s antidemocratic ballot system causes even incumbents—who the county line might have once endorsed—to drop out of races. In March 2021, for example, in Legislative District 31 (LD31), which includes Bayonne and parts of Jersey City, a legislative incumbent who lost the support of the county party and was dropped from the county line stated that he would not run again due to the extreme disadvantages faced by non-county line candidates on the primary ballot design.<sup>94</sup> The population of LD31 is majority people of color: 25.6 percent Black, 23 percent Asian and 25.2 percent Hispanic.<sup>95</sup> When this candidate terminated his candidacy prior to the election, Black and other voters of color in this majority-people-of-color township lost an opportunity to select him as their candidate of choice. This left them with a more limited slate of remaining candidates to choose from—before they even got to the ballot itself.

Examples like these have led to a legislative body that is segregated in both the top three positions, and is not reflective of, or accountable to, the people who make up a broader, diverse electorate within the state. The result of these elections is nearly predetermined, which is, as discussed above, not a bug, but a feature of the county line.

## 2. Why New Jersey Needs *Conforti v. Hanlon* to End the County Line

As beneficiaries of the county line, the New Jersey Legislature is unlikely to pass legislation to end the practice; this is precisely why the Garden State needs the landmark federal lawsuit that was filed in 2020 to abolish the county line to succeed.

In July 2020, six plaintiffs—comprised of former candidates who had previously run in New Jersey primaries and the New Jersey Working

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Hanlon, Case No. 3:20-CV-8267 (D.N.J., Jan 25, 2021), ECF No. 72 (D.N.J. June 1, 2021) [hereinafter “*Conforti v. Hanlon Amici Curiae*”], [https://d3n8a8pro7vhmx.cloudfront.net/njsj/pages/688/attachments/original/1622554519/Conforti\\_-\\_Motion\\_and\\_Brief\\_-\\_FILED.pdf?1622554519](https://d3n8a8pro7vhmx.cloudfront.net/njsj/pages/688/attachments/original/1622554519/Conforti_-_Motion_and_Brief_-_FILED.pdf?1622554519) at p. 8–9 (“Many ballot design studies demonstrate that when basic usability principles are ignores in the design of ballots, a significant percentage of voters will be disenfranchised, and the affected voters will disproportionately be . . . minority [voters.] . . . [P]oor and racial and ethnic minorities [across] the country have been most impacted when these problems are not adequately addressed”).

<sup>94</sup> Israel, *supra* note 42.

<sup>95</sup> *NJ 2020 State Legislatures, Map, DAVE’S REDISTRICTING*, <https://davesredistricting.org/maps#viewmap::3e874200-c618-42b5-8ed0-55cfc0bc5755> (last visited Apr. 11, 2023).

Families Alliance—sued to challenge New Jersey’s unconstitutional ballot design and practice under the county line.<sup>96</sup>

The suit in *Conforti v. Hanlon* alleges that New Jersey primary election ballots “undermine the integrity of elections and hinder[s] our democracy” by creating unfair ballots that “stack the deck for certain candidates at the expense of others.”<sup>97</sup> The county line, the suit argues, disproportionately advantages incumbents and “party elites” and thus “fails to treat similarly situated candidates the same.”<sup>98</sup> In doing so, New Jersey’s ballot design also harms voters by making it more difficult for them to elect unbracketed candidates they might prefer over bracketed ones.<sup>99</sup> The lawsuit further argues that the current system burdens voters “through the creation of a confusing, manipulated ballot design that taints the outcome of elections.”<sup>100</sup>

Plaintiffs in *Conforti v. Hanlon* allege that the county line ballot design and system violate: 1) the First and Fourteenth Amendments, specifically the right to vote, equal protection and freedom of association;<sup>101</sup> 2) the New Jersey Constitution, specifically the right to vote, equal protection, and free speech and association; and 3) the New Jersey Civil Rights Act.<sup>102</sup>

In June 2021, the League of Women Voters of New Jersey and Salvation and Social Justice, represented by the Institute and Campaign Legal Center, filed an amicus brief in support of plaintiffs.<sup>103</sup> This brief built on plaintiffs’ original claims and added that New Jersey’s primary ballot design misleads and confuses voters from casting votes that accurately reflect their preferences.<sup>104</sup> Moreover, the brief argued that the county line system and rules disproportionately harm Black and other voters and candidates of color specifically.<sup>105</sup>

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<sup>96</sup> See First Am. Compl., *supra* note 67; *Conforti v. Hanlon*, CAMPAIGN LEGAL CTR., <https://campaignlegal.org/cases-actions/conforti-v-hanlon> (last updated June 1, 2021).

<sup>97</sup> First Am. Compl., *supra* note 67, at 2.

<sup>98</sup> First Am. Compl., *supra* note 67, at 4–5.

<sup>99</sup> See First Am. Compl., *supra* note 67, at 6.

<sup>100</sup> See First Am. Compl., *supra* note 67, at 6.

<sup>101</sup> First Am. Compl., *supra* note 67, at 13. (Including freedom from association, since one of the features of bracketing is that candidates must be associated with other candidates on the county line whom they might not otherwise want to be associated with).

<sup>102</sup> See First Am. Compl., *supra* note 67.

<sup>103</sup> See *Conforti v. Hanlon Amici Curiae*, *supra* note 95.

<sup>104</sup> See *Conforti v. Hanlon Amici Curiae*, *supra* note 95, at 14.

<sup>105</sup> See *Conforti v. Hanlon Amici Curiae*, *supra* note 95, at 9.

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A year later, in June 2022, the court rejected defendant New Jersey's motion to dismiss this case, thereby allowing it to proceed.<sup>106</sup>

Plaintiffs in this case will ultimately prevail. But New Jersey should not wait to lose this case. It should instead settle this matter without further protracted and costly litigation—in fact, democracy requires it.

#### IV. CONCLUSION

For too long, democracy in New Jersey has been purposefully designed by a single, racialized, and antidemocratic county line.

The effects of that design, which is deeply rooted in the Garden State's history of democratic exclusion, manifest in election after election where incumbents win even as they remain largely unrepresentative of the state's population, and unaccountable to addressing the difficult conditions faced by Black and other people of color—among the worst in America.

Following our recent successes in building a more inclusive democracy, New Jersey must also end the county line.

For the good of democracy, the state cannot, and should not, continue to expend millions of taxpayer dollars defending a case it will ultimately lose. The courts, if not the legislature, must demonstrate the courage, resolve, and leadership to abolish the antidemocratic practice of the county line itself. New Jersey must, in addition, replace its system of tying bracketed candidates to ballot position with a practice of randomized drawing and ballot placement.

Only when the state abolishes and redesigns its antidemocratic primary ballot system can Black and other voters of color finally have a fighting chance of having their votes, candidacies, and voices heard in New Jersey.

The integrity of New Jersey's democracy depends on it.

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<sup>106</sup> *Conforti v Hanlon: United States District Court for the District of New Jersey – Order Denying Motion to Dismiss, Campaign Legal Center*, <https://campaignlegal.org/document/conforti-v-hanlon-united-states-district-court-district-new-jersey-order-denying-motion> (last updated June 1, 2022).