

No. 22-1033

IN THE
Supreme Court of the United States

EUGENE MAZO, et al.,
Petitioners,

v.

NEW JERSEY SECRETARY OF STATE, et al.,
Respondents.

**On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Third Circuit**

**BRIEF OF *AMICI CURIAE* NEW JERSEY
PROFESSORS OF LAW AND POLITICS
IN SUPPORT OF PETITION FOR CERTIORARI**

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INTEREST OF *AMICI CURIAE*¹

Amici curiae are four professors at various New Jersey universities (Princeton, Rutgers, and Seton Hall). They are all longtime observers of New Jersey's political system, intimately knowledgeable about the "slogan statutes," and particularly interested in the outcome of this case. They have each also served in various capacities in New Jersey State government.

Ronald K. Chen is Distinguished Professor of Law, University Professor, and Judge Leonard I. Garth Scholar at Rutgers Law School. He has been a faculty member since 1987 and served as the school's Dean from 2013 to 2018. From 2006 to 2010, Chen served as the Public Advocate of New Jersey, a cabinet position to which he was nominated by Governor Jon S. Corzine and confirmed by the State senate.

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¹ Pursuant to Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici curiae*, their members, and their counsel made a monetary contribution to its preparation or submission. *Amici curiae* further affirm that counsel of record for all parties received notice of the intent to file this brief at least 10 days before its due date.

since 1986. She has also served in many government roles, including chair of the New Jersey State Ethics Commission, chair of the State Commission on Professionalism, vice-chair of the State Election Law Enforcement Commission, and special ethics counsel to Governor Richard J. Codey.

Samuel S.-H. Wang is Professor of Neuroscience at Princeton University, where he is a faculty associate of the Program in Law and Public Affairs. He also directs the Electoral Innovation Lab, a nonpartisan policy analysis organization. In 2021, Wang served as a consultant to both the New Jersey Apportionment Commission and the New Jersey Redistricting Commission.²

INTRODUCTION AND SUMMARY OF ARGUMENT

This case provides a clean vehicle for this Court to resolve a constitutional issue of exceptional importance. As the Petition for Certiorari explains, New Jersey’s “slogan statutes” suppress core political speech through unmistakable content and viewpoint discrimination. *See* Pet. at 1–3; N.J. Stat. Ann. §§ 19:23-17, 19:23-25.1. And the decision below that upholds those statutes is incorrect. It applies the wrong analytical framework, and it threatens to undermine the First Amendment’s role in preserving our republican democracy. *Amici curiae* submit this brief to emphasize how the Third Circuit’s decision

² Institutional affiliations are provided for identification only and *amici* are speaking solely in their individual capacities. The contents of this *amicus* brief do not necessarily reflect the views of Princeton, Rutgers, or Seton Hall.

cements an unconstitutional ballot system that stifles political competition.

It is no secret that ballot design can have a profound effect on election outcomes. *See, e.g.*, Erik J. Engstrom & Jason M. Roberts, *The Politics of Ballot Design: How States Shape American Democracy* 4–5 (2020) (“The form and structure of the ballot presented to voters can affect . . . how those who choose to vote cast their ballots.”). For instance, “[d]ue to a phenomenon known as the ‘primacy effect,’ candidates listed first on a ballot have an advantage over later-listed candidates.” Michael R. Dimino et al., *Voting Rights and Election Law: Cases, Explanatory Notes, and Problems* 525 (3d ed. 2020). Similarly, because of a cognitive bias some have described as “weight of the line,” voters are naturally drawn to candidates whose names are grouped together in a row or column. *See* Samuel S.-H. Wang, *Two Tests for Bias Arising from the Design of Primary Election Ballots in New Jersey*, 47 *Seton Hall Leg. J.* (forthcoming 2023) (manuscript at 4) (on file with author).

By leveraging these phenomena in favor of their preferred candidates, entrenched political leaders can significantly impair the electoral prospects of challengers. That is precisely what the slogan statutes enable. But such preferential balloting systems undermine the integrity of our elections. They corrupt the democratic process. And they threaten our constitutional order. Indeed, the Framers considered political corruption among the greatest threats to the nascent country. *See, e.g.*, 1 *The Records of the Federal Convention of 1787*, at 391–92 (Max Farrand ed., 1911) [hereinafter “Farrand’s

Records”] (George Mason) (“[I]f we do not provide against corruption, our government will soon be at an end.”). So they deliberately structured our Nation’s charter to thwart abuses of power by political insiders. Those bulwarks of democracy—including the First Amendment—serve to ensure that the ultimate power remains “in the people over the Government, and not in the Government over the people.” 4 Annals of Cong. 934 (1794) (James Madison); see *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1675 (2020) (Thomas, J., concurring) (explaining that the Framers “embraced a concept of government in which the people are sovereign” (cleaned up) (quoting Akhil Amar, *America’s Constitution: A Biography* 278–79 (2005))).

New Jersey’s ballot system inverts that hierarchy of power. Through the slogan statutes, “New Jersey law provides advantages to machine-backed candidates that are extremely difficult for any challenger to overcome.” Brett M. Pugach, *The County Line: The Law and Politics of Ballot Positioning in New Jersey*, 72 Rutgers U. L. Rev. 629, 630 (2020). The State organizes its primary elections by allowing a “bracketed” group of candidates to line up together on a ballot based on a common slogan, rather than by political office. See N.J. Stat. Ann. § 19:23-24. In turn, the favorites of the entrenched political machines get to use the same party-controlled slogan and thereby benefit from the “weight of the line” phenomenon. And, through other aspects of New Jersey law, those candidates are often given favorable ballot positioning too. See Alexander J. Law, *The Restoration of Anti-Corruption as a Constitutional Principle*, 14 Alb. Gov’t L. Rev. 144, 174–75 (2021). Meanwhile, the slogan

statutes' consent restrictions can serve to prevent challengers from using their preferred slogans—or from adopting the party insiders' chosen slogans. Then those opposition candidates “are spread across the ballot into ‘ballot Siberia,’” where they predictably lose votes. *Id.* (citation omitted). The result is that “strong party bosses control the selection of candidates” in New Jersey, and “real competition is snuffed out.” William E. Schluter, *Soft Corruption: How Unethical Conduct Undermines Good Government and What To Do About It* 10 (2017).

This Court should end the electoral distortion facilitated by New Jersey's slogan statutes. Allowing the Third Circuit's decision to stand would entrench the influence of party machines over electoral behavior and greenlight intrusions into core political speech. *Amici curiae* respectfully urge this Court to grant certiorari and reverse.

ARGUMENT

I. The Framers Designed Our Constitution To Empower The People And Thwart Political Corruption.

“A fundamental principle of our representative democracy” is that “the people should choose whom they please to govern them.” *Powell v. McCormack*, 395 U.S. 486, 547 (1969) (quoting 2 *Debates on the Federal Constitution* 257 (J. Elliot ed., 1876) [hereinafter “Elliot's Debates”] (Alexander Hamilton)). To that end, the Framers insisted that popular elections—as the “great source of free government”—“be perfectly pure, and the most unbounded liberty allowed.” 2 Elliot's Debates at 257

(Alexander Hamilton). Only then could the streams of political power flow “from that pure, original fountain of all legitimate authority”—“the consent of the people.” The Federalist No. 22, at 152 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

The Framers knew, however, that this vision for the New Republic would face constant threats. After all, they “had much experience with a tendency in human nature to abuse power.” *Ullmann v. United States*, 350 U.S. 422, 428 (1956); see, e.g., 1 Farrand’s Records at 379 (Pierce Butler) (lamenting the nature of mankind as revealed by “the history of the government of Great Britain”); Patrick Henry, *Speech on the Expediency of Adopting the Federal Constitution* (June 7, 1788), in 1 *Eloquence of the United States* 178, 223 (E. B. Williston ed., 1829) (“Look at Britain; see there the bolts and bars of power; see bribery and corruption defiling the fairest fabric that ever human nature reared.”). And the Framers recognized that their country would not be immune from that natural tendency. If they were to sustain the “government of the people, by the people, for the people,” that they envisioned, see Abraham Lincoln, Gettysburg Address (Nov. 19, 1863), “[n]othing was more to be desired than that every practicable obstacle” be placed in the way of “cabal, intrigue, and corruption,” The Federalist No. 68, at 412 (Alexander Hamilton).

The Delegates to the Constitutional Convention thus set out to erect those guardrails in the summer of 1787. The result of their efforts was that the vices of political corruption were “more effectually guarded against, in the manner this government was

constituted, than in any other that had ever been formed.” 4 Elliot’s Debates at 302 (Charles Pinckney); *see also* Seth Barrett Tillman, *The Original Public Meaning of the Foreign Emoluments Clause: A Reply to Professor Zephyr Teachout*, 107 Nw. U. L. Rev. Colloquy 180, 208 (2013) (“[C]orruption-speak dominated the worldview of the Framers, and of the ratifiers, and of the public of 1787-1789[.]” (emphasis omitted)).

Still, the People were wary from their recent experience with the British Empire. It was not lost on them that “[t]he first instinct of power is the retention of power.” *McConnell v. FEC*, 540 U.S. 93, 263 (2003) (Scalia, J., concurring in part and dissenting in part). And so they responded by demanding greater assurances than the Constitution had initially provided. In particular, the Anti-Federalists insisted on a declaration of rights that would explicitly guarantee the “freedom of speech,” among other protections. *See* Centinel No. 1, in 2 *The Complete Anti-Federalist* 136, 136 (Herbert J. Storing ed., 1981).

That guarantee soon made its way into the First Amendment. “Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints.” *Citizens United v. FEC*, 558 U.S. 310, 340 (2010). And nowhere is the fundamental freedom that it enshrines more zealously guarded than in the context of a political campaign. *See FEC v. Ted Cruz for Senate*, 142 S. Ct. 1638, 1650 (2022).

That is no mistake. The political campaign is “at the heart of American constitutional democracy.” *Brown v. Hartlage*, 456 U.S. 45, 53 (1982). And “the

system of government the First Amendment was intended to protect” is a “democratic system whose proper functioning is indispensably dependent on the unfettered judgment of each citizen on matters of political concern.” *Elrod v. Burns*, 427 U.S. 347, 372 (1976) (plurality op.). In that system, free speech is “the means to hold officials accountable to the people.” *Citizens United*, 558 U.S. at 339. And even marginal burdens on that freedom can exact intolerable costs. When our political leaders use their positions to stifle or manipulate the content of election-related speech, democracy suffers—as does the future of our country. See *Buckley v. Valeo*, 424 U.S. 1, 14–15 (1976) (per curiam) (“In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation.”).

Simply put, “[t]he First Amendment was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Meyer v. Grant*, 486 U.S. 414, 421 (1988) (quotation marks omitted). And its democratic underpinnings cannot be overstated. As James Madison explained when opposing the Sedition Act, the First Amendment forbids “those in power” from suppressing speech to “derive an undue advantage for continuing themselves in [power].” James Madison, *Report on the Virginia Resolutions*, in 4 Elliot’s Debates at 576. Such self-serving attempts by politically entrenched actors to manipulate the public debate over who should govern “impair the right of election” and the right of the people to govern themselves. *Id.* Or, as this Court put it more recently:

“[T]hose who govern should be the *last* people to help decide who *should* govern.” *McCutcheon v. FEC*, 572 U.S. 185, 192 (2014) (plurality op.).

New Jersey’s slogan statutes flip that principle on its head. They “handicap candidates ‘at the most crucial stage in the election process—the instant before the vote is cast.’” *Cook v. Gralike*, 531 U.S. 510, 525 (2001) (quoting *Anderson v. Martin*, 375 U.S. 399, 402 (1964)). And as the Petitioners correctly explain, the statutes “operate to discriminate on the basis of viewpoint and in favor of entrenched political machines.” Pet. at 14. That much cannot be disputed. But the reality is that the situation in New Jersey is even worse than appears at first blush.

II. The Slogan Statutes Hamstring The People’s Will By Granting Outsized Influence To Party Machines.

A. Political Insiders Exploit New Jersey’s “County Line” Bracketing System To Influence Primary Election Outcomes.

In New Jersey, “manipulating the primary ballot structure in the selection of candidates for office” has long represented “standard operating procedure among political pros.” *Schluter*, *supra*, at 6. And one particular feature of the system—known as the “County Line”—illustrates with striking clarity just how “the state’s party bosses and county chairs” exploit the slogan statutes “to deprive [New Jersey’s] citizens of their right to exercise a free and fair vote.” *Pugach*, *supra*, at 631.

Here is how the County Line operates: By law, candidates who file a joint petition and “choose the

same designation or slogan” for the primary election have their names “drawn for position on the ballot as a unit,” and “shall have their names be placed on the same line” of the ballot by the county clerks. N.J. Stat. Ann. § 19:49-2; *see also id.* § 19:23-18. Each political party has a “county committee,” *see id.* § 19:5-3, and one of the committee’s principal functions is to endorse favored candidates, *see Pugach, supra*, at 653–54. “The slogan used by county committee-endorsed candidates is often owned by a corporation” controlled by insiders, “which grants permission for the slogan’s use to the slate of candidates endorsed by the county committee.” *Id.* at 654. Thus, through New Jersey’s slogan consent restrictions, *see* N.J. Stat. Ann. §§ 19:23-17, 19:23-25.1, county committees ensure that a cherrypicked slate of candidates appear together as a group on primary ballots, *see Pugach, supra*, at 654–55.

Candidates grouped together in this way possess significant advantages in primary elections. *See Julia Sass Rubin, Does the County Line Matter? An Analysis of New Jersey’s 2020 Primary* 2–12 (2020), bit.ly/3q6TwF9. They are “bracketed” together on the same column or row of the primary ballot. *See* N.J. Stat. §§ 19:23-24, 19:23-25. And because of the “weight of the line,” voters will often engage in straight-ticket voting to select all the candidates grouped together. *See Engstrom & Roberts, supra*, at 27 (“A ballot design that lines candidates into party columns encourages straight-ticket voting.”). As a matter of practice, then, “the county committee-endorsed candidates receive the County Line advantage, while ‘off the line’ candidates remain significantly disadvantaged.” *Pugach, supra*, at 657.


To make matters worse, New Jersey also allows bracketed candidates to participate in a preferential ballot draw, which means that they will receive more prominent ballot positioning. *See id.* at 637–38. That means that the “machine candidates” get placed on the same row or column, “often the first,” despite running for different offices. *Law, supra*, at 174; *see* N.J. Stat. Ann. § 19:49-2. Then unbracketed candidates are relegated to obscure parts of the ballot, colloquially known as “ballot Siberia.” *Law, supra*, at 174 (citation omitted); *see also* Pugach, *supra*, at 661–62 (explaining how “phantom candidates” are “placed on the ballot solely by the political machines to push candidates who [are] not on the party line onto obscure portions of the ballot”).

Consider the following sample ballot for the 2018 New Jersey Democratic primary in Camden County:

DEMOCRAT BALLOT PAPELETA DEMOCRATA										
OFFICE TITLE TITULO DE OFICINA	COLUMN 1 COLUMNA	COLUMN 2 COLUMNA	COLUMN 3 COLUMNA	COLUMN 4 COLUMNA	COLUMN 5 COLUMNA	COLUMN 6 COLUMNA	COLUMN 7 COLUMNA	COLUMN 8 COLUMNA	COLUMN 9 COLUMNA	WRITE-IN POR ESCRITO
United States Senator Senador de los Estados Unidos	Robert M. GUY MC CONROY	Richard P. ROBERTSON ROBERTSON								Write-in Senador Senador de los Estados Unidos
Member of the House of Representatives Miembro de la Cámara de Representantes		Joseph P. VINCIGROSSI VINCIGROSSI							Write-in Senador Senador de los Estados Unidos	Write-in Senador Senador de los Estados Unidos
Sheriff Alcalde		Robert M. NELSON NELSON								Write-in Alcalde Alcalde
Member of the Board of Chosen Freeholders Miembro de la Junta de Elegidos del Condado	Jeffrey L. NASH NASH	Mark A. CARANO CARANO	Joseph P. VINCIGROSSI VINCIGROSSI	John J. DE LUCA DE LUCA	John J. COYLE COYLE	Joseph P. VINCIGROSSI VINCIGROSSI	Joseph P. VINCIGROSSI VINCIGROSSI	Joseph P. VINCIGROSSI VINCIGROSSI	Joseph P. VINCIGROSSI VINCIGROSSI	Write-in Miembro Miembro de la Junta de Elegidos del Condado
	Steven M. SORIANO SORIANO	Mark A. CARANO CARANO	Joseph P. VINCIGROSSI VINCIGROSSI	John J. DE LUCA DE LUCA	John J. COYLE COYLE	Joseph P. VINCIGROSSI VINCIGROSSI	Joseph P. VINCIGROSSI VINCIGROSSI	Joseph P. VINCIGROSSI VINCIGROSSI	Joseph P. VINCIGROSSI VINCIGROSSI	Write-in Miembro Miembro de la Junta de Elegidos del Condado
	Robert M. NELSON NELSON	Mark A. CARANO CARANO	Joseph P. VINCIGROSSI VINCIGROSSI	John J. DE LUCA DE LUCA	John J. COYLE COYLE	Joseph P. VINCIGROSSI VINCIGROSSI	Joseph P. VINCIGROSSI VINCIGROSSI	Joseph P. VINCIGROSSI VINCIGROSSI	Joseph P. VINCIGROSSI VINCIGROSSI	Write-in Miembro Miembro de la Junta de Elegidos del Condado
Mayor Alcalde		Robert M. NELSON NELSON								Write-in Alcalde Alcalde
Members of Council Miembros del Consejo Municipal		Joseph P. VINCIGROSSI VINCIGROSSI							Write-in Miembro Miembro del Consejo Municipal	Write-in Miembro Miembro del Consejo Municipal
		Joseph P. VINCIGROSSI VINCIGROSSI							Write-in Miembro Miembro del Consejo Municipal	Write-in Miembro Miembro del Consejo Municipal

See Pugach, *supra*, at 663. The nine “County Line” candidates occupy column 2. See *id.* at 662. Incumbent Senator Robert Menendez occupies the column’s top row. See *id.* at 663. The candidates in Column 2 all have the same slogan. *Id.* And the remaining candidates for the various electoral offices are scattered across the other columns with different slogans. *Id.* These “ballot tricks are obviously designed” to benefit the machine-backed candidates in column 2, by encouraging voters to choose all the candidates bracketed together on the County Line. *Id.* As a result, obtaining the county committee’s endorsement—and in turn, its slogan—has become “synonymous with winning the primary election.” Pugach, *supra*, at 656.

Petitioner Eugene Mazo experienced these problems first-hand. He ran for office in 2020, and below is a sample primary ballot from Essex County for the 2020 Democratic primary election (Essex County brackets candidates by row instead of column):























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

Official Ballot
Primary Election, Tuesday, July 7th, 2020, Essex County, New Jersey

Papeleta Oficial
Elección Primaria, el 7 de Julio de 2020

2 Township of Bloomfield W1 CD10

Democratic

	 Choice for President Vote for One Selección para Presidente Vote por Uno	Choice for President and Delegates to the Democratic National Convention A vote for President is an equal weight vote for all alternate delegates and alternates. Selección para Presidente y Delegados a la Convención Nacional Democrática Un voto por Presidente es un voto igualitario por los delegados y alternantes afiliados	For United States Senator Two Year Term Vote for One Para Senador de los Estados Unidos Término de Seis Años Vote por Uno	For Member of the House of Representatives Two Year Term Vote for One Para Miembro de la Cámara de Representantes Término de Cuatro Años Vote por Uno	For County Clerk Two Year Term Vote for One Para Secretario del Condado Término de Cuatro Años Vote por Uno	For Members of the Board of Chosen Freeholders at Large Three Year Term Vote for Four Para Miembros del Consejo de Proprietarios Elección En General Término de Tres Años Vote por Cuatro	For Board of Chosen Freeholders Six Districts Three Year Term Vote for One Para Consejo de Proprietarios Elección Distrito 5 Término de 3 Años Vote por Uno	For Township Council Six Members Three Year Term Vote for One Para Consejo Municipal Distrito 1 Término de 3 Años Vote por Uno			
A	 Joseph R. BIDEN For President 1A <input type="radio"/>	Biden for President Delegates: Luis Quiñones, Warren, Nina Davis, M. James Rios, Anibal Ramos, Charles Hall. Alternate Delegates: Miriam Torres	 Cory BOOKER For Senator 2A <input type="radio"/>	 Donald M. PINE, Jr. For Representative 3A <input type="radio"/>	 Christopher J. DURKIN For County Clerk 4A <input type="radio"/>	 Patricia SEBOLD For Board of Chosen Freeholders 5A <input type="radio"/>	 Rafael I. JOHNSON For Board of Chosen Freeholders 6A <input type="radio"/>	 Brendan W. GILL For Board of Chosen Freeholders 7A <input type="radio"/>	 Romaine GRAHAM For Board of Chosen Freeholders 8A <input type="radio"/>	 Carlos M. POMARES For Township Council 9A <input type="radio"/>	 Jenny MUNDELL For Township Council 10A <input type="radio"/>
B	 Bernie SANDERS For President 1B <input type="radio"/>	Bernie 2020. Noe Me. Et. Delegates: Sean Callahan, Nyle Fox, Taid Clark, Nassor Kass, Anaila Mejia, Robert Earl Rogers, Jr. Alternate Delegates: Lisa Zilger	 Lawrence HAMM For Senator 2B <input type="radio"/>	 Eugene D. MAZO For Representative 3C <input type="radio"/>	 Suber BURBROUGH For County Clerk 5B <input type="radio"/>	 Anthony DIAZ For Board of Chosen Freeholders 6B <input type="radio"/>	 Simon BERBANSKI For Board of Chosen Freeholders 7B <input type="radio"/>				
C	 Bernie SANDERS For President 1C <input type="radio"/>	Bernie 2020. Noe Me. Et. Delegates: Sean Callahan, Nyle Fox, Taid Clark, Nassor Kass, Anaila Mejia, Robert Earl Rogers, Jr. Alternate Delegates: Lisa Zilger									
D	 Uncommitted 1D <input type="radio"/>	Delegates: Anita Norton, John Smith, Joan Jackson Harris, Charles Braden		 John J. FLORA For County Clerk 3D <input type="radio"/>							

See Third Am. Compl. at 11, *Mazo v. Durkin*, No. 3:20-cv-08336-ZNQ-TJB (D.N.J. Feb. 21, 2023). Mr. Mazo

does not appear in the same row as incumbent Senator Cory Booker or now-President Joe Biden because he did not bracket with those candidates. *See id.* And that placement “off the line” put him at a distinct disadvantage vis-à-vis Donald M. Payne, Jr., who was bracketed with those prominent candidates on the County Line. *See Pugach, supra*, at 655 (“Parties know that voters are much more likely to vote down [or across] the line for all candidates who are associated with the few recognized names at the top of the ballot than they are to vote for a candidate with a different slogan on a different line of the same ballot.”). Predictably, Mr. Mazo lost the primary. Pet.App.52.

The ability to select a slogan and then bracket candidates together provides a tremendous source of political power. And, of course, the party insiders—who usually control the slogans that candidates need to bracket with one another—exploit the County Line bracketing system to advantage their hand-picked candidates at the expense of challengers. That skews primary elections in ways that do not fairly reflect the people’s will.

B. Empirical Evidence Shows That New Jersey’s County Line Bracketing System Influences Voters, Entrenches Incumbents, And Skews Elections.

This electoral distortion is not just theoretical. Scholarly studies reveal that “structuring ballots around the county line impacts election outcomes by steering voters towards specific candidates.” Rubin, *Does the County Line Matter?*, *supra*, at 2; *see also, e.g.*, Wang, *supra* (manuscript at 8); Suzi Ragheb, *How*

New Jersey Political Parties Rig the Ballot, J. of Pub. & Int'l Affs. (June 23, 2021), <https://bit.ly/40hR3F2>. Indeed, “[c]andidates’ share of the vote varied by as much as 50 percentage points, based on whether or not they were on the county line.” Rubin, *Does the County Line Matter?*, *supra*, at 2. It is no wonder that political insiders regard this “faulty design [as] a feature rather than a bug” for controlling elections. Julia Sass Rubin, *Toeing the Line: New Jersey Primary Ballots Enable Party Insiders to Pick Winners* 4 (2020), bit.ly/433xfa2.³ The ballot structure “intentionally and effectively deprives the state’s voters from being able to replace party-backed insiders with challengers.” Pugach, *supra*, at 631.

Given the power of the County Line, “what matters most to political candidates” in New Jersey, “at least as far as primary elections go, is that they have the support of their county party chair, rather than the support of the state’s voters.” *Id.* That is especially true when it comes to incumbents. *Amicus* Samuel Wang has demonstrated that New Jersey incumbents “who are listed on the county line have success rates that are higher than their counterparts [in] the other 49 states.” Wang, *supra* (manuscript at 6). And the odds of this overperformance by New Jersey incumbents arising by chance are “less than one in 1 million.” *Id.* In fact, over the course of a decade, not one State legislative incumbent featured on the

³ The majority of New Jersey voters, by contrast, oppose the County Line bracketing system and the distorting influence it has on the State’s politics. See David Wildstein, *Most New Jerseyans oppose organization lines, FDU poll says*, N.J. Globe (Nov. 15, 2022), bit.ly/3Wt3YCY.

County Line lost a New Jersey primary election. *See* Rubin, *Does the County Line Matter?*, *supra*, at 3 (citing Francisco Diez, *The Likely Advantages of the Line*, *Comm’n Workers of Am.* (July 29, 2019)).

When an incumbent does lose his or her seat these days, “it is usually not as the legitimate result of the voters’ rejection, but rather because whoever controls the county line . . . simply decides . . . to give the line to someone else.” Ronald Chen & John Farmer, Jr., *New Jersey’s primary election ballots are rigged*, *The Star-Ledger* (June 27, 2021), [bit.ly/3okjy7G](https://www.nj.com/news/politics/story/new-jersey-primary-election-ballots-are-rigged/). This insider-controlled system is fundamentally at odds with our democratic ideals. It “enables entrenched political machines to remain in power and frustrate the ambitions of emerging and historically marginalized groups.” *Id.* Even incumbents “must tailor [their] positions to satisfy the party establishment rather than the voters whose wishes a primary election is ostensibly designed to measure.” *Id.* As a result, in many New Jersey races, “the primary winner is . . . a foregone conclusion,” which is “precisely the intention and the effect of the ‘county line’ primary ballot.” *Id.* “Given the advantages of ballot positioning,” “very few candidates who are not favored by the county line are able to prevail” in the Garden State. *Id.*

C. New Jersey’s County Line Bracketing System Violates The First Amendment.

This statutory scheme is unconstitutional in multiple ways. To start, the State’s slogan statutes restrict core political speech on the basis of content and discriminate on the basis of viewpoint in favor of entrenched partisan machines. *See* Pet. at 16–22. The

First Amendment simply does not tolerate those sorts of restraints. After all, political speech is “indispensable to decisionmaking in a democracy.” *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 777 (1978). So it “must prevail against laws that would suppress it, whether by design or inadvertence.” *Citizens United*, 558 U.S. at 340. In fact, this Court has “never allowed the government to prohibit candidates from communicating relevant information to voters during an election.” *Republican Party of Minn. v. White*, 536 U.S. 765, 782 (2002). It instead applies “exacting scrutiny” to any law that burdens such core political speech, “uphold[ing] the restriction only if it is narrowly tailored to serve an overriding state interest.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995) (citation omitted). The slogan statutes flunk that test. *See* Pet. at 20–22.

Yet the First Amendment flaws in the slogan statutes run even deeper. “This Court has long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others.” *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021) (quotation marks omitted). And “a corollary of the right to associate is the right not to associate.” *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000). Absent some overriding government interest, the States must respect both of these associational rights. *See id.* at 581 (“We have consistently refused to overlook an unconstitutional restriction upon some First Amendment activity simply because it leaves other First Amendment activity unimpaired.”).

New Jersey, however, does not. The County Line system bestows a clear advantage on political candidates who bracket with one another. *See supra* Section II.B. And, by doing so, it elevates some candidates over others who choose to exercise their right not to associate with the County Line. By affording preferential ballot treatment to bracketed candidates, “the State injects itself into the election process at an absolutely critical point—the composition of the ballot, which is the last thing the voter sees before he makes his choice—and does so in a way that is not neutral as to issues or candidates.” *Cook*, 531 U.S. at 532; *see also* Dimino et al., *supra*, at 535 (noting that caselaw “demonstrates very clearly that a ballot design that is neutral on its face can be employed to manipulate election results”). That impermissibly burdens the unbracketed candidate’s associational freedoms, as well as the rights of his supporters. *See Bullock v. Carter*, 405 U.S. 134, 143 (1972) (“[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.”). And that further underscores the need for this Court’s intervention.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully urge this Court to grant the petition for certiorari.

Respectfully submitted,

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