

SENATE, No. 1432

STATE OF NEW JERSEY

INTRODUCED JULY 25, 1996

By Senators SCHLUTER, Bubba and Bassano

1 AN ACT concerning political parties, supplementing Title 19 of the  
2 Revised Statutes, amending various parts of the statutory law, and  
3 repealing R.S.19:34-52.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) a. Sections 1 through 6 of this act shall be known  
9 and may be cited as the "Primary Ballot Reform Act."

10 b. As used in sections 1 through 6 of this act:

11 "party line" means either the horizontal line or the vertical column  
12 into which candidates are grouped on a primary election ballot; and

13 "ballot slating convention" means a convention called by a county  
14 or municipal political party for the purpose of determining ballot  
15 structure.

16

17 2. (New section) The Legislature finds and declares that:

18 a. primary elections are a critical part of the democratic process in  
19 this country and in this State because it is through this procedure that  
20 qualified candidates for elective office are initially screened;

21 b. the great political reform movements of the early part of this  
22 century, which promoted the primary system, recognized the  
23 importance of primaries in curbing the unbridled power of party  
24 bosses;

25 c. the significance of primary elections is further highlighted by the  
26 fact that, in many parts of this State, dominance by one party means  
27 that candidates selected at that party's primary will be elected to office  
28 at the general election;

29 d. the present system by which political parties in this State select  
30 primary candidates has permitted too much power and discretion to  
31 vest in certain individuals, usually the chair of the county committee  
32 of a political party;

33 e. often this one person, with considerable ease, is able to make  
34 unilateral decisions as to which candidates will receive the party

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

- 1 endorsement and have their names appear on the primary ballot on the  
2 party line under a common designation or slogan, thereby giving  
3 favored candidates a virtually unbeatable advantage over opponents;
- 4 f. this has frequently resulted in primary candidates being selected  
5 in a grossly unfair and undemocratic manner without participation by  
6 the party membership;
- 7 g. the essential purpose of a primary election, which is to give the  
8 members of a political party the opportunity to select the party's  
9 standard-bearers at the general election, is subverted when a small  
10 minority within the party is able to stifle the voice of the party  
11 membership by manipulating the process in an arbitrary and  
12 discriminatory manner which distorts the primary ballot structure and  
13 alignment and effects the election's outcome;
- 14 h. in Eu v. San Francisco County Democratic Central Committee,  
15 489 U.S. 214 (1989), the United States Supreme Court invalidated on  
16 First Amendment grounds certain California statutes which regulated  
17 the internal affairs of political parties;
- 18 i. nevertheless, the Supreme Court recognized that restrictions  
19 which infringe upon a party's right to freedom of association may be  
20 justified when there is a sufficiently strong State interest;
- 21 j. the need to reform the process by which a political party in this  
22 State designates the candidates who will be the party's standard-  
23 bearers on that party's primary election ballot is one of those instances  
24 in which the possible infringement on associational rights is justified  
25 by the State's compelling interest in ensuring an orderly and  
26 fundamentally fair system of structuring primary election ballots;
- 27 k. by providing for an orderly method of structuring a primary  
28 election ballot, the State protects the due process and equal protection  
29 interests of all involved, promotes openness and accountability in  
30 representative government and avoids arbitrary and discriminatory  
31 actions by individual party functionaries which detract from the  
32 contributions political parties have made to good government and  
33 American democracy;
- 34 l. improving the primary ballot structuring process would help to  
35 eliminate unfair and discriminatory ballot placements which have often  
36 meant the difference between success and failure in a primary election,  
37 thereby affecting the ultimate selection of the person who represents  
38 a constituency;
- 39 m. since under New Jersey law a political party is entitled to the  
40 use of a primary ballot, that party has a responsibility to properly  
41 structure that ballot; and
- 42 n. these legitimate and worthwhile objectives may be accomplished  
43 in a manner which intrudes upon internal party activities to an extent  
44 which is no greater than the provisions of law which allow a political  
45 party organization to fill certain vacancies in elective public office.

1       3. (New section) a. Notwithstanding the provisions of any other  
2 law to the contrary, in any county in which voting machines are used,  
3 primary election candidates shall appear on the primary ballot, by joint  
4 or individual petition, in an order determined by a random drawing  
5 conducted by the county clerk, except that if a political party holds a  
6 ballot slating convention in the manner provided by subsection b. of  
7 this section, candidates designated by the convention shall be grouped  
8 together on the party line, which may include a common designation  
9 or slogan.

10       b. The county organization of a political party may hold a ballot  
11 slating convention between 21 days and seven days prior to the  
12 deadline for the filing of primary election petitions. The members of  
13 the county committee of the political party who have served for a  
14 period of at least 30 days immediately preceding the convention shall  
15 be delegates to the convention. The county chair and municipal chairs  
16 who have served for a period of at least 30 days immediately preceding  
17 the convention and who are not members of the county committee  
18 shall also be delegates to the convention. Delegates shall receive  
19 seven days' notice of the convention. One-third of the delegates shall  
20 constitute a quorum. The delegates shall vote by secret ballot to  
21 determine which individuals seeking nomination for election shall be  
22 designated by the county organization to appear on the party line.  
23 Only delegates who reside in the district for which nomination for  
24 election is sought shall vote on that particular designation.

25       A candidate seeking designation by a ballot slating convention must  
26 submit a standard nominating petition or a copy thereof to the  
27 convention at least three days prior to the convening thereof. A  
28 candidate for nomination for election to an office from a district which  
29 crosses county lines may seek designation at the convention of each  
30 county included in the district. Voting by proxy or by unit rule is  
31 prohibited. A candidate seeking designation must be nominated by a  
32 delegate.

33       A candidate for nomination for election to an office who receives  
34 the votes of more than 50% of the delegates who are present and who  
35 reside in the district for which nomination for election is sought shall  
36 be the designated candidate, shall be eligible to be placed on the party  
37 line on the primary ballot, and shall be eligible to receive the same  
38 slogan or designation assigned by the campaign manager of the county  
39 freeholders' slate as other candidates on the party line. If another  
40 candidate for nomination for election to that office receives between  
41 20% and 50% of the vote, that candidate shall also be eligible to be  
42 placed on the party line, but without the slogan or designation of the  
43 designated candidates on the party line and in a position below or to  
44 the right, as appropriate, of the candidate who received more than  
45 50% of the vote. If two or more candidates receive between 20% and  
46 50% of the vote, those candidates shall be eligible to be placed on the

1 party line in order of the number of votes received but without the  
2 official party designation or slogan given to designated candidates on  
3 the party line. A candidate who receives less than 20% of the vote  
4 shall not be eligible to be placed on the party line and that candidate's  
5 ballot position shall be determined by a random drawing conducted by  
6 the county clerk unless that candidate is part of a county slate entitled  
7 to a separate line as provided in section 4 of P.L. , c. (C. ) (now  
8 pending before the Legislature as this bill). Whenever any candidate  
9 submits a petition seeking designation by a party convention, the  
10 convention shall hold a vote on designating a candidate for the office  
11 sought. The results of the balloting shall be reported forthwith to the  
12 county clerk. In the event of a tie vote, the ballot position of the  
13 candidates shall be determined by a random drawing conducted by the  
14 county clerk.

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16 4. (New section) Notwithstanding the provisions of any other law  
17 to the contrary, the campaign manager for candidates for nomination  
18 for election to the office of county freeholder shall cross certify  
19 candidates designated by a convention into the party line. Any other  
20 group filing a petition for all candidates eligible for nomination to the  
21 office of county freeholder shall be eligible for a separate line on the  
22 primary ballot. If there is more than one group of freeholder  
23 candidates choosing to have a separate line, including a group selected  
24 at a ballot slating convention, ballot position of each group shall be  
25 determined by a random drawing conducted by the county clerk.

26 A candidate whose name appears on a party line may have listed  
27 therewith the candidate's own slogan or designation or the slogan or  
28 designation of an incorporated entity with the permission of the person  
29 having authority to permit the use thereof and with permission of the  
30 campaign manager as provided in this section.

31 The municipal organization of a political party, consisting of the  
32 party's county committee members residing in the municipality, may  
33 conduct a ballot slating convention at any time after the holding of a  
34 convention by the party's county organization in the county in which  
35 the municipality is situated but not later than three days prior to the  
36 filing deadline for the primary. A municipal ballot slating convention  
37 shall be conducted in a manner which is similar to the procedures set  
38 forth above for a county convention and may designate candidates for  
39 placement on the party line or on a separate ballot line.

40 To qualify for a separate ballot line, a municipal slate of candidates  
41 must include candidates for all eligible positions on the municipal  
42 governing body, but need not have candidates for all county committee  
43 positions in that municipality. The candidates for the municipal  
44 governing body shall appoint a campaign manager, who will allow  
45 other candidates, including county committee persons of that  
46 municipality, to be admitted to the same municipal ballot line.

1 A municipal slate may request permission from the campaign  
2 manager of a group of county candidates having a separate ballot line  
3 to be included on the same line as the county candidates. If there is  
4 more than one municipal slate entitled to a separate line, but not the  
5 same line as a separate group of county candidates, the order of  
6 placement of the municipal slates shall be by draw of the county clerk.

7 A municipal candidate, including candidates for county committee  
8 in that municipality, who has not been designated by the municipal  
9 convention process or who is not part of a municipal ballot line shall  
10 be placed on the ballot in an order determined by a random drawing  
11 conducted by the county clerk but not on the same line as county  
12 candidates who have a separate line, and in a position on the ballot to  
13 the right or below, as the case may be, of any municipal slate of  
14 candidates.

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16 5. (New section) Notwithstanding the provisions of any other law  
17 to the contrary, the county committee of a political party shall have the  
18 authority, by a majority vote of the membership, to break a tie when  
19 two candidates for membership on the county committee receive the  
20 same number of votes in the primary election, when two candidates to  
21 fill a vacancy in the membership of the county committee receive the  
22 same number of votes, or when two candidates for the office of  
23 chairman of a municipal committee of the political party receive the  
24 same number of votes. A county committee shall also have the  
25 authority to vote to accept as a member of the county committee an  
26 individual from a municipality having no county committee member  
27 who submits a petition for county committee membership signed by at  
28 least eight party members residing in that individual's district of that  
29 municipality. At least seven days' notice shall be given of any meeting  
30 held pursuant to this section. One-third of the membership of a county  
31 committee shall constitute a quorum for the purpose of conducting  
32 business at any such meeting.

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34 6. (New section) The State, county or municipal committee of any  
35 political party, as well as any officer or member thereof, may endorse  
36 the candidacy of any candidate for nomination for election at a primary  
37 election.

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39 7. R.S.19:1-1 is amended to read as follows:

40 19:1-1. As used in this Title:

41 "Election" means the procedure whereby the electors of this State  
42 or any political subdivision thereof elect persons to fill public office or  
43 pass on public questions.

44 "General election" means the annual election to be held on the first  
45 Tuesday after the first Monday in November.

46 "Primary election" means the procedure whereby the members of a

1 political party in this State or any political subdivision thereof  
2 nominate candidates to be voted for at general elections, or elect  
3 persons to fill party offices, or delegates and alternates to national  
4 conventions.

5 "Municipal election" means an election to be held in and for a single  
6 municipality only, at regular intervals.

7 "Special election" means an election which is not provided for by  
8 law to be held at stated intervals.

9 "Any election" includes all primary, general, municipal, school and  
10 special elections, as defined herein.

11 "Municipality" includes any city, town, borough, village, or  
12 township.

13 "School election" means any annual or special election to be held  
14 in and for a local or regional school district established pursuant to  
15 chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes.

16 "Public office" includes any office in the government of this State  
17 or any of its political subdivisions filled at elections by the electors of  
18 the State or political subdivision.

19 "Public question" includes any question, proposition or referendum  
20 required by the legislative or governing body of this State or any of its  
21 political subdivisions to be submitted by referendum procedure to the  
22 voters of the State or political subdivision for decision at elections.

23 "Political party" means a party which, at the election held for all of  
24 the members of the General Assembly next preceding the holding of  
25 any primary election held pursuant to this Title, polled for members of  
26 the General Assembly at least [10%] 3% of the total vote cast in this  
27 State.

28 "Party office" means the office of delegate or alternate to the  
29 national convention of a political party or member of the State, county  
30 or municipal committees of a political party.

31 "Masculine" includes the feminine, and the masculine pronoun  
32 wherever used in this Title shall be construed to include the feminine.

33 "Presidential year" means the year in which electors of President  
34 and Vice-President of the United States are voted for at the general  
35 election.

36 "Election district" means the territory within which or for which  
37 there is a polling place or room for all voters in the territory to cast  
38 their ballots at any election.

39 "District board" means the district board of registry and election in  
40 an election district.

41 "County board" means the county board of elections in a county.

42 "Superintendent" means the superintendent of elections in counties  
43 wherein the same shall have been appointed.

44 "Commissioner" means the commissioner of registration in counties.

45 "File" or "filed" means deposited in the regularly maintained office

1 of the public official wherever said regularly maintained office is  
2 designated by statute, ordinance or resolution.

3 (cf: P.L.1995, c.278, s.13)

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5 8. R.S.19:5-1 is amended to read as follows:

6 19:5-1. A political party may nominate candidates for public  
7 office at primary elections provided for in this Title, elect committees  
8 for the party within the State, county or municipality, as the case may  
9 be, and in every other respect may exercise the rights and shall be  
10 subject to the restrictions herein provided for political parties; except  
11 that no political party which fails to poll at any primary election for  
12 a general election at least [~~ten~~ three per centum [(10%)] (3%) of the  
13 votes cast in the State for members of the General Assembly at the  
14 next preceding general election, held for the election of all of the  
15 members of the General Assembly, shall be entitled to have a party  
16 column on the official ballot at the general election for which the  
17 primary election has been held. In such case the names of the  
18 candidates so nominated at the primary election shall be printed in the  
19 column or columns designated "Nomination by Petition" on the  
20 official ballot under the respective titles of office for which the  
21 nominations have been made, followed by the designation of the  
22 political party of which the candidates are members.

23 (cf: P.L.1948, c.438, s.4)

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25 9. R.S.19:34-52 is repealed.

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27 10. This act shall take effect immediately and sections 1 through 6  
28 thereof shall apply to primary elections occurring more than 30 days  
29 thereafter.

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## 32 STATEMENT

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34 This bill provides that, in any county in which voting machines are  
35 used, the order in which candidates appear on a primary election ballot  
36 shall be determined by a random drawing conducted by the county  
37 clerk, unless the county organization of a political party holds a ballot  
38 slating convention for the purpose of designating candidates and  
39 determining the order in which those candidates will appear on the  
40 party line on the primary ballot. The members of the county  
41 committee would be delegates to the convention. The county chair  
42 and any municipal chairs who are not members of the county  
43 committee would also be delegates to the convention. Only delegates  
44 who reside in the district for which nomination for election is sought  
45 shall vote on that particular designation. Designations would be  
46 determined by secret ballot. Voting by proxy or by unit rule would be

1 prohibited. A candidate for nomination for election from a district  
2 which involves parts of more than one county may seek designation  
3 from a convention in each county.

4 The bill also provides that the campaign manager for candidates for  
5 nomination for election to the office of county freeholder shall cross-  
6 certify candidates designated by a convention into the party line;  
7 allows the municipal organization of a political party to conduct a  
8 ballot slating convention to designate candidates into a municipal line;  
9 and authorizes the county committee of a political party to break tie  
10 votes in elections for county committee member or for the chair of a  
11 municipal committee, and to vote to accept as a member of the county  
12 committee an individual from a municipality having no county  
13 committee members in that municipality. In addition, the bill reduces  
14 from 10% to 3% the total number of votes which a party must have  
15 polled at an election for members of the General Assembly in order to  
16 be recognized as a political party under New Jersey law.

17 The bill repeals R.S.19:34-52 which prohibits political party  
18 committees from endorsing primary candidates. That section of law  
19 was invalidated by a consent order of the Superior Court based upon  
20 the decision of the United States Supreme Court in Eu v. San  
21 Francisco County Democratic Committee, 109 S.Ct. 1013 (1989). The  
22 bill expressly authorizes political party committees, as well as officers  
23 and members thereof, to endorse primary candidates.

24 Although the bill affects the internal affairs of political parties, and  
25 may, therefore, infringe to some extent upon the associational rights  
26 of parties and party members, its provisions are necessary to further  
27 the State's compelling interest in ensuring that party primary ballot  
28 structure is determined in a fair, equitable and democratic manner and  
29 in guaranteeing an orderly primary election process.

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34 The "Primary Ballot Reform Act"; establishes procedure for  
35 determining party designations and position on primary ballots;  
36 effectuates certain other electoral reforms.