

No. 24-1594

**In the United States Court of Appeals
for the Third Circuit**

ANDY KIM, ET AL.,
Plaintiffs-Appellees,
v.

CHRISTINE GIORDANO HANLON, ET AL.,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of New Jersey
No. 3:24-cv-01098

Honorable Zahid N. Quraishi, United States District Judge

**BRIEF OF AMICI CURIAE JOE COHN, STACI BERGER,
JAMES SOLOMON, AND VALERIE VAINIERI HUTTLE IN
SUPPORT OF PLAINTIFFS-APPELLEES**

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DISCLOSURE STATEMENT

No counsel for a party authored this brief in whole or in part, and no entity or person, aside from *amici curiae* or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

Dated: April 9, 2024

/s/ Angelo A. Stio, III
Angelo A. Stio, III

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STATEMENT REGARDING CONSENT

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), all parties in the consolidated cases have consented to or affirmed no objection to the filing of this *amicus* brief.

Dated: April 9, 2024

/s/ Angelo A. Stio, III
Angelo A. Stio, III

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INTEREST OF *AMICI CURIAE*

This *amicus curiae* brief is filed on behalf past, present, and future candidates for elective office in New Jersey. Each of the *amici* have experienced—and, if the preliminary injunction is overturned, will again experience—first-hand the irreparable harm caused by the Line in New Jersey primary elections.

Joe Cohn is currently a candidate for the Democratic party nomination for the Third Congressional District of New Jersey.¹ He will be listed on the primary ballot in Mercer, Monmouth, and Burlington Counties.

Staci Berger is currently serving her second term as a member of the Middlesex County Democratic Organization (“MCDO”) representing Piscataway’s Ward 3, District 9. Ms. Berger has twice been a candidate for a Ward Council seat on the Piscataway Township Council.²

¹ Each of the *amici* were parties to the *Amicus* Brief of Joe Cohn, Staci Berger, James Solomon, Valerie Vainieri Huttler, and Ravi Bhalla in Support of Plaintiffs’ Motion for Preliminary Injunction. *See* ECF No. 90. That *amicus* brief was supported by declarations of each of the *amici*. *See* ECF Nos. 90-1; 90-2; 90-3; 90-4.

² Given her direct, adverse, and injurious experiences with the County Line and decades of grassroots advocacy for voters’ rights in New Jersey, Ms. Berger is in sharp disagreement with the position taken by

James Solomon is a Jersey City Councilmember. In 2020 and 2023, Mr. Solomon campaigned for candidates in the Democratic primaries for Hudson County.

Valerie Vainieri Huttle served in the State Assembly for over 15 years as the Assemblywoman for District 37. Elected in 2005, and holding the seat through 2020, Ms. Huttle worked to get landmark bills passed and served in various leadership positions including Deputy Speaker of the Assembly. In 2021, Ms. Huttle competed in the Democratic Primary for State Senate.

Amici do not submit this brief as an endorsement or signal of disapproval to any of the parties to this litigation. Rather, the sole interest of *amici* is in ensuring that New Jersey primary elections are, and will be perceived as, fair and democratic.

the organization to which she belongs, the MCDO, in the MCDO's amicus brief in this case (Doc. No. 52).

INTRODUCTION AND SUMMARY OF ARGUMENT

The *amici* parties are each past, present, or future candidates for the Democratic Party nomination for elected office in New Jersey who have experienced, and in some cases are presently experiencing, irreparable harm from the “county line.” They offer particular experiences and perspectives as to the violation of their constitutional rights, and in so doing, bolster further the district court’s findings as to irreparable injury. They seek to provide this Court with first-hand experiences detailing how the Line negatively affects Democratic candidates’ election chances, in some cases fatally. This irreparable harm will continue if the district court’s injunction against the Line is reversed.

The experiences of these *amici* are particularly relevant in light of the district court’s statement that “Defendants disproportionately focus on [Congressman Andy Kim]”, Order at 37, who in the interim between the filing of the injunction and the district court’s opinion had received certain “Line” positions after the withdrawal of Senate candidate Tammy Murphy. The district court held that Congressional candidates

“Schoengood and Rush will also face irreparable harm” from the Line. Order at 37. The *amici curiae* on this brief are in that same boat.³

This case has always been about an antiquated system of machine politics clinging to power and citing the Constitution as cover. That there is just one Defendant left, with that Defendant not even being an elected official but rather a county political “machine” itself, makes this all the more obvious. For decades, the Line has caused irreparable harm to potential and actual primary candidates across the State. A reversal of the preliminary injunction will sanction that harm, at least for the upcoming primary election, at the direct expense of all but a select few candidates and the public’s perception of the primary elections.

The district court’s injunction order should be upheld.

³ Similarly, in their separate *amicus* brief in opposition to the emergent motion for stay pending appeal, candidates Ravi Bahalla, Jerry Speziale, and Dr. Patricia Campos-Medina wrote, “Plaintiffs are not the only candidates harmed here; that harm extends to every candidate not selected by their respective county leaders and given preferential treatment on the county line.” Brief of *Amicus Curiae* in Opposition to the Emergent Motion for Stay Pending Appeal, Case: 24-1593, Document: 13 at 10.

ARGUMENT

As the district court stated in its March 29 opinion, “[i]t is well established that the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable, injury.” Order at 27 (D.N.J. Mar. 29, 2024) (quoting *Hohe v. Casey*, 868 F.2d 69, 72 (3d Cir. 1989)) (internal quotations omitted). In granting Plaintiffs’ motion below, the Court ruled that “Plaintiffs have met their burden to show they are likely to suffer ‘real or immediate’ irreparable harm ‘in the near future’ should the Court not grant the motion.” Order at 36. In particular, the Court found that the Line violated the Plaintiffs’ Freedom of Association because it forced candidates to associate with certain other candidates or risk being punished by being excluded from the preferential ballot draw or relegated to “Ballot Siberia.” *Id.* The Court found this harm to be both compelling and ever present for all three of the Plaintiffs even following Ms. Murphy’s suspension of her campaign. *Id.* at 37–38.

As detailed below, *amici* have been, and in the case of Mr. Cohn continue to be, irreparably harmed by the burdening of their associational rights in the same manner as found by the district court. *Amici* have been and are being forced to partake in zero-sum game – there is no possibility

of victory. A game in which either (1) the primary candidate is sentenced to “Ballot Siberia” by failing to win the endorsement; or (2) if they actually do win the endorsement, and appear on the Line, they are forced to appear with other candidates they do not wish to associate with at all. *See* Order at 30. And, a game in which the candidate must play because *candidates who do not win a position on the Line and do not bracket are excluded from even the opportunity to be placed in or near the first position on the ballot.* *Id.* at 31. This advantage alone is sufficient injury caused by Defendants’ actions.

The District Court found that this game, which all primary candidates were being forced to play, constituted “a severe burden on [Plaintiffs’] First Amendment rights,” noting “that the county-line provides a substantial benefit in terms of voting over and above candidates that are merely endorsed by a county.” *Id.* In particular, the Court accepted and credited expert testimony showing that “voters selected candidates endorsed by a county 11.6% more frequently when the endorsed candidates appeared together on a county line than if they appeared separately in office-block format.” *Id.* at 31. *Amici’s* experiences are consistent with Court’s findings.

Mr. Cohn is currently experiencing the “disadvantage for unbracketed candidates,” “ballot gaps between candidates running for the same office/Ballot Siberia,” and “forced association” as he continues his primary campaign for Congress. Mr. Cohn, like many of the Democratic candidates across this State, attempted to work within the Line system because he understood the massive disadvantage a candidate faces when they end up in Ballot Siberia. What he experienced in response to those attempts is an exemplar of the undemocratic nature of the Line primary elections. In Monmouth County, his application was precluded from consideration due to very late changes to the application process by that county’s Democratic Party Committee. In Mercer County, he was unable to obtain the Line due to actions and omissions of that county’s Democratic Party Committee. In short, Mr. Cohn was forced to expend time, money, and resources from his campaign to be part of an undemocratic process because of irreparable harm candidates denied the Line in primary elections face.

Ms. Berger experienced the “weight of the Line,” the “primacy effect,” “disadvantage for unbracketed candidates,” “ballot gaps between candidates running for the same office/Ballot Siberia,” and “forced

association” during both of her candidacies for Ward Council seat on the Piscataway Township Council. In her first election, Ms. Berger was faced with “forced association” when she was made to choose whether to run on a “bracket” with a candidate for the U.S. Senate competing with Senator Menendez or to run as a disadvantaged “unbracketed candidate.” When she decided against the association, finding it antithetical to her campaign, she suffered from being placed in “Ballot Siberia” with a full column gap between her and the candidate placed on the Line. As a result, she lost the election to a candidate who benefited from the “weight of the line,” which contained U.S. Senator Menendez and U.S. Congressman Frank Pallone. In her second election, Ms. Berger lost to a new candidate who had been recruited by the Piscataway Democratic Organization and who benefited from being bracketed with well-known elected officials. Ms. Berger is currently running for mayor of Piscataway and is being forced to expend time, money, and resources from her campaign to be part of an undemocratic process because of irreparable harm candidates denied the Line in primary elections face.

Mr. Solomon has personally seen how the “weight of the Line,” the “primacy effect,” and the “disadvantage for unbracketed candidates,”

effects Democratic primaries and the advantage gained by the candidates awarded the Line. During his campaigning for candidates in Hudson County in the 2020 and 2023 Democratic primaries, Mr. Solomon was continuously told by voters that the Line caused them to believe that only those candidates on the Line were Democrats and that any candidate not appearing on the Line was running as a Republican or Independent.

Ms. Huttle suffered the negative effects of the “weight of the Line,” the “primacy effect,” and the “disadvantage for unbracketed candidates,” during her 2021 campaign for State Senate. When the Committee Chair for the Democratic Committee of Bergen County, who is the *de facto* selector of which candidates get the line in Bergen County, chose to place Ms. Huttle’s competitor on the Line, she was forced to secure bracketing with other candidates to avoid Ballot Siberia. She further found herself having to battle against the ballot, which gave the inaccurate impression that she was not associated with the Governor, and forced her to spend additional time and resources to clarify that she did in fact support all of the Democratic candidates on the line save her opponent in the primary. Ms. Huttle also heard firsthand the confusion caused to voters who could

not find her on the ballot or did not understand what her not being on the Line said about her candidacy.

The district court also ruled that “Plaintiffs’ injuries derive from the current and future enforcement of the Bracketing Structure” and “directly from Defendants’ actions.” *Id.* at 8 (citing *Duke Power Co. v. Carolina Env’t Study Grp., Inc.*, 438 U.S. 59, 77–78 (1978)). The same applies to these parties. Any continued enforcement of the voting structure would directly and indiscriminately cause *amici* harm as a result of Defendants’ actions. Like in *Kim*, the above candidates’ injuries would be prevented by a declaratory judgment stating the Line’s unconstitutionality and granting an injunction enjoining Defendants from enforcing it. *See id.* at 7.

With the stunning withdrawal of every single County Clerk from this appeal, the only “harm” against which injunctive relief must be weighed are the Camden County Democratic Committee’s “association rights.” The comparison is not close. The Camden County Democratic Committee’s desire to control the Line, and the alleged harm it will suffer from losing that control, pales in comparison to the irreparable harm *amici* have experience, and, in the case of Mr. Cohn, continue to experience, to their freedom of association. Moreover, it is essential that

elections, including primary elections, not only be fair, just, and democratic, but that they also appear to be fair, just, and democratic. As *amici* explained, the Line undermines that very confidence by confusing and misleading this great State's voters. The harm that the Line causes to public perception of New Jersey primary elections far exceeds the alleged harm the lone Democratic Committee exclaims.

CONCLUSION

For the aforementioned reasons, as well as those articulated by Plaintiffs-Appellees, the Court should uphold the District Court's granting of the preliminary injunction.

Dated: April 9, 2024

Respectfully Submitted,

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COMBINED CERTIFICATIONS

Pursuant to Fed. R. App. P. 29 and Local R. 31.1, I certify the following:

1. I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

2. This brief complies with Fed. R. App. P. 29 because it contains 2,032, excluding those parts exempted by Fed. R. App. P. 32(f).

3. This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because the brief has been prepared in Century Schoolbook 14-point font using Microsoft Word 2016.

4. This brief complies with the electronic filing requirements of Local R. 31.1(c) because the text of the electronic brief is identical to the text of the paper copies and because Malwarebytes Anti-Malware was run on the file containing the electronic version of this brief and no viruses were detected.

5. This brief has been served on all counsel of record using the Court's CM/ECF system.

Dated: April 9, 2024

/s/ Angelo A. Stio, III
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