

“Social justice should be the underlying goal of all humanity.”

-Alan V. Lowenstein, Institute Founder



NEW JERSEY INSTITUTE  
FOR SOCIAL JUSTICE

Testimony of the New Jersey Institute for Social Justice  
before the  
Senate State Government, Wagering, Tourism, and Historic Preservation  
Committee on SCR43/SCR152  
December 13, 2018

My name is Scott Novakowski and I am Associate Counsel at the New Jersey Institute for Social Justice (the “Institute”). I want to start by thanking Chairman Beach and members of the Senate State Government, Wagering, Tourism and Historic Preservation Committee for allowing me the opportunity to testify before you today regarding SCR43/SCR152, a proposal to change the way in which New Jersey draws its state legislative districts.

The Institute is a legal advocacy organization that seeks to ensure that urban residents can live in a society that respects their humanity, provides equality of economic opportunity, empowers them to use their voice in the political process, and protects equal justice. As Associate Counsel, I help to lead the Institute’s Civic Engagement Pillar of work.

### SCR43/SCR152 Elevates Partisanship at the Expense of Communities of Color

The Institute’s testimony today is anchored by the fundamental belief that fairly and transparently drawn legislative districts that comply with federal law and allow communities of color an opportunity to elect candidates of their choice must be the benchmark of any redistricting process.

The new maps drawn following each decennial Census should reflect the diversity and demographic changes in New Jersey, not past partisan preference.

The proposal before you today, however, pushes these fundamental criteria to the side and instead attempts to dictate specific political results without adequate protections for communities of color.

The Institute opposes SCR43/SCR152 because it 1) writes partisan gerrymandering into our state constitution and 2) does not provide

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60 Park Place, Suite 511  
Newark, NJ 07102-5504  
ph. (973) 624-9400  
fax (973) 624-0704  
email: justice@njisj.org  
[www.njisj.org](http://www.njisj.org)

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adequate protections for communities of color and their ability to elect a candidate of choice.

### SCR43/SCR152 Writes Partisan Gerrymandering Into New Jersey's Constitution

The U.S. Supreme Court has famously stated that partisan gerrymandering is “incompatible with democratic principles”<sup>1</sup> and just last year, Justice Elena Kagan wrote that partisan gerrymandering “violates the most fundamental of all democratic principles—that the voters should choose their representatives, not the other way around.”<sup>2</sup>

The constitutional amendments proposed in SCR43/SCR152 are the embodiment of the partisan gerrymandering about which the Court has been so concerned.

By requiring that districts be drawn based on the share of votes received by each major party in certain statewide elections, the proposed amendments reduce New Jersey's diverse population to party labels in order to achieve specific political results. Despite the goal of “competitive districts,” the formula at the heart of this proposal can be manipulated to create extreme partisan gerrymanders.<sup>3</sup>

This focus on partisanship rather than people is in stark contrast to the direction in which other states are heading. In the November 2018 election, for example, voters in five states—Colorado, Michigan, Missouri, Ohio, and Utah—elected to put limits on partisan gerrymandering.<sup>4</sup> New Jersey will become a national outlier by constitutionalizing one of the most extreme methods of partisan gerrymandering at a time when other states are moving to reduce the role of partisanship in redistricting. The residents of New Jersey deserve better.

### SCR43/SCR152 Risks Diluting the Voting Power of New Jersey's Communities of Color

Manipulation of the redistricting process has long been used as a means of reducing and diluting the voting power of communities of color. What is notably missing in SCR43/SCR152 is any clear recognition of the special protections afforded communities of color under federal law.

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<sup>1</sup> *Arizona State Legislature v. Arizona Independent Redistricting Comm'n*, 135 S. Ct. 2652, 2658 (2015).

<sup>2</sup> *Gill v. Whitford*, 138 S. Ct. 1916, 1940 (2018) (Kagan, J., concurring).

<sup>3</sup> SAM WANG, WILL ADLER & BEN WILLIAMS, THE PRINCETON GERRYMANDERING PROJECT, NEW JERSEY'S REDISTRICTING REFORM LEGISLATION (S.C.R. 43/A.C.R. 205): REPUBLICAN GERRYMANDERS, DEMOCRATIC GERRYMANDERS, AND POSSIBLE FIXES, <http://election.princeton.edu/wp-content/uploads/2018/12/Princeton-Gerrymandering-Project-Analysis-of-S.C.R.-43-A.C.R.-205-5-December-2018-1.pdf> (Dec. 5, 2018).

<sup>4</sup> PETER MILLER & BRIANNA CEA, BRENNAN CENTER FOR JUSTICE, EVERYBODY LOVES REDISTRICTING REFORM, <https://www.brennancenter.org/blog/everybody-loves-redistricting-reform> (Dec. 5, 2018).

The most recent amendments to SCR43/SCR152 commendably seek to preserve “communities of interest,” defined as “a geographically contiguous population sharing common interests relevant to the legislative process such as trade areas, communication and transportation networks, media markets, or social, cultural, or economic interests.”

People of color are not simply another community of interest to be equated with NJ Transit riders or people who live on the Jersey Shore, however. Racial discrimination in voting—sometimes subtle, often explicit—has a long and shameful history in the United States, including here in New Jersey. That is why racial groups are afforded specific protections, especially in regards to voting.

While the federal Voting Rights Act currently provides some protection, that could easily change with an increasingly hostile Supreme Court. Without robust state-level protections, there would be little to protect against racial gerrymandering.

This is especially true if the competitiveness formula of SCR43/SCR152 is allowed to stand. We know from other states like North Carolina, whose district map has been ruled unconstitutional multiple times over the last few decades, that partisan gerrymanders look a lot like racial gerrymanders. Because race and party are so closely correlated, partisan gerrymanders are often created by “packing” people of color into a single district, thus reducing their influence in adjoining districts, or “cracking” what could be a majority-minority district into multiple majority-white districts. The result is the same – political parties create safe districts while people of color lose the ability to elect a candidate of their choice.

## **Conclusion**

SCR43/SCR152 is a step backwards for New Jersey. The proposed amendments place partisanship before people, allow politicians to choose their voters rather than voters choosing their politicians, and will lead to the diminishment of the voting power of communities of color. For those reasons, the Institute opposes SCR43/SCR105.

Thank you for the opportunity to testify before you today. Please do not hesitate to contact me at [snovakowski@njisj.org](mailto:snovakowski@njisj.org) or 973-624-9400 ext. 30 if you have any further questions or would like additional information.