



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

AMERICAN CIVIL LIBERTIES
UNION OF DELAWARE

Plaintiff,

v.

THE TOWN OF FENWICK ISLAND

Defendant.

Civil Action No. ____

NONARBITRATION CASE

COMPLAINT

Plaintiff American Civil Liberties Union of Delaware (“ACLU-DE”) brings this action to ensure the longstanding foundational principle of constitutional democracy: one *person*, one vote. Regarding the upcoming municipal election in the Town of Fenwick Island (“the Town”), Plaintiff alleges as follows:

NATURE OF THE CASE

1. The Town of Fenwick Island allows corporations, partnerships, trusts, and limited liability companies to vote in its municipal elections, allowing these entities to participate directly in the democratic process guaranteed to natural born human persons.

2. This regime unnecessarily risks the dilution of votes cast by natural persons. The bedrock principle of American elections is one *person*, one vote.

3. This action seeks a declaratory judgment that artificial entity voting in the Town's annual municipal election violates the Elections Clause of the Delaware Constitution. Plaintiff asks that this Court enjoin the Town from unconstitutionally including the ballots cast by artificial entities in the Town's upcoming August 1, 2026, election and all future elections.

THE PARTIES

4. Plaintiff ACLU-DE is a private, nonprofit membership corporation founded in 1961 as an affiliate of the American Civil Liberties Union. ACLU-DE has over 5,800 members within the state of Delaware. The mission of ACLU-DE and the common interest of its members is the preservation and protection of constitutional rights, including the right to vote, a fundamental founding principle of any democracy.

5. ACLU-DE has active members and supporters who live in the Town, are registered to vote in the Town's elections, and have voted in the Town's most recent municipal election.¹

6. Fenwick Island is a town in Sussex County, Delaware. The Town is governed by a Town Council which is elected during annual municipal elections and exercises all powers conferred by Fenwick's Town Charter.²

JURISDICTION AND VENUE

7. This Court has subject-matter jurisdiction under Del. Const. Art IV § 7, which grants this Court jurisdiction of all causes of a civil nature, real, personal and mixed, at common law.³

8. Venue is proper and the Court has personal jurisdiction over the defendant because the Town is within Sussex County.

¹ See Declaration of Mike Brickner in Support of Plaintiff's Complaint. Attached as Exhibit A.

² Fenwick Town Charter (hereinafter "The Charter") § 4
<https://ecode360.com/FE1574?needHash=true>.

³ See also *Mennella v. Albence*, 2023 WL 309042 (Del. Ch. Jan. 19, 2023) (dismissing matter after finding that the Court of Chancery did not have subject-matter jurisdiction over a challenge to election statutes when the relief requested was limited to a declaratory judgment that the laws were unconstitutional and an injunction enjoining the laws, but doing so with leave to transfer to the Superior Court).

FACTS

9. The Charter provides that any artificial entity that owns property in the Town as of March 1 prior to the annual municipal election for Town Council and Mayor, “including but not limited to corporations, partnerships, trusts, and limited liability companies,” “shall have one vote” if provided by ordinance.⁴

10. In accordance with the Charter, the Town allows artificial non-human entities to register to vote.⁵

11. The Town Council and Mayor have general governmental powers including providing for “public health, safety, comfort or welfare or the protection and preservation of public and private property.”⁶ The Town Council’s powers also include functions wholly unrelated to any special interest of corporations such as appointing a police force and a Board of Health.⁷

⁴ Charter § 9A(2)

⁵ See Fenwick Island Delaware, *Election & Voter Information*, <https://fenwickisland.delaware.gov/election/>. (last visited Dec. 4, 2025).

⁶ Charter § 25.

⁷ *Id.* at § 22, 21.

12. The Charter contains no limitation on the number of artificial non-human entities eligible to vote based on their ownership interest in any single property parcel.

13. Similarly, the Charter provision contains no minimum share of property ownership nor value of property owned required to register to vote as an artificial entity.

14. Thus, multiple non-human artificial entities would potentially be eligible to vote in the Town's municipal elections based merely upon a minor ownership interest in any parcel of land located therein.

15. As of October 8, 2025, 214 non-human artificial entities were registered to vote for the Town's elections. *See* October 8, 2025, FOIA Response from the Town ("2025 FOIA Response Letter") (attached as Exhibit. B).

16. These 214 registered artificial entities constitute approximately 12% of all who are registered in the Town's elections. *See Id.*

17. In the Town's most recent election in 2024, approximately 23% (109) of all votes were cast on behalf of non-human artificial entities. *See* September 17, 2024, FOIA Response from the Town ("2024 FOIA Response Letter") (attached as Exhibit C); September 17, 2024 Town Voter Registration List (attached as Exhibit D); 2024 Election Day Sign-In Sheet (attached as Exhibit E).

18. Non-human artificial entity votes may sway the outcome of elections.

19. For example, the Town's 2024 election was a contest between four candidates running for three available seats on the Town Council. The winning candidate with the least votes was only 55 votes ahead of the next highest vote-getting candidate, far short of the 109 votes cast on behalf of non-human artificial entities.⁸ This means that the votes cast on behalf of non-human artificial entities could have determined the outcome of the election.

20. Additionally, the Town's 2023 election was a contest between eight candidates running for four available seats on the Town Council. The winning candidate with the least votes was only 42 votes ahead of the next highest vote-getting candidate and only 62 votes ahead of the candidate who came in last.⁹

21. Reasonable discovery will likely demonstrate that the number of artificial entity votes exceeded the margin of victory between candidates in the Town's 2023 election.

⁸ Fenwick Island Delaware, *2024 OFFICIAL Town of Fenwick Island Election Results*, <https://fenwickisland.delaware.gov/2024/08/03/2024-unofficial-town-of-fenwick-island-election-results/> (last visited Dec. 4, 2025).

⁹ Shannon Marvel McNaught, *Mayor and incumbent council members retain seats in Fenwick Island election on Saturday*, Delaware News Journal (Aug. 7, 2023), <https://www.delawareonline.com/story/news/local/2023/08/05/fenwick-island-election-results-mayor-natalie-magdeburger-reelected/70537437007/>

22. There are three seats on the Town Council up for the election scheduled to occur on August 1, 2026.¹⁰

COUNT I – VIOLATION OF THE ELECTIONS CLAUSE

23. Paragraphs 1-22 are incorporated by reference.

24. The Elections Clause of the Delaware Constitution provides that “[a]ll elections shall be free and equal.” Del. Const. art. 1, § 3.

25. Similarly, the federal Constitution “protects the right of all qualified citizens to vote,” including protecting against “a debasement or dilution of the weight of a citizen’s vote.” *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964).

26. The Elections Clause is “more protective of electoral rights than the federal regime.” *Young v. Red Clay Consol. Sch. Dist.*, 122 A.3d 784, 813 (Del. Ch. 2015).

27. When a locality allows for non-human artificial entity voting in elections to a governmental body with general governmental powers, the locality must have a compelling interest for doing so, even under the federal regime which

¹⁰ Fenwick Island Delaware, *Election & Voter Information*, <https://fenwickisland.delaware.gov/election/>. (last visited Dec. 4, 2025).

is less protective of electoral rights. *See Bjornestad v. Hulse*, 229 Cal.App.3d 1568, 1592-93 (Ct. App. 1991); *See also Erven v. Bd. of Supervisors*, 126 Cal. Rptr. 285, 1017 (Ct. App. 1975) (“to be valid a voting scheme giving nonresident landowners the same voting rights accorded residents must satisfy the compelling state interest test. It is doubtful that such a voting scheme can ever meet the strict scrutiny test with respect to elections held by governmental entities exercising general governmental powers.”).

28. Therefore, the more protective Delaware Elections Clause should be found to similarly prohibit non-human artificial entity voting where there is no compelling interest in allowing for this voter dilution.

29. The Elections Clause also has independent content and “should not be interpreted in lockstep with the federal jurisprudence that has developed under the Fourteenth Amendment.” *Young*, 122 A.3d 784 at 813.

30. “[T]he purpose of the Elections Clause ‘is to ensure that the right of *citizens* to vote in an election is unfettered.’” *Id.* at 857 (quoting *Abbott v. Gordon*, 2008 WL 821522, at *19 (Del. Super. Ct. Mar. 27, 2008) (emphasis added)). “Free elections are essential because ‘[t]he very purpose of elections is to obtain a full, fair, and free expression of the popular will upon the matter ... submitted to *the*

people for their approval or rejection. *Id.* at 857-58 (quoting *Wallbrecht v. Ingram*, 175 S.W. 1022, 1026 (Ky. 1915) (emphasis added)).

31. Therefore, electoral regimes which stymie the right of natural born persons to elect candidates of their choice are invalid under the Elections Clause.

32. The Delaware Constitution also contains provisions regarding criminal offenses associated with voting. Del. Const. art. V, § 7. These provisions were added amid concerns regarding “corruption, bribery, and manipulation of elections” that Delaware faced as it industrialized and Delawareans complained that they “were becoming ‘absentee landlords of distant corporations.’” Richard Lynch Mumford, *Constitutional Development in the State of Delaware, 1776-1897*, 292, 319 (1969). The Elections Clause was reaffirmed at the same Constitutional Convention. Randy J. Holland, *The Delaware State Constitution*, 40 (2d ed. 2017).

33. Other Delaware constitutional provisions and Delaware’s election statutes indicate that the franchise is for the people of Delaware. *E.g.* Del. Const. art. V, § 2 (using the language “every *citizen*” and “[a]ny *person*” when describing qualifications for voting) (emphasis added); *E.g.* 15 *Del. C.* § 101A (“[t]he purpose of this title is to assure the *people’s* right to free and equal elections”) (emphasis added).

34. Therefore, the Elections Clause, independent of federal protections for the right to vote, prohibits non-human artificial entities from casting ballots in Delaware elections.

PRAYER FOR RELIEF

Wherefore, plaintiff(s) respectfully ask this Court to enter judgment as follows:

- a) Declaring that non-human artificial entity voting in Fenwick Island's municipal elections violates the Elections Clause of the Delaware Constitution;
- b) Permanently enjoining the Defendant from counting ballots cast by non-human artificial entities in the upcoming and any future Fenwick Island municipal elections; and
- c) Awarding any other relief the Court deems just and proper.

Respectfully submitted,

/s/ Andrew Bernstein

Dated: December 4, 2025

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