

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE HONORABLE GERALD W.
HOCKER,

Plaintiff,

v.

THE HONORABLE ANTHONY J.
ALBENCE, in his official capacity as State
Election Commissioner, and STATE OF
DELAWARE DEPARTMENT OF
ELECTIONS,

Defendants.

C.A. No.

COMPLAINT

Plaintiff, The Honorable Gerald W. Hocker (“Senator Hocker”, “Plaintiff”) by and through his undersigned counsel, hereby files this Complaint against Defendants, The Honorable Anthony J. Albence, in his official capacity as the State Election Commissioner, and the State of Delaware Department of Elections (together, “Defendants”) for the following reasons:

1. Delaware’s statutes providing for permanent absentee voting status conflict with and violate the Constitution of Delaware because they bestow absentee voting eligibility indefinitely, without consideration of the applicant’s eligibility at each subsequent election, as the Constitution requires. Del. Const. Art. V, § 4A.

2. When a Delaware statute conflicts with the Constitution of Delaware, the Constitution controls. *State ex rel. Southerland v. Hart*, 33 Del. 15, 21, 129 A. 691, 694 (1925) (“Nor can there be any doubt that if there is a conflict between the Constitution and the statute the former must control.”).

3. The enforcement of these statutes will cause irreparable harm to Plaintiff Hocker, as a candidate for State Senate, because “the casting and counting of legally invalid ballots would necessarily lead to an inaccurate vote tally”. *Albence v. Higgin*, 2022 WL 17591864, at *18 (Del. Dec. 13, 2022)), and would deprive him of his right to a free and fair election

Jurisdiction and Venue

4. This Court has subject-matter jurisdiction under 10 *Del. C.* § 541.

5. This Court also has jurisdiction to issue a declaratory judgment under 10 *Del. C.* §§ 6501, *et seq.*

6. Venue is proper in this Court and the Court has personal jurisdiction over Defendants because Commissioner Albence is a State of Delaware employee, and the Department of Elections is a state agency.

Parties

7. Plaintiff Senator Gerald W. Hocker is a registered voter and resident of the State of Delaware, who currently serves in the Delaware State Senate and represents the 20th Senate District. Senator Hocker has filed to run for the 20th District

State Senate seat for the General Election to be held in November, 2026. As a candidate, Senator Hocker has a direct interest in assuring that the election is conducted in a manner that is fair and lawful, and in accordance with the Delaware Constitution.

8. Defendant Commissioner Albence is the State Election Commissioner for Delaware. Commissioner Albence's duties include "general supervision over the county directors, deputy county directors, and other employees of the Department of Elections in carrying out their respective duties and responsibilities." 15 *Del. C.* § 302(12). Commissioner Albence is also responsible for "supply[ing] necessary instruction and assistance to the Department [of Elections] and all registration and election officers in order to insure uniform operation of this title throughout the State." 15 *Del. C.* § 302(7).

9. Defendant State of Delaware Department of Elections (the "Department of Elections") is a state administrative agency. *See* 15 *Del. C.* § 201. The Department of Elections consists of the State Board of Elections¹ and staff. 15 *Del. C.* § 101(6). The Department of Elections, "under the direction of the Board of

¹ The State Board of Elections is the "body of individuals appointed by the Governor and confirmed by the Senate to serve or who otherwise serve as the State Board of Elections in accordance with Chapter 2 of [Title 15], and are, as such, vested with the responsibility and power to see to the administration of the election laws of this State as more particularly defined in [Title 15]." 15 *Del. C.* § 101(2).

Elections, shall administer the election laws of this State as defined in [Title 15]” of the Delaware Code. *Id.*

10. Defendants, together and with those under their control and supervision, are responsible for administration and enforcement of Delaware’s permanent absentee voting laws.

Delaware Law

Permanent Absentee Voting Status

11. The Constitution of Delaware allows for absentee voting, with strict restrictions. It provides that:

any qualified elector of this State, duly registered, who shall be unable to appear to cast his or her ballot at any general election at the regular polling place of the election district in which he or she is registered, either because of being in the public service of the United States or of this State, or his or her spouse or dependents when residing with or accompanying him or her[,] because of the nature of his or her business or occupation, because of his or her sickness or physical disability, because of his or her absence from the district while on vacation, or because of the tenets or teachings of his or her religion, may cast a ballot at such general election to be counted in such election district.

Del. Const. Art. V, § 4A

12. The Constitution further requires the General Assembly to enact laws that allow voting by absentee ballot in accordance with the Constitution. Del. Const. Art. V, § 4A.

13. Delaware statutes provide an exhaustive list of reasons for which a registrant qualifies to vote by absentee ballot. *See 15 Del. C. § 5502.*

14. Delaware statutes permit registrants to apply to the Department of Elections for “permanent absentee status” for the following reasons:

- (1) Because such person is in the public service of the United States or of this State, or is a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia, or such person’s spouse or dependents when residing with or accompanying the person, or is absent from this State because of illness or injury received while serving in the armed forces of the United States; or
- (2) Because such person is in the armed forces of the United States or the merchant marine of the United States, or attached to and serving with the armed forces of the United States in the American Red Cross or United Service Organizations; or
- (3) Because such person is sick or physically disabled; or
- (4) Because such person is otherwise authorized pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) [52 U.S.C. § 20301 et seq.] to vote by absentee ballot; or
- (5) Because such person is otherwise authorized by federal law to vote by absentee ballot.

15 Del. C. §§ 5502, 5503(k)(2)

15. The law further provides that the Department of Elections “shall automatically send an absentee ballot to each person in permanent absentee status for each election in which the person is entitled to vote.” *15 Del. C. § 5503(k).*

16. Delaware law does not require the Department of Elections to verify whether each “permanent” absentee voter is eligible to vote in each election, and upon information and belief, the Department is not doing so.

17. The only known instance occurred after Plaintiff previously filed an action challenging this same statutory structure,² after which, in January 2022, the Department of Elections sent a letter to all permanent absentee voters, which explained, “You are, however, responsible for keeping the Department informed of any changes in your residential address, mailing address, email address (if you have one) or political party affiliation.”

18. A registrant in “permanent absentee status” stays in “permanent absentee status” indefinitely until one of the following things happens: correspondence to the registrant is returned as undeliverable, the registrant dies or is disqualified; the registrant’s registration is canceled, the registrant requests to be removed from “permanent absentee status,” or the Department of Elections receives other written notification that the reason that the registrant has stated for voting by absentee ballot is no longer valid. 15 *Del. C.* § 5503(k)(3).

19. Delaware law states that a registrant in “permanent absentee status” “shall keep the Department [of Elections] informed of changes in address, changes in name or changes in the reason that the person has listed for voting by absentee

² *Albence v. Mennella*, 320 A.3d 212 (Del. 2024)

ballot.” 15 *Del. C.* § 5503(k)(4).

20. As required by law, 15 *Del. C.* § 5503(k)(5), Delaware posts the list of permanent absentee voters on its website.

21. In February, 2026, there were approximately 22,800 registrants on the permanent absentee list maintained by the Department of Elections.

22. Of those voters, there were 1,170 voters listed who were confirmed to no longer receive mail at the address on file at the Department of Elections, according to the United States Postal Service.

23. Additionally, there were 193 deceased individuals on that same permanent absentee list, according to a cross-reference with the Social Security Administration.

24. These findings are consistent with previous findings, as in 2022, there were approximately 20,250 registrants on the permanent absentee voter list, which list also included both registrants who no longer received mail at the address on file with the Department of Elections, and those who were reported deceased between one and ten years previously.

Senator Gerald W. Hocker

25. Senator Hocker is currently serving in the Delaware State Senate representing the 20th Senate District. He has filed as a candidate to run again for the Delaware State Senate in the November 2026 general election, and the deadline for

any primary challenger to file has passed, so he will be participating in the General Election on November 3, 2026.

26. For Senator Hocker, it is critical, in order to have a fair election, that it be conducted in accordance with the laws of Delaware, including the Delaware Constitution.

27. As a candidate, Senator Hocker wants a fair election and all votes made and tabulated in his race to be in accordance with the law.

28. Moreover, as a voter, Senator Hocker does not want his vote diluted by votes placed in violation of Delaware law.

COUNT I

Violation of Article V, Section 4A of the Constitution of Delaware

29. Article V, Section 4A of the Constitution of Delaware—which authorizes absentee voting—concerns eligibility for each general election. It provides that a registered and qualified elector “may cast **a** ballot at **such general election** to be counted in such election district.” (emphasis added).

30. Delaware’s statutes providing for permanent absentee status conflict with and violate the Constitution of Delaware because they grant eligibility to vote by absentee ballot indefinitely, and without consideration of the applicant’s eligibility at each subsequent election, as required by the Constitution.

31. Defendants are enforcing Delaware’s permanent absentee voting laws.

32. As a result, Senator Hocker will be harmed as a candidate for State

Senate because “the casting and counting of legally invalid ballots would necessarily lead to an inaccurate vote tally” (*Albence*, 2022 WL 17591864, at *18), and would deprive him of his right to a free and fair election.

33. Plaintiff is also harmed as a Delaware voter because his vote would be diluted by illegally cast ballots.

34. Plaintiff is entitled to relief under Article V, Section 1 of the Delaware Constitution.

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment as follows:

A. Declare Delaware statutes allowing permanent absentee voting status, 15 *Del. C.* § 5503(k), violate the Constitution of Delaware, *Del. Const.* Art. V, § 4A;

B. Permanently enjoin Defendants from allowing any electors to be placed on the permanent absentee list, sending ballots to any elector already on the permanent absentee list or in any other way implementing any aspect of the permanent absentee voting process;

C. Award Plaintiff his reasonable attorney’s fees, expenses, and costs; and

D. Award such other relief the Court deems just and proper.

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Dated: August 5, 2026