

THE HONORABLE GERALD W.
HOCKER and STEVEN
WASHINGTON,

Plaintiffs,

V.

C.A. No. 2026-1021-BWD

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

Defendants.

OPINION RESOLVING CROSS-MOTIONS FOR SUMMARY JUDGMENT

Date Submitted: September 4, 2026

Date Decided: September 4, 2026

M. Jane Brady, HALLORAN FARKAS + KITTLA LLP, Wilmington, DE;
Attorneys for Plaintiffs the Honorable Gerald W. Hocker and Steven Washington.

Patricia A. Davis and Emily V. Burton, STATE OF DELAWARE DEPARTMENT OF JUSTICE, Wilmington, DE; OF COUNSEL: Donald B. Verrilli, Jr., Ginger D. Anders, Brandon H. Thomas, MUNGER, TOLLES & OLSON LLP; *Attorneys for Defendants the Honorable Anthony J. Albence and State of Delaware Department of Elections.*

DAVID, V.C.

The plaintiffs in this action, two candidates seeking election to the Delaware State Senate in the November 2026 general election, challenge the validity of Title 15, Section 5503(k) of the Delaware Code (the “Permanent-Absentee Statute”) under the Delaware Constitution.

Article V, Section 4A of the Delaware Constitution empowers the General Assembly to enact laws providing for absentee voting and includes an exhaustive list of reasons that qualify an elector to vote absentee. The Permanent-Absentee Statute permits an elector to apply for “permanent absentee” status if he or she is unable to appear at the polling place for a subset of the reasons in Article V, Section 4A. The Delaware Department of Elections then automatically sends an absentee ballot to each person in permanent absentee status for each election in which the person is entitled to vote.

The plaintiffs argue that the Permanent-Absentee Statute conflicts with Article V, Section 4A by improperly expanding eligibility to vote by absentee ballot. According to the plaintiffs, the Permanent-Absentee Statute grants indefinite absentee voting privileges even if an elector no longer qualifies to vote absentee, effectively enlarging the pool of voters eligible to vote absentee under the Delaware Constitution. Under the Permanent-Absentee Statute, however, electors with permanent absentee status are required to notify the Department of Elections of changes in their eligibility to vote absentee, and the Department of Elections must

cancel a person's permanent absentee status if he or she no longer qualifies. In other words, "permanent" is a misnomer because the Permanent-Absentee Statute permits an elector to vote absentee only when he or she is unable to vote in person under circumstances permitted under the Delaware Constitution.

Because the Permanent-Absentee Statute neither expands the circumstances qualifying an elector to vote absentee, nor permits an elector to vote absentee if he or she is able to appear in person, it does not contravene the Delaware Constitution. I therefore enter judgment for the defendants.

I. BACKGROUND

A. Absentee Voting And The Permanent-Absentee Statute

Article V, Section 4A of the Delaware Constitution governs absentee voting within the State of Delaware. Article V, Section 4A states:

The General Assembly shall enact general laws providing that any qualified elector of this State, duly registered, who shall be unable to appear to cast a ballot at any general election at the regular polling place of the election district in which the qualified elector is registered, because of being in the public service of the United States or of this State, because of being a spouse or dependent when residing with or accompanying the qualified elector who is in the public service of the United States or of this State, because of the nature of the qualified elector's business or occupation, because of the qualified elector's sickness or physical disability, because of the qualified elector's absence from the district while on vacation, or because of the qualified elector's religious tenets or teachings, may cast a ballot at such general election to be counted in such election district.

Del. Const. art. V, § 4A.

Title 15, Chapter 55 of the Delaware Code addresses “Absentee Voting.” Consistent with Article V, Section 4A of the Delaware Constitution, Title 15, Section 5502 provides that an elector may vote by absentee ballot if he or she is unable to appear at the polling place for one of eight listed reasons. *See* 15 *Del. C.* § 5502(1)–(8). A qualified elector who wishes to vote by absentee ballot may request an absentee ballot from the State of Delaware Department of Elections (the “DOE”) by filing a statement that “[i]ndicate[s] the election or elections for which the elector is requesting an absentee ballot[,]” provides identifying information, gives “[t]he reason that the elector cannot appear at the regular polling place for the elector’s election district on the day of the election, which shall identify at least 1 of the reasons set forth in § 5502 of this title[,]” and is “subscribed and sworn to by the elector.” *Id.* § 5503(d)(1)–(3).

The Permanent-Absentee Statute was enacted in 2010 and amended in 2012. *See* 77 Del. Laws, ch. 269 (2010); 78 Del. Laws, ch. 297 (2012); *Albence v. Mennella*, 320 A.3d 212, 216 (Del. 2024) (“*Mennella III*”). The Permanent-Absentee Statute permits a voter to apply for “permanent absentee” status if he or she is unable to appear at the polling place due to qualifying public service, membership in the Armed Forces, illness or physical disability, an occupation of providing “constant care” to a relative who needs it, or if he or she is authorized to vote absentee by federal law. 15 *Del. C.* § 5503(k). Under the statute, the DOE will

“automatically send an absentee ballot to each person in permanent absentee status for each election in which the person is entitled to vote.” *Id.* The Permanent-Absentee Statute requires that “[p]ersons in permanent absentee status shall keep the Department informed of changes in address, changes in name or changes in the reason that the person has listed for voting by absentee ballot.” *Id.* § 5503(k)(4). It also requires that:

The Department shall cancel a person’s permanent absentee status upon the return of an absentee ballot or other correspondence sent by first-class mail as undeliverable, the person’s death or disqualification, the cancellation of the person’s voter registration, the receipt of a written request from the person, or receipt of written notification that the reason that the person has stated for voting by absentee ballot is no longer valid.

Id. § 5503(k)(3) (emphasis added).

B. The Mennella Action And The Higgin Action

In February 2022, Michael Mennella, a registered Delaware voter and inspector of elections, filed a lawsuit in the Court of Chancery challenging the validity of the Permanent-Absentee Statute and another voting statute, 15 *Del. C.* § 5402 (the “Early Voting Statute”), under the Delaware Constitution (the “Mennella Action”). *Mennella v. Albence*, C.A. No. 2022-0179-SG (Del. Ch.). Mennella did not seek expedition and the defendants moved to dismiss the complaint.

While the parties in the Mennella Action briefed the motion to dismiss, a different plaintiff, Michael Higgin, filed another lawsuit in the Court of Chancery

challenging laws enacted earlier in 2022 allowing Delawareans to register to vote the same day as the general election (the “Same-Day Registration Statute”) and to cast their ballot by mail in the general election for any reason (the “Vote-by-Mail Statute”) under the Delaware Constitution (the “Higgin Action”). *Higgin v. Albence*, C.A. No. 2022-0641-NAC (Del. Ch.). After the Higgin Action was filed, plaintiff’s counsel in the Mennella Action submitted a letter stating that Mennella would not seek expedition while the Higgin Action proceeded. *Mennella*, C.A. No. 2022-0179-SG (Del. Ch. Sept. 6, 2022), Dkt. 18.

On September 14, 2022, the Court of Chancery issued a Memorandum Opinion resolving the Higgin Action, concluding that the Same-Day Registration Statute was valid under the Delaware Constitution but the Vote-by-Mail Statute was not. *See Higgin v. Albence*, 2022 WL 4239590, at *1–2 (Del. Ch. Sept. 14, 2022), *aff’d in part, rev’d in part*, 295 A.3d 1065 (Del. 2022). On October 7, the Delaware Supreme Court issued an order affirming in part and reversing in part, holding that both the Same-Day Registration Statute and the Vote-by-Mail Statute were unconstitutional. *See Albence v. Higgin*, 285 A.3d 840 (Table) (Del. 2022) (ORDER).¹

¹ The Delaware Supreme Court later issued an Opinion expounding on the reasons for its order. *See Albence v. Higgin*, 295 A.3d 1065, 1068 (Del. 2022) (“*Higgin II*”).

After the appeal in the Higgin Action was resolved, the Court of Chancery issued a letter opinion in the Mennella Action holding that it lacked subject matter jurisdiction because equity was not invoked in the absence of an imminent election threatening irreparable harm to the plaintiff. *See Mennella v. Albence*, 2023 WL 309042, at *2 (Del. Ch. Jan. 19, 2023) (“*Mennella I*”). The Court of Chancery dismissed the action with leave to transfer to the Superior Court under 10 *Del. C.* § 1902. After the action was transferred to the Superior Court, Mennella amended his complaint to add Delaware state senator Gerald W. Hocker—one of the plaintiffs in the present action—as a plaintiff in the case. *Mennella v. Albence*, C.A. No. S23C-03-014 MHC (Del. Super. Ct. June 16, 2023), Dkt. 19.

Before the Superior Court, the parties once again briefed the defendants’ motion to dismiss. On February 23, 2024, the Superior Court issued an Opinion resolving that motion, holding, among other things, that the Permanent-Absentee Statute and the Early Voting Statute are invalid under the Delaware Constitution. *Mennella v. Albence*, 2024 WL 758606, at *1 (Del. Super. Ct. Feb. 23, 2024) (“*Mennella II*”), *rev’d and vacated*, 320 A.3d 212 (Del. 2024). With respect to the Permanent-Absentee Statute, the Superior Court reasoned:

Section 4A allows the General Assembly to enact laws that permit qualified registered voters, “who shall be unable to appear to cast his or her ballot at *any general election*” to “cast *a* ballot at *such* general election to be counted in such election district.” To preserve the sense of Article V, Section 4A, it only makes sense that “such” refers to the nearest reasonable antecedent “any general election.” Further, the use

of the singular “a” before the singular “ballot” demonstrates that only one absentee ballot may be cast for any such general election at which the voter shall be unable to appear. In other words, Section 4A allows a voter to participate in absentee voting at only the election at which they are unable to appear.

This grammatical analysis demonstrates that Delaware’s Permanent Absentee Voting Statute is clearly at odds with Article V, Section 4A [of] the Delaware Constitution. As it stands[,] the Permanent Absentee Voting Statute would allow a voter who may be unable to appear at an upcoming election because of a temporary illness, such as the flu, to check a box on a form and automatically receive absentee ballots in all future general elections regardless of whether or not that voter is still ill at the time of those future elections. At each future election the Department of Elections requires no further affirmation that the voter is still in a situation that would require them to cast an absentee ballot.
...

Article V, Section 4A limits absentee voting to only such general election where the voter cannot cast a ballot in person for a constitutionally enumerated reason. By granting indefinite absentee voting to those who are unable to vote in a single election, Delaware’s Permanent Absentee Voting Statute impermissibly extends beyond the limited authority granted to the General Assembly by our Constitution.

Id. at *9.

On appeal, the Delaware Supreme Court reversed on standing grounds and did not reach the merits of the constitutional challenges. *Mennella III*, 320 A.3d at 216. The Supreme Court explained that Senator Hocker “d[id] not claim actual injury, only that he ‘face[d] . . . the “risk of defeat” and [an] “inaccurate vote tally” in future elections.’” *Id.* at 221. Senator Hocker lacked standing because he did not face “concrete and actual or imminent” harm, since he was re-elected in 2022 and would “not stand for re-election until 2026.” *Id.* The Supreme Court pointed out

that at that time, Senator Hocker was “neither a candidate” nor “actively campaigning” for election. *Id.* at 221–22. As for Mennella, the Supreme Court found that a “contrived injury” “invited by his undertaking of a voluntary role” as an inspector of elections and his “apparently political disagreement with the General Assembly” did not support standing. *Id.* at 223. The Supreme Court further found that neither plaintiff had standing as a registered voter under a vote-dilution theory. *Id.* at 223–29.

C. Procedural History

On August 5, 2026—two years after the Delaware Supreme Court’s reversal in *Mennella III*—Senator Hocker, who is now seeking reelection to the Delaware State Senate in the November 2026 general election, initiated this action through the filing of a Verified Complaint. Compl., Dkt. 1. Senator Hocker simultaneously moved for expedition and a temporary restraining order (“TRO”) prohibiting State Election Commissioner Anthony J. Albence and the DOE (together, “Defendants”) from “issuing any documents that would permit any elector who is listed as a voter on the Permanent Absentee List to vote in the November, 2026 General Election or to permit any elector to register to vote as a Permanent Absentee Voter eligible to vote in the General Election in November, 2026 until further order of this Court.” [Proposed] Temporary Restraining Order ¶ 2, Dkt. 1.

In opposing expedition and entry of a TRO, Defendants represented that the DOE is required to send ballots to permanent absentee voters by September 22. Defs.’ Opp’n to Pls.’ Mot. For a Temporary Restraining Order ¶ 22, Dkt. 6. On August 14, the Court held a hearing at which it ordered expedition and set a prompt hearing on cross-motions for summary judgment for September 4, mooted any need for a TRO. *See* [Granted] Joint Scheduling Stip. and Proposed Order, Dkt. 10.

On August 24, Senator Hocker and a second plaintiff seeking election to the Delaware State Senate in the November 2026 general election, Steven Washington (together, “Plaintiffs”), filed an amended complaint (the “Amended Complaint”). Am. Compl. ¶ 8, Dkt. 11. The Amended Complaint seeks a declaration that the Permanent-Absentee Statute violates Article V, Section 4A of the Delaware Constitution, as well as an order enjoining 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.” *Id.* at 9.

The parties filed cross-motions for summary judgment (the “Cross-Motions”) and opening briefs on August 24. Dkts. 12–13. The parties filed answering briefs on August 31. Dkts. 15–16. The Court heard oral argument on the Cross-Motions on September 4.

II. ANALYSIS

The parties have cross-moved for summary judgment on the validity of the Permanent-Absentee Statute, a statute that “has been on the books” for 16 years. *Mennella III*, 320 A.3d at 215.²

The Court will enter summary judgment only where “there is no genuine dispute as to any material fact and . . . the movant is entitled to judgment as a matter of law.” Ct. Ch. R. 56(a). “Where the parties have filed cross motions for summary judgment and have not presented argument to the Court that there is an issue of fact material to the disposition of either motion, the Court shall deem the motions to be

² Defendants do not argue that the Court of Chancery lacks equity jurisdiction over the claims asserted in this action or that Plaintiffs lack standing to bring their constitutional challenge. I have nevertheless independently considered these non-waivable issues implicating the Court’s subject matter jurisdiction.

I am satisfied that the Court has equitable subject matter jurisdiction because Plaintiffs seek expedited injunctive relief in the face of an imminent election. *See Mennella I*, 2023 WL 309042, at *2 (explaining that the Court of Chancery had subject matter jurisdiction in the Higgin Action because “equity was invoked in a constitutional challenge to election law, in light of an imminent election, seeking a restraining order to prevent irreparable harm”).

I am also convinced that Plaintiffs have standing to bring their challenge. Two Delaware Supreme Court decisions provide guidance on standing. In *Higgin II*, the Supreme Court found that a plaintiff running for election as State Representative had standing to challenge voting statutes when he “was actively campaigning, fundraising, meeting with voters, and distributing campaign literature daily.” 295 A.3d at 1087. By contrast, in *Mennella III*, the Supreme Court found that a Senator lacked standing to bring a constitutional voting challenge when he was “neither a candidate for the [upcoming] 2024 election—he was re-elected in 2022 to a term set to expire in 2026—nor . . . actively campaigning.” 320 A.3d at 221. Because both Plaintiffs here are actively campaigning for election in the upcoming 2026 general election, *Higgin II* suggests they have standing to bring this challenge.

the equivalent of a stipulation for decision on the merits based on the record submitted with the motions.” Ct. Ch. R. 56(i).

The Court’s analysis “is informed by certain well-settled interpretative principles.” *Higgin II*, 295 A.3d at 1088. “Enactments of the Delaware General Assembly are presumed to be constitutional.” *Hoover v. State*, 958 A.2d 816, 821 (Del. 2008). “This is because of the familiar principle which is nowhere questioned, that in the American States, as distinguished from the Federal Government, the legislative power is as broad and ample in its omnipotence as sovereignty itself, except in so far as it may be curtailed by constitutional restrictions express or necessarily implied.” *Collison v. State ex rel. Green*, 2 A.2d 97, 100 (Del. 1938). Put simply, the General Assembly may enact legislation under its broad grant of authority, subject only to specific constitutional constraints.

The presumption of constitutionality “can be defeated by ‘clear and convincing evidence of unconstitutionality.’” *League of Women Voters of Del., Inc. v. Dep’t of Elections*, 250 A.3d 922, 934 (Del. Ch. 2020). The Court must defer “to legislative judgment in matters ‘fairly debatable’” and resolve “[a]ll reasonable doubts as to the validity of a law . . . in favor of the constitutionality of the legislation.” *Higgin II*, 295 A.3d at 1089 (quoting *Hoover*, 958 A.2d at 821). But if the Court “discerns a conflict between the Constitution and a statute, the Constitution will prevail.” *Id.*

A. The Permanent-Absentee Statute Does Not Expand Eligibility For Absentee Voting.

The Delaware Supreme Court has held that Article V, Section 4A of the Delaware Constitution “specifically enumerates the classifications of persons eligible to vote by absentee ballot at general elections,” and it is “beyond the power of the Legislature . . . to either limit or enlarge upon the [Section] 4A absentee voter classifications specified in the Constitution for general elections.” *Opinion of the Justs.*, 295 A.2d 718, 722 (Del. 1972). According to Plaintiffs, the Permanent-Absentee Statute conflicts with Article V, Section 4A because it improperly expands eligibility to vote by absentee ballot.

The Permanent-Absentee Statute does not “limit or enlarge” the classifications for absentee voting set forth in Article V, Section 4A. *Id.* at 722. The Permanent-Absentee Statute enables voters in enumerated categories to “apply in writing to the [DOE] for permanent absentee status.” 15 *Del. C.* § 5503(k). The categories that qualify for permanent absentee status—electors who are absent by reason of qualifying public service, membership in the Armed Forces, illness or physical disability; who are authorized to vote absentee by federal law; or whose occupation is providing care to a relative who requires “constant care”—are a

narrower subset of voters than those qualified to vote absentee under the Delaware Constitution.³

Although the categories of electors that may apply for permanent absentee status fall within the scope of electors eligible to vote absentee under the Delaware Constitution, Plaintiffs say that the Permanent-Absentee Statute grants “indefinite absentee voting privileges,” “effectively enlarg[ing] the pool of eligible absentee voters.” POB at 9; *see also id.* at 1 (arguing that the Permanent-Absentee Statute “grants absentee voting eligibility in perpetuity”). According to Plaintiffs, “[t]he Delaware Constitution’s plain language limits absentee voting eligibility to each election” by authorizing an elector to cast an absentee ballot only if the elector is unable to appear in person at the polling place to cast his or her ballot. *Id.* at 7. When an elector is unable to appear for a qualifying reason, he or she “may cast *a* ballot at *such* general election to be counted in such election district.” Del. Const. art. V, § 4A (emphasis added). In *Mennella II*, the Superior Court interpreted the word “such” to “refer[] to the nearest reasonable antecedent ‘any general election,’” meaning “Section 4A allows a voter to participate in absentee voting at only the election at which they are unable to appear.” 2024 WL 758606, at *9.

³ *See also* Pls.’ Opening Br. In Support of Pls.’ Mot. For Summ. J. [hereinafter POB] at 4, Dkt. 12 (“The General Assembly has further allowed by statute a *more limited* set of registrants to apply to the DOE for ‘permanent absentee status.’”) (emphasis added).

For the reasons expressed in *Mennella II*, I agree that the plain language of Article V, Section 4A authorizes absentee voting only when an elector is unable to appear in person at the polling place for a qualifying reason. I disagree that the Permanent-Absentee Statute runs afoul of that limitation, however. *Mennella II* reasoned that the Permanent-Absentee Statute contravenes Article V, Section 4A by “allow[ing] a voter who may be unable to appear at an upcoming election because of a temporary illness, such as the flu, to check a box on a form and automatically receive absentee ballots in all future general elections regardless of whether or not that voter is still ill at the time of those future elections.” *Id.* Plaintiffs adopt this argument as well. But contrary to Plaintiffs’ position, the Permanent-Absentee Statute *prohibits* a voter with permanent status from voting by absentee ballot if he or she is no longer eligible to do so. The statute requires “[p]ersons in permanent absentee status [to] keep the Department informed of . . . changes in the reason that the person has listed for voting by absentee ballot[,]” and mandates that “[t]he Department shall cancel a person’s permanent absentee status upon . . . receipt of written notification that the reason that the person has stated for voting by absentee ballot is no longer valid.” 15 *Del. C.* § 5503(k)(3)–(4). “Permanent” is therefore a misnomer because the Permanent-Absentee Statute permits an elector to vote absentee only when he or she is unable to vote in person.

Notably, the procedure under the Permanent-Absentee Statute mirrors the voter registration process, in which a citizen submits an application attesting to his or her eligibility to vote and receives “permanent” voter status thereafter. *See id.* § 1101 (“Permanent registration system”). Despite the nomenclature, neither permanent voter registration nor permanent absentee status is, in fact, “permanent.” In either case, an elector can lose his or her “permanent” status if, for instance, the DOE’s mailing is returned undeliverable. *Compare id.* § 5503(k)(3) (“The Department shall cancel a person’s permanent absentee status upon the return of an absentee ballot or other correspondence sent by first-class mail as undeliverable”), *with id.* § 2014(e) (“If the person does not return the return card within 60 days of mailing or if the address verification request is returned as undeliverable, the person shall be transferred to ‘inactive status.’”); *id.* § 2014(h) (“[T]he State Election Commissioner shall remove from the voting rolls any person who has been in ‘inactive status’ for 2 consecutive general elections.”). While a voter “should” update his or her permanent voter registration information,⁴ the Permanent-Absentee Statute requires that a voter with permanent absentee status “*shall*” keep the DOE informed of changes to his or her eligibility. *Id.* § 5503(k)(4). Plaintiffs point out

⁴ *See* 15 *Del. C.* § 1101(b) (“Registered voters who change their permanent place of residence within this State or legally change their name should update their voter registration record”).

that the voter registration process differs from permanent absentee status because for permanent absentee voters, “the [DOE] affirmatively delivers a ballot, and therefore the ability to cast a vote, to those on the permanent absentee list.” Pls.’ Answering Br. In Opp. to Defs.’ Opening Br. In Support of Mot. For Summ. J. [hereinafter PAB] at 7, Dkt. 16. But this argument misses the point—in either case, voter status is “permanent” only until an elector becomes ineligible to vote or vote absentee.

While Article V, Section 4A of the Delaware Constitution mandates that the General Assembly “shall enact general laws” concerning absentee voting when an elector is unavailable to vote in person for qualifying reasons, it does *not* address how the DOE should determine whether a particular elector is unable to appear at an election. Because the Permanent-Absentee Statute neither expands the circumstances qualifying an elector to vote absentee, nor permits an elector to vote absentee if he or she is able to appear in person, it does not contravene the Delaware Constitution.

B. The DOE’s Oversight Of Voter Eligibility Does Not Render The Permanent-Absentee Statute Unconstitutional.

Plaintiffs separately argue that the DOE’s “passive policing” of absentee voting renders the Permanent-Absentee Statute unconstitutional. POB at 10. Plaintiffs contend the DOE “does not verify whether each permanent absentee voter is eligible to vote in each election” and “ineligible and deceased registrants have been included on the permanent absentee voter list” in the past. *Id.* According to

Plaintiffs, “1,000 voters are listed on the permanent absentee list who no longer receive mail at the address on file with the DOE” and “nearly 200 registrants on the permanent absentee list are deceased.” *Id.* at 5 (citing Compl. ¶¶ 22–23).

Importantly, Plaintiffs bring only a facial challenge to the Permanent-Absentee Statute. *See id.* at 1 (“[T]he narrow question before this Court is whether Plaintiffs . . . have plausibly alleged a conflict between the challenged law and the Delaware Constitution.”); PAB at 5 (“Facially, 15 *Del. C.* § 5503(k) violates the Constitution”). “For a facial challenge to succeed, the statute cannot be valid under any set of circumstances.” *Sierra v. Dep’t of Servs. for Child., Youth & their Fams.*, 238 A.3d 142, 156 (Del. 2020). Even imperfect procedures for policing permanent absentee voters’ continued eligibility do not render “every application” of the Permanent-Absentee Statute unconstitutional. *Id.*

Plaintiffs’ citation to the Delaware Supreme Court’s decision in *State ex rel. Smith v. Carey*, 112 A.2d 26, 28 (Del. 1955), does not support their constitutional challenge. In *Carey*, the petitioner, a losing candidate who would have won his election if absentee ballots were not counted, argued that an absentee voting statute was unconstitutional and absentee ballots should be rejected. *Id.* at 27. The basis for the petitioner’s challenge was that the absentee voting statute did not subject absentee ballots to the same certification processes that ballots cast in person underwent, such that an absentee ballot could not be challenged for bribery under

Article V, Section 3 of the Delaware Constitution.⁵ *Carey*, 112 A.2d at 27–28. The Supreme Court did not decide the merits of the challenge but observed that it is “the duty of the General Assembly, in enacting an absentee voters’ law, to take all possible precaution against fraudulent abuse of the privilege.” *Id.* at 28.⁶ This is uncontroversial; the Delaware Constitution tasks the General Assembly with “prescrib[ing] the means, methods, and instruments of voting so as best to secure secrecy and the independence of the voter, preserve the freedom and purity of elections, and prevent fraud, corruption, and intimidation thereat.” Del. Const. art. V, § 1. Even so, Plaintiffs do not identify a single instance where a Delaware court has struck down a voting statute as unconstitutional for failing to “take *all* possible precaution” against fraud. *Carey*, 112 A.2d at 28 (emphasis added).

Even if *Carey* could be read to mean that a failure to properly police voter fraud may render a statutory scheme unconstitutional, the record here does not support Plaintiffs’ position that the Permanent-Absentee Statute presents a substantial risk of fraud. Plaintiffs contend that individuals with permanent absentee

⁵ See Del. Const. art. V, § 3 (“No person who shall receive or accept, or offer to receive or accept . . . any money or other valuable thing as a compensation . . . for the giving or withholding . . . a vote at any general, special, or municipal election in this State, shall vote at such election.”).

⁶ After that ruling, the General Assembly amended the absentee voting statute “to require the actual voting of absentee ballots in the several election districts, thus affording the right to challenge in the election place, and the tallying of such votes by the election officers of the several election districts.” *State ex rel. Massey v. Terry*, 148 A.2d 102, 103 (Del. 1959).

status may continue to vote by absentee ballot for convenience when they should be required to vote in person, but not that any voter has committed *fraud*. In any event, prior to each election cycle, the DOE sends a letter to each permanent absentee voter, describing the eligibility requirements for permanent absentee status and reminding the elector of his or her obligation to update the DOE with any change in his or her information. Aff. of Anthony J. Albence [hereinafter Albence Aff.] ¶ 14, Dkt. 6; *id.*, Ex. A (sample communication to voters listing qualifying reasons for absentee voting). The DOE removes voters from the permanent absentee voter list when they become ineligible to vote absentee and when mail is returned as undeliverable. Albence Aff. ¶ 15. This record does not come close to providing “clear and convincing evidence that there is no set of facts under which the [Permanent-Absentee] Statute could be constitutional.” *League of Women Voters*, 250 A.3d at 934.

The wisdom of the DOE’s procedures is a matter for the General Assembly; the Court’s review is limited to whether the exercise of legislative power is “curtailed by constitutional restrictions[.]” *Collison*, 2 A.2d at 100. As set forth above, the Permanent-Absentee Statute does not conflict with the plain language of Article V, Section 4A of the Delaware Constitution. Judgment must be entered for Defendants.

III. CONCLUSION

For the reasons explained above, Plaintiffs' motion for summary judgment is DENIED and Defendants' motion for summary judgment is GRANTED.