



IN THE SUPREME COURT OF THE STATE OF DELAWARE

THE HONORABLE GERALD W.)
HOCKER and STEVEN) No. 406, 2026
WASHINGTON,)
) Court Below: Chancery Court of the
Plaintiffs-Below/Appellants,) State of Delaware
)
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-Below/Appellees.)

APPELLEES' ANSWERING BRIEF

OF COUNSEL:

Donald B. Verrilli, Jr.
Ginger D. Anders
Brandon H. Thomas
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave., NW
Suite 500E
Washington, DC 20001
Tel: (202) 220-1100
Fax: (202) 220-2300

Dated: September 14, 2026

Patricia A. Davis (#3857)
State Solicitor
Emily V. Burton (#5142)
Deputy Attorney General
STATE OF DELAWARE
DEPARTMENT OF JUSTICE
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400

*Counsel for Defendants-
Below/Appellees the Honorable
Anthony J. Albence and State of
Delaware Department of Elections*

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NATURE OF THE PROCEEDINGS

This case concerns a challenge brought by Plaintiffs Gerald Hocker and Steven Washington to the absentee voter law that Hocker helped enact over fifteen years ago and that has operated to protect the right to vote in this State without incident since. Plaintiffs' core claim is that Delaware's "Permanent" Absentee Voting law, 15 *Del. C.* § 5503(k), conflicts with Article V, Section 4A of the Delaware Constitution, which states that the General Assembly shall enact laws providing that eligible voters who are unable to vote "at any general election at the regular polling place" may cast an absentee ballot "at such general election." The Chancery Court granted summary judgment to Defendants the State Election Commissioner Anthony Albence and the Delaware Department of Elections, and it denied summary judgment to Plaintiffs.

That decision was correct and should be affirmed. As the Chancery Court explained, Plaintiffs' argument is premised on a contrived version of Section 5503(k) that bears no relation to the statute that the legislature actually enacted. *See* Appellants' Opening Br. ("App. Br."), Ex. A (Ch. Ct. Op.) at 1216. Plaintiffs assert that Section 5503(k) allows every Delaware voter who has ever claimed the right to vote absentee in any election for any of the reasons set forth in the Constitution to opt for "indefinite" absentee status in all future elections, regardless of whether the voter remains unable to appear. The actual statute that the General Assembly

enacted does no such thing. By its clear terms, Section 5503(k) grants “permanent” absentee status to only a subset of voters whom the Constitution designates as qualified absentee voters, and only for as long as the qualifying condition remains—like military servicemembers on multi-year deployments, so long as they remain in service abroad. Voters must notify the Department when their eligibility changes, and the Department must cancel absentee status in a range of circumstances. Nothing in the Constitution limits the General Assembly’s broad discretion to make the policy judgments behind those decisions—judgments about which subset of absentee voters should qualify for “permanent” status, and what enforcement mechanisms will adequately ensure that voters who have qualified for that status remain eligible to retain it over time.

Plaintiffs’ challenge to Section 5503(k) thus boils down to the contention that some voters might *violate* Section 5503(k) by continuing to vote absentee after they are no longer eligible. The Chancery Court correctly rejected that argument too. Ex. A at 1619. As a legal matter, hypothetical violations of a statute that is textually consistent with the Constitution in every respect cannot establish what must be shown to justify facial invalidation: that there are *no* lawful applications of the statute. And as a factual matter, Plaintiffs’ claims that Section 5503(k) enables “fraud” are no more than unsupported accusations, made on information and belief. Plaintiffs suspect that some names on the absentee voter list should not be there (for

instance, where a name on the absentee list matches a public record of a deceased individual). But Plaintiffs did not even try to grapple with the legitimate reasons those names may remain on the list (for instance, where that listed absentee voter simply shares a name with a deceased parent). Plaintiffs’ lack of factual support was fatal to summary judgment, as it was their burden to prove that Section 5503(k) has no constitutional applications based on *this* threadbare record.

More broadly, Plaintiffs ignore that the purpose and effect of the constitutional and statutory provisions at issue here is to *empower* Delawareans to vote. Plaintiffs’ entire challenge is premised on a myopic read of the statute that, if adopted, would disenfranchise the exact people the Delaware Constitution sought to reach—the permanently disabled, servicemembers abroad, and others similarly likely to qualify for absentee voting over an extended period of time—and throw Delaware out of line with the twenty-plus other states that similarly confer on some voters “permanent” absentee status.

It would be a grave injustice to strike from the absentee voter rolls thousands of Delaware citizens who must cope with the challenges of living with a serious permanent disability or who are serving their country in the conflict in the Middle East and elsewhere around the globe based on arguments like those that Plaintiffs offer here—arguments that misconstrue the statute at issue, misapply fundamental

principles of constitutional law, and rest on spurious allegations of fraud that Plaintiffs do not make the slightest effort to substantiate.

SUMMARY OF ARGUMENT

Answer to Plaintiffs' Summary of Argument

1. **Denied.** The Chancery Court properly interpreted Section 5503(k) to “*prohibit*[] a voter with permanent status from voting by absentee ballot if he or she is no longer eligible to do so,” Ex. A at 14, and thus not to expand the pool of voters who may vote absentee beyond the categories enumerated in Article V, Section 4A of the Delaware Constitution.

2. **Denied.** The Chancery Court correctly held that Plaintiffs’ baseless concerns—backed by no more than their own speculation—about allegedly “passive policing” of Section 5503(k), App. Br. 17, do not support finding the law facially unconstitutional, and that the “record here does not support Plaintiffs’ position that the Permanent-Absentee Statute presents a substantial risk of fraud” in any event, Ex. A at 18.

Defendants' Summary of Argument

1. Properly construed, Section 5503(k) comports with Section 4A of the Delaware Constitution, which authorizes voters to vote absentee each election at which they satisfy the eligibility requirements set forth in Section 4A. *See* Del. Const. art. V, § 4A. Plaintiffs manufacture a conflict with Section 4A only by

misconstruing Section 5503(k) to “literally indefinitely” authorize absentee voting privileges to “anyone who is ‘unable’ to vote in person at a *single* election.” App. Br. 11, 17. The statute does nothing of the sort. Section 5503(k) merely provides that a subset of the people entitled to vote absentee by Section 4A—those whose eligibility rests on a condition likely to persist over multiple elections—do not need to reapply for absentee status each election in order to vote absentee, so long as their eligibility in fact persists. In other words, Section 5503(k) simply permits some voters to opt for less paperwork: The law waives the obligation for a voter to reapply for absentee voting during each election, if the voter both fits within certain constitutional criteria and informs the Department that he would like to vote absentee in future elections. Moreover, each such voter must re-affirm his eligibility to vote absentee when he votes in each election. And the law expressly strips voters of their absentee status when the Department learns that the voter no longer qualifies—including, for instance, when voter communications are returned as undeliverable, the voter dies or otherwise becomes disqualified, or the voter’s response to the Department’s solicitations reveals that the voter no longer qualifies. Section 5503(k) thus does not enlarge the pool of individuals entitled to vote absentee beyond what Section 4A authorizes or permit voters to vote absentee regardless of their eligibility to do so.

Plaintiffs therefore cannot establish that Section 5503(k) is facially unconstitutional. Article V, Section 4A of the Constitution sets forth *who* may vote absentee, but it is silent as to *how* a voter's eligibility to vote absentee should be determined. The General Assembly accordingly had sweeping discretion to establish Section 5503(k)'s legislative presumption of continuing eligibility for voters whose inability to appear in person is most likely to continue over multiple elections. Such legislative policy judgments are not subject to judicial second-guessing.

2. Plaintiffs have no basis in law or fact to support their allegation that supposed "fraud" permitted by Section 5503(k) renders the provision facially unconstitutional—or that the claimed "fraud" exists at all. Plaintiffs appear to contend that Section 5503(k) is inconsistent with Article V, Section 1's provision that the General Assembly "may" enact election laws "so as best to" "preserve the freedom and purity of elections, and prevent fraud, corruption, and intimidation thereat." *See* Del. Const. art. V, § 1. But that constitutional provision *confers* discretion on the General Assembly rather than restricting it—indeed, this Court has never invalidated a statute based on Section 1. The provision does not purport to limit the legislature's ability to consider judgments as to what legislative measures may "best" further all of Section 1's broad objectives. Moreover, Plaintiffs' assertion that some individuals may *violate* the law by continuing to avail themselves

of the convenience of voting absentee when they no longer qualify to do so cannot establish that the statute is facially unconstitutional. Voting absentee without eligibility is expressly forbidden by Section 5503(k), not countenanced by it. And in any event, Plaintiffs have literally no record evidence to support the idea that even *that* is happening. This Court should affirm the Chancery Court’s rejection of Plaintiffs’ fraud-based rationale for finding the statute facially invalid.

STATEMENT OF FACTS

I. Delaware’s “Permanent” Absentee Voting Law: Section 5503(k).

A. The Delaware Constitution Establishes Absentee Voting in Article V, Section 4A.

The Delaware Constitution has provided for absentee voting since 1943, when the General Assembly added Section 4A to Article V. Del. Const. art. V, § 4A; *Albence v. Higgin*, 295 A.3d 1065, 1077 (Del. 2022). Since its adoption, Section 4A has been amended several times to expand the categories of voters eligible to vote by absentee ballot. Section 4A currently provides:

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.

Section 4A thus directs the General Assembly to facilitate absentee voting by “enact[ing] general laws” providing for absentee voting by qualified voters who are “unable to appear” at the polls for any of the enumerated reasons. The provision is silent as to the procedures by which the General Assembly must implement this directive—including how and when the factual determination of a voter's inability to appear must be made.

B. The General Assembly Implemented Section 4A in Chapter 55 of Delaware's Election Laws, Which Governs Delaware's Absentee Voting Program.

In the late 2000s, the General Assembly determined that existing absentee voting laws did not adequately enable eligible absentee voters to vote. Specifically, the General Assembly found that “certain voters have difficulty submitting applications for absentee ballots.” 77 *Del. Laws, ch. 269* (2010). Servicemembers stationed abroad, for instance, faced significant challenges in applying for and receiving absentee ballots on a timely basis for each election, as recommended by federal law. *See id.* The General Assembly sought to remove unnecessary administrative burdens for voters like these, whose inability to appear in person was likely to persist over multiple election cycles.

Accordingly, in 2010 and again in 2012, the General Assembly unanimously passed and the Governor signed amendments to Section 5503 that gave a subset of

eligible absentee voters the option of applying for “permanent absentee status.” 15 *Del. C. § 5503(k)*. The legislation brought Delaware into line with the over twenty states that provide presumptive absentee status to at least some voters. *See* National Conference of State Legislatures, *Voting Outside the Polling Place Report, Table 3: States With Permanent Absentee Voting Lists* (July 20, 2026).¹

Delaware’s law provides that “a registered voter eligible to vote by absentee ballot for reasons stated in § 5502 (1), (2), (4), (7) or (8)” or certain reasons listed in Section 5502(3) “may apply in writing to the Department for permanent absentee status.” 15 *Del. C. § 5503(k)*. Thus, an eligible absentee voter may apply for what the statute describes as “permanent absentee status” if the voter is unable to vote in person for reasons including: public service for the United States or Delaware; temporarily residing outside of the United States; service in the armed forces; maintaining an occupation of providing care to a parent, spouse or child who is living at home and requires constant care; or physical disability. *See* 15 *Del. C. § 5503(k)*; 15 *Del. C. § 5502*. By contrast, Section 5503(k) does *not* allow eligible absentee voters to obtain permanent absentee status if their reason for being unable to vote in person in an election is an occupation (other than constant in-home care of a family member); vacation; or absence on a particular day due to the teachings of one’s

¹ <https://www.ncsl.org/elections-and-campaigns/table-3-states-with-permanent-absentee-voting-lists> [last accessed September 13, 2026].

religion. *See* 15 *Del. C.* § 5503(k); 15 *Del. C.* § 5502. Absentee voters must attest on their actual ballots in each election that they are qualified to vote absentee for one of the reasons permitted by the Delaware Constitution. *See* A-77 ¶ 21.

“Permanent absentee status” is a misnomer, moreover, because Section 5503 permits a voter to vote absentee only in those elections in which he is unable to vote in person. Sections 5503(k)(3) and (k)(4) require cancellation of absentee status when eligibility changes. Under Section 5503(k)(3), the Department “shall cancel a person’s permanent absentee status” upon the occurrence of any of the following: (a) return of the ballot or correspondence as undeliverable; (b) death or disqualification of the voter; (c) cancellation of the voter’s registration; (d) written request by the voter to be removed from permanent absentee status; or (e) “receipt of written notification that the reason that the person has stated for voting by absentee ballot is no longer valid.” And under Section 5503(k)(4), “[p]ersons in permanent absentee status shall keep the Department informed of . . . changes in the reason that the person has listed for voting by absentee ballot.”

Before each election cycle, the Department sends a letter to all permanent absentee voters reminding them of the eligibility requirements for permanent absentee status and of their legal obligation to inform the Department of any change in their eligibility status. A-75 (Affidavit of Anthony J. Albence) ¶ 14. An absentee voter registration form is included with that letter. *See* A-83 (letter to voters)

(“Enclosed you will find a new absentee ballot application.”). Anyone whose letter is returned as undeliverable is removed from the permanent absentee voter list. A-75 ¶ 15.

The administrative processes created by Section 5503(k) mirror the processes for voter registration itself. Both processes begin with an application by a citizen, submitted under penalty of perjury. *Compare* 15 Del. C. § 1302, and 15 Del. C. § 5135(a), with 15 Del. C. § 5503(d)(3). When registering to vote, the citizen attests to eligibility to vote generally; when registering to vote on a permanent absentee basis, a voter must affirm under penalty of perjury that the voter is eligible to vote on an absentee basis for the reasons permitted by Section 5503(k) and the Constitution. *See* 15 Del. C. § 1701 (eligibility requirements); 15 Del. C. § 2050(a)(5)(a); 15 Del. C. § 5503(d)(2)(h); A-77 ¶ 21 (each Delawarean “currently registered to vote on a permanent absentee basis[] . . . has affirmed under penalty of perjury that they are eligible to vote on an absentee basis for the reasons permitted by Delaware’s constitution. This oath is printed on the permanent absentee ballot.”). Both processes direct the Department to maintain the citizen on a list of qualified individuals indefinitely. *Compare* 15 Del. C. § 1101(a), with 15 Del. C. § 5503(k), and 15 Del. C. § 5503(k)(5). Both processes require the Department to remove the citizen’s status under specific enumerated circumstances. *Compare, e.g.,* 15 Del. C. §§ 1702 *et seq.*, with 15 Del. C. § 5503(k)(3). Both processes include a requirement

to remove the citizen in response to returned mail (although the specific details differ). *Compare* 15 Del. C. § 2014(d)–(h) (removal procedures), *with* 15 Del. C. § 5503(k)(3) (“The Department shall cancel a person’s permanent absentee status upon” various disqualifying circumstances). Both processes require a citizen to inform the Department of a change in eligibility. *Compare* 15 Del. C. § 1101(b), *with* 15 Del. C. § 5503(k)(4). Both processes provide information to the general public as to which other members of the public claim eligibility. *Compare* 15 Del. C. § 304, *with* 15 Del. C. § 5503(k)(5). Both processes are described in law as “permanent.” *Compare* 15 Del. C. § 1101 (titled “Permanent registration system”), *with* 15 Del. C. § 5503(k) (establishing “permanent absentee status”). However, in practice, both processes actually create a presumption of continuing eligibility to prevent administrative burdens from interfering with voting.

II. Procedural History

A. This is the second time that Hocker has challenged Section 5503(k)’s constitutionality under Article V, Section 4A. In 2023, Hocker and a co-plaintiff challenged Delaware’s early voting statutes and Section 5503(k) on the same grounds asserted here (among others). *See Mennella v. Albence*, C.A. No. S23C-03-014 MHC (Del. Super. Ct.). The Superior Court construed Section 5503(k) to authorize voters who have obtained permanent absentee status to be able to vote absentee in future elections even if they have all become able to vote in person. In

so doing, the Superior Court ignored the cancellation provisions of Sections 5503(k)(3) and (k)(4). On that basis, the Superior Court granted summary judgment in plaintiffs' favor. *Mennella v. Albence*, 2024 WL 758606 (Del. Super. Ct. Feb. 23, 2024), *rev'd and vacated on other grounds*, 320 A.3d 212 (Del. 2024). On appeal, this Court reversed on standing grounds, expressly declining to reach the merits of either Section 5503(k) or the early voting statutes. *See Albence*, 320 A.3d 212.

B. Hocker filed his initial complaint in the instant action on August 5, 2026, seeking declaratory relief and an injunction. Plaintiffs filed their amended complaint on August 24, 2026. Plaintiffs are not challenging early voting in this case. The sole basis of Plaintiffs' complaint was their view that "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." A-107 (Am. Compl.) ¶ 27.

On August 14, 2026 the Chancery Court heard oral argument on a number of preliminary motions the parties filed, and later that day it entered a stipulated order calling for the submission of cross motions for summary judgment. The stipulated order also clarified, among other things, that "[n]o relief entered in this action shall prevent votes cast by permanent absentee voters from being counted in the 2026 primary election," "restrict the authority or obligation of the Department of Elections

to send absentee ballots to vote in the 2026 general election to either voters entitled to vote under the Uniformed and Overseas Citizens Absentee Voting Act or to voters who have applied to vote on an absentee basis since the conclusion of the 2024 general election,” or “invalidate or prevent votes cast by these voters from being counted in the 2026 general election.” *See Hocker v. Albence*, C.A. No. 2026-1021 BWD, D.I. 10 ¶¶ 12.

On September 4, 2026, the Chancery Court heard oral argument on the parties’ cross-motions for summary judgment, and later that day it issued its opinion upholding Section 5503(k)’s constitutionality. *See* Ex. A. Recognizing that, properly construed, Section 5503(k) “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,” the Court held that Delaware’s permanent absentee voting law “does not contravene the Delaware Constitution.” Ex. A at 16. The Court further held that Plaintiffs’ enforcement-related concerns could not sustain their facial challenge because “[e]ven imperfect procedures for policing permanent absentee voters’ continued eligibility do not render ‘every application’ of the Permanent-Absentee Statute unconstitutional.” Ex. A at 17 (quoting *Sierra v. Dep’t of Servs. for Child., Youth & Their Fams.*, 238 A.3d 142, 156 (Del. 2020)). Moreover, the Court explained, even if “a failure to properly police voter fraud may render a statutory scheme unconstitutional, the record here . . . 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.’” Ex. A at 18–19 (quoting *League of Women Voters of Del., Inc. v. Dep’t of Elections*, 250 A.3d 922, 934 (Del. Ch. 2020)). Accordingly, the Court granted summary judgment to Defendants (Delaware state actors) and denied summary judgment to Plaintiffs (Senator Hocker and co-plaintiff Steven Washington). Ex. A at 20.

The parties moved for expedited appellate proceedings, which this Court granted on September 8, 2026. On September 10, 2026, Plaintiffs filed their opening brief. Oral argument before this Court is set for September 16, 2026.

ARGUMENT

I. PLAINTIFFS CANNOT ESTABLISH THAT THE PERMANENT ABSENTEE VOTING LAW CLEARLY CONFLICTS WITH ARTICLE V, SECTION 4A OF THE DELAWARE CONSTITUTION

A. Question Presented

Whether Plaintiffs have established by clear and convincing evidence that the Permanent Absentee Voting Law, 15 *Del. C.* § 5503(k), unconstitutionally conflicts with Article V, Section 4A of the Delaware Constitution. This issue was raised and addressed below. Ex. A. at 1216.

B. Scope of Review

This Court reviews question of law, including constitutional claims, *de novo*. *Higgin*, 295 A.3d at 1085.

C. Merits of Argument

1. Legal standard

Courts “show[] deference to legislative judgment in matters ‘fairly debatable,’” and “[a]ll reasonable doubts as to the validity of a law must be resolved in favor of the constitutionality of the legislation.” *Higgin*, 295 A.3d at 1089; *accord New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (per curiam) (“[T]he judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations”). Accordingly, enactments of the General Assembly enjoy a strong presumption of constitutionality, which can be rebutted only on clear and convincing evidence of illegality. *Higgin*, 295 A.3d at 1089; *see also League of Women Voters*, 250 A.3d at 926 (“Statutes enjoy a presumption of constitutionality, and [this Court] may not invalidate (let alone, as sought here, rewrite) state statutes on ground of unconstitutionality unless that unconstitutionality is clear.”) (upholding constitutionality of ballot return deadline).

Moreover, because Plaintiffs bring a facial challenge to the statute, they must show that “the statute cannot be valid under any set of circumstances.” *Sierra*, 238 A.3d at 156. A facial challenge must not “go beyond the statute’s facial requirements and speculate about ‘hypothetical’ or ‘imaginary’ cases.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449–450 (2008)

(citation omitted). Thus, the mere possibility that a law may be violated does not render it unconstitutional.

2. Section 5503(k) does not authorize absentee voting by anyone who is not qualified under the Constitution.

a. Relying primarily on the Delaware Supreme Court’s decisions in *Opinion of the Justices*, 295 A.2d 718, 722 (Del. 1972), and *Albence v. Higgin*, 295 A.3d 1065, 1094 (Del. 2022), Plaintiffs contend that the General Assembly cannot expand the categories of individuals who may qualify to vote absentee under Article V, Section 4A of the Delaware Constitution. *See* App. Br. 9–15. But Section 5503(k) does not expand the categories of voters who may vote absentee, and it is thus entirely consistent with *Opinion of the Justices* and *Higgin*. The provision merely identifies a subset of voters whom the Constitution makes eligible to vote absentee—and whose condition makes it likely that they will continue to meet the constitutional criteria for absentee voting over multiple election cycles—and provides that upon application they may vote absentee under Section 4A until they no longer qualify. Section 5503(k) thus does not address *who* may vote absentee, but instead addresses the *manner* in which voters may establish their eligibility to do so. For the reasons discussed further below, the Constitution is entirely silent on *how* voters should be required to establish eligibility—thus leaving the General Assembly with sweeping authority to legislatively determine that question.

b. Plaintiffs next argue Section 5503(k) “permits absentee voting, literally indefinitely,” regardless of their continuing eligibility to do so. App. Br. at 11.

The problem with Plaintiffs’ argument is that it premised on an unsupportable reading of the statute. Section 5503(k) does not permit anyone to vote on an absentee basis without regard to whether they are unable to appear to vote in person in a particular election. To the contrary, Section 5503(k) provides that those who are absent by reason of 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,” may “apply in writing to the Department for permanent absentee status.” 15 *Del. C.* § 5503(k). That status enables voters who qualify to vote absentee *unless and until* they stop being eligible to vote absentee. *Id.*

In other words, “[p]ermanent 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.” Ex. A at 2. A voter who votes absentee pursuant to his or her “permanent absentee status” must affirmatively attest on the ballot for each election that he or she continues to be eligible to vote absentee. *See* A-77 ¶ 21. Under Section 5503(k)(4), “a voter with permanent absentee status ‘*shall*’ keep the [Department] informed of changes to his or her eligibility.” Ex. A at 15 (citing 15 *Del. C.* § 5503(k)(4) (“Persons in permanent absentee status shall keep the Department

informed of . . . changes in the reason that the person has listed for voting by absentee ballot.”)). The statute thus *requires* voters to notify the Department when their eligibility changes—and voters must re-attest to their eligibility in each election. The Department “shall” then “cancel a person’s permanent absentee status” upon any of the following happening: (a) death or disqualification of the voter; (b) cancellation of the voter’s registration; (c) written request by the voter to be removed from permanent absentee status; or (d) “receipt of written notification that the reason that the person has stated for voting by absentee ballot is no longer valid.” Ex. A at 14 (citing 15 *Del. C.* § 5503(k)(3)). In addition, the Department “shall” cancel permanent absentee status if the Department’s mailing—*i.e.*, the letter the Department sends to all permanent absentee voters before each election, reminding them of their obligation to inform the Department of any change in their eligibility status, *see pp.* 9–10, *supra*—is returned as undeliverable. Ex. A at 19; A-75 ¶ 15.

Taken together, Sections 5503(k)(3) and (4) impose an affirmative duty on (1) each person who has received permanent absentee status to alert the Department if the listed reason for being unable to appear in person changes; and (2) the Department to cancel the permanent absentee status of voters who alert the Department that they are unable to vote in person, or whom the Department otherwise learns no longer qualifies to vote absentee. As a result, Section 5503(k)

does not permit voters to vote absentee in a general election at which they are able to appear in person. Because Section 5503(k) requires that status to be canceled if a voter's eligibility changes, 15 *Del. C.* § 5503(k)(3)–(4), Section 5503(k) merely establishes a *presumption* that certain categories of absentee voters will remain unable to appear in person at future elections, absent contrary notice, and it places on the voter the administrative burden of notifying the Department of any changes in inability to appear. That is not an expansion of the categories of absentee voters beyond what the Delaware Constitution provides.

Nor does Section 5503(k) give voters “indefinite authority to vote absentee over multiple elections and multiple years without any certainty whatsoever that the person is still eligible.” App. Br. 15. It does the opposite: it unambiguously denies voters any right to vote absentee if they do not satisfy the eligibility requirements, and it requires them to notify the Department when they are no longer eligible. Accordingly, as the Chancery Court explained, the law “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.” Ex. A at 16. Instead, Section 5503(k) merely permits certain absentee voters to re-attest to their continued absentee eligibility on the ballot each election, without having to reapply for absentee status before each election.

3. Article V, Section 4A of the Constitution does not limit the General Assembly’s discretion to establish a framework for determining absentee voting eligibility.

Try as they might, Plaintiffs cannot identify anything in the text of Article V, Section 4A that remotely suggests that the General Assembly lacks discretion to enact Section 5503(k)’s presumption of continued absentee voting eligibility. Plaintiffs’ textual arguments establish no more than the undisputed proposition that a voter must be eligible to vote absentee at each election in which he votes absentee. But Section 5503(k) is entirely consistent with that requirement. To establish that the provision is *facially* unconstitutional, therefore, Plaintiffs must go further: they must demonstrate that Section 4A leaves the General Assembly no discretion to determine *how* a voter’s eligibility should be established.

a. Plaintiffs’ reliance on the “singular” language of Section 4A to manufacture a textual conflict with their mischaracterized version of Section 5503(k) is not persuasive. *See* App. Br. 11–12. Article V, Section 4A delegates to the General Assembly broad authority to facilitate absentee voting by enacting laws permitting voters unable to appear at “any general election” to “cast a ballot at such general election to be counted in such election district.” Del. Const. art. V, § 4A. Plaintiffs misconstrue Section 4A’s use of those “singular” descriptors (“a ballot” and “such general election”) to implicitly require the legislature to affirmatively evaluate and confirm voters’ eligibility every year. App. Br. 11, 13–14. Not so. For

one thing, resorting to the use of singular descriptors to establish that a grant of absentee status is good for one election only would be a highly roundabout way of saying, “the grant of absentee status is good for one election only.” Nor would such a limitation even make sense for some of the qualifying categories—like being on vacation—which would not last past a single election anyway. The far better read of the singular descriptors is that they simply indicate that the qualifying condition must *exist* at each election. Del. Const. art. V, § 4A (providing that “any qualified elector” who “shall be unable to appear . . . at any general election” for specified reasons “may cast a ballot at such general election”).

Plaintiffs’ reliance on the purportedly “mandatory” nature of the phrase “any qualified elector . . . who *shall* be unable to appear” in Section 4A is meritless for similar reasons. *Ibid.* (emphasis added). Plaintiffs argue that “[s]hall” is a term of certainty, used in laws and regulations to express what is mandatory.” App. Br. 4. To the extent Plaintiffs’ point is that a voter must be eligible to vote absentee in each election for which he does so, Defendants agree. Section 5503(k) does not provide otherwise. To the extent Plaintiffs are attempting to conjure from the word “shall” a requirement that the General Assembly require affirmative verification of each voter’s eligibility before each election, the text simply will not bear that weight. The phrase “shall be unable to appear” does not use the term “shall” in the context of any direction to determine inability to appear in any particular way or with any particular

frequency. The word is not even used in conjunction with any mandatory or commanding verb. Given the context, then, “shall” is thus naturally read as a synonym for “will be” or “is.” Del. Const. art. V, § 4A (“the General Assembly shall enact general laws providing that any qualified elector of this State, . . . who shall be unable to appear . . . at any general election . . . may cast a ballot at such general election”); *De Martinez v. Lamagno*, 515 U.S. 417, 432 n.9 (1995) (the word “shall” has many meanings in statutes, including “‘should,’ ‘will,’ or even ‘may’”). But in all events, there is no question that the word “shall,” without more, cannot be construed to prescribe how the General Assembly shall provide for eligibility determinations. Had the Constitution’s framers wanted to do so, they would have done so explicitly; they would not have cryptically relied solely on the word “shall.”

Thus, Section 4A does not address how to go about evaluating and confirming voters’ eligibility to vote absentee at each election. It instead delegates such administrative questions to the legislature, directing that the “General Assembly *shall* enact general laws” to empower enumerated absentee Delawareans to vote. *See* Del. Const. art. V, § 4A (emphasis added). Section 4A is entirely silent on the procedures, mechanisms, and administrative processes by which the factual determination of a voter’s inability to appear should be made. In other words, Section 4A works by specifying *who* may vote absentee, but otherwise leaving it to

the General Assembly to decide *how* to administer the process by “enact[ing] general laws.”

b. That delegation unquestionably gives the General Assembly the power to enact a presumption to allocate the administrative burdens of determining absentee voters’ continuing eligibility for absentee status. Indeed, this Court has long recognized that General Assembly possesses “legislative power [that] 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*, 2 A.2d 97, 100 (Del. 1938); *see also New Castle Cnty. Council v. State*, 688 A.2d 888, 891 (Del. 1996) (“[I]n the absence of limitations imposed by either the federal or state constitutions, the General Assembly’s power to legislate has been described by this Court as ‘unlimited.’” (citation omitted)).

Section 5503(k) is precisely the kind of legislative judgment that the Constitution commits to the General Assembly. In enacting Section 5503(k), the General Assembly expressly found that “certain voters have difficulty submitting applications for absentee ballots.” 77 *Del. Laws*, ch. 269 (2010). The legislation was also informed by the observation that servicemembers abroad faced challenges applying for and receiving absentee ballots as early as recommended by the federal laws governing military overseas absentee voting. *See ibid.* The General Assembly accordingly determined that the best way to foster the ease of voting that Section 4A

promotes was to enact a presumption of continuing inability to appear for the subset of eligible absentee voters whom the General Assembly found are most likely to have difficulty requesting and receiving absentee ballots for each election, and who are (relatedly) likely to remain unable to vote in person over multiple elections. That is the very definition of a reasonable policy choice, made based on legislative findings and in the exercise of the General Assembly’s broad discretion to carry out Section 4A’s purpose of facilitating voting by those who might otherwise find it difficult.

In an effort to make that policy choice seem unreasonable, Plaintiffs mischaracterize who qualifies for permanent absentee status under Section 5503(k) in the first place.² Plaintiffs repeatedly claim that the statute applies to individuals who “on a single occasion” experienced a “temporary or transitional reason” they could not vote in person. App. Br. 1, 3, 13. But Plaintiffs are just wrong. The General Assembly was careful to *carve out* of the “permanent” absentee program those voters who qualified to vote absentee in one election for a reason unlikely to persist—like being on vacation. Only those voters who qualify to vote absentee for

² To be clear, the Court does not need to assess how temporary the categories in the Constitution are because, by statute, the absentee status persists only so long as the condition persists, 15 *Del. C.* § 5503(k)(3)–(4), and allocation of the administrative burden of when and how voters must demonstrate that status is a classic legislative choice.

reasons likely to persist over time are eligible for the “permanent” status. For instance—and contrary to Plaintiffs’ assertions—conditions like “[i]llness[es]” or “disabilit[ies]” can certainly be “permanent circumstances” preventing voters from appearing in person. *See* App. Br. 13. Similarly, voters’ military or civil service abroad may endure for multiple years. Under Section 5503(k), voters like the disabled and servicemembers may obtain “permanent” absentee status; those unavailable because of work or vacation may not. *See* 15 *Del. C.* § 5503(k). Plaintiffs complain that even if a voter has a long-lasting physical disability or a multi-year overseas deployment, that voter might eventually become able to appear in person. App. Br. 13. True enough. If that occurs, Section 5503(k) requires the voter to so notify the Department. But in all events, the General Assembly was well within its rights to conclude that certain categories of absentee voters are likely to be unavailable in multiple elections and also to have difficulty obtaining absentee ballots—and that these concerns justified permitting such voters continue to vote absentee without reapplying so long as their eligibility persists.

Further reinforcing the reasonableness of its policy judgment, the General Assembly deliberately excluded categories of voters whose inability to appear in person is less likely to persist over time: voters who are absent due to the nature of their business or occupation (unless they provide constant care to a family member), those absent on vacation, and those unable to appear because of the tenets of their

religion. Such voters are eligible for regular absentee voting under Section 5502 (which tracks the Constitution’s enumerated categories) for individual elections, but they are *not* eligible for “permanent” absentee status under Section 5503(k). This deliberate narrowing reflects the General Assembly’s reasoned factual judgment that only certain categories of qualifying conditions are sufficiently persistent to justify a presumption of continued inability to appear.

Plaintiffs criticize the presumption on the ground that some voters eligible for “permanent” absentee status may not *in fact* qualify to vote absentee, even if they “likely” do. *See* App. Br. 14. But that again misses the point. All agree that only voters who in fact qualify to vote absentee may legally vote absentee. The legislative presumption Plaintiffs take issue with is simply a tool the General Assembly enacted to identify who those people are. The presumption is backstopped by a legal obligation on the voter’s part to notify the Department when it is no longer true, together with other administrative measures for detecting and addressing changes in absentee status. If the presumption is rebutted for a voter, the Department removes that voter from the absentee voter list.

At base, Plaintiffs take issue with precisely the sort of policy choices about how best to implement Section 4A’s directive that the Constitution properly entrusts to the General Assembly, not the courts. And “the General Assembly’s articulation of public policy, while not conclusive, is entitled to great weight.” *New Castle Cnty.*

Council, 688 A.2d at 891. That is why courts must accord “deference to legislative judgment in matters ‘fairly debatable.’” *Higgin*, 295 A.3d at 1089 (citation omitted). Here, the General Assembly decided, based on the available information and its own judgment, to enact Section 5503(k) to increase voter access while carrying out Section’s 4A’s charge. This Court should respect that judgment.

II. PLAINTIFFS’ UNSUPPORTED ALLEGATIONS THAT THE DEPARTMENT DOES NOT ADEQUATELY ENFORCE SECTION 5503(K) DO NOT UNDERMINE THE PROVISION’S CONSTITUTIONALITY

A. Question Presented

Whether the Delaware Constitution’s delegation to the General Assembly to “prescribe 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, authorized the General Assembly to enact the legislative presumption reflected in the Permanent Absentee Voting Law, 15 *Del. C.* § 5503(k). This issue was raised and addressed below. Ex. A. at 1619.

B. Scope of Review

This Court reviews question of law, including constitutional claims, *de novo*. *Higgin*, 295 A.3d at 1085.

C. Merits of Argument

Plaintiffs make the remarkable claim that Section 5503(k)'s use of a legislative presumption instead of a requirement that voters reapply for absentee status in each election has led to “fraudulent abuse” of the system, violating Article V, Section 1 of the Delaware Constitution. App. Br. 17. But Section 5503(k) authorizes only those who are in fact eligible to vote absentee at each election to do so, and the prospect that some individuals might *violate* Section 5503(k)—just as they might violate Plaintiffs’ preferred method or any other voting method—cannot render the statute facially unconstitutional. Moreover, Plaintiffs have presented no evidence whatsoever to support their assertions that any fraud has occurred, or that supposedly ineligible and deceased individuals are on the “permanent” absentee voter list. App. Br. 17. Plaintiffs’ allegations of “fraud” are therefore both legally and factually misconceived.

1. Plaintiffs appear to argue that the use of a legislative presumption conflicts with Article V, Section 1 of the Delaware Constitution. But far from restricting the General Assembly’s authority to create a workable voting system, Section 1 delegates authority to the General Assembly to enact voting laws in service of broad principles: “[T]he General Assembly may by law prescribe the means, method, 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 (emphasis added).

This Court has never held that Section 1’s provision that the General Assembly may prescribe the means and methods of voting “so as best to . . . preserve the freedom and purity of elections” and “prevent fraud,” *ibid.*, establishes a limit on the General Assembly’s authority, nor has it invalidated a statute on that ground. That is for good reason. By listing several high-level principles and instructing the General Assembly to legislate “so as best to” foster those principles, Section 1 delegates to the General Assembly—not the courts—authority to determine how “best” to further the broad objectives set forth in the Constitution. Certainly nothing in Section 1 suggests that the General Assembly is forbidden from concluding that in particular circumstances, a legislative presumption is the “best” means of fostering voter “independence,” ensuring the freedom and purity of elections, and preventing fraud. *See Higgin*, 295 A.3d at 1089 (courts must defer to legislative policy judgments). Nor can Section 1 be construed as an invitation for Plaintiffs to substitute their own policy preferences for those of the General Assembly—which, after all, is the branch of government entrusted with balancing policy objectives to enact a workable voting regime. *But cf.* App. Br. 17 (musing that “[f]ew of us would want someone to assume, by our silence, acquiescence or approval of any matter”). The Chancery Court was therefore entirely correct to conclude that “[t]he wisdom

of the [Department]’s procedures is a matter for the *General Assembly*,” not Plaintiffs. Ex. A. at 19 (emphasis added).

More specifically, Plaintiffs are wrong to rely on Section 1’s “prevent fraud” language and this Court’s statement that the General Assembly should “take all possible precaution against fraudulent abuse.” *State ex rel. Smith v. Carey*, 112 A.2d 26, 28 (Del. 1955). As an initial matter, Plaintiffs’ invocation of “fraud” is misconceived. Plaintiffs’ complaint is simply that some individuals might have availed themselves of the convenience of absentee voting when they are no longer eligible for it—not that any voter has *fraudulently* voted. Despite brandishing the “fraud” pejorative throughout this litigation, Plaintiffs provide no reason whatsoever to think that anyone has abused or will abuse absentee status to cast a ballot that purports to be that of another person, or anything of that sort. Plaintiffs also offer no reason to believe that a person availing themselves of the convenience of absentee voting when they are not eligible to do so might affect the outcome of any election.

Even putting that aside, all agree that the Constitution directs the General Assembly to “enact general laws” to carry out an absentee voting program, Del. Const. art. V, § 4A, and that the General Assembly should take precautions against voter fraud, *Carey*, 112 A.2d at 28. And, of course, Section 5503(k) does institute precautions against improper absentee voting: it requires voters to notify the Department when their eligibility has changed (and thus their initial certification

under penalty of perjury is no longer accurate) and directs the Department to cancel absentee status in circumstances in which eligibility may have changed. And individuals must attest to their continuing absentee eligibility on the ballot each election. Plaintiffs nonetheless assert, without support, that if Section 5503(k) were more restrictive—if it required voters to reapply for absentee status every election—there would be less of a chance that someone might *violate* Section 5503(k) and vote absentee when they are in fact able to appear. App. Br. 17. But individuals could *also* violate Plaintiffs’ preferred provision requiring voters to reapply for absentee status every election, for instance by falsely certifying eligibility—and Plaintiffs do not contend otherwise. Section 1 does not suggest that the General Assembly lacked authority to make a considered legislative judgment as to which of these two absentee voting methods constituted superior policy in light of *all* of Section 1’s objectives, or whether the anti-misuse protections attendant to Section 5503(k) would be adequate. Nor does Section 1 suggest that the legislature must always default to the most restrictive possible voting methods irrespective of any other consideration. *See* Ex. A at 18 (“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.” (citing *Carey*, 112 A.2d at 28) (emphasis in Chancery Court opinion)). The General Assembly was therefore entitled to conclude that Section 5503(k) adequately prevented misuse while more

effectively fostering absentee voting by those who would otherwise face the most difficulty. *See* Ex. A. at 19 (“The wisdom of the [Department]’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.” (internal quotation marks omitted)).

Finally, Plaintiffs’ argument that individuals might violate Section 5503(k) is legally insufficient for yet another reason. Plaintiffs chose to bring a facial challenge, meaning they needed to show that “the statute cannot be valid under any set of circumstances.” *Sierra*, 238 A.3d at 156. But the statute as written is consistent with the Constitution’s text in every respect. Potential violations of the statute are thus a matter of enforcement, not *facial* unconstitutionality. As the Chancery Court correctly explained, “[e]ven imperfect procedures for policing permanent absentee voters’ continued eligibility do not render ‘every application’ of the Permanent-Absentee Statute unconstitutional.” Ex. A at 17; *see also Washington State Grange*, 552 U.S. at 449–450 (“In determining whether a law is facially invalid, we must be careful not to go beyond the statute’s facial requirements and speculate about ‘hypothetical’ or ‘imaginary’ cases” (citation omitted)).

2. Plaintiffs’ “fraud” allegations are not merely legally misconceived; they are factually baseless as well. As an initial matter, because Plaintiffs moved for *summary judgment* below, they needed to show that *this record* is sufficient as a

matter of law to establish—by clear and convincing evidence—facial unconstitutionality. *See Higgin*, 295 A.3d at 1089 (enactments of General Assembly can be invalidated only on clear and convincing evidence of unlawfulness); *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 145 (Del. 2009) (summary judgment standard asks “whether *the record* shows that there is no genuine material issue of fact and the moving party is entitled to judgment as a matter of law” (emphasis added) (citation omitted)). But despite lobbying accusations of fraud throughout their brief, Plaintiffs have not taken take the most basic steps to support their accusations.

Plaintiffs rely solely on supposedly ineligible and deceased registrants on the “permanent” absentee voter list. But Plaintiffs have not even attempted to exclude the many obvious, legitimate explanations for the purported discrepancies they identify. For example, Plaintiffs point to “1,170 voters listed who were confirmed to no longer receive mail at the address on file at the Department of Elections.” App. Br. 8. But where one has their mail sent is not necessarily where one wants their ballot sent, and Plaintiffs provided no basis to assume that the Department sends ballots to the wrong addresses. Moreover, if the Department’s communications are returned as undeliverable, the person is struck from the list—and therefore cannot vote absentee. *See 15 Del. C. § 5503(k)(3)*; A-75 ¶ 15. Thus, the “1,170 voters” Plaintiffs point to do not even amount to evidence of underenforcement, let alone “fraud.” Similar too are the “193” names on the permanent absentee list that other

official records identify as deceased. App. Br. 8. Again, there are plausible explanations that Plaintiffs never tried to exclude—for instance, records yet to be updated or voters who share a name with their deceased parents. And it bears repeating that the fact that the absentee list contains a name that Plaintiffs—proceeding based solely on their “information and belief,” App. Br. 7—believe should not be there is hardly evidence of fraudulent voting.

It is no surprise then, that the Chancery Court found that “[t]his 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.’” Ex. A at 19 (quoting *League of Women Voters*, 250 A.3d at 934). Quite the contrary. “[P]rior to each election cycle, the [Department] 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.” Ex. A at 19 (citing A-75 ¶ 14; A-8384 (sample communication to voters)). And the Department “removes voters from the permanent absentee voter list when they become ineligible to vote absentee and when mail is returned as undeliverable.” Ex. A at 19 (citing A-75 ¶ 15). Many voters respond to Department mailings by updating their address or addressing their eligibility to vote on an absentee basis. A-76 ¶ 16.

More broadly, every study conducted with respect to voter fraud has found such fraud to be vanishingly rare. *See, e.g.*, 172 Cong. Rec. H2125 (daily ed. Feb. 11, 2026) (adding to Congressional Record evidence from a study conducted by the Brennan Center for Justice revealing that “[a]cross a sample of 23.5 million votes cast in 42 jurisdictions during the 2016 election, election officials identified 30 incidents of suspected noncitizen voting that were referred for further investigation, comprising 0.0001% of the total votes cast”); Brennan Ctr. for Justice, *Debunking the Voter Fraud Myth* 1–4 (Jan. 31, 2017) (compiling studies, court decisions, and government investigations that collectively demonstrate that “voter fraud is sufficiently rare that it simply could not and does not happen at the rate even approaching that which would be required to ‘rig’ an election”); Justin Levitt, *The Truth About Voter Fraud* 23, Brennan Ctr. for Justice (Nov. 9, 2007) (reviewing elections studied for voter fraud and finding incident rates between 0.0003 percent and 0.0025 percent).

3. Plaintiffs close by emphasizing the “purpose and spirit” of the law, which they say does not accord with a legislative presumption. App. Br. 18. But the purpose and spirit of the laws in question here are to enable Delawareans who cannot show up in person to be able to vote. Section 4A is a *pro*-voting constitutional provision. Its ratification “created, for the first time, a constitutional exception to the general rule requiring that all votes be cast in-person at a voter’s local polling

place, expressly identifying specific categories of voters who would be permitted to vote absentee.” *Higgin*, 295 A.3d at 1091. Section 5503(k) is, accordingly, a pro-voting statute. Plaintiffs, citing *Higgin*, attempt to portray Section 5503(k)’s pro-voting posture as an improper departure from historical practice. But *Higgin* simply holds that the General Assembly may not depart from historical practice by creating categories of absentee voters not authorized in the Constitution itself. Where the Constitution *has* authorized absentee voting, the General Assembly effectuates that constitutional design by facilitating absentee voting. *Compare ibid.*, with App. Br. 13–14 (“[I]n person voting is the default[.] . . . The opposite default[.] . . . is extra-constitutional.”). The Constitution’s framers determined that certain categories of individuals who cannot show up in person should be permitted to vote. Enabling the “more than 20,000 Delawareans” to vote without needing to jump through an unnecessary administrative hurdle each election furthers that mandate. App. Br. 18.

The pro-voting purpose and spirit of Delaware’s law accords with that in the more than twenty other states that also have “permanent” absentee voting programs. *See* National Conference of State Legislatures, *Voting Outside the Polling Place Report, Table 3: States With Permanent Absentee Voting Lists* (July 20, 2026).³ And for all of Plaintiffs’ policy gripes about how Delaware’s program “depends on

³ <https://www.ncsl.org/elections-and-campaigns/table-3-states-with-permanent-absentee-voting-lists> [last accessed August 24, 2026].

presumption,” “chance,” and “the wide-spread mindfulness . . . of more than 20,000 Delawareans to work correctly,” App. Br. 18 (internal quotation marks omitted), the fact of the matter is that it *has* worked correctly for its entire existence. Plaintiffs are unable to point to any evidence even suggesting that in all the years of its existence, Section 5503(k) has ever been misused, including for voter “fraud.”

At bottom, Plaintiffs’ mischaracterization of the Delaware Constitution and Section 5503(k) is squarely at odds with the fundamental principle that the right to vote is the “essence of a democratic society.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964); *see also Higgin*, 295 A.3d at 1069 (recognizing that as foundational a document as the Delaware Declaration of Rights “stressed the importance of the citizens’ right to vote”) (citing Del. Declaration of Rights § 6 (1776)); *League of Women Voters*, 250 A.3d at 925 (“[T]he right to vote in a free and equal election is not simply a right enshrined in Delaware’s Constitution; it is the fundamental right on which our democracy rests.”). Plaintiffs’ strained reading would strip absentee status from Delawareans with enduring disabilities, from servicemembers stationed overseas, and from caregivers tethered to their homes—forcing each of them to affirmatively re-prove their inability to appear at a polling place at every election. That result does not vindicate the Constitution; it burdens the very voters whom Section 4A was designed to protect.

CONCLUSION

For the foregoing reasons, this Court should affirm the Chancery Court's judgment.

OF COUNSEL:

Donald B. Verrilli, Jr.
Ginger D. Anders
Brandon H. Thomas
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave., NW
Suite 500E
Washington, DC 20001
Tel: (202) 220-1100
Fax: (202) 220-2300

/s/ Patricia A. Davis
Patricia A. Davis (#3857)
State Solicitor
Emily V. Burton (#5142)
Deputy Attorney General
STATE OF DELAWARE
DEPARTMENT OF JUSTICE
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400

*Counsel for Defendants-
Below/Appellees the Honorable
Anthony J. Albence and State of
Delaware Department of Elections*

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