



IN THE
Supreme Court of the State of Delaware

GERALD W. HOCKER and STEVEN WASHINGTON,
Plaintiff-Appellants

v.

THE HONORABLE ANTHONY J. ALBENCE and STATE OF DELAWARE
DEPARTMENT OF ELECTIONS
Defendant-Appellee

No. 406,2026

On Appeal from the Court of Chancery of the State of Delaware
C.A. No. 2026-1021-BWD

**BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF
DELAWARE, COMMUNITY LEGAL AID SOCIETY INC., THE LEAGUE
OF WOMEN VOTERS OF DELAWARE, AND THE ARC OF DELAWARE
IN SUPPORT OF APPELLEES AND AFFIRMANCE OF THE DECISION
BELOW**

Dated: September 14, 2026

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STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY

The American Civil Liberties Union of Delaware (“ACLU-DE”) is a nonpartisan non-profit organization with the mission of preserving and advancing civil liberties and civil rights enshrined in the United States and Delaware Constitutions. This work includes legal, legislative, and educational advocacy pertaining to voting rights. ACLU-DE has approximately 6378 members throughout the state of Delaware. ACLU-DE is actively advising voters about their voting options for upcoming elections in the state of Delaware that would be impacted by this matter.

The League of Women Voters of Delaware (LWVDE) is a nonpartisan, grassroots organization working to protect voting rights and ensure that every Delawarean is represented. LWVDE empowers voters and defends democracy through advocacy, education, and litigation at the state and local level. Voting rights are core to the League’s mission and founding. Active since 1921, LWVDE has approximately 320 members throughout the state of Delaware that are involved in educating voters on the electoral process and providing candidate information through voter forums and our Vote411 website. LWVDE has a long history of supporting legislation before the Delaware General Assembly on permanent absentee qualification for absentee ballots in the belief that such

legislation permissibly expands ballot access consistent with the Delaware Constitution.

The Community Legal Aid Society, Inc. (“CLASI”) is a non-profit nonpartisan organization with mission to protect and advance its clients’ most fundamental rights and ensure that everyone has equal access to justice, regardless of their background, including people with disabilities. CLASI is designated by the Governor as Delaware’s Protection and Advocacy System for Individuals with Disabilities (“P&A”). CLASI’s Disability Rights Delaware performs its federal statutory mandates of protecting and advocating for individuals with disabilities, including through the provision of legal advocacy services to Delaware residents with physical or mental disabilities. P&A programs include but are not limited to: Protection & Advocacy for Voting Access, Protection & Advocacy for Individual Rights, and Protection & Advocacy for Individuals with Developmental Disabilities.

The Arc of the United States is the world’s largest national community-based organization of and for people with intellectual and developmental disabilities. The Arc of Delaware (“The ARC”) was organized in 1953 as an affiliated chapter of the national network. The ARC advocates for policies, services and funding to promote and protect the civil rights of Delawareans with intellectual and developmental disabilities.

All Amici, and the ARC and CLASI in particular, understand permanent absentee voting is important to allow Delawareans with disabilities to participate in the voting process.

The source of amici curiae's authority to file would be leave of Court under Delaware Supreme Court Rule 28(a)(1).

RULE 28(c)(4) CERTIFICATION

Pursuant to Delaware Supreme Court Rule 28(c)(4), Amici Curiae state that no counsel for any party authored this brief in whole or in substantial part; no party or party's counsel contributed money intended to fund the preparation or submission of this brief; and no person—other than Amici Curiae, their members, or their counsel—contributed money intended to fund the preparation or submission of this brief.

ARGUMENT

I. Laches Bars the Plaintiffs from a Grant of the Relief They Seek.

This Court is once again contemplating a lawsuit pertaining to the rules by which Delawareans may cast ballots when they are unable to physically go to the polls. In fact, this case is literally a repeat: an identical plaintiff bringing an identical challenge. This candidate and his co-appellant decided to file this lawsuit 13 weeks before the November 3, 2026, elections and now seeks near-unprecedented relief less than two months before those elections—the precise moment when doing so causes the most harm to the Appellees, Amici, and voters.

The Department of Elections is mere days away from statutory and practical deadlines for sending absentee ballots to voters and has indicated that missing these deadlines presents a real risk of disenfranchising these voters.¹ Those who would be most harmed by the relief Appellants seek, such as those with disabilities, already face significant barriers to the franchise. The right to vote is “preservative of all rights” and of fundamental importance.² To uphold “considerations of conscience, good faith and reasonable diligence,” this Court should find laches prevents this challenge.³

¹ Albence affidavit at 28-32. Attached as Exhibit A.

² *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

³ *Fed. United Corp. v. Havender*, 11 A.2d 331, 345 (Del. 1940).

The three elements of laches apply here: 1) appellants had knowledge of the claim, 2) unreasonably delayed in bringing their claim, and 3) the delay injured or prejudiced the party raising the defense or a third party.⁴

⁴ *Fike v. Ruger*, 752 A.2d 112, 113 (Del. 2000); *Porach v. City of Newark, Del.*, 1999 WL 458624, *3 (Del. Ch. June 25, 1999).

a. The Appellants Had Knowledge of the Claim for Many Years

The complaint and public documents subject to judicial notice demonstrate that Appellants Hocker and Washington had knowledge of this claim for years.

This Court has previously held that a prior lawsuit addressing the same claim meets the threshold for demonstrating knowledge of a claim.⁵ Similarly, Appellant Hocker previously joined a lawsuit advancing this same claim in June of 2023.⁶ Even then, he represented to this Court his intention to run for state Senate in future elections, including this one.⁷ Further, considering Senator Hocker both voted for the bill creating the statutory scheme and has occupied a statewide elected office every year since then, it is likely he aware of this potential facial challenge to the law prior to 2023.⁸ The statutory scheme has not changed, so this element of laches is clearly met with Appellant Hocker.

Knowledge of a claim can also be demonstrated if a party has inquiry notice of his claim.⁹ Put another way, knowledge of a claim is attributed to a party where such knowledge can be obtained by a person of ordinary intelligence.¹⁰ This Court

⁵ *Fike*, 752 A.2d at 114.

⁶ Complaint ¶ 18.

⁷ *Albence v. Mennella*, 320 A.3d 212, 219, 221 (Del. 2024).

⁸ 77 Del. Laws, ch. 269 (2010). Delaware General Assembly, *Senator Gerald W. Hocker*, <https://www.legis.delaware.gov/AssemblyMember/151/Hocker>.

⁹ *Fike*, 752 A.2d at 114.

¹⁰ *NVF Co. v. New Castle Cnty.*, 276 B.R. 340, 355 (D. Del. 2002), *aff'd*, 61 Fed. Appx. 778 (3d Cir. 2003).

may attribute such knowledge to a party on the basis of judicial notice of publicly filed or otherwise available documents.¹¹

Appellant Washington has previously run for office twice in races in which the statutory scheme he now challenges was in effect.¹² A candidate of ordinary intelligence would understand the rules pertaining to receiving and casting ballots, especially if they take such constitutional issue with said rules. So, considering his prior campaigns and his allegation that permanent absentee voting prevents a free and fair election, this Court should also find this element met with Appellant Washington.¹³

¹¹ *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 320 (Del. 2004) (internal citations omitted); *Lehman Bros. Holdings Inc. v. Spanish Broad. Sys., Inc.*, 2014 WL 718430, *10 (Del. Ch. Feb. 25, 2014), *aff'd*, 105 A.3d 989 (Del. 2014).

¹² See State of Delaware, Department of Elections, *General Election 11/03/2020 Filed Candidates by Office*, https://elections.delaware.gov/candidates/candidatelist/genl_fcddt_2020.html; State of Delaware, Department of Elections, *2025 Special Election – Senate District 1 Official Results*, https://elections.delaware.gov/elections/special/20250215_sd01/2025SpecialElection_SD01_OfficialResults.pdf.

¹³ Complaint ¶ 3 (“enforcement of these statutes will cause irreparable harm to Plaintiffs, as candidates, because ‘the casting and counting of legally invalid ballots would necessarily lead to an inaccurate vote tally and would deprive them of their right to a free and fair election.’”) (internal citations omitted).

b. The Appellants Unreasonably Delayed Bringing the Claim for Many Months

Both Appellants also unreasonably delayed in bringing this claim. A party is expected to “act with alacrity once he has reason to suspect his rights have been violated.”¹⁴ The temporal aspect of the delay is less important than the reasons for it, so even a delay counted in days instead of months can be found unreasonable.¹⁵ Where an unexplained delay “risk[s] substantial disruption of the electoral process,” even waiting approximately seven weeks is unreasonable and allows for a laches defense.¹⁶

The only conceivable reason the Appellants waited to bring this claim is a concern that they would have lacked standing had they brought the claim sooner. However, mere litigation uncertainty is not equivalent to the inability to bring suit. And, regardless, temporal aspects of standing would not have barred either candidate from filing this claim months earlier.

¹⁴ *Whittington v. Dragon Grp. L.L.C.*, 2009 WL 1743640, *9 (Del. Ch. June 11, 2009).

¹⁵ *Roseton OL, LLC v. Dynegy Holdings Inc.*, 2011 WL 3275965, *7-8 (Del. Ch. July 29, 2011).

¹⁶ *Maddox v. Wrightson*, 421 F. Supp. 1249, 1252 (D. Del. 1976). *See infra* I.c. for further discussion of this case.

Plaintiffs bear the “litigation risk” that “a court may later determine it lacks jurisdiction.”¹⁷ This risk is not sufficient to withstand equitable defenses. In fact, the Court of Chancery recently held that such a risk was insufficient to justify equitable tolling.¹⁸ Equitable tolling applies where “a litigant diligently pursues its rights but is prevented from timely filing by circumstances beyond its control.”¹⁹ This Court has considered laches and equitable tolling together before, holding that a delay is reasonable where an action was filed within an equitably tolled limitations period.²⁰ It makes sense to consider them together again in this instance. Mere jurisdictional uncertainty neither prevents a diligent plaintiff from asserting his rights by a statutory deadline, nor does it justify a lengthy delay in bringing an action known to him where doing so causes hardship to others.

Regardless, even if litigation uncertainty could be a serviceable justification for delay in certain circumstances, it was not so here. It was unreasonable for the Appellants to conclude they had a real litigation risk when it came to their standing. In Appellant Hocker’s prior suit on this same issue, this Court was clear that actively campaigning or otherwise filed candidates can meet the imminence

¹⁷ *Berkley Research Grp., LLC v. S. Advanced Materials, LLC*, 2026 WL 1847512, *6 (Del. Ch. June 26, 2026).

¹⁸ *Id.*

¹⁹ *Id.* at *5.

²⁰ *Levey v. Brownstone Asset Mgmt., LP*, 76 A.3d 764, 773 (Del. 2013).

requirement for standing where their legal challenge pertained to a looming election, such as the next election in which the candidate could run.²¹ Signs of active campaigning recognized by this Court include “fundraising, meeting with voters, and distributing campaign literature.”²² This Court’s precedents even suggest that a candidate is not required to provide proof of their filed, active candidacy at the time they file their complaint.²³ Appellant Hocker qualified for the ballot on November 18, 2025.²⁴ This election was certainly impending and looming over him at that time under this Court’s analysis in *Mennella* and *Higgin*.

Amici acknowledge that Appellant Hocker did not have an official election opponent until August of this year, and that this also may have factored into his delay.²⁵ However, that is of no consequence, as the United States Supreme Court has held that candidates’ interests in an election for purposes of standing go beyond merely winning the election.²⁶ Their interests also include “a fair process,”

²¹ *Mennella*, 320 A.3d at 221-222.

²² *Albence v. Higgin*, 295 A.3d 1065, 1087 (Del. 2022).

²³ *Mennella* 320 A.3d at 221-222 (acknowledging that candidate Higgin’s standing in *Albence v. Higgin* was confirmed via an affidavit submitted after the initial complaint was filed).

²⁴ State of Delaware, Department of Elections, *General Election 11/3/2026 Filed Candidates by Office*, https://elections.delaware.gov/candidates/candidatelist/genl_fcddt_2026.html.

²⁵ *Id*; See Defendants’ Opposition to Plaintiff’s Motion to Expedite and Defendants’ Motion to Stay at 8. Attached as Exhibit B.

²⁶ *Bost v. Illinois State Bd. of Elections*, 607 U.S. 71, 77 (2026).

and the winner’s ultimate “political legitimacy.”²⁷ In fact, Appellant Hocker has now expressed some of these exact interests to this Court.²⁸ Even without an opponent, then, Appellant Hocker had legally cognizable interests that would have conferred him standing, particularly given that Delaware’s standards are less demanding than Article III standing in federal court.²⁹ Therefore, Appellant Hocker met both this Court’s formulation of imminence and the United States Supreme Court’s recitation of a particularized harm the moment he qualified for the ballot. Without any other conceivable reason for his delay— and he has offered none— this Court should find the nearly nine months he took to file this action unreasonable.³⁰

Appellant Washington did not qualify for the ballot until August 11, 2026.³¹ However, he was actively campaigning for office well before then, with the earliest

²⁷ *Id.* at 77, 78.

²⁸ Appellants Gerald W. Hocker and Steven Washington’s Opening Brief (“OB”) at 5 (“Senator Hocker has a direct interest in assuring that the election is conducted in a manner that is fair, lawful and in accordance with the Delaware Constitution”).

²⁹ *Higgin*, 295 A.3d at 1086 (internal quotations and citations removed).

³⁰ See Exhibit B at 9 (stating candidate Hocker “has offered no justification” for the “herculean effort” his delay has caused).

³¹ State of Delaware, Department of Elections, *General Election 11/3/2026 Filed Candidates by Office*, https://elections.delaware.gov/candidates/candidatelist/genl_fcddt_2026.html.

evidence of this available to amici appearing to trace back to March 13, 2026.³² He was frequently virtually interacting with potential voters and distributing campaign literature as early as April of this year.³³ He appears to have been raising funds since at least April 28th, 2026.³⁴ Therefore, he would have had standing to bring this action in March or April of this year under *Mennella* and *Higgin*.³⁵ Even if he

³² Steven Washington, *What's your why?*, FACEBOOK (Mar. 13, 2026), <https://www.facebook.com/share/p/19e8tQkEoK/?mibextid=WC7FNe> (showing a car with a large Steve Washington for State Senate District 1 decal).

³³ See e.g. Steven Washington, *Welcome home Steve*, FACEBOOK (Apr. 4, 2026), <https://www.facebook.com/share/p/1E8yNVN8Yw/?mibextid=WC7FNe> (promoting a digital campaign poster); Steven Washington, *I would love to hear from you.*, FACEBOOK (Apr. 11, 2026) <https://www.facebook.com/share/p/1UWgk1SKfL/?mibextid=WC7FNe> (requesting potential voter input on his policy pillars).

³⁴ Steven Washington, FACEBOOK (Apr. 28, 2026) <https://www.facebook.com/share/p/19ZuvNWiGP/?mibextid=WC7FNe> (promoting a May 15, 2026, fundraiser for his campaign).

³⁵ While these facts are derived from social media posts, this Court may take judicial notice at “any stage of the proceeding” of a fact that “is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” D.R.E. 201(d), (b)(2). Social media posts that are publicly available and attributable to a party are subject to judicial notice. *You Map, Inc. v. Snap Inc.*, No. CV 20-00162-CFC, 2021 WL 106498, at *4 (D. Del. Jan. 12, 2021) (taking judicial notice of thirteen “publicly available social media posts” that demonstrated when the plaintiff disclosed certain information to the public); *Lopez v. Conchetta, Inc.*, No. CV 23-5030, 2024 WL 2300767, at *1 (E.D. Pa. May 21, 2024) (considering “copies of social media posts from Facebook accounts allegedly operated by Defendants” including “(1) posts with Plaintiffs’ images, (2) the dates each image was initially posted, and (3) the names of Plaintiffs’ identifiable in each post” in resolving a motion to dismiss); *Al-Ahmed v. Twitter, Inc.*, 603 F. Supp. 3d 857, 868–69 (N.D. Cal. 2022) (taking judicial notice of “publicly accessible webpages” including the landing page of [plaintiff]’s Twitter account, a public post on the account, and a press release page, which are all available publicly.”). Delaware Courts “appropriately” look to

was concerned about not having officially qualified for the ballot, that concern would have been misplaced considering this Court’s broad description of candidacy not being limited to only officially filed candidates and its allowance for subsequent affidavits to bolster standing.³⁶ Only joining this lawsuit on August 24, 2026, and without another conceivable reason for his delay, this Court should find his many months of silence fatal to his claim as well.

“Equity aids the vigilant, not those who slumber on their rights.”³⁷ Here, for the foregoing reasons, Appellants have grossly overslept their rights.

interpretations of the Federal Rules of Evidence as persuasive authority when construing analogous Delaware rules. *In re Zantac (Ranitidine) Litig.*, 342 A.3d 1131, 1144 (Del. 2025) (rejecting trial court’s adoption of “a standard distinct from [the federal rule]”); *Lebanon Cnty. Employees’ Ret. Fund v. Collis*, 311 A.3d 773, 798–99 (Del. 2023) (relying on “the weight of authority in the federal courts applying Federal Rule of Evidence 201, which is nearly identical to D.R.E. 201”); *Atkins v. State*, 523 A.2d 539, 542 (Del.1987) (“The Delaware Uniform Rules of Evidence are modeled upon the Federal Rules of Evidence.”); D.R.E 201 Advisory Committee’s comment (“This rule largely tracks F.R.E. 201”). Here, it is the fact that Washington published campaign communications on a publicly available website (Facebook) and the dates on which he posted them that are relevant and should be subject to judicial notice, not the content of those posts.

³⁶ This Court’s broad description of candidate standing to include those not officially qualified for the ballot makes sense. Candidate-hopefuls otherwise may not have standing to challenge laws or rules which would block their ability to get on the ballot.

³⁷ *Adams v. Jankouskas*, 452 A.2d 148, 157 (Del. 1982).

c. The Amici and the Voters They Serve are Injured by the Candidates'

Unreasonable Delay

“‘The 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.’”³⁸

The injury element of laches recognizes harms to third parties, including voters in cases pertaining to elections.³⁹ Late-breaking changes to election rules result in voter confusion and disenfranchisement.⁴⁰ Here, a change right at the deadline for mailing absentee ballots to the voters who are at greatest risk of being disenfranchised if they do not receive their ballot as they expect clearly amounts to a tremendous harm that equity should not allow to stand.

The Court of Chancery briefly considered a laches defense raised by the Delaware Department of Elections in a challenge to a statute which permitted all voters to cast a ballot by mail in the 2020 primary election, general election, and

³⁸ *Mennella*, 320 A.3d at 234 (Valihura, J., *concurring*) (citing *League of Women Voters of Del., Inc. v. Dep't of Elections*, 250 A.3d 922, 925 (Del. Ch. 2020)).

³⁹ *Maddox v. Wrightson*, 421 F. Supp. 1249, 1252 (D. Del. 1976). *See also* *Republican State Comm. of Delaware v. Dep't of Elections*, 250 A.3d 911, 917 (Del. Ch. 2020).

⁴⁰ *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). In fact, due to the disruption this causes, an entire doctrine of federal law has formed to create a presumption that courts “should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020).

any special elections.⁴¹ The Court was convinced that harm to the public was present where ballot applications had already been submitted to vote by mail.⁴² The Court also indicated that the harm “*to the public* of granting the Plaintiffs the relief they seek grows apace as the election nears.”⁴³ This precedent is strong evidence that a laches defense applies to the instant matter and harm to voters can be considered.⁴⁴

The District of Delaware has applied laches to a late-breaking case threatening to throw a Delaware election into chaos. In *Maddox v. Wrightson*, two candidate-hopefuls sought ballot access as a ticket for the 1976 presidential election.⁴⁵ The Court reinforced its holding that the candidates could not get on the ballot for failure to comply with election rules by adding that the extraordinary relief they requested would be barred

⁴¹ *Republican State Comm. of Delaware v. Dep't of Elections*, 250 A.3d 911, 917 (Del. Ch. 2020).

⁴² *Id.*

⁴³ *Id.* (emphasis added).

⁴⁴ While the Court did not ultimately grant the laches defense, it only indicated that it could not determine whether the unreasonable delay element was met on the record in front of it. Plaintiffs in that dispute, voters and an unincorporated political association, brought their lawsuit a little over a month after the signing of the vote-by-mail statute at issue. On the other hand, in this matter this Court has been presented evidence it can take judicial notice of to conclude that these plaintiffs have sat on their hands on this issue for at least nine and five months respectively. *Id.* at 917, 914-15.

⁴⁵ 421 F. Supp. 1249, 1250 (D. Del. 1976).

by laches.⁴⁶ The Court specifically noted the chaos that the requested relief would create with regard to absentee ballots.⁴⁷ The Court found that even requiring election officials to paste labels on absentee ballots and the subsequent delay that would cause “could be expected to disenfranchise voters,” and therefore a grant of relief would incur “a sizeable risk of substantial harm to the public by disruption of the electoral process.”⁴⁸ The Court also noted that considerations beyond de facto disenfranchisement, such as voter confusion and the rights of protected classes, were “special problems” present in the plaintiffs request for relief which bolstered the Court’s finding that laches would apply.⁴⁹ The Court wrote: “[d]iscretionary relief from a court of equity cannot be expected if it could jeopardize one of the most cherished rights of a free people the right to vote.”⁵⁰ Since *Maddox* was decided, the District of Delaware has indicated that a risk that “some persons may lose their right to vote” can make out substantial harm for purposes of laches.⁵¹

⁴⁶ *Id.* at 1251-52.

⁴⁷ *Id.* at 1252.

⁴⁸ *Id.*

⁴⁹ *Id.* at 1252-53.

⁵⁰ *Id.* at 1252.

⁵¹ *Commoner v. Du Pont*, 501 F. Supp. 778, 781 n. 1 (D. Del. 1980). The laches defense was ultimately not granted in *Commoner* because the Court did not receive any evidence of this harm.

Here, there is ample evidence that voters will be at risk of disenfranchisement if Appellants' requested relief is granted. First, Permanent absentee voters have already been "reassure[ed] ... that the [Department of Elections] will provide them with absentee ballots by mail" for the November 2026 elections.⁵² Therefore, these voters have no reason to expect at this point in time that they need to take any additional action to receive their absentee ballots for the general election. And their reliance on this will only be bolstered by the fact that they presumably already received (and voted) their absentee ballots for the primary election happening tomorrow.

Second, while the Department of Elections and Amici may attempt to inform these voters of any changes that result from this litigation, these efforts will be confined to an incredibly tight window and is not guaranteed to reach all voters. The Department of Elections plans to mail General Election ballots to permanent absentee voters between September 21 and September 25 and has indicated that not sending out ballots by these deadlines risks postal delays that "could prevent voters from completing and returning their ballots in time for those ballots to be counted."⁵³

⁵² Exhibit A at 14.

⁵³ *Id.* at 31 and 32.

Within this tight window, Appellees and Amici will try to reach populations that are inherently harder to communicate with.⁵⁴ Voters with disabilities, for example, may not see internet notices from the Appellees or Amici considering nearly 14% of eligible voters with disabilities do not own a computing device, 16% of eligible voters with disabilities do not use the internet at all, and only 34% of people with disabilities reported receiving information on the voting process and where to vote in 2020 from internet-based sources.⁵⁵ Further, attempts to communicate with these voters by mail in time for them to protect their right to vote may also be fruitless, as only 25% of people with disabilities reported receiving information on the voting process and where to vote in 2020 from printed mailings from an elections office.⁵⁶ Reliance on voter information mailings poses a very real risk of disenfranchisement for absentee ballot voters.

⁵⁴ See 15 Del. C. § 5502, 5503(k) (listing the categories of voters eligible for to become permanent absentee voters).

⁵⁵ See Lisa Schur, Douglas Kruse, & Mason Ameri, *Disability, The Voting Process, And the Digital Divide*, U.S. Election Assistance Commission, 8-9, 12 (July 26, 2022)

https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Disability_the_Voting_Process_and_the_Digital_Divide_EAC.pdf. The first two percentages listed above were calculated by amici using data provided in the cited report.

⁵⁶ *Id.* at 12.

Instead of relying upon the internet or mailings, people with disabilities were substantially more likely than people without disabilities to rely upon television and slightly more likely to talk in person with a trusted contact to understand the voting process in 2020.⁵⁷ It is logistically impossible for Appellees and Amici to reach all voters who will rely on absentee ballots in the days before the November 2026 election.

Further, even permanent absentee voters the Appellees and Amici reach face barriers to understanding the communications sent to them. For example, internet alerts and mailings describing how to vote absentee are often inaccessible to voters with cognitive or vision impairments, and many rely on assistance to understand these alerts.⁵⁸ By the time they get the help they need to decipher an election notice, they may miss critical deadlines.

Even if Appellees and Amici could reach all permanent absentee voters with news of a change in permanent absentee voting—they cannot—

⁵⁷ *Id.*

⁵⁸ See Lisa Schur, et. al., *Voting Experiences Since HAVA: Perspectives of People with Disabilities*, U.S. Election Assistance Commission, 13-14 (April, 2024) https://www.eac.gov/sites/default/files/2024-04/EAC_2024_Rutgers_Report_PDF.pdf (presenting findings that people with visual impairments have challenges reading even when printed materials are in large print as well as findings that people “with cognitive disabilities reported that confusion was their primary barrier” in the voting process. Adding that “[i]nformation about ... mail-in voting applications, or the lack thereof, also kept [surveyed people with disabilities] from voting in some elections.”).

and even assuming they all understand what they need to do to request an absentee ballot—which is uncertain—they will still face hurdles in exercising their right to vote. The entire point of this statutory scheme is to ease absentee voting for a subset of constitutionally qualified absentee voters based on the specific legislative finding that they face challenges applying for these ballots. If they face these challenges under ordinary circumstances, they clearly will have a much more difficult time under extraordinary circumstances.

Further, while voters who hear of this potential change to absentee voting will not be barred from voting in person, that is simply not an adequate way for all these voters to protect their right to vote. First, this is clearly too heavy a burden for permanent absentee voters who reside overseas. Second, voters with disabilities residing in Delaware face difficulties voting in person.⁵⁹ Delaware continues to depart from the ADA parking standards, with over half of polling places in 2024 containing an

⁵⁹ See generally Disability Rights Delaware, 2024 General Election Accessibility Report (June, 2025) <https://www.declasi.org/wp-content/uploads/2026/03/DRD-2024-General-Election-Accessibility-Report.pdf> (reporting findings from assessments of Americans with Disabilities Act (“ADA”) compliance of 91% of polling places in Delaware).

accessible parking issue.⁶⁰ Other very common issues with voting in person for voters with disabilities in 2024 included the accessibility of exterior routes and poll-worker familiarity with accessible voting equipment.⁶¹

To counteract all of these barriers to the voters they serve, Amici will be required to redouble their efforts on voter education, providing updated information within a very tight window. This harm, while not as grave as the harm the potentially disenfranchised voters will face, is still substantial and exacerbated by the Appellants' delay.⁶²

Put together, granting Appellees' relief risks chaos, voter confusion, and disenfranchisement mere days ahead of key practical and statutory absentee voting deadlines. It is abundantly clear that voters, Amici, and Appellees face substantial harm should Plaintiffs receive the relief they seek, and this harm is in large part traceable to an incredibly unreasonable delay on the part of the Appellants. Appellants sat "by inactive and in what amount[ed] to silence, when every consideration for the rights of others

⁶⁰ *Id.* at 8-14 (providing this data and documenting the various types of accessible parking issues).

⁶¹ *Id.* at 15-19, 23-27.

⁶² Appellees are harmed as well. *See* Exhibit A at 31-32 (indicating how any delays in sending out absentee ballots on or before September 25 would potentially place the Department of Elections in violation of federal or state law). This Court should of course consider the harm to Appellees as an additional means by which this element of laches is met considering they are the immediate subject of the lawsuit.

demanded prompt and vigorous action;” so their conduct is blocked by laches.⁶³ Appellants’ nebulous and unsubstantiated concerns about election integrity pales in comparison.⁶⁴

⁶³ *Havender*, 11 A.2d at 348.

⁶⁴ *See* OB at 15-18. To the extent the Appellants are concerned about election integrity, American elections are virtually devoid of fraud, and baseless allegations of fraud cast needless doubt upon the legitimacy of elections. *See* Joseph A. Coll, *Measuring the Extent to Which Voter Fraud Beliefs Link Election Reforms to Voter Confidence in the United States*, Public Opinion Quarterly, Vol. 88, 735-756 (2024). Without evidence of fraud, the relief Appellants seek, if granted, would further a discredited narrative and disillusion Delawareans as to the legitimacy of both elected officials now in office who do not stand for election in 2026 and elections in general. These harms are worthy of this Court’s consideration as well.

CONCLUSION

For the foregoing reasons, this Court should find that Appellants' claims are barred by laches.

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