IN THE SUPREME COURT OF THE STATE OF DELAWARE

AMERICAN CIVIL LIBERTIES UNION OF DELAWARE,	§	
	§	No. 229, 2026
Plaintiff Below, Appellant,	§	Court Below: Superior Court of the State of Delaware
v.	§	
	§	C.A. No. S25C-12-003
THE TOWN OF FENWICK ISLAND,	§	
Defendant Below, Appellee.	§	

Submitted: September 23, 2026
Decided: November 13, 2026

Before **SEITZ**, Chief Justice; **TRAYNOR**, **LEGROW**, **GRIFFITHS**, and **ZURN**, Justices, constituting the Court *en Banc*.

ORDER

(1) Fenwick Island's town charter specifies who is qualified to vote in its municipal elections.[1] In 2008, the Delaware General Assembly amended the town's charter to permit individuals to cast votes in municipal elections on behalf of legal entity property owners.[2] Legal entities include corporations, partnerships, trusts, and

[1] 22 *Del. C.* § 801(4) ("'Qualified voter' means those persons who, under the terms of a municipal charter, shall be authorized to vote in elections within that municipal corporation."); 15 *Del. C.* § 7554(a) ("Voter eligibility shall be as specified within the town charter . . . .").

[2] 76 Del. Laws, ch. 363, § 5 (2008). Fenwick Island, like other municipalities, are creatures of the state and have only the authority explicitly granted to them by the General Assembly. *Simon v. Town of Seaford*, 197 A. 681, 685 (Del. 1938) ("It is well settled in this State that a municipal corporation has no power except by express legislative grant, or by fair and necessary implication because of being incident to the powers expressly granted or essential to carrying them out.").

limited liability companies.[3] According to Fenwick Island, the "overwhelming majority of legal entity property owners in Fenwick registered to vote, and on whose behalf votes are cast, in Fenwick's municipal elections are trusts."[4]

(2) Under the amended charter, votes on behalf of legal entities must be cast by authorized individuals.[5] Also, the charter must be interpreted by applying the principle of "one-person/entity, one vote."[6] Further, "[w]here a voter is entitled to vote by ownership of two (2) or more parcels of real property, that voter shall be entitled to only one (1) vote."[7]

(3) On December 4, 2025, the American Civil Liberties Union of Delaware filed a Superior Court complaint seeking a declaratory judgment that votes cast on behalf of legal entities in Fenwick Island's municipal elections violate the Delaware Constitution by diluting the votes of natural persons. It sought a permanent injunction barring legal entities' votes from being counted in all upcoming and future Fenwick municipal elections. The Superior Court granted Fenwick's motion to

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[3] Charter of the Town of Fenwick Island § 9A(2), 49 Del. Laws. ch. 302 (1953) (as amended by 76 Del. Laws ch. 363 (2008) and 81 Del. Laws ch. 258 (2018)) [hereinafter Fenwick Island Charter § _].

[4] Answering Br. at 1.

[5] Fenwick Island Charter § 9A(4).

[6] Fenwick Island Charter § 9A(3).

[7] *Id*.

dismiss.[8] It held that the ACLU had not demonstrated that Fenwick Island's charter provision violated the Elections Clause or any other provision of the Delaware Constitution.

(4) The ACLU appealed and moved for expedited review. At first, we granted the ACLU's motion to expedite based on the need for a decision prior to the upcoming August 1, 2026, Fenwick Island municipal election. But Fenwick Island canceled the election after the only candidates who filed to run for town council were unopposed. Thereafter, the appeal was briefed on a non-expedited schedule. We also requested that the parties address whether the appeal is or will become moot.

(5) We raised the mootness issue because, concurrently with this appeal, the General Assembly passed the first leg of a constitutional amendment restricting the right to vote in any Delaware election to natural persons.[9] Unlike other states, the Delaware Constitution can only be amended by a constitutional convention or a

[8] *Am. Civil Liberties Union of Del. v. Town of Fenwick Island*, 2026 WL 1471236, at *7 (Del. Super. May 26, 2026).

[9] Del. H.B. 430 syn., 153d Gen. Assem. (2026) ("This Act is the first leg of a constitutional amendment that would require that only natural persons be allowed to vote in any election in this State, and forbid corporations and other artificial entities from voting in such elections."); *see also Hearing on H.B. 430 Before the S. Elections & Gov't Affs. Comm.*, 153d Gen. Assem. (Del. June 25, 2026) (statement of Sen. Kyra Hoffner), at 11:31, https://tinyurl.com/5yaydhyv (stating that the purpose of the amendment is to "make one simple principle explicit in our Delaware Constitution: only natural persons may vote in our elections occurring in or for this state, at any level or political subdivision").

two-thirds vote in both the House and Senate followed by a second leg – another two-thirds supermajority in both chambers by a newly elected General Assembly.[10]

(6) Fenwick Island's next election is scheduled for August 2027. Fenwick Island argues that this appeal is moot because by the time of Fenwick Island's next contested municipal election, the General Assembly is likely to have voted on the second leg of the constitutional amendment prohibiting voting by artificial entities in Delaware elections.[11] The ACLU disagrees, citing the uncertainty of legislative action.[12] It does not, however, disagree that passage of the second leg would moot this appeal.[13]

(7) As a matter of judicial restraint, this Court avoids reaching constitutional questions unless required by the circumstances.[14] Considering the passage by supermajority vote of the first leg restricting the right to vote in any Delaware election to natural persons, and the General Assembly's likely

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[10] Del. Const. art. XVI, § 1; RANDY J. HOLLAND, THE DELAWARE STATE CONSTITUTION: A REFERENCE GUIDE 262 (2011) ("Section 1 provides that two-thirds of all members elected to each house of two successive general assemblies may amend the constitution.").

[11] Answering Br. 45.

[12] Reply Br. 23.

[13] *See id.* at 23–24.

[14] *See Dir. of Revenue v. Verisign, Inc.*, 267 A.3d 371, 381 (Del. 2021) ("[I]t is the settled policy of this Court that a constitutional question will not be decided unless its determination is essential to the disposition of the case." (quoting *Downs v. Jacobs*, 272 A.2d 706, 708 (Del. 1970))).

consideration in 2027 of the second leg of the constitutional amendment limiting the right to vote in Delaware to natural persons, this Court will exercise its discretion to stay this appeal until June 30, 2027. The stay is without prejudice to the parties' rights to move to lift the stay due to a change in circumstances.

NOW, THEREFORE, IT IS ORDERED that this appeal is stayed pending the General Assembly's consideration of the second leg of the constitutional amendment for House Bill 430.

FOR THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice