



STATE OF DELAWARE
DEPARTMENT OF ELECTIONS

October 27, 2023

Via email to: abernstein@aclu-de.org

Andrew Bernstein
Cozen Voting Rights Fellow
ACLU of Delaware
110 West 10th Street, Suite 706
Wilmington, DE 19801

RE: Eligible Voters Incarcerated in Delaware Facilities

Dear Mr. Bernstein:

Thank you for your letter of October 4, 2023, in which you express your concern that the Delaware Supreme Court's December 2022 decision in *Albence v. Higgin* has "totally disenfranchised" incarcerated individuals who are otherwise eligible to vote. Your letter asserts that the decision leaves these individuals "without sufficient constitutional guarantee that they can vote absentee" and therefore the State "must provide a constitutionally guaranteed mechanism for eligible incarcerated voters to vote in the upcoming 2024 elections."

It remains the position of the Department of Elections ("DOE") that the *Albence v. Higgin* decision does not impact the ability of eligible voters who are incarcerated in Delaware prison facilities to vote by absentee ballot. The "otherwise eligible persons who are incarcerated" absentee reason, which falls under the broader "Business or Occupation" reason set forth in Article V, Section 4A of the Delaware Constitution, has been expressly included for the past several election cycles on the DOE's absentee ballot application form as a specific and authorized reason for voting by absentee ballot.

As the ACLU of Delaware is aware, DOE worked cooperatively and diligently during the 2022 election cycle with the Department of Correction ("DOC") and the Department of Justice ("DOJ") to ensure eligible voters in DOC custody were informed of voter eligibility and registration requirements, were able to register vote (if not already registered), and were able to exercise their right to vote by casting an absentee ballot. DOE assures you the Department will continue partnering with DOC for the 2024 election cycle, as detailed in the October 26, 2023, letter of DOC Acting Commissioner Taylor, to ensure the voting accessibility of Delaware's incarcerated, eligible voters. The Department is open to meeting with the ACLU of Delaware, DOC, and DOJ to further discuss the concerns that you have raised.

Sincerely,

Anthony Albence
State Election Commissioner