



PRESS RELEASE  
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## **ACLU-DE and LWV-DE File Lawsuit to Ensure Late-Arriving Vote By Mail Ballots Are Counted**

WILMINGTON—The ACLU of Delaware, in cooperation with Shaw Keller, LLP partner David Fry, filed a lawsuit against the Department of Elections today that aims to ensure absentee and vote by mail ballots are counted if they were mailed timely but are received by mail after Election Day. The lawsuit addresses the General Election to be held on November 3, 2020.

Currently, absentee and mail-in ballots must be received by 8 p.m. on Election Day to be counted.

Amid COVID-19 and uncertainty around the United States Postal Service’s ability to promptly deliver mail-in ballots, the ACLU-DE lawsuit seeks to change this deadline by asking the Courts to order that the Department of Elections accept all ballots mailed by Election Day and received within 10 days of the election.

“Voting by mail is a secure and safe way for voters to cast their ballot, especially during the COVID-19 pandemic. But Delaware’s current deadline for receiving ballots could mean thousands of voters would be disenfranchised because of mail delays,” says Karen Lantz, Legal and Policy Director at the ACLU of Delaware. “By extending the deadline, it would also minimize the number of people that will need to access voting locations, thereby providing more space and less risk for those who choose to vote in-person.”

On July 29, 2020, the US Postal Service warned many states, including Delaware, that it could not guarantee delivery of ballots in time to be counted. In particular, they warned that voters who mail ballots for the general election should do so by October 27 – a full week before Election Day. With the current ballot return deadline, given that ballots can be mailed out up until 4 days before Election Day, there is a strong risk that a substantial number of voters may have their ballots disqualified for arriving too late, or they may have to choose between their health and their right to vote and go in-person to the polls.

The defendants in the case are the Delaware Department of Elections and the State Election Commissioner Anthony J. Albence, in his official capacity. The plaintiffs are the League of Women Voters Delaware, Inc. and an individual voter.

“Delaware leaders took action to allow any voter to cast a mail-in ballot due to the pandemic, but now we must have a system that works for everyone. In July’s Presidential Primary, more than 50,000 voters cast their vote by mail, and 1,669 of those ballots were rejected because they were received after the return deadline, currently 8 p.m. on election



day,” said Carol Jones, President of the League of Women Voters in Delaware. “We expect these numbers to grow exponentially for the State Primary and General Elections. COVID-19 is still a health risk and Delaware is under a state of emergency — we need to make sure we’re doing everything we can to allow people to cast their vote by mail safely and without undue barriers.”

This press release can be found online here:

<https://www.aclu-de.org/en/news/filed-were-suing-doe-ensure-late-arriving-ballots-are-counted>

A copy of our complaint can be found online here:

[https://www.aclu-de.org/sites/default/files/lwv\\_v\\_doe\\_complaint\\_final.pdf](https://www.aclu-de.org/sites/default/files/lwv_v_doe_complaint_final.pdf)

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