



IN THE SUPREME COURT OF THE STATE OF DELAWARE

AMERICAN CIVIL LIBERTIES
UNION OF DELAWARE

*Plaintiff below,
Appellant*

v.

THE TOWN OF FENWICK ISLAND

*Defendant below,
Appellee.*

No. 229, 2026

On Appeal from a Decision of
the Superior Court of the State
of Delaware

C.A. No. S25C-12-003 CAK

**BRIEF OF AMICI CURIAE FREE SPEECH FOR PEOPLE AND LEAGUE
OF WOMEN VOTERS OF DELAWARE IN SUPPORT OF THE
APPELLANT AND THE REVERSAL OF THE DECISION BELOW**

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STATEMENT OF IDENTITY AND INTEREST

Free Speech For People (“FSFP”), is a non-partisan, nonprofit public interest organization dedicated to protecting our country’s core democratic principles and our Constitution. FSFP is a leading force for defending our Constitution and fulfilling the promise of political equality for all. Since its founding in January 2010, FSFP has worked to protect the opportunity for equal and meaningful civic participation by championing freedom of speech for individuals, challenging big money in politics, confronting corruption in government, fighting for free and fair elections, and advancing a new jurisprudence grounded in the promises of political equality and democratic self-government. FSFP engages in legal advocacy, public education, and organizing in communities across the country. The organization has more than one million supporters nationwide.

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. Active since 1921, LWVDE has 325 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 the voting rights of natural persons in Delaware.

The source of amici curiae's authority to submit this brief would be leave of Court under Delaware Supreme Court Rule 28, if granted.

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

The Superior Court below opens its decision by quoting an essay by a Luxembourg author, whose philosophical musings on personhood rest in part on the fact that Saudi Arabia—an authoritarian monarchy that does not grant democratic rights, liberties, or the power to vote to its actual people—has granted citizenship to a robot. This illustrates how far astray the lower court’s ruling is from the principles of our constitutional democracy. As the U.S. Supreme Court has made clear, extending the franchise to inanimate objects, thereby diluting the vote of real people, is antithetical to those principles:

Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or *economic interests*. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.¹

Ours remains a representative form of government, and the people of Fenwick live in a town that, however small, operates like any other town, with costs and benefits afforded to the people who live there, decided by its elected representatives. They deserve to be governed by representatives chosen by qualified persons, via rules that respect the bedrock principles of the U.S.

¹ *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (emphasis added).

Constitution and the Delaware Constitution, including the guarantee of “one person, one vote.”²

I. Fenwick’s Charter Violates the Federal Constitution

Although this case concerns only a state law claim, analysis of rights under the federal Constitution is warranted here, both because the court below incorrectly analyzed vote dilution claims; and because, as the Court of Chancery has made clear, “[t]he Elections Clause has independent content that *is more protective* of electoral rights than the federal regime.”³ While the Fourteenth Amendment and Elections Clause⁴ should not be interpreted in lockstep, the Elections Clause cannot be read to accord the people of Delaware with *fewer* protections than the U.S. Constitution accords them.

In 2008, Fenwick amended the town charter to grant voting rights to corporations and other artificial entities. By 2025, these non-persons made up 12% of the town’s voter rolls and cast 23% of the votes in the 2024 election—more than enough to decide an election.⁵ This is constitutionally impermissible. The right to vote cannot be given over to corporations, which are artificial creatures of the state.

² *Gray v. Sanders*, 372 U.S. 368, 381 (1963).

³ *Young v. Red Clay Consolidated School District*, 122 A.3d 784, 813 (Del. Ch. 2015).

⁴ Del. Const. art. I, § 3.

⁵ *A.C.L.U. of Delaware v. The Town of Fenwick Island*, No. S25C-12-003, Del. Super. Ct., 2026, Complaint, at ¶¶ 15–20 (Dec. 4, 2025).

Moreover, a system of voting must ascribe to “one person, one vote,” which the Charter amendment—despite its claim to the contrary—does not.

A. Granting corporations and other artificial entities the right to vote violates the longstanding principle that citizens and not economic interests have the right to vote.

The U.S. Supreme Court has made it clear that the right to vote is reserved for natural persons, and not to other interests. In the landmark case of *Reynolds v. Sims*, Alabama sought to justify its malapportioned districts by asserting that important economic interests should have an indirect role in the electoral process by granting more voting power to the human voters that purportedly represented those interests. The Supreme Court wholly rejected Alabama’s argument: “Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures, vote.”⁶ For this reason, this Court held that it was unconstitutional in Delaware to weigh votes according to assessed real estate value in a special annexation election.⁷

Fenwick ignores this unassailable constitutional requirement by giving the vote to artificial entities that own certain economic or land interests in the town. This directly contradicts the Supreme Court’s ruling in *Reynolds* which mandates

⁶ *Reynolds v. Sims*, 377 U.S. 533, 580 (1964).

⁷ *Mayor and Council of City of Dover v. Kelley*, 327 A.2d 748, 752-53 (1974).

that voting must be preserved for natural persons, and natural persons alone. Further, granting voting rights to artificial entities contravenes the limits of artificial entities; undermines individual rights; and erodes the functioning of our democracy.

Although corporations and other artificial entities are, in limited circumstances, treated as a legally distinct “persons,”⁸ they are not and cannot be afforded all the rights to which natural persons are entitled. Delaware’s corporate law—including the treatise cited by the court below—recognizes this limit: “A corporation is not a natural person but, rather, it is an artificial person, and that artificial person is a legal fiction. The general tendency and policy of legislatures and courts has been to treat corporations, **as far as their inherent nature will permit**, on the same footing as individuals.”⁹ The Superior Court also omitted the more salient rule that “statutory and constitutional provisions must be construed to determine whether their benefits were intended to be conferred on corporations.”¹⁰

⁸ *Manti Holdings, LLC v. Authentix Acquisition Co., Inc.*, 261 A.3d 1199, 1213 (Del. 2021) (“it is a fundamental principle of Delaware law that a corporation is an entity, capable of forming a contract, with an identity separate from its stockholders.”); *In re Aeero Techs. LLC*, 346 A.3d 584, 596 (Del. 2025) (same concept applied to LLCs); 12 Del. C. § 3803(a, b) (beneficiaries and trustees are not liable for the acts of the trust); cf. *United States v. Sanofi-Aventis U.S. LLC*, 226 A.3d 1117, 1128 (Del. 2020) (partnerships are presumed to be separate legal entities but partners may choose to establish a partnership as a mere association).

⁹ 18 Am. Jur. 2d Corporations 65 (2026) (emphasis added).

¹⁰ *Id.*

The caution here is telling: the inherent nature of artificial entities does not permit them to claim certain rights—including the right to vote.

Artificial entities are infinitely divisible, highly manipulable, easily dissolved, but potentially immortal. They can be formed for nearly any purpose and they need not be successful at that purpose to exist.¹¹ Legally speaking, their age rarely matters. A person can own or control an unlimited number of entities; entities can control other entities; and a person may incorporate an entity in a place they have never been. Delaware-incorporated entities may be controlled by non-citizens who do not live in the United States. Artificial entities are not self-organized; they can act only through agents¹² and are controlled either by their

¹¹ Cf. 6 *Del. C.* § 18-106 (“A limited liability company may carry on any lawful business, purpose or activity, whether or not for profit”); 8 *Del. C.* § 101 (“A corporation may be incorporated or organized under this chapter to conduct or promote any lawful business or purposes”); 6 *Del. C.* § 17-106 (“A limited partnership may carry on any lawful business, purpose or activity, whether or not for profit”)

¹² *In re Dole Food Co., Inc. S’holder Litig.*, 110 A.3d 1257, 1261 (Del. Ch. 2015) (“a corporation only can act through human agents”). Agents, of course, act at the direction and in the interests of the entity. *Oberly v. Kirby*, 592 A.2d 445, 466 (Del. 1991) (noting that “self-dealing on the part of a trustee is virtually prohibited” and outlining the process stockholders may use to challenge an “interested transaction” on the part of a corporation’s directors); *Arxada Holdings NA Inc. v. Harvey*, 351 A.3d 519, 572 (Del. Ch. 2026) (“An agent’s duty of loyalty includes a duty of obedience When the principal or a senior agent has made a decision, the duty of obedience may require compliance with that decision, even if the agent might independently have followed a different course.”).

interest holders,¹³ directors,¹⁴ or agents.¹⁵ They cannot be questioned by law enforcement nor imprisoned for violating the law.

Because of these characteristics, artificial entities are not given—and cannot be given—all of the rights of natural persons. They are not entitled to personal privacy.¹⁶ They cannot swear oaths, and therefore may not serve as witnesses under Delaware law,¹⁷ serve on juries, or get married. They cannot run for public office. And they cannot vote. Allowing corporations to encroach on these domains is inconsistent with their nature and would imperil both the rights of real persons and the functioning of our democratic government.¹⁸

¹³ *Cf. CML V, LLC v. Bax*, 28 A.3d 1037, 1043 (Del. 2011), *as corrected* (Sept. 6, 2011) (“in the LLC context specifically, the General Assembly has espoused its clear intent to allow interested parties to define the contours of their relationships with each other to the maximum extent possible”); 12 *Del. C.* § 3806 (giving trusts significant flexibility in crafting their management structure).

¹⁴ *Wagner v. BRP Group, Inc.*, 316 A.3d 826, 855–56 (Del. Ch. 2024), *reversed on other grounds*, 2026 WL 1256588, (Del. May 7, 2026).

¹⁵ *See, e.g., Pollock v. Peterson*, 271 A.2d 45, 49 (Del. Ch. 1970) (the beneficiaries of charitable trusts are “some or all of the members of a large shifting class of the public” who have no right to control it—instead, they are controlled by the trust’s agents).

¹⁶ *FCC v. AT&T*, 562 U.S. 397, 405, 409-10 (2011).

¹⁷ *In re Dole Food Company*, 110 A.3d at 1260–63.

¹⁸ *Batson v. Kentucky*, 476 U.S. 79, 86 (1986) (“The very idea of a jury is a body ... composed of the *peers or equals* of the person whose rights it is selected or summoned to determine; that is, of *his neighbors, fellows, associates, persons having the same legal status in society as that which he holds.*”) (quoting *Strauder v. West Virginia*, 100 U.S. 303, 308 (1880)) (emphasis added).

The right to vote—for “qualified voters within a state to cast their ballots and have them counted”— “is one secured by the Constitution.”¹⁹ “[O]ur Constitution’s plain objective’ was that ‘of making equal representation for equal numbers of people the fundamental goal.’”²⁰ The Constitution provides this right to the natural person, and protects the person’s right to vote against attempts by legislatures to hand over that right to other interests. There are two critically important reasons for granting the right to vote to people and not to artificial entities: doing so protects individual rights,²¹ and protects our democracy itself. In a representative democracy such as ours, voting is reserved for real people and not “economic interests.”²²

In other words, voting does double duty: it protects the rights of the individual, and it protects the functioning of our democracy. Artificial entity voting would undermine both.

The Supreme Court has recognized one narrow exception to the normal application of constitutional protections to voting, an exception that is not relevant to Fenwick. In *Salyer*, the Supreme Court considered the constitutionality of a law

¹⁹ *United States v. Classic*, 313 U.S. 299, 314-15 (1941).

²⁰ *Reynolds*, 377 U.S. at 559-60 (quoting *Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964)).

²¹ *Reynolds*, 377 U.S. at 560 ([o]ther rights . . . are illusory if the right to vote is undermined”); see also *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (voting “is regarded as a fundamental political right, because preservative of all rights”).

²² *Reynolds*, 377 U.S. at 562.

that allocated votes to landowners in proportion to property size in what it dubbed a special-interest district (specifically, a water management district). It held that the district was exempt from *Reynolds* “by reason of its special limited purpose and . . . the disproportionate effect of its activities on landowners as a group.”²³ The district did not exercise “normal governmental authority,” and had “no . . . facilities designed to improve the quality of life within the district boundaries”; it existed solely to acquire, store, and distribute water for farming, with costs born disproportionately by the water-using landowners.²⁴ Notably, though the district allowed and plaintiffs did not challenge voting by artificial entities, the Supreme Court indicated that voting by such entities, like voting in proportion to land ownership, would be tolerable *only* in a special-interest district, describing the franchise as being “extended to landowners, whether they reside in the district or out of it, and indeed whether or not they are natural persons *who would be entitled to vote in a more traditional political election.*”²⁵

More importantly, districts that qualify for any such exemption are exceedingly rare. Most districts, even those with special interests, exercise such

²³ *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 728 (1973); *see also Ball v. James*, 451 U.S. 355, 355 (1981); *Hellebust v. Brownback*, 42 F.3d 1331, 1333 (10th Cir. 1994) (explaining that these cases established that “one vote rule does not apply to units of government having a narrow and limited focus which disproportionately affects the few who are entitled to vote”).

²⁴ *Salyer*, 410 U.S. at 729–30 (emphasis added).

²⁵ *Salyer*, 410 U.S. at 729–30 (emphasis added).

normal government authority so as to warrant application of *Reynolds*.²⁶ And Fenwick is no special interest district. It appoints a police force, levies taxes, enacts zoning ordinances, grants business licenses, maintains public works, and allocates the town budget.²⁷ It may be small and may wish to afford voting rights to people who own property in the town, but it still exercises traditional government authority and cannot evade the constitutional voting protections laid out in *Reynolds*.

B. Fenwick violates the constitutional guarantee of one person, one vote.

Fenwick’s law violates the “one person, one vote” rule set forth in *Gray v. Sanders*²⁸ and affirmed through a long line of subsequent cases, including

²⁶ See, e.g., *Hellebust*, 42 F.3d at 1332 n.1 & 1334–35 (the Kansas State Board of Agriculture, whose members were elected by delegates from various private associations across the state, including associations of individuals, each of which was given a single delegate, violated the one-person, one-vote rule because “[o]nce a state agency has the authority to affect every resident in matters arising in their daily lives, its powers are not disproportionate to those who vote for its officials”).

²⁷ See *Town of Fenwick, Del., Charter*, §§ 22, 23, 24, 26; *contra Salyer*, 410 U.S. at 729–30 (*Reynolds* does not apply to a resource-management district that allocated votes only to landowners, including corporations, and allocated votes on the valuation of the land because the district did not exercise “‘normal governmental’ authority” and its “actions disproportionately affect landowners,” later referred in the case law as “special interest districts.”); see also *Ball*, 451 U.S. at 366 (similar).

²⁸ *Gray v. Sanders*, 372 U.S. 368, 381 (1963).

Reynolds.²⁹ The Court in *Reynolds*, unequivocally laid out the rule, its purpose, and its importance to our democracy:

How then can one person be given twice or 10 times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. That is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of ‘we the people’ under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every vote is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions [T]here is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State. . . . The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.³⁰

²⁹ *Moore v. Ogilvie*, 394 U.S. 814, 819 (1969); *Kramer v. Union Free School District No. 15*, 395 U.S. 621, 626 (1969) (similar); see also *Mayor & Council of City of Dover v. Kelley*, 327 A.2d (“state laws denying or diluting the right to vote . . . are tested by the same strict standard” under the Equal Protection Clause).

³⁰ *Reynolds*, 377 U.S. at 557-58 (quoting *Gray v. Sanders*, 372 U.S. 368, 379-80, 381 (1963)).

This line of cases has rejected many efforts to place property-ownership qualifications on the right to vote,³¹ both those that would disenfranchise non-property owners entirely, and those that, as here, give special privileges or voting weight to property owners.³² These cases also categorically reject vote dilution schemes.³³

Fenwick’s Charter purports to abide by a “one-person/entity, one vote” rule:

Where a voter is entitled to vote by virtue of being both a resident and as an owner of real property, that voter shall be entitled to only one (1) vote; where 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.³⁴

However, the enfranchisement of artificial entities renders this guarantee meaningless, in several distinct but equally unconstitutional ways.

First, artificial entities are not subject to the same qualifications as natural persons. Under Fenwick’s Charter, natural persons may only vote if they are citizens of the United States, eighteen, and either reside or own property in

³¹ *Kramer*, 395 U.S. at 627.

³² *Kelley*, 327 A.2d at 752–53.

³³ *Reynolds*, 377 U.S. at 565-66. Contrary to the Superior Court’s suggestions, vote dilution claims stemming from the *Reynolds* and *Kramer* lines of cases are not limited to claims brought under the Voting Rights Act, nor do they require a showing of discriminatory intent or racial animus. *See Reynolds*, 377 U.S. at 557-58 (rejecting vote dilution schemes based on a myriad of categories, including occupation, income, and property ownership).

³⁴ Town of Fenwick, Del., Charter, § 9(A)(3).

Fenwick.³⁵ Artificial entity voters must own property in Fenwick and be “a domestic entity in the State of Delaware.”³⁶ Thus, for example, a sixteen-year-old nonresident (even a non-U.S. citizen) who owns and manages a Delaware entity that owns property in Fenwick can control the entity’s vote. Thus, the vote of artificial entities can be controlled or operated on behalf of people who would not independently be entitled to vote.³⁷

Second, as a resident and real estate holder, a person might be entitled to only one vote under the Charter; but that same person can obtain control over and, therefore exercise, multiple votes by placing their piece or pieces of real estate into a trust, or by setting up an LLC to own the land. In fact, according to the voting rolls, this is precisely what people in Fenwick tend to do; many residents have transferred ownership of their property in Fenwick to trusts.³⁸ Property owners can artificially create additional “persons”—and therefore obtain more votes—by buying multiple pieces of real estate, or even splitting a piece of land into multiple parcels, and placing each piece of land or each parcel into a separate trust, LLC, or

³⁵ Town of Fenwick, Del., Charter, § 9(A)(1, 2).

³⁶ Town of Fenwick, Del., Charter, § 9(A)(2).

³⁷ *Cf. Kelley v. Mayor & Council of City of Dover*, 300 A.2d 31, 37 (Del. Ch. 1972) (in holding that a corporation which was statutorily barred from voting could not assign its property to an individual in order to gain voting rights, the Court of Chancery ruled “Equity will not permit one to evade the law by dressing what is prohibited in substance in the form of that which is permissible.”).

³⁸ *A.C.L.U. of Delaware v. The Town of Fenwick Island*, No. S25C-12-003, Del. Super. Ct., 2025, Complaint, Exhibit D (Dec. 4, 2025).

other artificial entity. This duplication problem is not hypothetical: in a 2018 election in Newark, Delaware, which had identical voting rules to Fenwick's, a single representative of a company that owned multiple LLCs voted 31 times.³⁹ In response, the city repealed the ordinance allowing artificial entity voting.⁴⁰

Even if Fenwick's Charter were read to prohibit the same person from voting on behalf of multiple LLCs, the owner can easily assign a different agent to each LLC. Nor does the Charter provide any mechanism for election officials to determine whether different agents voting for different LLCs are in fact acting at the behest of a single owner, let alone to prevent such multiple voting.

The danger of the same person exercising multiple votes is present regardless of whether anyone intentionally structures their legal entities for the purpose of enhancing their electoral voice. While such manipulation is certainly possible, a resident of Fenwick may for reasons unrelated to intentional vote duplication ultimately control three or more votes, for example: (1) as a town

³⁹ Josh Shannon & Brooke Schultz, *\$27.6 million capital referendum draws broad support from Newark voters*, Newark Post (Jun. 20, 2018), https://www.newarkpostonline.com/news/27-6-million-capital-referendum-draws-broad-support-from-newark-voters/article_6dd997d6-64df-5c1e-88b0-88837b796009.html (last accessed July 22, 2026); Josh Shannon, *Newark closes loophole that allowed developer to vote 31 times*, Newark Post (June 21, 2019), https://www.newarkpostonline.com/news/newark-closes-loophole-that-allowed-developer-to-vote-31-times/article_dac0293e-b78b-576b-9d3b-dcecc2cfb593.html (last accessed July 22, 2026). To be clear, although there was no legal challenge, this election was conducted under unconstitutional rules.

⁴⁰ *Id.*

resident; (2) as interest-holder in a family land trust; and (3) by operating a Fenwick-land-owning LLC. The resident, the trust, and the LLC each have a vote, all votes are cast at the resident owner's behest, resulting in some natural persons effectively having multiple votes while others have only one vote. The scheme thus violates the one person, one vote rule.

Each of these risks is inherent in the Fenwick Charter as amended, each violates "one person, one vote," and each dilutes the votes of the natural persons who are qualified to vote in Fenwick's elections.

Fenwick authorized non-resident voting long before this amendment, and it may wish to still further extend this franchise.⁴¹ But it can do so by amending the qualifications that natural persons must satisfy in order to vote.⁴² Fenwick may not seek to advance this dubious interest indirectly by extending the vote to economic interests in defiance of *Reynolds v. Sims*.

II. Fenwick Island's Charter Violates the Delaware Election Clause

The Delaware Constitution provides that "[a]ll elections shall be free and equal."⁴³ The analysis above of federal voter protections is instructive here, both

⁴¹ *May v. Town of Mountain Vill.*, 132 F.3d 576, 582 (10th Cir. 1997); *Duncan v. Coffee County*, 69 F.3d 88, 92, 94–98 (6th Cir. 1995).

⁴² *Cf. Brown v. Bd. of Comm'rs of City of Chattanooga*, 722 F. Supp. 380, 399 (E.D. Tenn. 1989) (extending the vote to property owners who own a trivial amount of property violates the Equal Protection Clause).

⁴³ Del. Const. art. I, § 3.

because [t]here is a dearth of case law addressing [the Elections Clause],”⁴⁴ and because state courts interpreting similar provisions have found that a one person, one vote principle is implicit in the notion of a “free and equal” election.⁴⁵ Also, Delaware’s Election Clause provides *greater* protections to qualified voters than those afforded by the U.S. Constitution, meaning a violation of the Equal Protection Clause must also violate the Elections Clause.⁴⁶ Indeed, in interpreting the Elections Clause, the Court of Chancery has held that “[a]n election in which certain groups of citizens receive rewards for voting is neither ‘free’ nor ‘equal.’” If it violates the Elections Clause for election officials to induce certain voters to vote, *a fortiori*, it violates the Elections Clause to give certain persons more votes than others. Finally, the Clause’s few substantive interpretations in case law and statute make it clear that its purpose “is to assure the people’s right to free and equal elections,”⁴⁷ and use the terms “citizens” and “people” interchangeably, demonstrating that the clause is intended to protect natural persons (given that only natural persons may be citizens).⁴⁸

⁴⁴ *Young*, 122 A.3d at 815.

⁴⁵ *Orr v. Edgar*, 1101, 670 N.E.2d 1243, 1252 (Ill. App.1996); *Moore v. Election Comm'rs of Cambridge*, 35 N.E.2d 222, 230 (Mass. 1941), *abrogated on other grounds by McSweeney v. City of Cambridge*, 665 N.E.2d 11, 14–15 (Mass. 1996).

⁴⁶ *Young*, 122 A.3d at 827.

⁴⁷ 15 *Del. C.* § 101A.

⁴⁸ *See, e.g., Abbott v. Gordon*, 2008 WL 821522, at *20 (Sup. Ct. Delaware, March 27, 2008) (“this section’s purpose is to ensure that the right of citizens to vote in an

Carr and *Reynolds* clearly protect voters from encroachment by economic interests, and prohibit laws that, like the Fenwick Charter amendment, undermine the “one person, one vote” rule. Delaware’s Election Clause does no less.

The Elections Clause demands that, for the sake of voters, its elections be free and equal. No town or county is allowed to give voting privileges or benefits to some class of voters over another, nor to dilute the votes of real persons by extending the franchise to artificial entities. But this is precisely what Fenwick has done. It has impermissibly extended voting rights to economic interests of legal entities and it has provided one class of persons—namely, those owning property through legal entities—with special voting privileges. They are exempt from constitutional voting qualifications and can control multiple votes. They have been afforded more votes than others due to the fact that they hold real estate via an artificial entity.

A federal court previously has rejected a system in which property-owning residents were subject to less stringent qualification restrictions than non-property-owning residents. Non-owner residents had to satisfy age, capacity, and crime-related qualifications; people who owned property in the district did not.⁴⁹ The

election is unfettered”); *see also Hemphill v. Orloff*, 277 U.S. 537, 548–50 (1928) (corporations are not citizens under the Privileges and Immunities Clause).

⁴⁹ *Day v. Robinwood West Community Improvement Dist.*, 693 F.Supp.2d 996, 1006–07 (E.D. Mo. 2010).

court found the distinction to be “irrational and arbitrary” and held that owning property did not justify an exemption from voting qualifications under the Equal Protection Clause.⁵⁰ That court’s rationale is persuasive here in determining the scope of the Elections Clause: there is no proper basis for exempting property owners from the same qualifications other voters face because they happen to use an artificial entity to hold property.

CONCLUSION

This case is not about whether and under what circumstances Fenwick could extend voting rights to individuals with interests in artificial entities that own property in town consistent with the Elections Clause. It is about whether Fenwick can grant privileges to certain landowners on the basis of artificial entity ownership. It cannot. Fenwick’s grant of voting rights to artificial entities violates the Elections Clause of the Delaware Constitution and the bedrock principle of “one person, one vote.” The Superior Court’s ruling must be reversed.

⁵⁰ *Id.* at 1007–08. In contrast, the Court upheld the citizenship and residency requirements, finding that because the interest in the district was met by owning property, establishing residency or citizenship was unnecessary. *Id.* at 1007. However, Fenwick imposes citizenship requirements on non-resident property owners who do not own their property via an artificial entity, rendering that distinction here irrational.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AMERICAN CIVIL LIBERTIES
UNION OF DELAWARE

*Plaintiff below,
Appellant*

v.

THE TOWN OF FENWICK ISLAND

*Defendant below,
Appellee.*

No. 229, 2026

On Appeal from a Decision of
the Superior Court of the State
of Delaware

C.A. No. S25C-12-003 CAK

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