

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AMERICAN CIVIL LIBERTIES	)	
UNION OF DELAWARE,	)	
	)	
<i>Plaintiff Below,</i>	)	
<i>Appellant</i>	)	No. 229,2026
	)	
v.	)	Court Below:
	)	Superior Court of the State
THE TOWN OF FENWICK	)	of Delaware
ISLAND,	)	Case No. S25C-12-003 CAK
	)	
<i>Defendant Below,</i>	)	
<i>Appellee</i>	)	

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*
CAMPAIGN LEGAL CENTER IN SUPPORT OF APPELLANT
AND REVERSAL OF THE DECISION BELOW**

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Dated: July 23, 2026

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Campaign Legal Center (“CLC”) respectfully moves for leave to file its proposed *amicus* brief in support of Appellant and reversal of the Superior Court’s decision.¹ CLC is a nonpartisan, nonprofit organization dedicated to advancing democracy through law. It has litigated numerous cases on corporate and monied influence in elections. It has also participated in litigation under Free and Equal Elections Clauses and their analogues in states around the country (collectively, “Free Elections Clauses”), including Utah, South Carolina, Kentucky, New Hampshire, and North Carolina. Through its work, CLC has developed a unique expertise on corporate influence in elections and Free Elections Clauses throughout the country. This case focuses on a matter of general public importance—the scope of Delaware’s right to vote and whether that right can be extended to corporations. CLC’s proposed *amicus* brief would aid the Court in deciding this critical question by offering supplemental analysis of the history of Free Elections Clauses, Delaware’s constitutional history and structure, and scholarship distinguishing the rights of natural persons from corporations.

Proposed *amicus* conferred with counsel of record on this Motion. Appellant consents. Appellee does not consent.

¹ Pursuant to Delaware Supreme Court Rule 28(b)(2), CLC affirms that no counsel for a party authored this brief in whole or in substantial part; no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than CLC, its members, or its counsel made such a monetary contribution.

I. Identity and interest of proposed *amicus curiae*.

Proposed *amicus curiae* CLC is a nonpartisan, nonprofit organization that has been working for nearly twenty-five years to advance democracy through law. CLC has litigated prominent voting rights cases, including as lead counsel in *Gill v. Whitford*, 585 U.S. 48 (2018) (redistricting); *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756 (2018) (NVRA); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc) (VRA); and *Jones v. Gov. of Fla.*, 975 F.3d 1016 (11th Cir. 2020) (en banc) (felony disenfranchisement law). CLC has also advocated for guardrails on corporate influence in our political system. Since its founding in 2002, CLC has participated in every campaign finance case decided by the U.S. Supreme Court, including *Citizens United v. FEC*, 558 U.S. 310 (2010), and its most recently decided campaign finance case, *Nat’l Republican Senatorial Comm. v. FEC*, No. 24-621, 2026 WL 1868932 (U.S. June 30, 2026). CLC also litigates to help defend state campaign finance laws, including recently in Arizona, *see Ctr. for Ariz. Policy Inc. v. Ariz. Sec’y of State*, No. CV-24-0295-PR, 2026 WL 1911955 (Ariz. June 29, 2026), and Delaware, *see Order, Ams. for Prosperity Found. v. Albence*, No. 26-cv-445 (D. Del. June 8, 2026), ECF No. 28.

CLC moves to file an *amicus* brief here because this Court will likely decide an important question that impacts corporate influence in elections: whether Delaware localities may grant artificial entities the right to vote. Furthermore, the

parties ask this Court to interpret an important, pro-democratic provision of its Constitution that will influence the interpretation of parallel provisions in other states.

CLC also seeks to participate in this case as *amicus curiae* to provide the Court with important historical and doctrinal background on the Free Elections Clause. CLC has litigated the proper interpretation of an analogous state Constitutional provision in Utah. *See League of Women Voters of Utah v. Utah State Legis.*, 554 P.3d 872 (Utah 2024); *see also Rivera v. Schwab*, 512 P.3d 168 (Kan. 2022) (litigating partisan gerrymandering claims under Kansas Constitution’s “Political Power and Privileges” Clause). It has also submitted amicus briefs on the history and interpretation of the Free Elections Clauses to assist state supreme courts in South Carolina, Kentucky, New Hampshire, and North Carolina. *See League of Women Voters of S.C. v. Alexander*, 921 S.E.2d 660 (S.C. 2025); *Graham v. Sec’y of State Michael Adams*, 684 S.W.3d 663, 684–85 (Ky. 2023); *Brown v. Sec’y of State*, 313 A.3d 760 (N.H. 2023); *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022). In these cases and briefs, CLC has argued that Free Elections Clauses and their analogues guarantee important political rights, including the right to vote, to the natural people of the state.

Thus, CLC has a demonstrated interest in laws that curb or amplify corporate influence in the political process, and in the interpretation of laws, such as the Free Elections Clause, that protect voters and the proper functioning of democracy.

II. Granting the motion would assist the Court’s review of the decision below.

“[T]he privilege to be heard as an *amicus curiae*, as well as the manner and extent of participation, rests within the discretion of the court.” *Giammalvo v. Sunshine Mining Co.*, 644 A.2d 407, 408 (Del. 1994). While “consent of the parties is an important consideration,” it is not binding on this Court. *Id.* at 410. “Permission to be heard *amicus curiae* is granted when the movant possesses ‘a unique perspective or expertise’ in a case involving a question of ‘general public importance’ and the court finds that it would benefit from the movant’s ‘unique supplemental assistance.’” *Jarden LLC v. ACE Am. Ins. Co.*, No. 273, 2021, 2021 WL 5296824, at *1 (Del. Nov. 10, 2021) (citing *Giammalvo*, 644 A.2d at 410).

CLC has a “unique perspective or expertise” that would aid this Court. Over twenty-five years, CLC has developed special expertise litigating high profile cases concerning corporate influence in elections and state Free Elections Clauses across the country. *Supra* Part I. That expertise is unique and would aid this Court as it considers the merits of this case. Delaware Courts have granted leave in other cases under similar circumstances, including over a party’s opposition. *See Turnbull for Turnbull v. Fink*, 644 A.2d 1322, 1324 (Del. 1994) (allowing the Delaware Trial

Lawyers Association to file an *amicus curiae* brief regarding the constitutionality of a Delaware statute that limited the Delaware Transportation Authority’s liability in litigation); *Tornetta v. Musk*, C.A. No. 2018-0408-KSJM, 2024 WL 3494118, at *1 (Del. Ch. July 22, 2024) (granting motion for leave to file *amicus* brief from United States Chamber of Commerce because “[t]he Chamber’s reputation and ability speaks for itself”; and from a law professor over the party’s objection because “[h]e is highly reputable” and his brief addressed legal issues presented by the parties).

This case involves a matter of “general public importance,” as “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.” *League of Women Voters of Del., Inc. v. Dep’t of Elections*, 250 A.3d 922, 925 (Del. Ch. 2020). Election laws “are of transcending public importance, touching upon—indeed giving vitality to—the most fundamental of our rights.” *Bartley v. Davis*, 1986 WL 8810, at *9 (Del. Ch. Aug. 14, 1986), *aff’d* 519 A.2d 662 (Del. 1986). This Court has previously held that questions involving the rights of a majority-owned subsidiary to exercise its voting interest in its international parent company raised a question of public importance under Delaware’s mootness exception doctrine because of its impact on Delaware corporate law. *McDermott Inc. v. Lewis*, 531 A.2d 206, 209, 211–12 (Del. 1987). Likewise, this case raises serious questions about the scope of Delaware’s fundamental right to vote and the proper interpretation of the state

constitution, which will have serious ramifications for Delaware election law, localities, and voters. If questions regarding shareholder voting rights are of “general public importance,” the rights of citizens to vote in elections must be too.

Finally, CLC’s proposed brief would give this Court supplemental assistance in deciding the case at hand. *Amici curiae* are most helpful when raising non-duplicative arguments that relate to issues raised by counsel in the party’s opening brief. *See Fink*, 644 A.2d at 1324. CLC’s brief does exactly that. Appellant’s opening brief discusses the history and structure of Delaware’s Free Elections Clause because its merits argument turns on that Clause’s proper interpretation. *See* Opening Br. at 17–20. CLC’s brief presents relevant historical and doctrinal context for Delaware’s Free Elections Clauses from pre-revolutionary England and other states, most notably Pennsylvania. It also introduces structural evidence from the Delaware Constitution’s Qualifications Clause. Finally, the proposed brief discusses scholarly work on the boundary between individual and corporate rights, connecting that work to the operative question here. These arguments are closely linked to Appellant’s merits arguments, as they must be, but are limited to those points that expand upon Appellant’s arguments. Most importantly, CLC’s discussion of the history of Free Elections Clauses, analysis of Delaware’s Qualifications Clause, and available academic literature will help this Court determine whether Delaware’s conception

of the “right to vote,” as protected by the Free Elections Clause, ever included or should be extended to artificial entities.

CONCLUSION

This Court should grant CLC’s motion for leave to submit an *amicus* brief in support of Appellant and reversal of the decision below.

Respectfully submitted,

/s/ Emily S. DiBenedetto

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<i>Appellee</i>	)	

[PROPOSED] ORDER

The Motion by Campaign Legal Center for Leave to File Brief as *Amicus Curiae* in Support of Appellant and Reversal of the Decision Below (the “Motion”) having been considered by the Court, and the Court having determined within its sound discretion¹ that good cause exists to grant the Motion in this case, which involves a question of public importance:²

NOW, THEREFORE, IT IS ORDERED that the Motion is GRANTED, this _____ day of _____, 2026.

¹ *Giammalvo v. Sunshine Min. Co.*, 644 A.2d 407, 408 (Del. 1994).

² *Id.*

BY THE COURT:

Justice

Form R. Certificate of Compliance [Rule 13(a)(i) and Rule 14(d)(i)].

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[1] American Civil Liberties Union of Delaware,

[2] Plaintiff Below,

Appellant,

v.

[3] The Town of Fenwick Island,

[4] Defendant Below,

Appellee,

No. [5] 229, 2026

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION**

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Time New Roman 14-point typeface using [6] MS Word.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains [7] 1,483 words, which were counted by [6] MS Word.

Dated: 07/23/2026

/s/ Emily S. DiBenedetto (No. 6779)

Signature of filing attorney or unrepresented
person

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Jessica Bulman-Pozen & Miriam Seifter, <i>The Democracy Principle in State Constitutions</i> , 119 Mich. L. Rev. 859 (2021)	10
John Locke, <i>Two Treatises of Government</i> , sec. 3 (Rod Hay, eds. 1823)	8
Margaret M. Blair & Elizabeth Pollman, <i>The Derivative Nature of Corporate Constitutional Rights</i> , 56 Wm. & Mary L. Rev. 1673 (2015)	19, 21, 22
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INTERESTS OF *AMICUS*¹

Proposed *amicus curiae* Campaign Legal Center (“CLC”)² is a nonpartisan, nonprofit organization working for nearly twenty-five years to protect voting rights and curb corporate influence over elections. CLC has litigated prominent voting rights cases, including as lead counsel in *Gill v. Whitford*, 585 U.S. 48 (2018) (redistricting); *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756 (2018) (NVRA); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc) (VRA); and *Jones v. Gov. of Fla.*, 975 F.3d 1016 (11th Cir. 2020) (en banc) (felony disenfranchisement law). Since its founding in 2002, CLC has participated in every campaign finance case decided by the U.S. Supreme Court, including *Citizens United v. FEC*, 558 U.S. 310 (2010), and its most recently decided campaign finance case, *Nat’l Republican Senatorial Comm. v. FEC*, No. 24-621, 2026 WL 1868932 (U.S. June 30, 2026). CLC also litigates to defend state campaign finance laws, including recently in Arizona, see *Ctr. for Ariz. Policy Inc. v. Ariz. Sec’y of State*, No. CV-24-0295-PR,

¹ This brief was not authored in whole or in part by counsel for any party, and no person other than *amicus* or its counsel has made monetary contribution to its preparation and submission.

² CLC affirms that Appellants have consented to and Appellees oppose the filing of this brief. Pursuant to Delaware Supreme Court Rule 28(c)(3), CLC’s authority to submit this brief would be leave of this Court, if granted.

2026 WL 1911955 (Ariz. June 29, 2026), and Delaware, *see* Order, *Ams. for Prosperity Found. v. Albence*, No. 26-cv-445 (D. Del. June 8, 2026), ECF No. 28.

CLC also has significant experience with and interests in Free and Equal Elections Clauses (“Free Elections Clauses”) around the country. CLC has litigated under an analogous state constitutional provision in Utah. *See League of Women Voters of Utah v. Utah State Legis.*, 554 P.3d 872 (Utah 2024); *see also Rivera v. Schwab*, 512 P.3d 168 (Kan. 2022) (“Political Power and Privileges Clause”). It has also submitted *amicus* briefs on the history and interpretation of Free Elections Clauses to assist state supreme courts in South Carolina, Kentucky, New Hampshire, and North Carolina. *See League of Women Voters of S.C. v. Alexander*, 921 S.E.2d 660 (S.C. 2025); *Graham v. Adams*, 684 S.W.3d 663, 684–85 (Ky. 2023); *Brown v. Sec’y of State*, 313 A.3d 760 (N.H. 2023); *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022). CLC offers this brief pursuant to Delaware Supreme Court Rule 28(a) to assist this Court in interpreting an important, pro-democratic provision of its Constitution that other states may look to in the future.

SUMMARY OF THE ARGUMENT

The Town of Fenwick Island’s charter, which allows artificial entities to vote in municipal elections, defies a fundamental premise of the franchise. Our nation was founded on the ideal, developed in seventeenth-century England and refined by our Framers, that legitimate government is built on natural persons consenting to a social compact. Delaware’s Framers codified that belief in the Free Elections Clause,³ guaranteeing Delaware’s citizens the right to vote free of interference or dilution. The history of Free Elections Clauses; their interpretations across states and in Delaware; structural evidence from Delaware’s Qualifications Clause; and scholarly work on the boundaries of corporate rights make clear that Delaware’s Constitution does not allow artificial entities to vote. By disregarding that fundamental premise, the Town of Fenwick Island has undermined the compact between its people and their government in violation of Delaware’s Constitution. This Court should uphold the promise of a government accountable to its people, embodied in Delaware’s Free Elections Clause, by reversing the Superior Court’s decision.

³ *Amicus* uses “Free Elections Clause” to refer to Delaware’s “Free and Equal Elections Clause” and similar clauses throughout the country.

ARGUMENT

I. Delaware's Free Elections Clause reserves the right to vote for natural persons, not artificial entities.

Fundamental Enlightenment ideals drove the development and adoption of Free Elections Clauses in pre-revolutionary England and the United States. Chief among these was the Lockean concept that government gains its legitimacy from the consent of natural persons. The adoption history of the Free Elections Clauses—in Pennsylvania in 1790 and two years later in Delaware—confirms that understanding: the Framers of state Free Elections Clauses understood popular sovereignty as foundational to our democracy. State courts have similarly confirmed that Free Elections Clauses were intended to protect popular sovereignty through equal voting rights for natural persons. Moreover, Delaware's Qualifications Clause provides strong structural evidence that the Free Elections Clause was intended to reserve the franchise for natural persons forming Delaware's political community. Notably, there is no evidence in the historical record or caselaw to suggest that artificial entities may vote in our electoral system. That idea is incompatible with the Free Elections Clause's promise of popular sovereignty and protection for the inherent rights of natural persons.

A. Free Elections Clauses protect the legitimacy of democratic government by ensuring the continued consent and control of natural persons.

Free Elections Clauses arose from centuries of debate over the source of government legitimacy. For centuries in England, that legitimacy was widely believed to come from a King's divine right to rule. As Parliamentary power and popular dissatisfaction grew, English theorists proposed the consent of the governed as an alternative source of governmental legitimacy. Parliamentary theorists in the seventeenth century grounded their principle of popular sovereignty in a belief that every individual had a divine right to choose their government. Building on their work, John Locke grounded the same principle in a less theological, trust-based theory of governmental legitimacy, where people exchange natural freedoms for the benefits of civil government. The Framers of the federal and state constitutions implemented Locke's thinking through state constitutional provisions intended to secure republican government, including Free Elections Clauses. Thus, the Free Elections Clause is firmly rooted in the promise of popular sovereignty and protection for the inherent rights of individual natural persons, not artificial entities.

1. The Free Elections Clause’s origins in English, Lockean, and American theories of popular sovereignty show that its Framers intended to protect the franchise of natural persons to maintain governmental legitimacy.

The Free Elections Clause’s origins in England inform its enduring meaning. At the turn of the seventeenth century, England’s dominant theory of governmental authority was royal absolutism: kings had a divine right to rule and were accountable only to God. Bertrall L. Ross II, *Challenging the Crown: Legislative Independence and the Origins of the Free Elections Clause*, 73 Ala. L. Rev. 221, 242 (2021). The only constraints on royal power were self-imposed concessions that the King granted. *Id.* at 243. But political realities demanded change. Over time, King Charles I and his Parliament grew adversarial, and members viewed the King as “an existential threat to [Parliament] and to the people’s liberties.” *Id.* at 246. Amidst disagreement over the Crown’s tax policies and a religious dispute with Scotland, Parliament resisted the Crown. *Id.* at 247–49. To justify a Parliament coequal to the Crown, contemporaneous theorists posited that people possessed an inherent and divine right to choose their government’s form, and that government derived its authority from the people’s consent. *Id.* at 251.

The first Free Elections Clause arose in England from that belief in the rights of natural persons to choose their governments. In the late seventeenth century, King James repeatedly invoked his divine right to rule to issue writs of quo warrantum that

reshaped local “boroughs” and allowed him to pack Parliament with sympathetic members. *Id.* at 270, 279–80. Frustration with “rotten boroughs” and the Crown’s manipulation of Parliament drove English and Scottish Clergy to ask Prince William of Orange for protection. *Id.* at 281–82. In response, Prince William prepared to invade England in the summer of 1688. *Id.* at 282.

King James and Prince William posed their power struggle as a stark choice for the English people between the divine right to rule and popular sovereignty. King James accused Prince William of “usurping our Crown and Royal Authority” and offered to remove his loyalists and reinstate a system of independent boroughs. *Id.* at 285–86. William countered that “all Elections of Parliament-men ought to be made with an entire Liberty, without any sort of Force, or the requiring the Electors to choose such Persons as shall be named to them,” and that only free elections would guarantee their rights. *Id.* at 286 (citation modified) (quoting Prince of Orange’s Declaration (Dec. 19, 1688), *in* 10 *Journal of the House of Commons 1688–93*, at 3 (London, 1802)). Choosing popular sovereignty, English nobility and their followers sided with Prince William, forced King James to abdicate, and called a convention to decide the country’s constitutional future. *Id.* at 287–88. That convention agreed to a Declaration of Rights that embraced an independent Parliament accountable to the people and mandated that “Election of Members of

Parliament ought to be free.” *Id.*; see Bill of Rights, 1 Wm. & Mary, 2d Sess., ch. 2, (Eng.), 3 Stat. at Large 440 (Dec. 16, 1689).

Popular sovereignty eventually made its way to revolutionary America through the work of John Locke. “It would be difficult to overstate John Locke’s influence on the American Revolution and the people who created the government that followed it.” Donald L. Doernberg, “*We the People*”: John Locke, *Collective Constitutional Rights, and Standing to Challenge Government Action*, 73 Cal. L. Rev. 52, 57 (1985). Like his English predecessors, Locke crafted a new theory of popular sovereignty as a counterpoint to divine rule. *See generally* John Locke, *Two Treatises of Government* (Rod Hay, eds. 1823) (critiquing divine right theory and arguing for popular sovereignty). He argued that civil government only arises when people—that is, natural persons—remove themselves from the state of nature and combine to form a government. Doernberg, *supra*, at 59. In his view, civil government acted as a trustee of the powers its citizens granted to it, *id.* at 63, and is only legitimate insofar as the people retain “a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them.” Locke, *supra*, at 169. Locke’s ideas permeated the Framers’ revolutionary work, as evidenced by the Declaration of Independence’s embrace of his “social compact theory” and the Bill of Rights. Doernberg, *supra*, at 66–67.

The Framers of the federal and early state constitutions expressly adopted Locke’s theories through provisions that guaranteed citizens a republican form of government. For example, Locke was, according to some, “an intellectual godparent of James Madison.” *Id.* at 66. Throughout debates over the Federal Constitution, Madison advocated forcefully for a “republican government”: “a government which derives all its power directly or indirectly from the great body of the people.” The Federalist No. 39 (James Madison). Those ideals made their way through the states, and ultimately to Delaware’s Constitution in the form of the Free Elections Clause.

2. The history of Free Elections Clauses in Pennsylvania, Delaware, and other states confirm that they were intended to protect the legitimating connection between natural persons and their governments.

The legislative and historical record trace Delaware’s Free Elections Clause through Pennsylvania and Virginia to the English Bill of Rights. Virginia’s constitutional convention was the first to adopt a Free Elections Clause, which it effectively copied from pre-revolutionary England. Pennsylvania followed soon after, adding the words “and equal” to its Free Elections Clause, to protect republican ideals and popular sovereignty for its citizens. And just two years later, Delaware adopted a Free Elections Clause nearly identical to Pennsylvania’s, likely due to the influence of an influential Framers who was present at both states’ conventions. *See Young v. Red Clay Consol. Sch. Dist.*, 122 A.3d 784, 810, 819 (Del. Ch. 2015); Brett

Graham, “*Free and Equal*”: *James Wilson’s Elections Clause and Its Implications for Fighting Partisan Gerrymandering in State Courts*, 85 Alb. L. Rev. 799, 814–16 (2021). Given popular sovereignty’s centrality in our system of government, it is unsurprising that courts have almost universally concluded that Free Elections Clauses reflect a commitment to the legitimating link between natural persons and their governments.

Before ratification of the federal Constitution, the Framers of the state constitutions adopted provisions nearly identical to the English Bill of Rights, that elections “ought to be free.” Graham, *supra*, at 803. All the original state constitutions “declared that the people were sovereign and the source of government power,” and all twelve states that adopted constitutions before the federal convention included “clauses protecting or recognizing free elections as a fundamental right or principle.” Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 Mich. L. Rev. 859, 881 (2021); Ross, *supra*, at 289. As an influential early treatise on State Constitutions indicates, the right to “Free and Equal Elections” was commonly understood as part of a bundle of rights fundamental to republican government. Thomas A. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 34–35 (2d ed. 1871).

Importantly, Virginia's 1776 Declaration of Rights closely followed the English Bill of Rights when it mandated: "That elections of members to serve as representatives of the people, in assembly ought to be free[.]" 1776 Va. Decl. of Rights § 6. Pennsylvania's 1776 Constitution looked to Virginia and similarly mandated that "all elections ought to be free." Graham, *supra*, at 802–03. After the U.S. Constitution's ratification, states rewrote their constitutions. *Young*, 122 A.3d, 820. In 1790, Pennsylvania appended the words "and equal" after "free" for the first time. Pa. Const. of 1790, art. IX, § 5.

This insertion was no formality. Pennsylvania's 1776 Constitution was viewed as the most radically democratic of the early constitutions. Graham, *supra*, at 802. That structure created serious tension between groups who viewed the legislature as "the only legitimate voice of the people," and those arguing the state's constitution lacked important checks and balances. *Id.* at 803. When Pennsylvania rewrote its constitution in 1790, debates ensued over balancing those interests. Still, the Pennsylvania convention rejected three proposed amendments to the Free Elections Clause as introduced, preserving its protection for popular sovereignty in elections. *Id.* at 810–812; Minutes of the Grand Committee of the Whole Convention of the Commonwealth of Pennsylvania 85 (1790).

James Wilson, likely the author of Pennsylvania’s Free Elections Clause, Graham, *supra*, at 809–10, explicitly connected the clause to popular democratic principles in lectures he delivered after Pennsylvania ratified its 1790 Constitution:

The constitution of the United States and that of Pennsylvania rest solely, and in all their parts, on the great democratic principle of a representation of the people; in other words, of the moral person, known by the name of the state. This great principle necessarily draws along with it the consideration of another principle equally great to the principle of free and equal elections.

2 Collected Works of James Wilson 404, 833 (Mark D. Hall & Kermit L. Hall eds., 2007). Wilson defined the “moral person”—for whom the Free Elections clause was designed to represent and protect—as the “complete body of free *natural persons*, united together for their common benefit.” *Id.* at 831 (emphasis added). Thus, Wilson’s understanding of the Free Elections Clause tracked the Framers’ Lockean aim of translating popular elections into the “legitimate energy and weight of true representation” for the people. *Id.* at 837.

Just two years later in 1792, Delaware adopted a Free Elections Clause “nearly identical” to Pennsylvania’s. *Young*, 122 A.3d, at 810, 819. That was no accident. This Court has recognized that Delaware’s Framers were intimately familiar with Pennsylvania’s constitution, in part because individuals like John Dickinson were influential at both states’ constitutional conventions. *See Jones v. State*, 745 A.2d 856, 865–66 (Del. 1999). Dickinson was amongst the most well-known and

influential delegates at Delaware's 1791 constitutional convention, serving as convention chair and on the influential Committee of Nine, responsible for proposing and composing constitutional revisions. Graham, *supra*, at 814–15. Dickinson taught Wilson law. *Id.* at 815. Despite his conservatism relative to Wilson, Dickinson also “favored democratic representation and recognized the utility of free and equal elections in achieving that goal[.]” *Id.* at 816.

With Dickinson at the helm, the Delaware convention infused the Constitution with a commitment to popular sovereignty. For instance, the new Constitution's preamble emphasized that “all just authority in the institutions of political society is derived from the people, and established with their consent, to advance their happiness; and they may, for this end, as circumstances require, from time to time, alter their constitution of government.” Del. Const. of 1792, pmb1. Moreover, the 1792 Delaware Constitution limited the legislature's power to deprive individuals of “life, liberty, or property”; suspend laws; and raise standing armies. Del. Const. of 1792, art. I, §§ 7, 10, 16, 17. Those provisions, along with the Free Elections Clause, were commonly understood to reflect “general principles of republican government.” *See Cooley, supra*, at 34–35.

While Delaware's convention record does not indicate that Delegates discussed the Free Elections Clause extensively, *see* Proceedings of the House of Assembly of the Delaware State 1781–1792 and of the Constitutional Convention of

1792, 908 (Claudia L. Bushman, Harold B. Hancock & Elizabeth M. Hosey eds., 1988); *Young*, 122 A.3d at 819, that may be for good reason: “[T]here was nothing inherently controversial about the clause.” Graham, *supra*, at 816. The Framers understood popular sovereignty—power derived from the consent of natural persons—to be foundational to legitimate government. Delaware’s subsequent constitutions never changed the Lockean and republican conceptions of the right to free and equal elections, reflecting this stable foundation. There is no evidence in the historical record that the Framers even considered the possibility of artificial entities exercising the right to vote.

3. Judicial interpretations of Free Elections Clauses across states also confirm that the Clause protects the legitimating connection between natural persons and their governments.

Courts have interpreted related state constitutional Free Elections Clauses to uphold Lockean and republican commitments to popular sovereignty. State courts have also routinely held that such clauses reflect republican ideals that guarantee an equitable connection between natural persons and their government. Most relevant, the Pennsylvania Supreme Court has interpreted its Free Elections Clause as “a salutary effort by the learned delegates to the 1790 convention to end, once and for all, the . . . dilution of the right of the people of this Commonwealth to select representatives to govern their affairs.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 808 (Pa. 2018). That Court also held that an “election is free and equal

where all of the qualified electors of the precinct are carefully distinguished from the unqualified . . . That election is not free and equal where the true electors are not separated from the false[.]” *Patterson v. Barlow*, 60 Pa. 54, 76 (Pa. 1869); *cf. Howell v. McAuliffe*, 788 S.E.2d 706, 712–13 (Va. 2016) (recognizing vote dilution injury arising from registration of unqualified voters pursuant to unconstitutional Executive Order). The Pennsylvania Supreme Court has thus understood its Free Elections Clause to protect against vote dilution, including by expanding the franchise to unqualified voters, maintaining the legitimating connection between natural persons and their government.

Numerous state courts have similarly construed their Free Elections Clauses. For example, in *Asher v. Arnett*, 132 S.W.2d 773, 776 (Ky. 1939), the Kentucky Supreme Court stated that its Free Elections Clause “comprehends the principle that every elector has the right to have his vote counted for all it is worth in proportion to the whole number of qualified electors desiring to exercise their privilege.” Nearly a century later, it reaffirmed how Kentucky Free Elections Clause’s “guarantee of equal elections is violated when a voter’s vote is not afforded the same influence as that of any other voter.” *Graham v. Adams*, 684 S.W.3d 663, 684–85 (Ky. 2023) (internal emphasis and quotation marks omitted). The Illinois Supreme Court similarly stated that under its Constitution, “[e]lections are equal when the vote of every elector is equal in its influence upon the result to the vote of every other

elector.” *People v. Hoffman*, 5 N.E. 596, 600–01 (Ill. 1886). One Maryland court interpreted its “free elections” clause to protect “the right of political participation by *citizens* of the State.” *Szeliga v. Lamone*, No. C-02-CV-21-001816, 2022 WL 2132194, at *14 (Md. Cir. Ct. Mar. 25, 2022) (emphasis added). The Supreme Court of New Mexico has held, in part, that it can exercise jurisdiction over partisan gerrymandering claims based on the state constitution’s popular sovereignty, right of self-government, and Free Elections Clauses, which protect “the sovereignty of the people over their government” by ensuring the right to vote. *Grisham v. Van Soelen*, 539 P.3d 272, 282 (N.M. 2023).

No court has ever read a Free Elections Clause, its analogues, or any Constitutional guarantee of the right to vote, to protect suffrage for artificial entities. Rather, state courts nearly universally read these clauses to preserve each citizen’s opportunity for an equal, undistorted voice in the political process to protect the sovereignty of the people and government legitimacy.

Locke and his followers presumed that government arose from natural persons exchanging autonomy for a government bound to act in their best interest. The Framers sought to preserve the critical legitimating link between natural persons and their government by guaranteeing free and equal elections for people subject to the social compact. Artificial entities, as “creature[s] of the state,” do not enjoy any of those same natural rights and cannot similarly consent. 19 Am. Jur. 2d *Corporations*

§ 2335. So, it is no surprise that every state to adopt and construe its Free Elections Clause has understood it to protect the rights of natural persons to an equal vote in their government without ever mentioning artificial entity voting. The Free Elections Clause’s philosophical underpinning is flatly incompatible with granting artificial entities the right to vote.

B. Delaware’s Qualifications Clause reinforces the conclusion that the Free Elections Clause bars artificial entities from voting.

Delaware courts are clear that “the Constitution and each part thereof must be harmonized and construed as a whole.” *State v. Roberts*, 282 A.2d 603, 606 (Del. 1971). Delaware’s Qualifications Clause reinforces that the Free Elections Clause bars artificial entities from voting. The Qualifications Clause gives the right to vote to “[e]very citizen” above the age of 21. Del. Const., art. V, § 2. Contemporaneous U.S. Supreme Court and Delaware precedent suggest that corporations were not commonly understood to be “citizen[s]” when Delaware adopted the Free Elections Clause. Moreover, the Qualifications Clause’s age requirement suggests that the Framers only considered natural persons as part of the polity protected under the Free Elections Clause.

Delaware’s Qualification Clause reserves the right to vote for “citizen[s],” a word commonly understood to include only natural persons. In its 1792 Constitution, Delaware reserved the right to vote to “every white free man” meeting the Constitution’s qualifications. Del. Const. of 1792, art. IV, § 1. The Framers of

Delaware’s 1831 Constitution added the word “citizen” to that formulation, which the Framers of the 1892 Constitution kept as they expanded the franchise. *See* Del. Const. of 1831, art. IV, § 1; Del. Const., art V, § 2a. While the exact meaning of “citizen” was debated in the 1780s, its public meaning implied an allegiance between people and their states reserved for natural persons. *See* Mark Moller & Lawrence Solum, *Corporations and the Original Meaning of “Citizens” in Article III*, 72 *Hastings L.J.* 169, 172 (2020).

Contemporaneous dictionaries defined “citizen” in explicitly Lockean terms. For instance, the First Edition of Black’s Law dictionary defined “citizen” as “One of the sovereign people. A constituent member of the sovereignty, synonymous with the people.” *Citizen*, Black’s Law Dictionary (1st ed. 1891); *see also Citizen*, Black’s Law Dictionary (2d ed. 1910) (“In American law, One who . . . by virtue of birth or naturalization within the jurisdiction, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights.”); *Citizen*, Webster’s New Standard Dictionary (1911) (similar).

Throughout the 19th century, U.S. Supreme Court cases often interpreted the word “citizen” to exclude corporations. *See, e.g., Bank of the U.S. v. Deveaux*, 9 U.S. 61, 86–87 (1809) (holding “that invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen” for purposes of Article III diversity jurisdiction), *overruled by Louisville, Cincinnati & Charleston R.R. Co.*

v. Letson, 43 U.S. 497, 555 (1844); *Pembina Consol. Silver Mining & Milling Co. v. Com. of Pennsylvania*, 125 U.S. 181, 187–88 (1888) (“[T]he term ‘citizens,’ as used in the [privileges and immunities] clause, applies only to natural persons, members of the body politic owing allegiance to the state.”); *Bank of Augusta v. Earle*, 38 U.S. 519, 587 (1839) (similar).

While the Supreme Court pragmatically softened its stance to facilitate diversity suits against corporations, *see Marshall v. Baltimore & Ohio R.R. Co.*, 57 U.S. 314, 325–29 (1853) (adopting legal fiction that all persons associated with a corporation are citizens of the entity’s state of incorporation to justify diversity jurisdiction), it held firm on its interpretation of “citizen” in the Privileges and Immunities context. *See* Margaret M. Blair & Elizabeth Pollman, *The Derivative Nature of Corporate Constitutional Rights*, 56 Wm. & Mary L. Rev. 1673, 1696 (2015). Contemporaneous Delaware cases followed this arc. *State v. Del. & A. Telegraph & Tel. Co.*, 31 A. 714 (Del. Super. Ct. 1885) (holding corporations are “citizens in no sense except for redress of grievances in the courts of the Union” because if corporations were “entitled to the same recognition as citizens, then all constitutional restraint upon their creation would be nugatory”); *Caldwell v. Armour*, 43 A. 517, 518–19 (Del. Super. Ct. 1899) (holding corporations are not “citizens” under the federal privileges and immunities clause); *cf. Off. of Pub. Def. v. Del. State Police*, No. Civ.A.01C09208FSS, 2003 WL 1769758, at *2 (Del. Super. Ct. Mar.

31, 2003) (holding that the definition of “citizens” in Delaware’s Freedom of Information Act does not include government agencies).

The Qualifications Clause’s minimum age requirement further suggests that Delaware’s Framers did not intend the franchise to extend to artificial entities. “A corporation is not, of course, a citizen for every purpose and statutory and constitutional provisions must be construed to determine whether their benefits were intended to be conferred on corporations.” *Kelley v. Mayor of Dover*, 300 A.2d 31, 38 (Del. Ch. 1972). The Delaware Chancery Court held in *Kelley* that the plain language of the City of Dover’s charter limited the vote to natural persons by defining “qualified voter” as a “citizen of [the] State of the age of eighteen years and upwards” because it was “obvious that only a natural person may be ‘of the age of 18 years’ and thus qualify for registration[.]” *Id.* at 37 n.4. Likewise, Article V, Section 2 requires eligible voters to be at least 21 years old, suggesting the drafters of the Qualifications Clause intended only natural persons to qualify as voters. Delaware’s Qualifications Clause is consistent with the historical evidence that the Framers intended elections in furtherance of popular sovereignty and the rights of natural persons who could cede their rights and form allegiance with a state.

II. Corporate assertions of individual rights are necessarily limited and should not be extended to the right to vote.

Although corporations may assert certain constitutional rights, courts have never held that corporations possess the full array of constitutional rights enjoyed by natural persons. Corporations do not have the same privacy rights as people. *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *FCC v. AT&T Inc.*, 562 U.S. 397, 405, 409–10 (2011). They may not serve as expert witnesses under Delaware law. *In re Dole Food Co., Inc. Stockholder Litig.*, 110 A.3d 1257, 1260–63 (Del. Ch. 2015). And historically, a corporation could not assert rights under the Privileges or Immunities Clause, *see, e.g., Bank of Augusta*, 38 U.S. at 586, or even invoke federal court jurisdiction, *see, e.g., Deveaux*, 9 U.S. at 86–87. Likewise, municipal governments cannot extend the right to vote to corporations under our constitutional order.

Academic analysis of extensive case law helps explain the gap between the rights of corporations and natural persons. Tracing trends in Supreme Court jurisprudence throughout American history, Professors Margaret M. Blair and Elizabeth Pollman demonstrate that the Court has historically extended constitutional protections to corporations when it would safeguard the rights of a specific group of natural persons who organize, own, or associate through the corporate form. Blair & Pollman, *supra*, at 1677–81 (2015). Under this derivative-rights framework, a corporation does not assert its own constitutional rights. Rather,

courts extend constitutional protections to corporations when doing so protects the rights of identifiable natural persons associated with the corporation.

The Supreme Court's decision in *Hale v. Henkel* illustrates this point. 201 U.S. 43, 66–75 (1906). The *Hale* Court held that a corporation could not invoke the Fifth Amendment privilege against self-incrimination to prevent one of its officers from responding to a subpoena, because the Fifth Amendment right is “purely a personal privilege” held by natural persons, and the witness was immune from liability arising from his testimony under federal law. *Id.* at 69. But the Court also held that corporations could assert their Fourth Amendment right against unreasonable searches and seizure because a corporation is “an association of individuals under an assumed name and with a distinct legal entity” that “waives no constitutional immunities appropriate to such body.” *Id.* at 76. These are distinct because, in the Fifth Amendment context, no natural person's interest was at risk as the officer was immune, but in the Fourth Amendment context, abrogating the right to unreasonable search and seizure would impact the privacy rights of the corporation's members. Thus, *Hale* adopted the view that the scope of corporate rights depends on the risk of harm to the rights of natural persons associated with the corporation.

Similarly, Blair and Pollman argue that the Supreme Court's campaign finance jurisprudence protects the First Amendment rights of the natural persons

associating through the corporate form rather than the rights of the corporation itself. Blair & Pollman, *supra*, at 1735. Courts and other commentators offer a complementary theory, arguing that constitutional protection for corporate speech may safeguard the First Amendment interests of listeners who have a right to receive information and ideas from all speakers, including corporations. *See, e.g., First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978); Thomas W. Joo, Const. Commentary, *Corporate Speech & the Rights of Others*, 30 Minn. L. Rev. 335, 341 (2015). But under either theory, the Court’s extension of corporate constitutional rights is justified only because doing so protects the constitutional interests of identifiable natural persons.

Thus, the right to vote should not extend to corporations. Like the Fifth Amendment rights at issue in *Hale*, the right to vote has long been understood as “purely a personal privilege[.]” 201 U.S. at 69–70; *see supra* Part I.A. Denying corporations the right to vote does not burden the rights of natural persons because the individuals who own, manage or associate through the corporation can still vote in their individual capacities if they meet the jurisdiction’s qualifications. Unlike the listeners in the corporate context, no natural person possesses a constitutional interest in another person’s vote. *See, e.g., Gill v. Whitford*, 585 U.S. 48, 65 (2018) (“We have long recognized that a person’s right to vote is individual and personal in nature.”) (internal quotation marks and citation omitted). Even strong proponents of

corporate personhood concede that corporations do not have the right to vote in general elections. *See* Asaf Raz, *Taking Personhood Seriously*, 2023 Colum. Bus. L. Rev. 729, 804 n.389 (2024).

The derivative understanding of corporate rights is consistent with Delaware’s constitutional tradition concerning the right to vote. The Framers of early state constitutions understood Free Elections Clauses as important guarantors of republican government and popular sovereignty: principles ensuring that governments remain accountable to natural persons through the “purely [] personal” right to vote. *Hale*, 201 U.S. at 69–70. Granting artificial entities the right to vote contravenes that longstanding history and undermines the link between natural persons and their government. Thus, the Free Elections Clause is properly understood to prohibit artificial entities from the franchise and dilute the votes of natural persons.

CONCLUSION

For the reasons above and in Appellant's brief, this Court should reverse.

Respectfully submitted,

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Form R. Certificate of Compliance [Rule 13(a)(i) and Rule 14(d)(i)].

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[1] American Civil Liberties Union of Delaware,

[2] Plaintiff Below,

Appellant,

v.

[3] The Town of Fenwick Island,

[4] Defendant Below,

Appellee,

No. [5] 229, 2026

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Signature of filing attorney or unrepresented person

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AMERICAN CIVIL LIBERTIES	)	
UNION OF DELAWARE,	)	
	)	
<i>Plaintiff below,</i>	)	
<i>Appellant</i>	)	No. 229,2026
	)	
v.	)	Court Below:
	)	Superior Court of the State
THE TOWN OF FENWICK	)	of Delaware
ISLAND,	)	Case No. S25C-12-003 CAK
	)	
<i>Defendant Below,</i>	)	
<i>Appellee</i>	)	

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I hereby certify that on July 23, 2026, this document was served on the persons listed below in the manner indicated:

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