



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

AYONNE “NICK” MILES,)
PAUL J. FALKOWSKI, and)
NANCY M. SMITH)

Plaintiffs,)

v.)

C.A. No. 2022- _____ - ____

DELAWARE DEPARTMENT)
OF ELECTIONS, and ANTHONY)
J. ALBENCE, State Election)
Commissioner,)

Defendants.)

**VERIFIED COMPLAINT SEEKING INJUNCTIVE RELIEF AND
DECLARATORY JUDGMENT**

Plaintiffs, Ayonne “Nick” Miles, Paul J. Falkowski and Nancy M. Smith, by and through their undersigned counsel, upon knowledge with regard to themselves and their own acts and upon information and belief as to all other matters, hereby bring this action for injunctive relief and declaratory judgment against the Delaware Department of Elections and its Commissioner, Anthony J. Albence (together, the “Defendants”), declaring Senate Bill 320 (“SB 320”), unconstitutional.

In support hereof, Plaintiffs state as follows:

Introduction

Plaintiffs bring this action for a permanent injunction and declaratory judgment that SB 320 is unconstitutional because it statutorily creates a permanent “no-excuse vote by mail”¹ system that impermissibly expands the enumerated and exhaustive excuses for voting via absentee mail ballot enshrined in Article V, § 4A of Delaware’s Constitution.

The Parties

1. Plaintiff, Ayonne “Nick” Miles, is a resident of Kent County, Delaware, and is registered to vote in Delaware.

2. Plaintiff, Paul J. Falkowski, is a resident of New Castle County, Delaware, and is registered to vote in Delaware.

3. Nancy M. Smith is a resident of Sussex County, Delaware and is registered to vote in the State of Delaware.

4. Defendant Delaware Department of Elections is a department of the State of Delaware.

5. Defendant Anthony J. Albence is the Commissioner of Elections for the State of Delaware.

¹ “No-excuse vote by mail” is a descriptive term adopted by the Plaintiffs. It is not included in the text of the bill.

Jurisdiction

6. This Court has jurisdiction pursuant to 10 *Del. C.* § 341, which gives the Court of Chancery jurisdiction “to hear and determine all matters and causes in equity,” and 10 *Del. C.* §§ 6501 *et seq.*

7. This Court also has jurisdiction under the “clean-up doctrine” to the degree that any of the claims herein are not deemed equitable in nature.

Background

8. SB 320 authorizes “no-excuse vote by mail.” It was signed into law by Governor Carney on July 22, 2022. See *Exhibit A*.

9. SB 320 *statutorily* creates permanent “no-excuse vote by mail.”

10. Upon information and belief, vote by mail and absentee voting are for all intents and purposes procedurally treated the same by the Defendants.

11. Under the Delaware Constitution, the reasons for which a voter may vote by absentee ballot in a general election are strictly limited and the list is exhaustive. See Del. Const. art. V, § 4A; *Op. of Justices*, 295 A.2d 718, 722 (Del. 1972).

12. The Delaware Constitution specifically, and exclusively, permits registered voters to vote absentee only

because of being in the public service of the United States or of this State, or his or her spouse or dependents when residing with or accompanying him or her because of the nature of his or her business or occupation, because of his or her sickness or physical disability, because of his or her absence from the district while on vacation, or because of the tenets or teachings of his or her religion.

Del. Const. art. V, § 4A; *see also* 15 Del. C. § 5502.

13. Except for the permitted excuses set forth in the Delaware Constitution, persons intending to vote in a general election must vote in person at a polling place on election day.

14. SB 320 impermissibly conflicts with the constraints imposed by Article V, § 4A, of the Delaware Constitution for voting absentee by permitting absentee voting for any excuse or no excuse at all.

15. The Delaware Constitution directs that the General Assembly “prescribe the means, methods and instruments of voting so as to best secure secrecy and the independence of the voter, preserve the freedom and purity of elections and prevent fraud, corruption and intimidation thereat.” Del. Const. art. V, § 1.

16. The legislative hand is free except as the constitution restrains.” *Op. of Justices*, 295 A.2d 718, 720 (Del. 1972) (citing *Collison v. State*, 39 Del. 460, 486, 2 A.2d 97, 108 (1938)).

17. Furthermore, “the General Assembly shall in all respects conform to the requirements of this Constitution except to the extent that in the judgment of the General Assembly to do so would be impracticable...” Del. Const. art. V, §1.

18. The General Assembly has asserted authority for implementing its “no-excuse vote by mail” system under Article V, §1 of the Delaware Constitution.

19. In so doing, the General Assembly cannot disregard the requirements of Article V, §4A.

20. The General Assembly has asserted no reason that adhering to Article V, §4A is impracticable.

21. The Supreme Court of the State of Delaware previously has held:

We are of the opinion that by expressly including certain classifications, the drafters of § 4A impliedly excluded all other classifications. It is beyond the power of the Legislature, in our opinion, to either limit or enlarge upon the § 4A absentee voter classifications specified in the Constitution for general elections.

Op. of Justices, 295 A.2d at 722 (Daniel F. Wolcott, CJ).

2020 Vote by Mail

22. In 2020, the General Assembly passed vote by mail pursuant to Article XVII, §1 of the Delaware Constitution which gives the General Assembly the power “to act extra-Constitutionally in light of a health emergency, where necessary to preserve the continuity of government.” *Republican State Comm v. Del. Dep’t of Elections*, 250 A3d 911, 913 (Del. Ch. 2020).

23. In 2020, the General Assembly explicitly relied on powers pursuant to Article XVII, §1 and this Court upheld the constitutional challenge *pursuant to the emergency powers* of Article XVII, §1.

24. This Court was very specific that the 2020 vote by mail statute, which was limited in duration and not permanent, was permissible because of COVID-19. In his Memorandum Opinion, Vice Chancellor Sam Glasscock held:

The Act [Vote by Mail statute HB 346] expands the ability to vote by mail, for this election year only. The right to cast an absentee ballot is limited by our state constitution, the Delaware Constitution of 1897, however, and constitutional limits cabin legislative freedom.

Republican State Comm v. Del. Dep't of Elections, 250 A3d 911, 913 (Del. Ch. 2020).

2022 Vote by Mail

25. Unlike 2020, now the General Assembly did not invoke their emergency powers for continuity of government, but rather, their “broad” powers under Article V, §1 which allows the General Assembly to “...prescribe the means, methods and instruments of voting...” Del. Const. art V, §1.

26. Again the 2020 case is instructive. VC Glasscock held that “absent some other authority, Article V, §4A *prohibits* the General Assembly from allowing general absentee voting for the November 4, 2020, general election based on the threat posed by the COVID-19 virus” because it was not part of the exhaustive list

of permitted excuses enumerated in the Delaware Constitution. *Republican State Comm v. Del. Dep't of Elections*, 250 A3d 911, 918 (Del. Ch. 2020).

27. SB 320 expands absentee voting to not require an excuse – which is in direct conflict with the exhaustive list of excuses enshrined in Article V, §4A.

28. In enacting SB 320, the General Assembly impinged upon the clear and enumerated exceptions to in-person voting contained in the Delaware Constitution at Article V, § 4A.

29. If the General Assembly wishes to remove the excuses for absentee voting, they must amend the Delaware Constitution, not attempt to make changes statutorily.

Plaintiffs Are Entitled to Injunctive Relief

30. Permitting SB 320 to stand and permanent “no-excuse vote by mail” to proceed causes irreparable harm to Plaintiffs as their constitutional rights to absentee voting as prescribed by Article V, §4A are violated.

31. Plaintiffs have standing to challenge SB 320 because the violation of their constitutional rights is an injury-in-fact.

32. SB 320 is contrary to the Delaware Constitution, not properly adopted under the Delaware Constitution, and the procedures set forth therein should be enjoined by the Court.

COUNT I

Permanent Injunction

33. Plaintiffs incorporate all of the foregoing paragraphs as if fully set forth herein.

34. SB 320 violates Article V, §4A of the Delaware Constitution of 1897.

35. Plaintiffs lack an adequate remedy at law.

36. Plaintiffs will suffer irreparable harm if the November 8, 2022, general election absentee voting does not conform to the excuses enumerated in Article V, §4A.

37. Injunctive relief is the only remedy available to Plaintiffs and is necessary to stop the violation of the Plaintiffs' constitutional rights.

38. An injunction is needed to enjoin Defendants from publishing procedures for implementation of "no-excuse vote by mail" and from actually implementing SB 320 for the November 8, 2022, general election.

39. To avoid voter confusion, Defendants should be enjoined from publishing procedures for the September 13, 2022, primary election until such time as the General Assembly can enact legislation that is specific to the primary election only to not run afoul of the Delaware Constitution.

COUNT II
Declaratory Judgment

40. Plaintiffs incorporate all of the foregoing paragraphs as if fully set forth herein.

41. Plaintiffs seek a declaratory judgment pursuant to 10 *Del. C.* §§ 6501 *et seq.* regarding issues of fact and the constitutionality of SB 320, specifically, that (a) in enacting SB 320, the General Assembly exceeded its constitutional authority, (b) by enacting “no-excuse vote by mail” the General Assembly impermissibly expanded the exhaustive list of excuses for absentee voting contained in Del. Const. Article V, § 4A, and (c) the General Assembly is not permitted to assert its “broad power” under Article V, §1 to prescribe permanent “no-excuse vote by mail.”

42. The determination of these issues between Plaintiffs and Defendants entails an actual controversy in that this controversy involves the rights or other legal relations of the parties related to SB 320; the claim of right or other legal interest is asserted against Defendants, who have an interest in contesting the claim; the controversy is between parties whose interests are real and adverse; and the issues involved in the controversy are ripe for judicial determination.

PRAYER FOR RELIEF

For all the reasons set forth herein, Plaintiffs pray that this Court for entry of an order:

- i. Issuing a permanent injunction enjoining Defendants from publishing processes and procedures for implementation of SB 320 for the November 8, 2022, general election, including but not limited to applications for ballots and other documents required in SB 320,
- ii. Issuing a permanent injunction enjoining Defendants from implementing SB 320,
- iii. Declaring that, in enacting SB 320, the General Assembly exceeded its constitutional authority,
- iv. Declaring that by enacting “no-excuse vote by mail” the General Assembly impermissibly expanded the exhaustive list of excuses for absentee voting contained in Del. Const. Article V, § 4A,
- v. Declaring that the General Assembly is not permitted to assert its “broad power” under Article V, §1 to prescribe permanent “no-excuse vote by mail” as it impermissibly conflicts with Article V, §4A.
- vi. Awarding Plaintiffs such other and further relief as the Court deems just and proper under the circumstances.

Dated: July 22, 2022

Respectfully submitted,

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