

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THE HONORABLE ANTHONY J. §  
ALBENCE, in his official capacity as §  
State Election Commissioner, and §  
STATE OF DELAWARE §  
DEPARTMENT OF ELECTIONS, §

Defendants Below, §  
Appellant/Cross-Appellees, §

v. §

MICHAEL HIGGIN and MICHAEL §  
MENNELLA, §

Plaintiffs Below, §  
Appellee/Cross/Appellants. §

No. 342, 2022

Court Below: Court of Chancery  
of the State of Delaware

C.A. Nos. 2022-0641  
2022-0644

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

Defendants Below, §  
Appellant/Cross-Appellee, §

v. §

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

Plaintiffs Below, §  
Appellee, Cross-Appellants. §

Submitted: October 6, 2022

Decided: October 7, 2022

Before **SEITZ**, Chief Justice; **VALIHURA, VAUGHN, TRAYNOR**, Justices, and **JURDEN**, President Judge,<sup>1</sup> constituting the Court *en banc*.

Upon appeal from the Court of Chancery. **AFFIRMED** in part, **REVERSED** in part.

***PER CURIAM:***

## **ORDER**

This 7th day of October, 2022, the Court has considered on an expedited basis the parties' briefs, the record on appeal, and the argument of counsel, and it appears that:

1. The Vote-by-Mail Statute<sup>2</sup> impermissibly expands the categories of absentee voters identified in Article V, Section 4A of the Delaware Constitution. Therefore, the judgment of the Court of Chancery that the Vote-by-Mail Statute violates the Delaware Constitution should be affirmed.
2. The Same-Day Registration Statute<sup>3</sup> conflicts with the provisions of Article V, Section 4 of the Delaware Constitution. Consequently, the judgment of the Court of Chancery that the Same-Day Registration Statute does not violate the Delaware Constitution should be reversed.

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<sup>1</sup> Sitting by designation under Del. Const. art. IV, § 12 and Supreme Court Rules 2(a) and 4(a) to complete the quorum.

<sup>2</sup> 15 Del. C., ch. 56A.

<sup>3</sup> 15 Del. C. § 2036.

3. The Court enters this abbreviated order in recognition of the impending election scheduled for November 8, 2022, and the Department of Election's desire to mail ballots to voters by or around October 10, 2022. A more formal opinion, fully explaining the Court's views and the reasons supporting our unanimous decision, will issue in due course. The mandate shall issue immediately.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery as reflected in its September 14, 2022 Memorandum Opinion and September 15, 2022 Implementing Order be AFFIRMED in part and REVERSED in part.

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