



FACTSHEET | Restoring the “Day” in Election Day in Delaware

Delaware’s early voting and permanent absentee voting laws conflict with the state constitution

- In 2019, the Delaware General Assembly passed a law that permitted **early voting** in person at least 10 days before the general Election Day.
- Beginning in 2010, the Delaware General Assembly passed laws that allow individuals to apply for **permanent absentee** status.
 - These individuals qualified to vote absentee in one election and are granted absentee status indefinitely in future elections.
 - Permanent absentee registrants are automatically sent ballots in each election.
- In 2022, the Public Interest Legal Foundation (PILF) and former Delaware Attorney General Jane Brady filed a lawsuit against the Department of Elections for enforcing these election laws that **violate the state’s constitution**.
- Delaware’s Superior Court [ruled](#) in PILF’s favor, finding that early voting and permanent absentee laws violated the state’s constitution. The state appealed the ruling to the Delaware Supreme Court.

PILF is fighting to restore the “day” in Election Day in Delaware by having the state’s early voting and permanent absentee voting laws declared invalid.

- The Delaware Constitution mandates the general election “shall be held biennially on the Tuesday next after the first Monday in the month of November.” (Article V, Section 1)
 - Delaware’s early voting law expands Election Day beyond the constitutionally designated day.
 - The state constitution mandates one Election Day, not 10 separate days.
- The Delaware Supreme Court is being asked to interpret this very specific language that has fixed Election Day to one day for centuries.
- Delaware’s Constitution provides a specific list of reasons that someone qualifies to vote absentee (Article 5, Section 4A). These reasons include vacation, work requirements, illness, military service, or disabilities.
- Delaware’s law granting permanent absentee voting privileges conflicts directly with the constitution that requires consideration of eligibility to vote absentee at each election.

Delaware lawmakers have a history of passing election laws that conflict with the plain text of the state constitution.

- In 2022, PILF led a successful challenge of Delaware’s newly passed law that allowed for universal vote-by-mail and same-day voter registration.
- The Delaware Supreme Court ruled both election practices were prohibited under the Delaware Constitution.
- PILF’s previous victory, along with this case, will help restore the rule of law to Delaware elections.

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