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IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS DREW RUTLEDGE, Plaintiff Below/Appellant, v. CLEARWAY ENERGY GROUPS, LLC, and CHRISTOPHER SOTOS, Defendants Below/Appellees, and CLEARWAY ENERGY, INC., Nominal Defendant Below/Appellees.	No. 248,2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2025-0499-LWW

ANSWERING BRIEF OF INTERVENOR THE STATE OF DELAWARE EX REL. GOVERNOR MATTHEW S. MEYER

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Dated: September 5, 2025

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NATURE OF PROCEEDINGS

This certified appeal tests the constitutionality of recent amendments to the Delaware General Corporation Law. Senate Bill 21 ("SB 21"), enacted in March of 2025, amended Section 144 of the DGCL to make equitable relief or damages unavailable in actions challenging controlling stockholder and going private transactions if the Court of Chancery finds that certain conditions have been satisfied by the transacting parties.

Appellant contends that these provisions of SB 21 reduce "the jurisdiction and powers vested by the laws of this State in the Court of Chancery" and thereby violate Article IV, Section 10 of the Constitution. Appellant further asserts that SB 21 violates Article I, Section 9 of the Constitution by applying to transactions approved before the amendments took effect.

The State of Delaware, through Governor Matthew S. Meyer, has intervened to defend the constitutionality of the amendments. SB 21, which was approved by a bipartisan supermajority of the state's elected lawmakers and protects important state interests, is consistent with long interpretation of our Constitution and does not diminish or alter the Court of Chancery's jurisdiction over fiduciary breach claims.

SUMMARY OF ARGUMENT

1. **Denied**. Appellant contends that the Constitution prohibits the General Assembly from curtailing the Court of Chancery's jurisdiction as it existed in 1792. From that premise, appellant argues that the "Safe Harbor Provisions" of Section 144 impermissibly diminish the Court of Chancery's jurisdiction by disqualifying some transactions as providing a basis for equitable relief or damages if they were approved under certain conditions. This is mistaken. The Safe Harbor Provisions accord with the General Assembly's legislative authority and follow a long tradition of amendments to the DGCL that define the contours of directors' and officers' duties and the standards that the Court of Chancery applies in evaluating claims of breach of those duties. Such amendments do not diminish "the jurisdiction and powers vested by the laws of this State in the Court of Chancery" or otherwise violate its traditional equitable jurisdiction because they do not alter its power to adjudicate fiduciary breach claims. The Court of Chancery retains jurisdiction over claims attacking the fairness of controlling stockholder and going private transactions. What SB 21 changes are the standards the court must apply. The court remains empowered to adjudicate such claims—including the power to assess whether the Safe Harbor Provisions have been satisfied at all.

2. **Denied**. Appellant says that the Constitution's guarantee of "open courts" prohibits the legislature from passing laws that operate retroactively to

impair "vested rights," and that the amendments to Section 144 run afoul of this restriction. This misapprehends both the Constitution and the nature of stockholder claims. Where, as here, the General Assembly clearly intends its acts to apply retroactively, the Constitution requires only that the legislature acted with legitimate purpose. That test is readily satisfied here, where the General Assembly sought to address recent judicial rulings that it believed had injected uncertainty and imbalance into Delaware's corporate law. In any event, stockholders do not possess vested rights in derivative claims, which arise from statutory corporate law subject to the General Assembly's plenary power to amend it.

STATEMENT OF FACTS

A. Delaware's Constitution empowers its General Assembly to legislate the General Corporation Law.

Article II of the Constitution sets out the power of the legislative branch. The Constitution "vest[s]" in its General Assembly "[t]he legislative power of this State." Del. Const. Art. II, § 1. That legislative power extends to Delaware corporations, which may be created "only by or under general law." *Id.* Art. IX, § 1. Recognizing both the General Assembly's authority to amend the General Corporation Law, and the importance of such amendments, the Constitution conditions any amendment to the corporation law upon a two-thirds majority in each House. *Id.*

Article IV addresses the judicial branch. Article IV, Section 10, provides:

> The Chancellor and the Vice-Chancellor or Vice-Chancellors shall hold the Court of Chancery. One of them, respectively, shall sit alone in that court. This court shall have all the jurisdiction and powers vested by the laws of this State in the Court of Chancery. In any cause or matter in the Court of Chancery that is initiated by an application to a Judge of that Court, the application may be made directly to the Chancellor or a Vice-Chancellor. Causes or proceedings in the Court of Chancery shall be decided, and orders or decrees therein shall be made by the Chancellor or Vice-Chancellor who hears them, respectively.

Id. Art. IV, § 10. Confirming the authority of the legislative branch to revise the law to be interpreted in Chancery, Article IV, Section 17 provides: "The General Assembly, notwithstanding anything contained in this Article, shall have power to

repeal or alter any Act of the General Assembly giving jurisdiction to … the Court of Chancery, in any matter, or giving any power to any of the courts." *Id.* § 17. Section 18 then directs that "the Chancellor and the Vice-Chancellor or Vice-Chancellors, respectively, shall exercise all the powers which any law of this State vests in the Chancellor, besides the general powers of the Court of Chancery"—but only "[u]ntil the General Assembly shall otherwise provide." *Id.* § 18.

B. Delaware's corporation law has evolved over time and frequently in response to judicial decisions.

The General Assembly adopted Delaware's first General Corporation Law in 1899. S. Samuel Arsht, *A History of Delaware Corporation Law*, 1 Del. J. Corp. L. 1, 6-7 (1976) [hereinafter, "*Arsht*"]. In the wake of its adoption, Delaware "bec[a]me the venue of choice for incorporation by much of the American business community." 1 David A. Drexler *et al*., *Delaware Corporate Law and Practice* § 1.01 (2025).

In the ensuing years, the legislature amended the General Corporation Law as necessary to maintain its effectiveness, "often in response to court decisions limiting the exercise of a power granted by the certificate of incorporation but not mentioned in the statute." *Arsht* at 10. Thus, for example, in 1949, the statute was amended to give directors the authority to fill newly created directorships in order to overturn "the then prevailing judicial construction." *Id*. at 12. Many other additions to the statute were "characterized as protective provisions" and "intended to insulate

officers and directors from liability in particular transactions," including, for example, the right to "rely in good faith upon the books and records of the corporation or on reports made to the corporation." *Id.*

In 1967, the Delaware Corporation Law Revision Committee—comprising former judges, practitioners, and Professor Ernest Folk—drafted the revised corporate law that became the DGCL. *Arsht* at 14-16. Their work reflected an effort to modernize the General Corporation Law and to maintain Delaware's position as an incorporation leader.

Section 144 of the DGCL was first codified following that review. Commenting on the treatment of directors and officers, Professor Folk examined the corporation statutes in other states and observed that "[c]orporation law is increasingly statute law," and that it could be "relatively disadvantageous to leave important questions solely to case-law statement or development." Ernest L. Folk III, *Review of the Delaware Corporation Law for the Delaware Corporation Law Revision Committee,* 1965-1967, at 51 (1968). Professor Folk further reported that "codification usually makes for greater certainty, both for business counsel and courts," and "may forestall complex and unsettling litigation." *Id.* Professor Folk ultimately recommended "that Delaware adopt a useful statutory provision expressly validating" interested director transactions, resulting in Section 144. *Id.* at 67.

Since 1967, the General Assembly has continued to amend the General Corporation Law "to keep abreast or ahead of business or legal developments and trends, perceived ambiguities in the law, and to correct problems noted by judicial decisions." 1 R. Franklin Balotti & Jesse A. Finkelstein, *The Delaware Law of Corporations & Business Organizations*, Introduction (4th ed. 2025). The General Assembly has also enacted amendments to the state's corporate law in response to specific judicial decisions. For example, after this Court upheld the facial validity of bylaws shifting attorneys' fees and costs to unsuccessful plaintiffs in *ATP Tour, Inc*. v. *Deutscher Tennis Bund*, 91 A.3d 554 (Del. 2014), criticism from the stockholder class-action bar led to its legislative undoing through an amendment to Section 102(f) of the DGCL. *See* Mark Lebovitch & Jeroen van Kwawegen, *Of Babies and Bathwater: Deterring Frivolous Stockholder Suits without Closing the Courthouse Doors to Legitimate Claims*, 40 Del. J. Corp. L. 491 (2015).

C. The General Assembly enacts Senate Bill 21 to clarify available protections and ensure ongoing balance and consistency in Delaware's corporate law.

Today, more than 2.1 million active business entities, including two-thirds of the Fortune 500, are incorporated in Delaware. But the ongoing position of Delaware's corporate franchise is not guaranteed: "[O]ther states are eager to compete by promoting their respective corporate governance regimes." *Maffei* v. *Palkon*, 2025 WL 384054, at *1 (Del. Feb. 4, 2025).

Delaware's elected leaders monitored these developments and "concerns expressed by many of Delaware's corporate stakeholders, including investors, managers, and their legal advisors" about the predictability and consistency of its law. Press Release, Bryan Townsend *et al.*, Bipartisan legislation filed to promote clarity and balance in Delaware's corporate laws (Feb. 17, 2025) [hereinafter, "SB 21 Sponsors Press Release"], https://senatedems.delaware.gov/2025/02/17/bipartisan-legislation-filed-to-promote-clarity-and-balance-in-delawares-corporate-laws/.

To address these concerns, on February 17, Senate Majority Leader Bryan Townsend introduced Senate Bill 21, cosponsored by bipartisan House and Senate leaders, which proposed amendments to the DGCL to implement safe harbors consistent with longstanding Delaware law and "clarif[y] the legal protections a controlling stockholder may earn for a transaction if they first secure the approval of unconflicted directors or unconflicted stockholders." *Id.* SB 21's sponsors believed it would "ensure[] that controlling-stockholder companies have certainty as they plan transactions," with "safeguards for minority stockholders." *Id.*

The Delaware State Bar Association Corporation Law Council and the Corporate Law Section then reviewed, suggested revisions to, and approved SB 21 as revised by a vote of 160 to 57. *See* Hearing on S.B. 21 Before the S. Judiciary Comm., 153rd Gen. Assemb., 2:27:06 PM (Del. Mar. 12, 2025) (statement of

Srinivas Raju). The Council's work took place over six meetings and two subcommittee meetings covering "all aspects" of SB 21. *Id.* at 2:27:52. Corporate Law Section and Council Chair Srinivas Raju spoke in favor of the legislation and told the Senate Judiciary Committee that the Council's assessment resulted in an "unqualified endorsement." *Id.* at 2:28:24 PM. On March 12, Senator Townsend introduced Senate Substitute 1 for SB 21, which reflected the input of the Corporate Law Section.

In a joint statement, SB 21's bipartisan sponsors explained, "For the last century, Delaware law and all relevant stakeholders have benefited from our law having balanced protections and being shepherded by expert corporate law practitioners and thoughtful elected officials. That is what this legislation reflects." SB 21 Sponsors Press Release, *supra*.

Following a hearing before the Senate Judiciary Committee on March 12, the bill advanced to the full Senate, which debated the bill before passing it by a vote of 20 to 0 on March 13. On March 25, the House passed SB 21 by a margin of 32 to 7. Governor Meyer signed the bill into law the same day, remarking that SB 21 will "ensur[e] clarity and predictability [and] balanc[e] the interests of stockholders and corporate boards." Press Release, Office of the Governor, Governor Meyer Signs SB21 Strengthening Delaware Corporate Law (Mar. 26, 2025),

https://news.delaware.gov/2025/03/26/governor-meyer-signs-sb21-strengthening-delaware-corporate-law/.

As amended, Section 144 defines a "controlling stockholder transaction" as "an act or transaction between the corporation or 1 or more of its subsidiaries, on the one hand, and a controlling stockholder or a control group, on the other hand, or an act or transaction from which a controlling stockholder or a control group receives a financial or other benefit not shared with the corporation's stockholders generally." 8 *Del. C.* § 144(e)(3). The amended statute defines a "going private transaction" as either a Rule 13e-3 transaction under the Securities Exchange Act of 1934 or "any controlling stockholder transaction, including a merger, recapitalization, share purchase, consolidation, amendment to the certificate of incorporation, tender or exchange offer, conversion, transfer, domestication or continuance, pursuant to which all or substantially all of the shares of the corporation's capital stock held by the disinterested stockholders (but not those of the controlling stockholder or control group) are cancelled, converted, purchased, or otherwise acquired or cease to be outstanding." 8 *Del. C.* § 144(e)(6).

Amended Section 144 provides for safe harbors for interested director and officer transactions, controlling stockholder transactions and going private transactions. Under Section 144(a), an act or transaction between the corporation and one or more of its directors or officers "may not be the subject of equitable relief,

or give rise to an award of damages," if certain safe-harbors in either sections (1) or (2) of Section 144(a) are met, or if it is "fair as to the corporation and the corporation's stockholders." 8 *Del. C.* § 144(a)(1)-(3).

Under Section 144(b), a controlling stockholder transaction "may not be the subject of equitable relief, or give rise to an award of damages," if:

> (1) The material facts as to such controlling stockholder transaction (including the controlling stockholder's or control group's interest therein) are disclosed or are known to all members of a committee of the board of directors to which the board of directors has expressly delegated the authority to negotiate (or oversee the negotiation of) and to reject such controlling stockholder transaction, and such controlling stockholder transaction is approved (or recommended for approval) in good faith and without gross negligence by a majority of the disinterested directors then serving on the committee; provided that the committee consists of 2 or more directors, each of whom the board of directors has determined to be a disinterested director with respect to the controlling stockholder transaction; or
>
> (2) Such controlling stockholder transaction is conditioned, by its terms, as in effect at the time it is submitted to stockholders for their approval or ratification, on the approval of or ratification by disinterested stockholders, and such controlling stockholder transaction is approved or ratified by an informed, uncoerced, affirmative vote of a majority of the votes cast by the disinterested stockholders; or
>
> (3) Such controlling stockholder transaction is fair as to the corporation and the corporation's stockholders.

Under Section 144(c), a going private transaction may not be the subject of equitable relief, or give rise to an award of damages, if it is approved in accordance

with *both* sections (1) and (2) of Section 144(b), or if it is "fair as to the corporation and the corporation's stockholders."

The drafters of the legislation were clear that "the statute does not displace the common law requirements regarding core fiduciary conduct." S.S. 1 for S.B. 21, 153rd Gen. Assemb. (Del. 2025) (Synopsis) (A0066-67). "Revised § 144," they explained, "does not limit the right of any person to seek relief on the grounds that a stockholder or other person aided and abetted a breach of fiduciary duty by one or more directors." *Id.*

Section 3 of SB 21 provides that the foregoing amendments "take effect on the enactment of this Act and apply to all acts and transactions, whether occurring before, on, or after the enactment of this Act," other than with respect to "any action or proceeding commenced in a court of competent jurisdiction that is completed or pending … on or before February 17, 2025."

D. This litigation is filed and challenges the constitutionality of the 2025 amendments.

On May 6, 2025, plaintiff filed a derivative action on behalf of Clearway Energy Inc. ("Clearway"), challenging the fairness of an asset purchase transaction consummated on April 24 between Clearway and its majority stockholder. Dkt. 3 ¶ 1. Plaintiff seeks, in addition to other relief, a declaratory judgment that SB 21 violates the Delaware Constitution and therefore cannot be relied upon by defendants. *Id.* On June 6, 2025, the Court of Chancery granted plaintiff's

unopposed motion to certify two constitutional questions to the Delaware Supreme Court under Supreme Court Rule 41. *Id.* ¶ 3. On June 9, 2025, the State of Delaware moved to intervene in the action for the limited purpose of participating in the certified questions concerning SB 21's constitutionality. Dkt. 6. at 4. The State's motion was granted on June 10, 2025. *Id.* at 5. The Delaware Supreme Court accepted the certified questions on June 11, 2025. Dkt. 3, ¶ 5.

ARGUMENT

I. THE SAFE HARBOR PROVISIONS DO NOT REDUCE THE COURT OF CHANCERY'S JURISDICTION AND ARE THEREFORE CONSTITUTIONAL

A. Question Presented

Does Section 1 of Senate Bill 21, codified as 8 *Del. C.* § 144—eliminating the Court of Chancery's ability to award "equitable relief" or "damages" where the Safe Harbor Provisions are satisfied—violate the Delaware Constitution of 1897 by purporting to divest the Court of Chancery of its equitable jurisdiction?

B. Scope of Review

"Certified questions of law are reviewed *de novo*." *Baker* v. *Croda Inc.*, 304 A.3d 191, 194 (Del. 2023). "In the hierarchy of law-making in a democratic regime, courts defer to legislatures." *Totta* v. *CCSB Fin. Corp.*, 2022 WL 1751741, at *15 (Del. Ch. May 31, 2022), *aff'd*, 302 A.3d 387 (Del. 2023). Accordingly, "[e]nactments of the Delaware General Assembly are presumed to be constitutional," and the "Court has 'a duty to read statutory language so as to avoid constitutional questionability.'" *Hoover* v. *State*, 958 A.2d 816, 821 (Del. 2008) (quoting *State* v. *Sailer*, 684 A.2d 1247, 1250 (Del. Super. Ct. 1995)). "All reasonable doubts as to the validity of a law must be resolved in favor of the constitutionality of the legislation." *McDade* v. *State*, 693 A.2d 1062, 1065 (Del. 1997).

C. Merits of Argument

Appellant contends that the Safe Harbor Provisions of SB 21 violate Section 10 of Article IV of the Delaware Constitution, providing that the Court of Chancery "shall have all the jurisdiction and powers vested by the laws of this State in the Court of Chancery." Relying on this Court's 1951 decision in *DuPont* v. *DuPont*, appellant says this sentence means "the General Assembly *cannot* enact legislation that reduces the Court of Chancery's equity jurisdiction below the jurisdiction of the High Court of Chancery of Great Britain as it existed prior to the separation of the colonies except where a sufficient alternate remedy exists." OB 16 (citing *DuPont* v. *DuPont*, 85 A.2d 724 (Del. 1951)). Because the Safe Harbor Provisions provide that certain transactions "may not be the subject of equitable relief" or otherwise "give rise to an award of damages" where various conditions indicating fairness are satisfied, appellant argues that they divest the Court of Chancery of its jurisdiction by limiting the circumstances in which it can find a breach of duty and offer a remedy. *Id.* at 26.

Appellant is mistaken. Both this Court and the Court of Chancery have long and repeatedly recognized the General Assembly's broad constitutional authority to modify fiduciary duties and the standards of equitable review applicable thereto through legislative amendments to the General Corporation Law. Never has the simple statement in Section 10 that the Court of Chancery enjoys jurisdiction to the

extent vested by the laws of Delaware been claimed to (let alone held to) divest the authority of the legislative branch to make and revise the law. Reflecting this common sense reading of Section 10, and the separation of powers principles embedded in the Constitution, no amendment to the DGCL has ever been found to violate the "jurisdiction and powers vested by the laws of this State in the Court of Chancery." Del. Const. Art. IV, § 10.

SB 21 is no different. The Court of Chancery's jurisdiction over claims of fiduciary breach was unimpaired by the enactment of the Safe Harbor Provisions. The Court of Chancery will continue to preside over breach of fiduciary duty causes of action. It will continue to use statutory and equitable principles to determine when the safe harbors apply, including when the challenged transaction is "fair." It will continue to fashion equitable relief and other appropriate relief when a litigant satisfies the prevailing legal standard.

1. The General Assembly has the power to shape fiduciary duties arising under the General Corporation Law and the standards of equitable review applied to those duties

Delaware's Constitution recognizes the General Assembly's broad authority to enact laws in the public interest, including the General Corporation Law. Under the "legislative power of this State" confided to it by the Constitution, the General Assembly enacted the Delaware General Corporation Law in 1899. Del. Const. Art. II, § 1; *see also id.* Art. IX, § 1. Since then, the General Assembly has repeatedly

amended the DGCL, often in response to judicial decisions or changing market conditions.

The initial enactment of the General Corporation Law and its periodic amendments create no conflict with Article IV, Section 10. Section 10 establishes only that the Court of Chancery "shall have all the jurisdiction and powers vested by the laws of this State in the Court of Chancery." *Id.* Art. IV, § 10. Article IV thus provides in Section 10 that the Court of Chancery must enjoy the jurisdiction and powers vested by the laws of the State, but that, notwithstanding Section 10, the State, through its legislative branch, retains the plenary power to make the law that Chancery applies. This is the way the separation of powers works in nearly every functioning democracy. Nothing in this entirely sensible constitutional scheme bars the General Assembly from making and revising the substantive laws of the State, which is of course the constitutional office of the legislative branch, or exempts the courts from their obligation to interpret those laws, which is equally axiomatically the constitutional function of the judicial branch.

As a result, it is unsurprising that our courts have long and repeatedly held that the "the General Assembly has the power to wholesale displace the foundational role of equity in corporate law," *Totta*, 2022 WL 1751741, at *16; *see also New Enter. Assocs. 14, L.P.* v. *Rich*, 295 A.3d 520, 542 n.50 (Del. Ch. 2023) (rejecting argument that legislature lacks constitutional power to authorize the waiver or

elimination of fiduciary duties). And the General Assembly "alone 'has the authority to eliminate or modify fiduciary duties and the standards that are applied by this court.'" *Delman* v. *GigAcquisitions3, LLC*, 288 A.3d 692, 715 (Del. Ch. 2023) (quoting *Totta*, 2022 WL 1751741, at *15).

The Safe Harbor Provisions do not go nearly as far as these authoritative statements of the legislative power would permit. They instead reflect yet another instance in which the "General Assembly has acted cautiously to limit specific default rules of equity." *Totta*, 2022 WL 1751741, at *16.

Nothing in the General Assembly's actions violates the straightforward language of Article IV. This is apparent not only from the constitutional text, but from the long history of courts and legislators interpreting it. Over and over again, the courts have upheld and respected the General Assembly's "act[s]…limit[ing] specific default rules of equity." *Id.* Thus, in *Glassman* v. *Unocal Exploration Corp.*, this Court considered the short-form merger statute—8 *Del. C.* § 253—and held that "[b]y enacting a statute that authorizes the elimination of the minority without notice, vote, or other traditional indicia of procedural fairness, the General Assembly effectively circumscribed the parent corporation's obligations to the minority in a short-form merger." 777 A.2d 242, 243 (Del. 2001). The Court noted that "a parent corporation and its directors undertaking a short-form merger are self-dealing fiduciaries who should be required to establish entire fairness, including fair

dealing and fair price," but the General Assembly passed a statute that "authorizes a summary procedure that is inconsistent with any reasonable notion of fair dealing." *Id.* at 247. As a result, "[t]he equitable claim" of entire fairness "plainly conflicts with the statute." *Id.* This Court did not hold the short-form merger statute to be an unconstitutional encroachment on the Court of Chancery's jurisdiction as a result of this curtailment of the court's ability to apply entire fairness review; it instead "resolve[d] this conflict by giving effect [to] the intent of the General Assembly" and held that "§ 253 must be construed to obviate the requirement to establish entire fairness." *Id.* at 248. The Safe Harbor Provisions operate similarly. By statute, the General Assembly has displaced the common-law default application of entire fairness review for specified transactions involving controlling stockholders where specified procedures are followed.

Many other examples make the same point. Section 141(e) provides a safe harbor from liability for directors who demonstrate that they meet the statute's conditions. Under the statute, directors are "fully protected in relying in good faith upon" qualifying information, opinions, and reports. 8 *Del. C.* § 141(e). Just as director defendants who demonstrate the "good-faith reliance" of Section 141(e) are "insulate[d] … from monetary liability," so too do the Safe Harbor Provisions of SB 21 shield a controlling stockholder where a transaction meets the requirements of Section 144(b) or (c). *Cirillo Fam. Tr.* v. *Moezinia*, 2018 WL 3388398, at *15

(Del. Ch. July 11, 2018), *aff'd*, 220 A.3d 912 (Del. 2019). An analogous safe harbor exists in Section 152, which provides that, "[i]n the absence of actual fraud in the transaction, the judgment of the directors as to the value of the consideration [for a stock issuance] shall be conclusive." 8 *Del. C.* § 152(d).

Section 102(b)(7) similarly permits corporations to adopt charter provisions that eliminate monetary liability for breaches of the duty of care, a legislative response to this Court's decision in *Smith* v. *Van Gorkom*, 488 A.2d 858, 863 (Del. 1985) and the "directors and officers insurance liability crisis" connected with it. *Malpiede* v. *Townson*, 780 A.2d 1075, 1095 (Del. 2001) (citing 8 *Del. C.* § 102(b)(7)). Noting that "the General Assembly feared that directors would not be willing to make decisions that would benefit stockholders if they faced personal liability for making them," and that "[t]he purpose of Section 102(b)(7) was to 'free[] up directors to take business risks without worrying about negligence lawsuits,'" this Court has repeatedly both enforced Section 102(b)(7) exculpation provisions and rejected equitable relief that would "reduce the benefits that the General Assembly anticipated in adopting Section 102(b)(7)." *In re Cornerstone Therapeutics Inc., S'holder Litig.*, 115 A.3d 1173, 1185 (Del. 2015). Section 102(b)(7) goes beyond the Safe Harbor Provisions because it provides for a method that entirely eliminates monetary liability for an entire class of fiduciary breach; our courts have

"consistently" held that "a Section 102(b)(7) charter provision bars a claim that is found to state only a due care violation." *Malpiede*, 780 A.2d at 1095.

Other long-accepted amendments have gone farther still. Section 122(17) allows corporations to renounce potential business opportunities prospectively. 8 *Del. C.* § 122(17). As the Court of Chancery has noted, "[a] claim for usurpation of a corporate opportunity is a claim for breach of fiduciary duty," and Section 122(17) accordingly allows "Delaware corporations and managers … to contract out of a significant portion of the duty of loyalty." *Rich*, 295 A.3d at 552 (citing 8 *Del. C.* § 122(17)). Section 327 imposes a standing requirement that restricts stockholders' ability to sue derivatively by imposing a continuous ownership requirement that did not exist at common law. 8 *Del. C.* § 327. As this Court has explained, "[t]he equitable standing of a stockholder to bring a derivative action was judicially created *but later restricted by a statutory requirement*." *Schoon* v. *Smith*, 953 A.2d 196, 204 (Del. 2008) (emphasis added) (citing 8 *Del. C.* § 327). *Schoon* thus confirms the legislature's power to impose restrictions on parties' threshold access to equitable relief, and Section 327's restriction of standing goes well beyond the Safe Harbor Provisions of SB 21 by entirely eliminating certain stockholders' standing rather than just curtailing relief in limited circumstances.

These legislative enactments, and the judicial decisions enforcing them, demonstrate the settled understanding of jurists and legislators alike that the General

Assembly must and does retain the authority to prescribe the rules of liability and relief that will govern litigation brought in Delaware courts under Delaware law. The rule of law appellant sponsors is not required or even suggested by the plain words of the Constitution. It would call the legitimacy of all these statutes into serious questions. It would undermine the reliability of Delaware corporate law just as the Legislature is acting to stabilize it. It would neuter the right of the General Assembly to make the law. And it would give no respect at all to the principle that courts must construe legislation wherever possible to avoid constitutional conflict.

2. The Safe Harbor Provisions do not alter the Court of Chancery's jurisdiction

Appellant ignores all of the foregoing examples of legislation that have effectively altered the standards the Court of Chancery might have otherwise applied when hearing breach of fiduciary duty claims. He likewise ignores the Court of Chancery's ongoing jurisdiction to interpret and apply SB 21's safe harbors.

Those safe harbors circumscribe when controlling stockholder transactions or going private transactions can give rise to liability for breaches of fiduciary duty, but they do not divest the Court of Chancery of jurisdiction over any fiduciary breach claims. To the contrary, the Court of Chancery remains the proper forum for any claim challenging the fairness of a controlling stockholder transaction or a going private transaction, and the Court of Chancery has the authority to determine whether the conditions of the Safe Harbor Provisions are satisfied. As the legislature

has done time and time again since the initial adoption of the Delaware General Corporation Law, SB 21's amendments to Section 144 define standards for reviewing fiduciary duty claims and set certain conditions on potential relief for alleged breaches of those duties; they do not change the scope of the court's jurisdiction.[1]

3. SB 21 does not conflict with *DuPont*, or Article IV, Section 10 of Delaware's Constitution

To answer the straightforward constitutional text and long-settled legislative practice and judicial precedent, Appellant invokes this Court's 1951 *DuPont* decision. Plaintiff in that case challenged a provision of the Family Court Act that conferred exclusive jurisdiction over spousal maintenance claims to the Family

[1] Nor can it be said with any confidence that the High Court of Chancery would have had jurisdiction over controlling stockholder or going private transaction litigation in 1776. Such transactions did not exist at the time. Nor did any general corporation law. Nor did the High Court of Chancery even have the general authority to award damages. *See Wright* v. *Scotton*, 121 A. 69 (1923) (noting that, prior to the passage of the "Lord Cairns Act" in 1858, "Courts of equity, under the old rule, refrained altogether from awarding pecuniary reparation for damage sustained"). What can be said with confidence is that no law anywhere has pretended to divest the legislature of the authority to make the law. Notably, appellant's theory would appear to deprive even the judicial branch to circumscribe causes of action in equity. Appellant cites this Court's *Match* decision, OB 27 & nn.103-04, but by appellant's reading the Court could not have constitutionally affirmed the trial court decision, which, if appellants are correct, violated the Constitution in just the way it claims SB 21 has done. Appellant's proposed rule of law would thus permit only the expansion of Chancery authority, with all branches of government powerless to define it. Nothing in the Constitution supports that bizarre result.

Court and thus divested the Court of Chancery of its jurisdiction to hear such causes of action. DuPont, 85 A.2d at 726-27.

The *DuPont* majority concluded that the Constitution prohibited the legislature from reducing Chancery's jurisdiction beyond that which existed at the time of U.S. independence. *Id.* at 729. Because the Court of Chancery did or would have had the ability to hear an action for spousal maintenance at the time of the separation of the colonies, reasoned the Court, the provision of the Family Court Act's conferring "exclusive" jurisdiction of such claims to the Family Court unconstitutionally reduced the Court of Chancery's jurisdiction. *Id.* at 733-34.

SB 21 is nothing like the Family Court Act, and in ways that matter decisively. SB 21 does not divest the Court of Chancery of jurisdiction over any cause. SB 21 does not direct any species of claim, still less historically equitable claims, to a court other than the Court of Chancery. The contrary is true: breach of fiduciary claims remain within the undisputed jurisdiction of the Court of Chancery.

SB 21 thus does nothing to disturb Chancery's jurisdiction. The Legislature has instead changed are some of the rules that Chancery must apply—it has adjusted the substantive law in accordance with its view of the interests of the people in the State. Nothing in *DuPont* or the Constitution precludes this. *DuPont* holds only that "Section 10 of [] Article IV vests the Court of Chancery with jurisdiction to hear and

decide all historically equitable causes of action." Randy J. Holland, The Delaware State Constitution 166 (2d ed. 2017).

To read *DuPont* in the manner appellant proposes would work a usurpation of the legislative function. Considered in the context of *DuPont* itself, appellant's position would mean that the General Assembly was powerless to set maximum or minimum amounts of spousal support, or the legislate the principles under which spousal support could be awarded. Nothing in *DuPont* would support such an extraordinary result. Nor does anything in that decision suggest that the General Assembly is powerless today to enact rules governing the circumstances under which relief can be had in the context going-private or controlling-stockholder litigation. Taken to its conclusion, this line of reasoning would ossify the law of equity and shift the power to make and modernize the law of corporations from the legislature to the courts. Nothing in *DuPont* supports this outcome, and neither the words nor the structure of the Constitution permit it.

Moreover, to the extent *DuPont* could be read to support that outcome, we respectfully submit it should be overruled. For the many reasons outlined in Justice Tunnell's dissent and elsewhere, any suggestion that the legislature cannot amend the Court of Chancery's equitable jurisdiction as it existed in 1792 is unmoored from the text and history of the Constitution as well as more than a century of practice. *DuPont* reads Section 10 to impose an atextual legislative restriction where there is

none. But Section 10—which is modified by, and must therefore be interpreted in light of, Section 17—contains no prohibition on any amendment to the equitable jurisdiction of the Court of Chancery. To achieve that result, *DuPont* reads "vested" to be fixed in perpetuity, and distinct from Section 17, which provides that "[t]he General Assembly, *notwithstanding anything contained in this Article*, shall have power *to repeal or alter* any Act of the General Assembly giving jurisdiction to … the Court of Chancery, *in any matter*." Del. Const. art. IV, § 17 (emphasis added); *see DuPont*, 85 A.2d at 728 (discussing "the relation between Sections 10 and 17").

Writing in dissent, Justice Tunnell had the better interpretation: the scope of the Court of Chancery's authority—"[t]he jurisdiction and powers vested by the laws of this State"—is not fixed by the terms of the constitution. *Id.* at 737-38 (Tunnel, J., dissenting) (quoting Del. Const. art. IV, § 10). That which is vested can be divested, and the scope and content of the "laws of this State" are necessarily committed to the legislature. *Id.* at 738-39. This reading is in accord with authorities such as Pomeroy, who explains that "in many … states"—including Delaware—"the ordinary jurisdiction of equity thus conferred in such general terms is greatly abridged, restricted or modified, with respect to some of its branches or heads by other statutes." 1 John N. Pomeroy, Equity Jurisprudence § 285 (5th ed. 1941); *see also id.* § 281 ("[I]f the statute contains words negativing or expressly taking away

the previous equitable jurisdiction, … then the former jurisdiction of equity is thereby ended.").

At bottom, *DuPont* is not implicated here because SB 21 does not purport to strip any jurisdiction from the Court of Chancery as the Family Court Act did in the 1950s. But to the extent there is any doubt about its applicability, this nearly 75-year-old, largely dormant decision of a split panel at the dawn of the Court's modern era in a case concerning spousal maintenance should not be extended to—much less offer the last word on—the constitutionality of a statute duly adopted by a bipartisan supermajority of the legislature and signed by the governor. Nor should it purport to hold in stasis the further legislative development of Delaware's corporate law in perpetuity or call into question decades of similar legislative enactments.

II. THE RETROACTIVE REACH OF THE SAFE HARBOR PROVISIONS IS CONSTITUTIONAL

A. Question Presented

Does Section 3 of Senate Bill 21—applying the Safe Harbor Provisions to plenary breach of fiduciary duty claims arising from acts or transactions that occurred before the date that Senate Bill 21 was enacted—violate the Delaware Constitution of 1897 by purporting to eliminate causes of action that had already accrued or vested?

B. Scope of Review

Certified questions of law are reviewed *de novo*. *Supra* Part I.B. When reviewing a statute for constitutionality, this Court presumes validity and resolves all doubts in favor of upholding the statute as constitutional. *Id.*

C. Merits of Argument

Section 3 of SB 21 expressly applies Section 144's amendments to fiduciary breach claims arising out of acts that occurred before the amendments were enacted. Appellant contends that this violates Article I, Section 9 of the Constitution because "vested rights" are categorically immune from legislative amendment. OB 32-35. But that is not Delaware's law. Delaware neither immunizes accrued causes of action from legislative amendment nor recognizes a special "vested" status for causes of action held by stockholders. Section 9 of Article I provides that the "courts shall be open; and every person for an injury done him or her in his or her reputation,

person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land, without sale, denial, or unreasonable delay or expense." This has nothing to do with retroactivity.

First, whether any statute is retroactive is first and fundamentally a question of legislative intent. Where statutory language is ambiguous, the courts have construed against retroactive application. But where—as is here undisputed—the language clearly evidences an intent for an amendment to apply retroactively, Delaware's test for retroactivity turns on whether the Legislature had a legitimate purpose for acting, not on whether there is any impact to a so-called vested right. Although some other states have interpreted their constitutions to bar the legislature from regulating "vested" rights, Delaware has not. Delaware follows the limited federal rule that permits retroactive legislation so long as it serves a legitimate legislative purpose. *See Price* v. *All Am. Eng'g Co.*, 320 A.2d 336, 340 (Del. 1974). That standard is satisfied here because the Legislature addressed legal uncertainty threatening the balance and predictability of Delaware law. *Second*, even if appellant's premise were correct, a stockholder—like the appellant here—possesses no vested right in a derivative claim, which arises from statutory corporate law subject to legislative amendment "at the pleasure of the General Assembly." 8 *Del.*

C. § 394. *Finally*, even if constitutional concerns existed, the retroactivity provision is severable from the remainder of SB 21.

1. Section 3 satisfies Article I, Section 9's reasonableness review

Article I, Section 9 was "inserted in the Constitution to secure the citizen against unreasonable and arbitrary deprivation of rights whether relating to life, liberty, property, or fundamental rights of action relating to person or property." *Bailey* v. *Pennington*, 406 A.2d 44, 46-47 (Del. 1979) (quoting *Gallegher* v. *Davis*, 183 A. 620, 624 (Del. Super. Ct. 1936)). This Court has interpreted "Delaware constitutional due process" pursuant to Article I, Section 9 to be "coextensive with federal due process." *Sheehan* v. *Oblates of St. Francis de Sales*, 15 A.3d 1247, 1259 (Del. 2011). Accordingly, Article I, Section 9 "has substantially the same meaning as the due process clause contained in its federal counterpart," and the extent of its limitations on retroactive legislation is identical. *Id.* at 1258-59.

Under this standard, "the restrictions that the Constitution places on retroactive legislation 'are of limited scope.'" *Bank Markazi* v. *Peterson*, 578 U.S. 212, 228 (2016) (quoting *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 267 (1994)). "Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Pension Benefit Guar. Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 729

(1984). This Court has accordingly explained that it "do[es] not sit as an überlegislature to eviscerate proper legislative enactments," and that even a statute with retroactive effects will "not violate Article 1, Section 9 if it is reasonable." *Sheehan*, 15 A.3d at 1259 (alteration omitted).

There is no dispute that SB 21 was intended by the General Assembly to govern in suits arising from acts prior to enactment. Section 3 provides that the amendments to Section 144 "apply to all acts and transactions, whether occurring before, on, or after the enactment of this Act," except in the case of a plenary action already pending as of February 17, 2025. *See* 85 Del. Laws 2025, ch. 6, § 3. The only question, then, is whether plaintiff has met its "burden of showing a lack of rational justification" for the retroactive application of the law. *Helman* v. *State*, 784 A.2d 1058, 1074 (Del. 2001).

Plaintiff cannot meet this heavy burden—and has not tried. Addressing judicial developments is a legitimate reason for enacting retroactive legislation. *See Gen. Motors Corp.* v. *Romein*, 503 U.S. 181, 191 (1992) (enacting a retroactive statute "to correct the unexpected results of [a judicial] opinion" qualifies as a legitimate legislative purpose); *United States* v. *Carlton*, 512 U.S. 26, 30 (1994) (closing an unexpected loophole in an estate tax statute was a "legitimate legislative purpose" for a retroactive amendment to that statute). Here, the General Assembly acted for precisely that purpose: to restore, in Senator Townsend's words, "certain

principles that have been foundational to Delaware law for quite a long time," but had "morph[ed] in certain ways over the years as certain facts unfolded in cases before judges." Hearing on S.B. 21 Before the Senate, 153rd Gen. Assemb., 2:52:54 PM (Del. Mar. 13, 2025) (statement of Sen. Bryan Townsend); *see also* OB 27 & n.104. And it did so not—as appellant asserts—by "eliminat[ing] a cause of action," OB 24, but by amending Section 144 in a targeted manner to create "safe harbor procedures" that, when properly followed, insulate certain interested transactions from equitable and monetary relief, S.S. 1 for S.B. 21, 153rd Gen. Assemb. (Del. 2025) (Synopsis) (A0066-67). Such legislative intervention is neither "unreasonable" nor "arbitrary." *Bailey*, 406 A.2d at 46.

Rather than challenge the General Assembly's rational basis in extending the amendments to past transactions, appellant tries to answer a different question. He cites a bevy of academic articles and out-of-state decisions to argue against retroactive legislation. *See* OB 33-36. Specifically, appellant lists a number of other states that he says have "recognized that a state legislature may not retroactively eliminate a cause of action that has accrued or vested." *Id.* at 34. Delaware—appellant says—"follow[s] the rule of other states." *Id.* at 36.

But that is not true. Delaware, as previously explained, interprets Article I, Section 9 to be "coextensive" with federal due process, *Sheehan*, 15 A.3d at 1259, and the federal approach rejected that more restrictive rule long ago: As one article

appellant relies on explains, the federal courts—in contrast to some states—have now "significantly withdrawn from imposing a more searching review of retroactive civil legislation, collapsing much of the jurisprudential divide in assessing the constitutionality of prospective and retrospective lawmaking." Jeffrey Omar Usman, *Constitutional Constraints on Retroactive Civil Legislation: The Hollow Promises of the Federal Constitution and Unrealized Potential of State Constitutions*, 14 Nev. L.J. 63, 100 (2013) (cited at OB 32-34); *see also* 2 Norman J. Singer & Shambie Singer, Sutherland Statutory Construction § 41:4 (8th ed. 2007) (federal courts "stopped asking whether a particular interest was vested and instead applied the same substantive due process analysis to all economic legislation affecting any legal interest, whether it was prospective or retroactive").

In fact, Delaware has explicitly rejected the position "that rights vest only once and thereafter are immune to legislative action." *Town of Cheswold* v. *Cent. Delaware Bus. Park*, 188 A.3d 810, 822 n.58 (Del. 2018). Instead, consistent with due process, "a statute may retroactively reach property rights which have vested and may create new obligations with respect thereto, provided that the statute is a valid exercise of police power." *Id.* (quoting *Price*, 320 A.2d at 340). Thus, for example, in *Price*, this Court rejected the argument that a plaintiff's "right to compensation became vested on the date of injury and could not be reduced or enlarged by legislation enacted subsequent to that date." 320 A.2d at 340.

Consistent with this principle, Delaware courts have applied statutes giving rise to affirmative defenses even when those defenses impact claims for injuries that occurred before the statutes were enacted. *See, e.g.*, *State ex rel. Brady* v. *Pettinaro Enters.*, 870 A.2d 513, 531 (Del. Ch. 2005) (statute of limitations enacted after injury occurred rendered the claim time-barred).

The Delaware cases on which appellant relies neither recognize nor apply the categorical vested rights rule for which he argues. For example, in *Cheswold Volunteer Fire Co.* v. *Lambertson Construction Co.*, this Court *rejected* a constitutional challenge to a statute of repose, explaining that "the dictates of due process" only restricted the legislature from "*arbitrarily* extinguish[ing] a right of action which redresses essential rights of person or property." 489 A.2d 413, 418 (Del. 1984) (emphasis added). That is the same rule recognized by this Court in *Bailey*, *Sheehan*, and elsewhere: retroactive legislation regulating economic rights, like prospective legislation doing the same, must be reasonable. In no way do these precedents suggest that an accrued cause of action cannot in any circumstances be legislatively modified.

The other Delaware cases appellant cites are further inapposite, addressing "vested rights" and similar concepts not in the context of holding a retroactive statute to be unconstitutional, but rather in determining whether a statute should be construed retroactively in the first place. Consider this Court's opinion in *Monacelli*

v. *Grimes*, which appellant characterizes as holding that the jurisdictional statute in question could not constitutionally "be construed to apply to an accident happening before its passage, since such a construction would confer upon the plaintiff a legal right where none before existed." OB 38 (quoting 99 A.2d 255, 267 (Del. 1953)). But this Court said nothing about a constitutional constraint. Rather, it held that the statute could not be construed retroactively in light of a *statutory* instruction, found in 1 *Del. C.* § 104(a), that any substantive changes resulting from the formal codification of Delaware's laws should have no retroactive effect. *Monacelli*, 99 A.2d at 266-67.

Similarly, in *A.W. Financial Services, S.A.* v. *Empire Resources, Inc.*, this Court relied on its determination that an amendment to an escheatment statute "affect[ed] a substantive right," as opposed to being purely "remedial," in finding that the "presumption against retroactivity"—the interpretive canon providing that statutes only apply retroactively when the General Assembly's intent is clear—applied. 981 A.2d 1114, 1120 (Del. 2009). But that presumption has no application here, where "the act clearly, by express language … indicates that the legislature intended a retroactive application." *Fountain* v. *State*, 139 A.3d 837, 842 (Del. 2016) (quoting 2 Sutherland Statutory Construction § 41:4). Thus, because a proper purpose supports the retroactive application of the amendments, this Court's constitutional analysis need go no further.

2. A stockholder has no vested right in a derivative claim

Even imagining that the existence of a vested right were material to this Court's analysis, appellant's challenge to retroactivity nevertheless fails for an independent reason—stockholders like appellant here have no "vested right" in their derivative claims. Appellant's own authorities spell out the law clearly: "Vested rights" refer only to rights "springing from contract or common law," and "not dependent on legislation." *Artesian Water Co.* v. *Gov't of New Castle Cnty.*, 1983 WL 17986, at *12 (Del. Ch. Aug. 4, 1983); *see also Rennick* v. *Glasgow Realty, Inc.*, 510 F. Supp. 638, 642 (D. Del. 1981) (same). Thus, "[t]here can be no vested right" in a claim arising from a statute "until judgment is rendered." *Hazzard* v. *Alexander*, 173 A. 517, 519 (Del. Super. Ct. 1934); *see also In re Digex, Inc.*, 2002 WL 749184, at *3 (Del. Ch. Apr. 16, 2002) (stockholders' "right to receive compensation" is "inchoate" until "the entry of an order and final judgment by a competent court").

Applying this principle, "[o]ur corporate law has long rejected the so-called 'vested rights' doctrine." *Boilermakers Loc. 154 Ret. Fund* v. *Chevron Corp.*, 73 A.3d 934, 955 (Del. Ch. 2013) (citing *Fed. United Corp.* v. *Havender*, 11 A.2d 331, 335 (Del. 1940)). Though the corporate charter is sometimes "[r]egard[ed] … as a contract," *Hartford Acc. & Indem. Co.* v. *W. S. Dickey Clay Mfg. Co.*, 24 A.2d 315, 322 (Del. 1942), a corporation is fundamentally a creature of "legislative grace," *Zapata Corp.* v. *Maldonado*, 430 A.2d 779, 782 (Del. 1981). To the extent

shareholders have any "contract rights," they "do not rest upon an unchangeable base, but are subject to alteration under the amendatory provisions of the General Law." *Hartford Acc. & Indem. Co.*, 24 A.2d at 322. The DGCL makes this explicit, noting its provisions "may be amended or repealed, at the pleasure of the General Assembly." 8 *Del. C.* § 394. It was thus established decades ago that any rights held by the stockholder are subject to "the reserved power of the State to amend corporation charters." *Coyne* v. *Park & Tilford Distillers Corp.*, 154 A.2d 893, 897 (Del. 1959) (citing 8 *Del. C.* § 394) (constitutional challenge to "short-merger" statute failed as stockholders had no "vested right" to a particular form of merger consideration).[2]

Appellant's cited cases prove nothing to the contrary. In *Strougo* v. *Hollander*, the Court of Chancery declined to "resurrect … the vested rights doctrine" when it held that the DGCL does not provide the board the authority to regulate former stockholders' rights through bylaw amendments. 111 A.3d 590, 601

[2] Though Section 394 contains a proviso for "any remedy … or any liability which shall have been previously incurred," Delaware courts have interpreted it narrowly—and consistent with the traditional scope of the "vested rights" doctrine—to apply only to a limited subset of "'contractual' right[s]," such as "a director['s] individual indemnification rights that became perfected before the board amended its by-laws to eliminate those rights." *Kidsco Inc.* v. *Dinsmore*, 674 A.2d 483, 492 (Del. Ch.), *aff'd and remanded*, 670 A.2d 1338 (Del. 1995). This has no application where, as is the case here, the cause of action at issue is not contractual in nature, but rather for breach of fiduciary duty.

(Del. Ch. 2015). This Court in *Urdan* v. *WR Capital Partners, LLC* simply applied the uncontroversial principle that a shareholder loses any fiduciary-duty claim when its sells the underlying shares. *See* 244 A.3d 668, 670 (Del. 2020). And *In re Activision Blizzard, Inc. S'holder Litig.*, far from establishing immutable derivative rights, expressly recognized the General Assembly's authority to limit such rights through the contemporaneous ownership requirement. *See* 124 A.3d 1025, 1047 (Del. Ch. 2015). The upshot is clear: because a stockholder's derivative claim flows entirely from Delaware's statutory framework—not from common law or contract—that stockholder does not possess a vested right immune from legislative modification.

3. Any constitutional concerns regarding retroactivity would not invalidate Senate Bill 21's other provisions

To the extent there were any constitutional issue with Section 3 of SB 21, the remainder of the amendments should stand. "Where a statute, regulation, or state action faces a constitutional challenge, 'a Court may preserve its valid portions if the offending language can lawfully be severed.'" *Doe* v. *Wilmington Hous. Auth.*, 88 A.3d 654, 669 (Del. 2014). Under 1 *Del. C.* §§ 308 and 301, statutory provisions are presumed severable unless severability "would be inconsistent with the manifest intent of the Legislature," *State* v. *Dickerson*, 298 A.2d 761, 766 (Del. 1972). Absent any evidence of a contrary legislative intent—let alone evidence that is "beyond doubt or question"—the retroactive provisions are severable. *See id.* The text and

enactment history show that the amendments to Section 144 creating the safe harbor procedures serve an independent purpose from the retroactivity provisions in Section 3 and would remain fully functional without it. While the clear constitutionality of Section 3 should give this Court no reason to consider the question, if its retroactivity provision is struck down, the rest of the statute should remain.

CONCLUSION

This Court should uphold the constitutionality of SB 21.

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