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IN THE SUPREME COURT OF THE STATE OF DELAWARE

TOWN OF FENWICK ISLAND, and SUSSEX COUNTY, *Appellants,* v. STATE OF DELAWARE, and THE HONORABLE MATTHEW S. MEYER, in his official capacity as Governor of the State of Delaware, and RENEWABLE REDEVELOPMENT, LLC. *Appellees*.	No. 153, 2026 On appeal from the Court of Chancery of the State of Delaware, C.A. No. 2025-1478 KSJM

ANSWERING BRIEF OF APPELLEES RENEWABLE REDEVELOPMENT, LLC, STATE OF DELAWARE, AND MATTHEW S. MEYER

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NATURE AND STAGE OF PROCEEDINGS

Ultimately, this case is about the General Assembly's power to decide and set forth the energy policy of this State and, in connection therewith, the General Assembly's ability to revoke or amend the zoning powers it has previously granted to local governments when local governments act to thwart that energy policy because they disagree with it.

In this case, Sussex County Council denied a conditional use application for a proposed electrical substation which is:

(i) next to an existing electrical substation and existing power plant,

(ii) on land zoned "heavy industrial," and

(iii) at a location consistent with the County's Comprehensive Plan.

Before Council's denial, the County's Planning & Zoning Commission (the "Planning Commission") had unanimously recommended in favor of the application, and it is hard to imagine a better site for such use. In truth, the denial was not based on the merits of the substation itself, or the proposed location, but had everything to do with the County's opposition to the offshore wind turbines which the proposed substation is designed to serve.[1] And, in fact, no one at the public

[1] Renewable is an affiliate of US Wind, which is constructing wind turbines in federal waters off the coast of Maryland (and to a much lesser extent, Delaware) to produce electricity. The electricity will be routed to Delaware across subaqueous land owned by the State, and come ashore at Renewable's property, where it will be

hearing on the application said anything about the proposed location or anything about the substation, instead focusing on the offshore turbines.

In response to Sussex County's rejection of the conditional use permit for the electrical substation – a substation which the General Assembly views as critical to Delaware's renewable energy policy and the future of this state – the General Assembly adopted SB 159 and SB 199 (together, the "Legislation,"[2]) which effectively reverses the County's decision. The Legislation states in part that: "[n]o county shall deny a conditional use permit to any electrical substation [that meets certain criteria]."[3] The Legislation further provides that it applies retroactively to all applications made after August 3, 2023, and that all such applications will be deemed approved, notwithstanding any adverse action a county may have taken prior to the effective date. SB 199 delayed the effective date of the Legislation to January 31, 2026. Although the Legislation was signed by the Governor on June 30, 2025, Appellants waited until December 22 to bring their suit challenging it. The Court of Chancery rejected all of their claims in a comprehensive bench ruling on March 25, 2026.[4] Appellants have now appealed to this Court.

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connected to the grid via the proposed substation. Sussex County, however, has no jurisdiction over the proposed turbines or cables.

[2] The Legislation appears in the Appendix at B-51-53. All references to the Appendix are "B-__."

[3] Renewable's application meets all the relevant criteria.

[4] A complete transcript of the bench ruling appears in the Appendix at B-1-50.

In short, the General Assembly's actions were entirely consistent with its constitutional authority. Under the Delaware Constitution, a county "possesses no inherent power to regulate land use in the county. That power is one that resides in the General Assembly."[5] More specifically, Article II, Section 25 of the Delaware Constitution provides that: "The General Assembly may enact laws under which municipalities and [counties] may adopt zoning ordinances, laws or rules . . ." Thus, the General Assembly clearly has the authority to delegate, revoke, or otherwise place conditions on the zoning powers it grants to local governments. Sussex County and Fenwick may disagree with the conditions set forth in the Legislation, but the General Assembly has the authority to place those conditions.

It is not, however, zoning concerns that led to Appellants' lawsuit, but their disagreement with the State's renewable energy policy and the State's commitment to wind power. Appellee Renewable Redevelopment, LLC has proposed an electrical substation in what is surely the least objectionable location one could imagine – on ground zoned HI-1 (Heavy Industrial), located next to an existing substation and power plant, far from any residential areas. As the Planning Commission noted in its unanimous recommendation in favor of the substation's approval: "The construction and use of an electrical substation on this site will not

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[5] *Green v. County Council*, 508 A.2d 882, 889 (Del.Ch. 1986), *aff'd*, 516 A.2d 480 (Del. 1986).

adversely affect neighboring properties or roadways."[6] And, at Sussex County Council's hearing on Renewable's conditional use application, not one opponent (nor any member of Council) spoke about the proposed location, its zoning, or the suitability of a substation on land zoned Heavy Industrial next to an existing substation – all of which are the material factors to be considered by Council when granting or denying a conditional use permit. Rather, the public comments were based on opposition to the offshore wind turbines which the substation will serve.

But whatever the feelings of those who spoke in opposition, the General Assembly is deeply committed to renewable energy sources. In the "Delaware Energy Solutions Act of 2024," the legislature continued its commitment to a sustainable energy future, and stated in the synopsis to that legislation that "offshore wind" constitutes "a significant element of Delaware's energy future."[7]

Ultimately, Appellants' claims fail. The General Assembly has the constitutional authority to enact the Legislation, and did so properly. In its comprehensive ruling, the Chancery Court rejected all of the Appellants' arguments, and that ruling should be upheld.

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[6] *See* B-86.

[7] *See* B-82, the complete bill appears at B-65-83.

SUMMARY OF ARGUMENT

I. Denied. The Legislation does not violate the "separation of powers" doctrine because Sussex County is not a separate branch of government under the Delaware Constitution, but a creation of the General Assembly, which retains control over the County and its zoning authority.

II. Denied. The General Assembly did not improperly "infringe" on Sussex County's zoning authority, because, under the Delaware Constitution, all zoning authority resides in the General Assembly, and local governments only exercise such power as the General Assembly delegates to them. And, what the General Assembly giveth, it may taketh away – or, as was done here, limit or modify.

III. Denied. SB 159 was not improperly titled for purposes of the Delaware Constitution. Substations are a critical component of the public utility process and infrastructure.

IV. Denied. The due process protections claimed by the Appellants do not apply to the Delaware General Assembly's legislative process.

V. Denied. Fenwick Island has no standing here because it has not alleged any harm flowing from the substation at issue, and its fears about future legislation do not constitute a concrete harm.

STATEMENT OF FACTS

Sussex County denies Renewable's Conditional Use Application and Renewable promptly files in Superior Court for review

Renewable is the owner of property zoned HI-1 (Heavy Industrial) under the Sussex County Zoning Code and sought a conditional use approval under that Code to construct an electrical substation on its property, located far from residential communities, adjacent to an existing electrical substation and power plant, to permit electricity generated by off-shore wind turbines to come ashore and enter the electrical grid. In unanimously recommending in favor of the application, the Planning Commission noted that: "The construction and use of an electrical substation on this site will not adversely affect neighboring properties or roadways."[8]

Nevertheless, despite the obvious propriety of the site for the use, Council voted 4-1 to deny the application on December 17, 2024.[9] In so doing, the naysaying Councilmembers all failed to mention or discuss the merits of the application before them (that is, an electrical substation on ground zoned HI-1 located next to an existing electrical substation and power plant, screened from view by mature trees and natural barriers), and instead (and erroneously) claimed the substation would be of no benefit to Sussex County. In rejecting the application, Council said nothing

[8] July 10, 2024 Planning Comm'n Minutes at 9, ¶6 (appearing in appendix at B-86).
[9] Transcript, Sussex County Council, Dec. 17, 2024, vote on Renewable Redevelopment Conditional Use Application (appearing in Appendix at B-89-95).

about the proposed use, nothing about the propriety of that use in the proposed location, and nothing about the consistency of the use with the County's Comprehensive Plan. Most tellingly, Council completely ignored the favorable recommendation issued unanimously by its own Planning Commission. Instead, Council claimed the project would provide no benefits to the County and therefore denied the application. It made this decision because 14 individuals appeared at the public hearing and complained vociferously – not about the substation, but about the wind turbines to be located in federal waters off the coast, and about the buried cable lines from that offshore location to the proposed substation.

Renewable promptly sought review by writ of certiorari in the Superior Court, filing its action nine days later on December 26, 2024.[10] After some delay on the part of the County, the record was filed and briefing occurred. However, in light of the General Assembly's passage of the Legislation, the Superior Court has stayed its review, observing that: "If the Court were to opine on the pending Writ of Certiorari, the opinion would be merely advisory in that the Superior Court would not have last authoritative say in the matter effective January 31, 2026."[11] The Superior Court matter remains stayed pending the final resolution of the appeal to this Court.

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[10] Petition for Writ of Certiorari (appearing in the Appendix at B-54-63).

[11] *See Renewable Redevelopment v. Sussex Cnty. Council,* 2025 WL 2443112 (Del.Super. Dec. 1, 2025) (the "Stay Order," appearing in the Appendix at B-64).

The General Assembly is committed to renewable energy sources and the State signs an agreement with US Wind for US Wind to make substantial upgrades ($200 million) to the "grid" and to save Delaware ratepayers on their power bills

The State of Delaware, concerned with climate change and greenhouse gas emissions, is committed to increasing the use of renewable energy sources for power supply in Delaware. On June 30, 2024, the General Assembly passed Senate Bill 265,[12] titled the "Delaware Energy Solutions Act of 2024," which among its recitals states as follows:

- "emissions of greenhouse gases are contributing to climate change, threatening the health and well-being of the people of Delaware"
- "Delaware has the lowest mean elevation of any state in the nation and the State is particularly vulnerable to climate change impacts"
- "the Delaware General Assembly, recognizing the threat posed by climate change, enacted the Climate Change Solutions Act of 2023, requiring the State to establish strategies to ensure that greenhouse gas emissions shall be at or below net zero emissions no later than January 1, 2050"
- "key elements for facilitating this transition will be increased flexibility in connecting renewable energy resources to the transmission grid, and preparing for offshore wind to be a significant element of Delaware's energy future"

The synopsis to the bill further provides that:

> The bill facilitates a transition to carbon-free energy sources by (i) preparing for offshore wind to be a significant element of Delaware's energy future, if cost is competitive with other potential sources, and (ii) increasing options for interconnecting renewable energy resources to the transmission grid.

Thus, the General Assembly has found that "offshore wind" constitutes "a

[12] The original Senate Bill appears in the appendix at B-65-83.

significant element of Delaware's energy future."

As to US Wind and Renewable, specifically, the State of Delaware began negotiating with US Wind on the procurement of electricity from its offshore project well before the enactment of the 2024 legislation. On December 19, 2023, Governor John Carney announced that negotiations had begun with US Wind, and released a copy of the Term Sheet for those negotiations.[13] Among other things, the Term Sheet states:

- US Wind will pay the State $350,000/year (with an annual 3% increase for inflation) for running the transmission line across the State's 3Rs Beach.
- The wind turbine project "is anticipated to reduce ratepayer costs for electricity by $329 million in gross terms over the contract term."
- US Wind expects to make over $200 million in upgrades to the transmission system on the Delmarva peninsula and these upgrades "are anticipated to increase reliability of the local electric grid and reduce congestion costs to Delaware ratepayers."
- US Wind will pay to the State or to entities designated by the State benefit payments totaling but not exceeding $40 million.
- Once US Wind's offshore wind turbine projects are operational, "they will generate approximately 150,000 MWhs per year of RECs – more than twice the amount of in-State renewable energy generation in Delaware from existing wind, solar, and biomass facilities," and if US Wind fails to meet this 150,000 REC figure from its own operations, it is required to purchase or otherwise obtain similar RECs that are compliant with Delaware's Renewable Portfolio Standard.[14]

Following execution of the Term Sheet, then-Governor Carney issued a press release stating that a formal agreement had been signed, consistent with the Term Sheet.[15]

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[13] *See* B-97 (Dec. 19, 2023 press release) and B-99-105 (term sheet).
[14] *See* Term Sheet at 2, 4, 4, 5-6.
[15] *See* B-16 (press release announcing signed agreement with US Wind).

The press release states in part that, consistent with the Term Sheet, US Wind "will sell carbon-free power into the regional power grid, and this new source of power generation is projected by US Wind to lower electric costs for Delaware ratepayers by up to $253 million over 20 years. US Wind will also invest more than $200 million in transmission system upgrades."

In his recent State of the State address, Governor Meyer reiterated the State's commitment to this project, making clear that the State needs more energy and sees the US Wind project as a critical source: "We need more homegrown energy to lower electricity bills. And that is why U.S. Wind, a 1.7 gigawatt project can and must be part of the solution."[16]

Thus, it is more than fair to say that the State of Delaware is committed to the overall US Wind project, particularly in light of the agreement signed with US Wind.

The General Assembly takes action and passes the Legislation in response to Sussex County's rejection of the substation

Without a substation, there is no way to get the power generated offshore by the wind turbines into the "grid" and thereby into homes and businesses. Alarmed by Sussex County's actions, particularly in light of the substation's well-suited proposed location, the General Assembly took action to ensure that the substation can be constructed and that Sussex County's denial does not interfere with or defeat

[16] *See* B-118 (the complete text of the 2026 State of the State Speech, B-108-128).

the state policy in favor of renewable energy sources.

On May 21, 2025, Senate Bill 159 was introduced. It passed the Senate (with one amendment) on June 10, then passed the House (with an additional amendment) on June 30, and then passed the Senate again (due to the House amendment) that same day. It was then signed by the Governor. Later that evening, in response to pressure from Senate Republicans, SB 199 was introduced and quickly passed by the Senate and House (and then signed by Governor Meyer that evening as well). SB 199 delayed the effective date of the Legislation until January 31, 2026.

Senate Bill 159 provides that:

> No county shall deny a conditional use permit to any electrical substation, along with any directly related project infrastructure, proposed to be located on unincorporated land within such county where the following conditions apply:
>
> > (1) The substation is being proposed to support the operation of a proposed renewable energy generation project of 250 MW or greater;
> > (2) The proposed substation would be located in a heavy industrial zone;
> > (3) An electrical substation is an allowed conditional use within the proposed zone; and
> > (4) The specific zoning district in which the proposed substation would be located already has an electric substation located in such zone with a rating of 230kv or greater as of August 3, 2023.

The bill further provides:

> This Act shall have retroactive effect and any previous application to a county, on or after August 3, 2023, for approval of an electrical substation prior to the enactment of this Act that complies with the provisions of this Act shall be deemed to be approved, notwithstanding

> any adverse action which a county may have already taken with respect to such application prior to the enactment of this Act. Further, any action on the part of a county to alter the underlying zoning classification applicable to a previously filed application for a conditional use for an electrical substation or otherwise render an application unqualifying by any means, including changing the underlying zoning or zoning code, is prohibited.

Finally, when SB 159 was first passed, it provided that the legislation would sunset on December 31, 2026, thus not having indefinite effect. However, after SB 159 passed with this sunset date, opponents of the bill threatened to hold up other legislation (including the bond bill) and demanded that, instead of a sunset, the bill should not become effective until January 31, 2026.

In response, Senate Bill 199 was quickly introduced and passed by both chambers. This bill removed the sunsetting language and replaced that language with the phrase: "This Act takes effect on January 31, 2026." The bill also made clear, though, that: "This Act does not affect or limit the retroactive effect of Section 2 of [Senate Bill 159]." The Governor signed SB 199 shortly after it was passed on June 30. Thus, under the Legislation, Sussex County Council's denial of Renewable's application has been reversed as a matter of law and the application deemed approved as of January 31, 2026.

Sussex County and Fenwick Island challenge the Legislation
(nearly 6 months after its adoption and only 6 weeks before its effective date)

Although the Legislation was signed on June 30, 2025, Sussex County and Fenwick Island waited until December 22 to bring their lawsuit. Their complaint,

however, is devoid of any allegations of harm that the proposed substation itself, or the Legislation, would actually cause either party, although this omission is hardly surprising given the Planning Commission's statement that: "The construction and use of an electrical substation on this site will not adversely affect neighboring properties or roadways." And, the omission is further consistent with the fact that no one speaking at County Council's public hearing offered any testimony challenging the suitability of the site for a substation.

The Court of Chancery rejects Appellants' claims and grants summary judgment to Renewable Redevelopment and the State

On March 25, 2026, in a comprehensive bench ruling which followed expedited briefing and oral argument, the Court of Chancery denied all of Appellants' claims and granted summary judgment to Renewable Redevelopment and the State, concluding:

> Plaintiffs fail to provide a basis for invalidating the legislation. One of the plaintiffs, Fenwick, lacks standing to bring this action. And none of plaintiffs' argument succeed. [Plaintiffs'] Motion for summary judgment is therefore denied and Defendants' motion for summary judgment is granted.[17]

[17] *See* B-48-49.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY HELD THAT THERE IS NO "SEPARATION OF POWERS" ISSUE IN THIS CASE BECAUSE THIS CASE DOES NOT INVOLVE SEPARATE BRANCHES OF GOVERNMENT UNDER THE DELAWARE CONSTITUTION, AND, SUSSEX COUNTY'S ZONING AUTHORITY IS SUBJECT TO CORRECTION AND MODIFICATION BY THE GENERAL ASSEMBLY.

A. Question Presented: Did the Chancery Court correctly conclude the Legislation does not violate the "separation of powers" doctrine?

The question of whether the Legislation violates the "separation of powers" doctrine was briefed and argued below.[18]

B. Standard of Review: Constitutional questions are reviewed *de novo.*

Whether the Legislation violates the "separation of powers" doctrine is a constitutional question[19] and therefore subject to *de novo* review.[20]

C. Merits of Argument.

With their first argument, Appellants allege that the Legislation violates the "separation of powers" doctrine – but this is not a case of co-equal branches of government. As the Chancery Court observed in its bench ruling, the "separation of powers" doctrine applies to the separation of powers between the three branches of

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[18] *See* B-168-172, 215-217.

[19] *Guy v. Judicial Nomination Com'n*, 659 A.2d 777, 785-86 (Del. 1995).

[20] *In re: COVID-Related Restrictions on Religious Services*, 326 A.3d 626, 638 (Del. 2024).

government as created by the Delaware Constitution; and, Sussex County Council, a creation of state law and not the Constitution, is not a separate branch of government under the Constitution. The Chancery Court further observed that under the Delaware Constitution, zoning authority rests with the General Assembly, which *may delegate* zoning authority to counties and municipalities and which delegation is subject to being reclaimed, corrected, or prescribed, before stating that "[r]egulating the use of Renewable's land is undoubtedly within the purview of the General Assembly's plenary authority."[21] The Court's analysis and conclusions were entirely correct.

1. As a constitutional matter, all zoning authority rests with the General Assembly and local governments only exercise such zoning power as may be delegated to them.

In considering the Appellants' "separation of powers" argument, there is an important principle of law that must be remembered – all zoning authority ultimately rests with the General Assembly. Delaware courts have long recognized that, under the Delaware Constitution, local counties and municipalities have no inherent zoning powers. Rather, Article II, Section 25 of the Delaware Constitution provides that any zoning powers exercised by local governments must be delegated to them by the

[21] *See* B-29.

General Assembly.[22] And, in providing that authority, the General Assembly can, and has, placed conditions on it.[23] And so, ultimately, what the General Assembly giveth, it can taketh away.

As but one example, in 1976, the General Assembly modified the zoning power it had delegated to New Castle County by adding the following language at the end of 9 *Del.C.* §2601(a), where such language remains to this day:

> no such regulation or regulation promulgated pursuant to Chapter 30 of this Title shall apply to any lands, buildings, or other structures proposed to be used by or for any non-profit corporation organized under the laws of this State and engaged at the time of such proposal in the operation in this State of one or more acute general hospital facilities for the purpose of such or similar operations, or to any lands, buildings, or other structures of such corporation devoted to such operations.[24]

Such language acted (and still acts) to exempt "acute general hospital facilities" from certain land use regulations which the county may otherwise impose on other uses and facilities. In *Wilmington Medical Center, Inc. v. Bradford*,[25] the Supreme Court found "no merit" in the contention that this legislation was illegal because it withdrew zoning power already granted or that the legislation was invalid because

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[22] *See, e.g., Green*, 508 A.2d at 889 ("The Sussex County government possesses no inherent power to regulate land use in the county. That power is one that resides in the General Assembly").
[23] *Id*.
[24] 60 *Del.Laws* c. 661, §1.
[25] 382 A.2d 1338, 1351 (Del. 1978).

similar restrictions were not imposed on Kent or Sussex Counties. Again, what the General Assembly giveth, it may taketh away.

Similarly, in 1980, the General Assembly limited the zoning authority of all three counties regarding housing for the disabled with identical language stating: "[f]or purposes of all county zoning ordinances a residential facility licensed or approved by a state agency serving 10 or fewer persons with disabilities on a 24-hour-per-day basis shall be construed to be a permitted single family residential use of such property."[26] The General Assembly has restricted the zoning authority of counties and municipalities in other situations as well.[27]

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[26] *See* 62 *Del.Laws* c. 390 (amending Title 9 by adding new Sections 2612, 4923, and 6819).

[27] In 1994, for example, when the General Assembly first authorized the video lottery at existing Delaware racetracks (69 *Del.Laws* c. 446, the "Video Lottery Act"), it provided, in part, that video lottery machines (*i.e.*, slot machines) would be permissible at any then-operating horse racetrack, and that counties and municipalities could not prohibit video lottery machines by zoning ordinance or otherwise. 29 *Del.C.* §4819(b) ("use of video lottery machines shall not be prohibited by any . . . county or municipal zoning ordinance, including amendments thereto"). Put another way, the General Assembly limited local governments' zoning powers so they could not restrict or interfere with the video lottery created by the General Assembly. So too here, the General Assembly is taking action to make sure that Sussex County cannot derail wind power, which the State believes is critical for Delaware's energy future. Other examples of similar "zoning-like" actions taken by the General Assembly include requirements that buildings constructed in excess of 25,000 square feet in size must include certain emergency communication systems. *See* 76 *Del.Laws* c. 181 (adding Sections 2616, 4927, and 6927 to Title 9 and adding section 311 to Title 22). In addition, Delaware's Coastal Zone Act prohibits new heavy industrial uses, and places conditions on other uses, in the "coastal zone" (as defined in the act). *See* 7 *Del.C.* §§7003, 7004. Prohibiting

In sum, there simply is "no merit" to the notion that the General Assembly cannot modify the zoning authority it has granted to local governments. With this understanding of the General Assembly's zoning authority, it is readily apparent why the Appellants' "separation of powers" argument fails.

2. Because zoning authority resides in the General Assembly, and because local governments are not independent branches of government, there is no "separation of powers" violation.

Appellants incorrectly assert that the Legislation here, in which the General Assembly is exercising its authority to control and place limits on the zoning power it granted to Sussex County, violates "separation of powers" because Sussex County's denial of Renewable's conditional use permit application is considered a "quasi-judicial" act. But just because County Council's act is considered "quasi-judicial" does not make it an action of the judicial branch. "Quasi-judicial" simply means that a legislative body is applying the law it enacted to a particular application.[28] And, because the "quasi-judicial" action taken here is simply carrying out "existing legislative policy" relating to zoning, the General Assembly has the final say since zoning power and policy ultimately resides in the General Assembly.

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or restricting uses in a particular geographic area (as is the case with the Coastal Zone Act) is at the very heart of zoning authority.

[28] *See, e.g., Delta Eta Corp. v. City of Newark*, 2023 WL 2982180, at *11 (Del.Ch. Feb. 2, 2023) ("An entity acts in a quasi-judicial capacity where it applies existing laws to a set of facts before it. In order words, a quasi-judicial act carries out existing legislative policy, rather than making new policy.").

In their Opening Brief, Appellants cite to *Evans v. State*,[29] but such case does not support their argument. In *Evans*, the General Assembly enacted a statute which purported to directly reverse an *en banc* opinion of this Court in a criminal matter. In analyzing the respective powers of the three *constitutionally-created* branches of government, this Court observed that the Delaware Constitution specifically vests this Court with the power and jurisdiction "to determine finally all matters of appeal on the judgments and proceedings of said Superior Court in criminal causes."[30] Thus, by enacting the legislation at issue in *Evans*, the General Assembly attempted to usurp a power expressly granted to the Supreme Court *by the Delaware Constitution* – something the General Assembly lacked the power to do under the Constitution and the "separation of powers" doctrine.[31]

But this case presents a very different scenario. Here, the Legislation does not interfere with actions taken by a *separate constitutional branch* of the government – local governments are a creation of the General Assembly. And thus,

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[29] 872 A.2d 539 (Del. 2005).

[30] *Id.* at 548, *quoting* Del.Const. Art. IV, § 11.

[31] *Id*. at 549; *see also* Randy J. Holland, THE DELAWARE STATE CONSTITUTION, at 92 (Oxford Univ. Press, 2017) (discussing *Evans*):

> Only the Delaware judiciary has the power, "province and duty . . . to say what the law is" in particular cases and controversies. House Bill No. 31 purported to exercise judicial power in a specific case. Therefore, the provision in House Bill No. 31, that declared the decision in *Evans v. State* "null and void," was a legislative act that violated Sections 1 and 11 of Article IV of the Delaware Constitution.

the Legislation does not seek to usurp power granted by the Constitution to another branch of government. Rather, here, the General Assembly exercised its zoning authority under the Delaware Constitution to make clear that a certain use (electrical substations), meeting certain criteria, would be permitted, regardless of any actions which a local government might take or may have taken with respect to that use.

Appellants also cite to *Sierra Club v. DNREC*,[32] but that case is equally unhelpful. They claim that, in *Sierra Club*, the Court suggested (but did not hold) that if the General Assembly had reversed a decision by the Environmental Appeals Board, this Court would have found a separation of powers violation – but, with all due respect, there is no such suggestion. In *Sierra Club*, the plaintiff argued that certain legislation violated the "separation of powers" doctrine by "reversing" an Environmental Appeals Board ("EAB") decision, but, in fact, the legislation did not reverse the Board's decision, and so the Court simply said that *Evans* was inapplicable.

More to the point, the *Sierra Club* Court found that the General Assembly, through the challenged legislation, had simply reclaimed authority it had previously delegated to DNREC and the EAB without "overstep[ping] its constitutional bounds."[33] Thus the *Sierra Club* case actually supports what the General Assembly

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[32] 2006 WL 1716913 (Del.Ch. June 19, 2006).

[33] 2006 WL 1716913, at *5. The *Sierra Club* Court relied upon *Biodiversity Associates v. Cables*, 357 F.3d 1152 (10th Cir. 2004), in which the 10th Circuit found

did with the Legislation at issue here – that is, the General Assembly has reclaimed a small portion of the zoning authority delegated to Sussex County, and such reclamation is not a "separation of powers" violation.

As already observed above, the General Assembly's authority in zoning and land use matters is broad and supreme,[34] and local governments have no inherent zoning authority except the authority delegated by the General Assembly, which authority the General Assembly may modify, condition, or revoke as it sees fit.[35]

Congress could reclaim power it had previously delegated to the executive branch without violating the "separation of powers" doctrine.

[34] *University of Delaware v. New Castle County Dept. of Finance*, 801 A.2d 202, 206 (Del.Super. 2006) ("when the county ordinance and the state statute conflict, the county ordinance must yield") *aff'd* 903 A.2d 323 (Del. 2006). This principle also applies to zoning codes. *See 4th Generation Ltd. v. Board of Adjustment of City of Rehoboth Beach*, 1987 WL 14867 (Del.Super. July 16, 1987) (holding that Rehoboth zoning code provision prohibiting sand dune fences on beachfront properties pre-empted by state law allowing such fences); *Lewes v. Nepa*, 212 A.3d 270, 274 (Del. 2019) (holding Sussex County's authority to regulate land use through zoning is "subject to any express or implied preemption by other state law"); *see also State ex rel. Jennings v. City of Seaford*, 278 A.3d 1149, 1160 (Del.Ch. 2022) ("If a state law and a municipal ordinance directly conflict, then the state law prevails [and, further,] [a] conflict exists '[i]f the ordinance expressly permits what a statute expressly forbids, or vice versa.'") *citing Taylor v. Smith*, 115 A. 413, 414 (Del. Ch. 1921) (explaining that the "legislative power of [a] municipality . . . , expressing itself through [its] council, is inferior and subordinate to the legislative power of the state, whose creature it is"); *State v. Putman*, 552 A.2d 1247, 1249 (Del. Super. 1988) ("[W]here a conflict exists between a state statute and a municipal ordinance, the statute must always prevail.").

[35] By way of example, the General Assembly could enact a statute declaring that electrical substations are permitted by right in any zoning classification, without the need for any conditional use or other special use permit from any local government; and, under such statute, Renewable's proposed substation would be permitted. Here, the General Assembly did not go so far; but, the point is that the legislature has the

Sussex County was not acting as a separate, constitutional branch of the government, nor was Sussex County acting in accordance with inherent powers under the Delaware Constitution. The Appellants' claim that the Legislation is invalid on "separation of powers" grounds lacks merit.

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right to do so. Indeed, the General Assembly could, if it so desired, enact a statewide zoning code and remove all authority from local governments. Such would most likely not be sound policy (and hence it has never been done), but, ultimately, the General Assembly has the right to decide zoning matters, and, here, all the Legislation does is correct what the General Assembly found to be a mis-use of Sussex County's delegated zoning authority in denying the conditional use permit for the proposed electrical substation at the proposed location – an action severely hampering and undermining the State's commitment to renewable energy.

II. THERE IS NO IMPROPER "INFRINGEMENT" OF THE COUNTY'S ZONING POWER – UNDER THE DELAWARE CONSTITUTION, ALL ZONING AUTHORITY IS VESTED IN THE GENERAL ASSEMBLY AND LOCAL GOVERNMENTS ONLY EXERCISE SUCH AUTHORITY AS IS DELEGATED TO THEM.

A. Question Presented: Did the General Assembly act properly in accordance with its powers under the Delaware Constitution?

The question of the propriety of the General Assembly's exercise of its plenary zoning power was briefed and argued below.[36]

B. Standard of Review: Constitutional questions are reviewed *de novo.*

Whether the Legislation conforms with the General Assembly's plenary zoning powers under Article II, Section 25 of the Delaware Constitution is a constitutional question[37] and therefore subject to *de novo* review.[38]

C. Merits of Argument.

In argument II of their Opening Brief, Appellants claim that this case:

> presents a significant issue of first impression concerning whether the Delaware General Assembly, having fully delegated zoning authority to Sussex County under Article II, Section 25 of the Delaware Constitution and thereafter, through Title 9, Chapter 69, of the Delaware Code, may then exercise that power, in a quasi-judicial manner and, particularly, whether it can do so in a way that abrogates and reverses a specific prior zoning decision of Sussex County.[39]

They go on to claim that the Legislation "is not, as Defendants [sic] contend, a lawful

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[36] *See* B-204-206, 223-28.
[37] *Guy*, 659 A.2d at 785-86.
[38] *In re: COVID-Related Restrictions on Religious Services*, 326 A.3d at 638.
[39] Op.Br. at 23-24.

exercise of the General Assembly's power to delegate, amend or terminate the zoning authority of the County government, but rather, an unconstitutional and retroactive exercise of that delegated zoning authority itself."[40] But in making these claims, Appellants: (i) greatly mischaracterize the Legislation, (ii) ignore the numerous examples cited by Appellees here (on pages 16-18 above) and to the Chancery Court of instances where the General Assembly has limited or taken back zoning powers from local governments, and (iii) have relied on cases that are easily distinguishable and involve different legal issues than those here.

Appellants claim that because the General Assembly did not modify Section 7001(a) of Title 9, which grants broad powers to the County, the Legislation must be invalid. Put another way, Appellants claim that the only way the General Assembly may limit or restrict the power it grants to the County is by specifically modifying Section 7001(a). They cite absolutely no authority for such position, and the argument has no merit. Appellants ignore the fact that, notwithstanding Section 7001(a), it is Section 6902(a) of Title 9 where the General Assembly specifically grants zoning power to Sussex County and Chapter 69 of Title 9, entitled "Zoning," is chock full of limitations on that power as well as procedures which must be followed when Sussex County exercises that power.

Moreover, Appellants still do not address the numerous instances identified

[40] *Id.* at 24.

in the Chancery Court briefing or on pages 16-18 above where the General Assembly has done exactly what Appellants say it cannot do – the General Assembly has limited the County's zoning authority without amending Section 7001.[41] One example is the Video Lottery Act, codified in Title 29, which prohibits counties from restricting video lottery machines by zoning ordinance or otherwise. Another is the Coastal Zone Act, codified in Title 7, which similarly restricts certain uses in the coastal zone. In fact, there are many limitations on powers granted to Sussex County sprinkled throughout both Title 9 and other sections of the Delaware Code.[42] The fact the Legislation does not specifically amend Section 7001(a) is of no moment. There is no specific need, and no legal requirement, that the general grant of power to Sussex County in Section 7001(a), or the more specific grant of zoning power in Section 6902(a), must be modified every time the General Assembly wants to limit or restrict that power, and the Appellants have identified no such requirement.

To the extent Appellants rely on *Delaware Dep't of Natural Resources & Environmental Control v. Sussex Cnty.*[43] or *Hayward v. Gaston*[44] to support their argument, that reliance is misplaced as well, as these two cases have nothing to do with the issues presented here.

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41 *See* B-175-76, 204-206.
42 *Id.*
43 34 A.3d 1087 (Del. 2011).
44 542 A.2d 760 (Del. 1988).

In the *DNREC* case, the issue was whether DNREC (not the County) had the authority to issue a regulation regarding buffer sizes near certain bodies of water. Sussex County, under its zoning code, had already put buffers in place, but the DNREC regulations greatly increased the required buffers, thereby rendering more ground incapable of development and potentially causing issues for farmers. Sussex County objected and filed suit. Under Title 7, DNREC is granted authority to adopt regulations, but its authority to do so is limited by language which reads: "[n]o such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof." 7 *Del.C.* §6010(a). The Superior Court found, and this Court upheld, that DNREC's regulation constituted zoning, conflicted with the Sussex County Zoning Code, and was therefore impermissible under Section 6010(a). The *DNREC* case has no application here, where the General Assembly is unfettered by the limitations it imposed on DNREC.

Similarly, *Hayward* offers Appellants no solace. In that case, a state agency claimed it possessed sovereign immunity and was therefore not subject to certain zoning restrictions which, if applicable, would bar its plan to operate a home for emotionally troubled youths in the location it desired. Neighbors brought an action to enjoin the proposed home, claiming it was not permitted by the zoning code. The Supreme Court upheld the Chancery Court decision that sovereign immunity did not excuse the state agency from the applicable zoning restrictions. Like the *DNREC*

case, the *Hayward* case is of no import or application here. That a state agency is subject to local zoning ordinances has nothing to do with the question of whether the Legislation is permissible.[45]

Simply put, the General Assembly is free to grant, restrict, or take back zoning authority from local governments. Sussex County may bristle at what the legislature has done here, and how it was done, but the County's dislike does not prohibit the General Assembly from doing what it did. The Legislation is a valid limitation on the County's zoning authority.

[45] The General Assembly could, if it so chose, exempt state agencies or state-owned property from the application of zoning restrictions, but has not chosen to do so.

III. THE LEGISLATION DOES NOT VIOLATE THE TITLING REQUIREMENTS OF ARTICLE II, SECTION 16 OF THE DELAWARE CONSTITUTION.

A. Question Presented: Does the title of SB 159 comply with the requirements of Art. II, Sec. 16 of the Delaware Constitution?

The question of the Legislation's title was briefed and argued below.[46]

B. Standard of Review: Constitutional questions are reviewed *de novo.*

Whether the Legislation conforms with the Delaware Constitution's titling requirements is a constitutional question[47] and therefore subject to *de novo* review.[48]

C. Merits of Argument.

Appellants claim that the Legislation is invalid because it was not properly titled in accordance with Article II, Section 16 of the Delaware Constitution, which states: "No bill or joint resolution, except bills appropriating money for public purposes, shall embrace more than one subject, which shall be expressed in its title."

Here, SB 159's title was: "An Act to Amend Title 26 of the Delaware Code Relating to Public Utilities," and the bill does exactly what it says: it amends Title 26, which is named "Public Utilities," by adding a single new section to Title 26. Electrical substations exist for the sole purpose of either adding or withdrawing electric power from the "grid," and public utilities use the grid to deliver electric

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[46] *See* B-172-175, 218-221.
[47] *Guy*, 659 A.2d at 785-86.
[48] *In re: COVID-Related Restrictions on Religious Services*, 326 A.3d at 638.

power to consumers of that power. Here, the new Section added to Title 26 requires that electrical substations which meet certain conditions shall be approved or deemed approved. There is no multiplicity of subjects. There is only one subject – the addition of a new section to Title 26, which deals with the substations that deliver power to the grid, and thus to public utilities, for distribution to the public.

SB 159's title is similar to the bill title the Supreme Court examined and found to be constitutional in the *Wilmington Medical Center* case. There, the title was "An Act to Amend Title 16, Delaware Code, by Adding a New Part IX Providing For a Delaware Health Facilities Authority," which the Court found was "neither fatally deceptive and misleading nor void for double subject matter."[49] The Court made clear that the Delaware Constitution does not require the title to be "an index to its details or a synopsis of the means by which its object is to be accomplished" but merely needed to be "sufficiently informative as to put on notice parties interested in the general subject matter in such manner as would lead them to inquire into it if they wished."[50]

In *Klein v. National Pressure Cooker Co.*,[51] where a statute was being challenged on the grounds of an insufficient title, this Court rejected the challenge and observed that:

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[49] *Wilmington Med. Ctr.*, 382 A.2d at 1343.
[50] *Id.*
[51] 64 A.2d 529, 532 (Del. 1949) (emphasis added).

> *Legislative Acts should not be disturbed except in clear cases, and then only upon weighty considerations.* Each case dealing with the subject must of necessity be determined upon its own merits. Nevertheless, it should be said to those seeking to annul legislative Acts on such grounds as here presented that *it has consistently been the policy of this Court to construe the provisions of Article 2, Section 16 of the Constitution most liberally*, and whenever possible, to sustain rather than to destroy the legislation. Especially is this so in the light of the general rule that *each legislative enactment is cloaked with the presumption of constitutionality and should not be invalidated unless the circumstances be shown beyond doubt to do violence to the provisions of the Article and Section aforesaid*.

The Court then went on to observe that: "All that is required is that the language be of sufficient import to give reasonable intimation of the subject matter dealt with."[52] In a later opinion, this Court stated that the Constitutional titling requirement "is designed to prevent deception of the general public and the members of the General Assembly by titles to bills which give no adequate information of the subject matter of the bills."[53] Where a bill indicates what section of the Code it is intended to amend, such reference is sufficient.

Appellants also suggest the title is misleading because they believe the new statutory provision should have been inserted into Title 9 (which deals with the powers granted counties) rather than Title 26 (which deals with utilities). Certainly the General Assembly could have placed the provision (or similar language) in Title 9, but the same can be said of many provisions of the Delaware Code. One might

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[52] *Id.*

[53] *Opinion of the Justices*, 194 A.2d 855, 856 (Del. 1963).

just as easily argue that the restrictions on certain land uses in Title 7 (under the Coastal Zone Act), or that the restrictions regarding slot machines in Title 29 (under the Video Lottery Act), should be in Title 9; but, ultimately, where the Code is amended is a matter of legislative discretion. And Appellants have pointed to no harm or confusion resulting from the Legislation's placement in Title 26 rather than Title 9. This claim is similar to that raised in *Wilmington Medical Center*, where the party challenging the statute claimed that its placement in Title 16 was misleading, as Title 16 had previously only dealt with controlling threats to public health, not hospitals in general.[54] This Court rejected such challenge.[55]

If, as Appellants acknowledge, the purpose of the titling requirement is to "prevent deception" and not "trap the unwary into inaction," then they must concede that no such deception occurred and no one was "trapped" into "inaction." There were intensive debates about the Legislation, as well as extensive media coverage.[56] Sussex County's legislators fought tooth and nail against SB 159, but failed. They were, however, able to delay its effective date until January 31, 2026, through SB 199. Appellants were well aware of the Legislation and its import, and they have not alleged that anyone was trapped by the title "into inaction."

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[54] 382 A.2d at 1343.

[55] *Id.*

[56] Appearing in the record below is a collection of news reports, letters to the editor, and other media coverage from May and June of 2025 while the bill was being considered and debated. *See* B-129-155.

Further, Delaware courts have repeatedly stressed that the provisions of Article II, Section 16 are to be construed "most liberally" and must only give "reasonable intimation of the subject matter dealt with."[57] The titling requirements are not meant to be used as a club by those opposing legislation hoping to derail it after the fact: "Wherever possible, this constitutional provision should be construed so as to uphold legislation rather than to destroy it."[58] Legislation "should not be invalidated unless the circumstances be shown beyond doubt to do violence to the provisions of the Article and Section"[59] – and here they do not. This is not a case where Appellants have alleged interested persons were lulled into inaction, nor can they so allege given the robust debate, public comment, and media attention that accompanied the Legislation's enactment. The title was sufficient. The Legislation should be upheld.

[57] *Klein*, 64 A.2d at 532.
[58] *State ex rel. Craven v. Shaw*, 126 A.2d 542, 548 (Del.Super. 1956).
[59] *Klein*, 64 A.2d at 532.

IV. THERE IS NO STATUTORY "DUE PROCESS" VIOLATION BECAUSE THIS CASE INVOLVES LEGISLATION PASSED BY THE GENERAL ASSEMBLY.

A. Question Presented: Are there any applicable due process requirements and, if so, were they violated?

The question of due process was briefed and argued below.[60]

B. Standard of Review: Alleged statutory violations are reviewed *de novo* where they do not rely on factual findings.

Appellants allege that the Legislation does not provide "due process" "required" by certain provisions of state and county law. Questions of statutory applicability and compliance are questions of law reviewed *de novo* to the extent there are no factual determinations.[61]

C. Merits of Argument.

Appellants claim that the Legislation is invalid because it does not provide "due process" that is otherwise required by state and county law.[62] But, the Chancery Court found otherwise and, after observing that the statutory provisions cited by the Appellants apply to land use decisions made by the County, the Court stated in its bench ruling:

> The County challenges legislation of the General Assembly, not a land use application covered by Title 9, Chapter 69. No statutes . . . bind the General Assembly's process on this subject, and nothing says that the County has standing to challenge the General Assembly's process in

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[60] *See* B-175-178, 221-222.

[61] *State v. Culp*, 152 A.3d 141, 145 (Del. 2016); *State v. Lewis*, 797 A.2d 1198, 1199 (Del. 2002).

[62] *See* Op.Br. at 36-42.

> any event. The County's efforts to challenge the legislation on due process grounds, therefore, fail.[63]

To understand the Chancery Court's ruling, one must look at the basis for Appellants' due process claim. More specifically, Appellants argue that the Legislation, by requiring certain conditional use applications be approved as a matter of law, violates due process requirements imposed by the General Assembly on the county by various provisions in Title 9 concerning Sussex County's exercise of its zoning powers. For example, before the County may adopt a zoning code amendment or rezone property, it must conduct a public hearing.[64] But, while the General Assembly may have mandated that Sussex County follow certain procedures in the exercise of its delegated zoning authority, the General Assembly has imposed no such requirements on itself.

Thus, to the extent that Appellants cite to *Citizens Coal., Inc. v. Cnty. Council of Sussex Cnty.*,[65] to suggest that the Legislation passed by the General Assembly violates procedural due process rights, Appellants misread the case. In *Citizens*, the plaintiffs argued that Sussex County failed to follow the rezoning procedures

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[63] *See* Bench Ruling at 41 (B-41). Note that the Court of Chancery also held that the County lacked standing to challenge the Legislation on due process grounds. *See* Bench Ruling at 39 (B-39) *citing City of Trenton v. State of New Jersey*, 262 U.S. 182 (1924) (holding local governments cannot claim due process violations against a state).

[64] *See, e.g.,* 9 *Del.C.* §§6910(a), 6911(b).

[65] 773 A.2d 1018 (Del.Ch. 2000).

required by the General Assembly in Title 9 of the Delaware Code because the ordinance as adopted differed slightly from the ordinance originally considered by the County's Planning & Zoning Commission. In that case, the Chancery Court concluded that the statutory process mandated by the General Assembly was satisfied and did not require the process to re-start given the minor nature of the changes. The *Citizens* case is about the process created by the General Assembly which Sussex County must follow, and has no bearing on the process the General Assembly must follow in adopting legislation.

Similarly, to the extent Appellants argue that the Legislation violated certain Sussex County Code procedures regarding public hearings and conditional uses, the County again misses the point. Sussex County, being a creature of statute created by the General Assembly, cannot impose procedural requirements on the General Assembly in the General Assembly's adoption of legislation.

Ultimately, Appellants complain about a legislative act by the General Assembly, and this Court has held that there are no due process rights relating to the legislative process, explaining: "procedural due process protections do not apply to legislation of general applicability."[66] The General Assembly is not bound by the procedural requirements it has imposed on Sussex County, and there are no due process violations arising from the Legislation.

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[66] *Croda, Inc. v. New Castle County*, 282 A.3d 543, 550 (Del. 2022).

V. THE COURT OF CHANCERY CORRECTLY FOUND THAT FENWICK ISLAND LACKED STANDING – FENWICK ALLEGED NO HARM FROM THE PROPOSED SUBSTATION AND FEAR OF FUTURE LEGISLATION IS NOT A CONCRETE INJURY.

A. Question Presented: Does Fenwick Island have standing?

The question of the Appellants' standing was briefed and argued below.[67]

B. Standard of Review: Questions of standing are reviewed *de novo*.

Standing is a question of law and reviewed *de novo*.[68]

C. Merits of Argument.

Standing is a threshold question and "[t]he party invoking the jurisdiction of a court bears the burden of establishing the elements of standing."[69] In *Higgin,* this Court further explained that in order to establish standing:

> "a plaintiff must demonstrate that: (i) the plaintiff has suffered an 'injury-in-fact,' i.e., a concrete and actual invasion of a legally protected interest; (ii) there is a causal connection between the injury and the conduct complained of; and (iii) it is likely the injury will be redressed by a favorable court decision." In addition, the plaintiff must demonstrate that the interest they seek to vindicate is "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."[70]

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[67] *See* B-165-167, 206-211. Note that in the Court of Chancery, Appellees challenged the standing of both Fenwick Island and Sussex County. The Chancery Court found no standing on the part of Fenwick Island, but "accepted" the County's argument that it has standing "for present purposes" noting that "the issue is not dispositive" because "I am finding in favor of defendants on the merits." B-13. Accordingly, as the Court did not rule on the County's standing, Appellees did not cross-appeal the issue.

[68] *In re: COVID-Related Restrictions on Religious Services*, 326 A.3d at 638.

[69] *Albence v. Higgin*, 295 A.3d 1065, 1086 (Del. 2022).

[70] *Id.* (citations omitted).

Moreover, a plaintiff only has standing when the "plaintiff's interest in the controversy [is] distinguishable from the interest shared by other members of a class or the public in general."[71] Here, the Chancery Court found that Fenwick lacked standing and in particular, the Court held that:

> Fenwick lacks standing because it has failed to establish that it would suffer injury to a legally protected interest from the enforcement of the legislation. Fenwick does not contend that the construction or operation of the proposed substation would cause it any harm. . . . According to Fenwick, upholding the Legislation would establish a precedent of allowing the state to overrule local and county-level zoning determinations. The argument is that, in essence, Fenwick suffered a generalized injury arising from an alleged constitutional or statutory violation . . . Standing requires more. . . . The risk that the State might usurp Fenwick's municipal zoning authority in the future applies to every governmental body and individual subject to the State zoning authority. That is not a personal or an individual risk. Fenwick's alleged injury is also not concrete. . . . fear of being subject to future state action is not an injury for purposes of standing.[72]

The Court's analysis was exactly right.

To begin, Fenwick has never alleged or pled any facts suggesting that the construction or operation of the proposed substation, to be located many miles from Fenwick, will cause it any harm. Rather, Fenwick argues that it is adversely affected by the Legislation because (i) "it was entitled to rely on the decision and vote of Sussex County Council to deny the permit," and (ii) the Legislation "poses a direct

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[71] *Albence v. Mennella*, 320 A.3d 212, 216 (Del. 2024) (finding plaintiffs lacked standing) citing *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del. 1991).
[72] B-11-12.

threat to [Fenwick's zoning] authority, in that it constitutes the State's determination that it can retroactively override a specific local zoning decision via legislation."[73] Elsewhere in its complaint, Fenwick noted that its mayor appeared and spoke at the public hearing before Sussex County Council.[74] None of these allegations provides a basis for standing.

Fenwick is, of course, no more entitled to "rely" on a Sussex County Council decision than any other member of the general public. It lacks an interest distinguishable from the public at large in that regard and has otherwise suffered no injury-in-fact.

To the extent that Fenwick suggests it has standing because its mayor spoke at County Council's public hearing, such appearance does not confer standing, and Fenwick has never cited any caselaw to support this novel proposition. Indeed, if mere appearance at a public hearing was sufficient to confer standing, then any person or entity who speaks at a public hearing, regardless of whether they suffered an "injury-in-fact," could nevertheless achieve standing simply because they spoke at the public hearing. Moreover, mere participation in a public hearing does not create an "injury-in-fact" just because the decision does not turn out the way the speaker wanted or because the decision might be overturned.

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[73] *See* Complaint ¶15 (appearing in Appendix at B-239).
[74] *Id.* at ¶2 (B-232).

Finally, as to Fenwick's apprehension about possible future legislation, such possible future legislation does not give Fenwick the right to contest legislation *which in no way affects its legal rights or powers*. Put another way, Fenwick suffers no "injury-in-fact" from the passage of legislation which affects only counties. Fenwick, like all local governments in Delaware, is always subject to the General Assembly modifying or terminating its zoning authority. Under the Delaware Constitution, zoning authority resides with the General Assembly. If the General Assembly is displeased by a local government's exercise of the power delegated to it, the General Assembly has the authority and ability to take whatever corrective action it deems necessary, including corrective legislation. Local governments may, as was done here, participate in that legislative process, but they cannot override it. Fenwick's distaste for offshore wind and the aesthetics of the turbines far off-shore has nothing whatsoever to do with this case. Fenwick lacks standing. The Court of Chancery was correct.

CONCLUSION

Under the Delaware Constitution, the General Assembly has the authority not only to grant zoning powers to local governments, but to limit, restrict, or revoke zoning authority previously delegated to local governments. And, because the General Assembly has this authority, it did not violate the "separation of powers" doctrine nor did it "interfere" with Sussex County's zoning authority – after all, under Delaware's Constitution, the General Assembly is where zoning power resides. As a result, the General Assembly has the ultimate say when it comes to zoning.

To the extent that Appellants complain about the title of the Legislation, this claim is also without merit. There was extensive media coverage, and, in fact, Sussex County's legislators fought vigorously against the Legislation. The Legislation's title did not create a "trap for the unwary." Rather, it addresses substations which are, of course, a matter that inherently involves "public utilities" – a fact clearly and concisely declared in its title. Finally, Appellants' claims regarding due process fail for the reasons discussed above.

Appellants may disagree with the State's commitment to renewable energy and they may dispute the benefits it will bring – but it is the General Assembly, and not Sussex County, which determines Delaware's energy policy. Where a local government seeks to use its delegated zoning power to interfere with important

policy goals established by the General Assembly, the General Assembly is entirely within its rights under the Delaware Constitution to make clear its supremacy and to make sure that delegated zoning powers are not used to interfere with, or stop, what the General Assembly believes is critical for the State's energy future. Appellants' recourse is through their duly elected state legislators and the legislative process.

Respectfully submitted,

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