EFiled: May 14 2026 10:36AM EDT
Filing ID 79468897
Case Number 153,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TOWN OF FENWICK ISLAND and SUSSEX COUNTY, *Plaintiffs-Below, 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., *Defendants-Below, Appellees*.	)	No. 153, 2026

ON APPEAL FROM DECISION OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE

APPELLANTS' SUSSEX COUNTY AND TOWN OF FENWICK ISLAND'S REPLY BRIEF

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ARGUMENT

I. THE STATE'S ENACTMENT OF SB 159 VIOLATES THE DOCTRINE OF SEPARATION OF POWERS IN THE DELAWARE CONSTITUTION, AS IT PURPORTS TO OVERRIDE AND REVERSE A PRIOR, LAWFUL, QUASI-JUDICIAL ZONING DECISION BY SUSSEX COUNTY.

As this Court noted in *Evans v. State*, 872 A.2d 539, 553 (2005), "'it is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it.'" (citing *Marbury v. Madison*, 5 U.S. 37 (1803)). In SB 159, the Legislature is clearly engaging in conduct of an adjudicatory nature. This is apparent from the plain language of the bill itself, in which the first four words are a direction as to how to decide a particular case decision: "***No county shall deny*** a conditional use permit to any electrical substation . . . where the following conditions apply." (OB, Exhibit B). Section 2 of the bill amplifies this violation by explicitly providing that the Act (compelling the granting of a permit) "shall have ***retroactive*** effect, and any previous application to a county . . .***shall be deemed to be approved***, *notwithstanding any adverse action which a county may have already taken* with respect to such application." *Id*.

Defendants claim that there can be no separation of powers violation because the County is not a "co-equal branch of government" with the State legislative branch. (AB at 14). Obviously, no junior sovereign – county or municipality – is an independent or co-equal "branch" of State government *per se,* just as no State is

a "branch" of the federal government, although each is an integral part of the larger sovereign. But the "branch" argument is entirely misplaced, and does not mean that junior sovereigns (whether State as to federal, or County as to State) do not also carry out various functions of government (executive, legislative *and* judicial) within their own lawful scope of jurisdiction.

Defendants admit – and the Court of Chancery also found -- that County Council's action in approving or denying zoning permits are "quasi-judicial" in nature, but argue that, because local governments are not separate and independent branches of government, separation of powers cannot apply because the bill did not "usurp" or "interfere" with another branch. (AB at 18-19).

Defendants' argument again misses the mark as, in a separation of powers challenge, it does not matter whether the legislative action targets a great judicial entity (*i.e.* in *Evans*, *supra*, where HB 31 attempted to declare a holding of the Delaware Supreme Court "null and void") or a small, quasi-judicial one (*Sierra Club*'s consideration of the *Evans* holding relative to a decision of the Environmental Appeals Board)[1]. Rather, to determine whether a separation of powers violation has occurred, ***the focus must be on the conduct of the body being challenged****– here the*

1 *Sierra Club v. DNREC*, 2006 WL 1716913, (Del. Ch. 2006), *aff'd sub nom. Sierra Club v. Delaware Dep't of Nat. Res. & Env't Control,* 919 A.2d 547 (Del. 2007).

legislature – which allegedly exceeded its powers – not on the identity or size of the body whose jurisdiction it has allegedly infringed.

In fact, Defendants wrongly characterize the *Evans* holding as a finding that the General Assembly attempted to "usurp" a power of the Supreme Court. In actuality, the focus of *Evans* was on the "encroachment" by the legislative branch into the adjudicatory arena, in a particular case, or the attempt to *exercise* judicial authority. "'A legislature without exceeding its province cannot reverse a determination once made, in a particular case; though it may prescribe a new rule for future cases.'" *Id* at 548.

The Delaware General Assembly possesses only those powers granted to it by Constitution, and has been granted (only) "[t]he legislative powers of this State." Del. Const. Art. II, Section 1. It has <u>not</u> been granted any executive or judicial functions or powers. If, then, the General Assembly engages in activity of an executive or judicial nature, under the guise of enacting legislation, that activity is unauthorized, and exceeds the scope of the Legislature's authority.

"Reversal" of a pre-existing case decision (whether that decision was made by a court or a quasi-judicial body), as in *Evans,* and as here, is the classic example of an overreach of powers by the legislative branch. Despite Defendants' protestations to the contrary, the Court of Chancery in *Sierra Club* considered the *Evans* holding to be relevant in the context of a quasi-judicial decision, and this

Court later affirmed. *Sierra Club* characterized the *Evans* test as one which bars the General Assembly "from reversing an adjudicatory decision in a particular case." *Id* at *3. Notably, the court did not say "a court decision," or "a decision of the judicial branch," but "an *adjudicatory* decision."[2]

It was unnecessary to overrule the legislation on separation of powers grounds, however, because in Sierra Club, the court took pains to note that:

> Indeed, the EAB Order was not even in existence when the Legislature adopted the Bond Bill on June 30, 2005…. Section 81 did not reverse a particular determination made by the EAB, but rather addressed the EAB's request for additional information from DNREC…. Thus, *Evans* is inapplicable in these circumstances.

Id. By clear implication, had Section 81 actually reversed a "particular determination" by the EAB, such action by the General Assembly would have been subject to the rule set forth in *Evans* (and likely reversed), even though it involved a quasi-judicial determination.

In *Opinion of the Justices*, *supra*, this Court considered an unconstitutional attempt by the legislature to transfer certain powers of Executive division to itself -

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2 *See also Opinion of the Justices*, 380 A.2d 109, 113 (Del. 1977) (focus is on the "inherent" nature of the legislative act – that is whether it is legislative or judicial (or executive) in nature). Contrary to the case law's focus on whether the *action being taken by the General Assembly* is within *its* constitutional authority (that is--legislative), Defendants erroneously place their focus on the allegedly inferior status of Sussex County, as "not a branch" of the State government.

- noting that among the hallmark considerations as to whether a violation of separation of powers has occurred with a legislative enactment are: whether there is "a coercive influence" upon the target body/agency, and "is the objective of the legislature obviously one of establishing its superiority over the executive department in an area essentially executive in nature?" It is plain, and admitted by Defendants that SB 159 was coercive in nature[3], and deliberately crafted to superimpose the legislature's judgment upon Sussex County-- which was characterized as little more than a recalcitrant obstacle to the Legislature's goal of facilitating US Wind's (RRLLC's parent) offshore wind project.

Finally, it bears noting that the Legislature's policy goals regarding wind power, clean energy and the like are completely immaterial to the question of whether SB 159 violated the separation of powers doctrine (and the other constitutional claims raised herein). The question is whether this bill constituted an unauthorized foray by the Legislature into a judicial arena, when it purported to retroactively "reverse" a case decision, and "grant" a permit application by operation of law – a permit which had already been denied by a quasi-judicial body with full

3 Defendants opine at length that Sussex County's action in denying the local zoning permit thwart's the State's legislative energy goals (AB at 4, 8-12), and states (using judicial language) that "all the Legislation does is *correct what the General Assembly found* to be a mis-use of … authority in denying the conditional use permit…." (AB at 22, fn. 35) (emphasis added).

legal authority over the issue. SB 159 is either constitutionally valid, or it is not; and if it is not, no amount of "policy" reasons can, or should, save the Act.

The court below found, and Defendants do not dispute, that ruling upon conditional use permits is a quasi-judicial action. They further admit that the legislature's sole purpose with SB 159 was to "reverse" Sussex County Council's decision denying RRLLC's zoning application. Little more evidence is needed. This case suffers from the same constitutional infirmity as did HB 31 in *Evans*. Granting or denying permit applications, and retroactively reversing case decisions to obtain the outcome desired by the General Assembly, is not legislative action, and the General Assembly fundamentally exceeded its constitutional authority when it enacted SB 159.

II. THE GENERAL ASSEMBLY IS GRANTED LEGISLATIVE AUTHORITY BY ARTICLE II, SECTION 25 OF THE DELAWARE CONSTITUTION, AND MAY DELEGATE THAT AUTHORITY, BUT IT MAY NOT EXERCISE THE ADMINISTRATIVE AND QUASI-JUDICIAL POWERS ATTENDANT TO THE EXECUTION OF THAT AUTHORITY.

The General Assembly is authorized, by the Delaware Constitution, in Article II, Section I, with the exclusive authority over "the legislative power of the State." The General Assembly is also authorized, by that same document, in Article II, Section 25, to delegate specific legislative authority by enacting laws which allow the counties to adopt "**zoning ordinances, laws or rules** limiting…and regulating…structures… as well as the use to be made of land…" (emphasis added) The General Assembly did, in fact, grant Sussex County that power through 9 *Del.C.* § 6902, outlining with specificity the scope of the County's authority.

In the present case, the General Assembly did not exercise its constitutional power with regard to the delegation of authority over zoning ordinances, laws and rules, but substituted its judgment for that of Sussex County, as to a particular case. No claim has been made that the County acted *ultra vires*, that is, without authority at the time it acted or in some way not in compliance with the rules and regulations it had enacted. It is undisputed that the County possessed full authority to act as it did when it decided this matter.

Had the General Assembly wanted to address the zoning of a certain type of

use, retain authority unto itself, or restrict the County in certain matters, Plaintiffs might not have contended it was outside the legislative authority of the General Assembly to do so. That is not what the General Assembly did in this case. Here, the General Assembly addressed a specific application, made a determination of a quasi-judicial nature, and granted a permit. It is that conduct that constitutes one component that makes this case one of first impression. The other is that the General Assembly executed that decision retroactively, after a body with authority to decide the matter had done so – a body that had followed the laws, rules and regulations requiring notice, testimony and deliberation, and made a quasi-judicial decision.

None of the cases Defendants cite address a General Assembly acting in this manner with regard to a zoning matter, and they could not do so, regardless of the hours they would search. That is because, with the noted and significant exception of *Eva*ns, no legislature has previously stepped so outside of their authority.

Defendants write pages regarding the importance of energy policy in Delaware, but that is not a matter before this Court. This appeal is not about the merits of RRLLC's application, or how dire some in the General Assembly view climate issues. This case does not involve a challenge to the General Assembly's authority to legislate, but, rather, its authority to apply those rules and regulations and decide a quasi-judicial matter.

It is not within the authority of the General Assembly to exercise the

administrative (executive) or quasi-judicial powers required to apply the zoning regulations to a specific application. That rests with Sussex County, and is precisely the authority Sussex County exercised in making the case decision in 2024. That is also precisely what the General Assembly took upon itself to do, without authority, in SB 159. The General Assembly is not equipped by either constitutional authority or structure to conduct the consideration of zoning applications.

DNREC v Sussex County, citing *Hayward,* demonstrated that the County, having properly conducted the procedures to adopt zoning regulations, could *supersede* the executive branch in resolution of a conflict between a zoning decision and a state regulation. The reasoning was that:

> The General Assembly has **ceded** primary responsibility for land use control to county and municipal governments. In this delegation of its power over land use, the General Assembly, in effect, has **surrendered** that incident of its sovereignty to subordinate governmental entities.

Del. Dept. of Natural Resources and Envt'l Control v. Sussex County, 34 A.3d 1087 (Del. 2011) at 1090, *citing Hayward v. Gaston*, 542 A.2d 760, 766 (Del. 1988) (emphasis added).

Similarly, once the General Assembly, a co-equal branch of government with the Executive Branch, has delegated zoning authority to the County through Article II, Section 25 and 9 *Del.C.* §6902(a), it cannot reverse or act inconsistently with an existing zoning decision of the County made pursuant to that lawfully delegated

authority.

Defendants minimize the significance of *Hayward,* but *Hayward* is critical to the resolution of the zoning issues presently before the Court. In *Hayward*, the Delaware Supreme Court ruled that the State did not have sovereign immunity from Kent County zoning ordinances regulating group homes. The Court rejected the hierarchical approach which the Chancery Court applied:

> We find that the hierarchical approach to land use disputes between competing governmental entities, as urged by the Department, is both simplistic and archaic. . . .The regulation of land use through zoning and building regulations, however, has not been traditionally a matter of State concern in Delaware.

Hayward v. Gaston, 542 A.2d at 766. And, in *Concerned Citizens of Cedar Neck, Inc. v. Sussex County*, 1998 WL 671235 (Del. Ch. 1998), this Court found that the "final decision rests with Sussex County," and upheld the County's authority and decision. *Id* at *6.

Defendants cite multiple instances involving conflicts between state law and local regulation, such as 29 *Del.C.* §4819 (video lottery) and 7 *Del.C.* §7003 *et. seq*., (Coastal Zone Act), but this is not a conflict of laws case. The laws and regulations the County enacted remain the same. SB 159 did not change any of them. The County could hear another application for a substation and make a determination without limitation by any of the terms of SB 159, because SB 159 solely addresses this project and this parcel.

Remarkably, Defendants acknowledge that "'[q]uasi-judicial' simply means that a legislative body is applying the law it enacted to a particular application". (AB at 18). They then claim that the legislature took "quasi-judicial action in this matter to carry out "existing legislative policy". *Id.* But, the General Assembly does not have "quasi-judicial" authority, only legislative authority.

Particularly concerning is the Chancery Court's conclusion that the General Assembly may exercise its plenary authority over zoning at any time, on a case-by-case basis. The danger is that the Chancellor's language suggests the General Assembly may intervene, at any time, to act regarding specific matters, as the General Assembly chooses. Such a holding necessarily eliminates any finality for decisions made by those entities to which authority has been delegated by the General Assembly, and disrupts the orderly administration of the laws and regulations which those entities were authorized to adopt and are entitled to implement.

Neither the Court below nor the Defendants cite to any statutory or case law authority that affirmatively holds that the General Assembly can reverse a valid decision of a County or other subdivision which was properly made under lawfully promulgated zoning ordinances. Accordingly, SB 159 violates Article II, Section 25 of the Delaware Constitution because it illegally usurps the power to make zoning case decisions after the County has already exercised duly delegated zoning

authority, and extends beyond the authority of the General Assembly to act in a legislative capacity only.

III. THE STATE'S ENACTMENT OF SB 159, AS AN AMENDMENT TO TITLE 26 OF THE DELAWARE CODE ("PUBLIC UTILITIES") VIOLATES ARTICLE II, SECTION 16 OF THE DELAWARE CONSTITUTION.

Article II, Section 16 of the Delaware Constitution of 1897 contains two separate provisions. First, a bill may contain only one subject. Second, other than appropriations bills, that subject "*shall be expressed in its title*." The Supreme Court of Delaware confirmed that the dual requirements of Article II, § 16 were included in the Delaware Constitution of 1897 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." *Turnbull v. Fin*k, 668 A.2d 1370 (Del. 1994) (*citing Opinion of the Justices*, 194 A.2d 855, 856 (Del. 1963)).

SB 159 violates the title requirement of Article II, Section 16. The General Assembly titled the bill "An Act to Amend Title 26 of the Delaware Code Relating to Public Utilities." However, by the very terms of the legislation itself, the bill addresses "conditional use permits," a county zoning function. The text of the Act, beginning with "[n]o county shall deny a conditional use permit . . . where the following conditions apply…", has nothing to do with "Public Utilities" and everything to do with placing limitations on the exercise of local zoning authority.

SB 159, by its title and placement within Title 26 of the Delaware Code, did not provide adequate notice of the subject matter of the bill to the public. The

legislation did not otherwise address or regulate any aspect of a "public utility". The General Assembly created a provision which overruled a specific local zoning decision of Sussex County, and placed it in Title 26 of the Delaware Code – a Title related to public utilities. While the majority in *Turnbull* did not invalidate a liability cap because it was enacted in the Bond Bill, SB 159 is not an appropriation bill and therefore the single subject requirement applies.

The intent of the "title" provision is to ensure fair and reasonable notice of the subject matter of bills. *See Opinion of the Justices*, 194 A.2d at 856. As in *Evans v. State, supra*, two paragraphs of SB 159 (which were not codified along with the balance of the bill) differ entirely from the title: they grant a permit, entirely and retroactively undo a decision by the Sussex County Council and prohibit the Council from enacting any rule or regulation that might be considered to "disqualify" a single company from exercising the permit which the General Assembly granted. Just as the title in *Evans*, according to the Chancellor, "failed to alert the judiciary"[4], this bill's title violates Article II, § 16 of the Delaware Constitution.

In fact, the bill should be titled, "An Act Granting Renewable Redevelopment's Application for a Conditional Use Permit." It is specific to one project and one parcel, and reverses, then restricts, the County's ability to exercise lawful zoning

4 *See* Order at 37.

authority already granted by the General Assembly. There is only one stated purpose to the bill, and it is not about public utilities; it is about the County's zoning authority. Indeed, the text begins, "[n]o county shall deny a conditional use permit . . . where the following conditions apply…." Apart from this project involving a "substation," this bill addresses no aspect of "public utilities."

Equally, SB 159 is in violation of the prohibition in Article II, Section 16 against embracing multiple subjects within a bill, not clearly identified by title. There can be no credible claim that this bill does not address zoning. The sponsors and legislators said so. The language of the bill says so. Defendants' briefs are replete with arguments about the State's zoning authority. Zoning provisions and restrictions on the exercise of zoning authority continue into Section 2 (not codified) of the bill. Even if the determination is made that the bill addresses a matter related to power (however remotely), SB 159 remains clearly in violation of Article II, Section 16. The bill exercises and regulates zoning authority, but only references public utilities in the title.

Defendants suggest that, even if SB 159's title did not disclose that it applied to counties and zoning, that no one was actually "trapped into inaction," because there were intensive debates and "extensive media coverage" about the legislation. (AB at 31). This type of "no harm, no foul" finds no place in this Court's assessment of whether a constitutional violation has taken place. The title either passes muster

under Article II, Section 16, or it does not.

Defendants rely on *Klein v. National Pressure Cooker Co*., 64 A.2d 529 (Del. 1949), which states, as a statutory construction principle, that a statute is presumed constitutional and that Article II, Section 16 is to be construed liberally. However, *Klein* also says "[i]n determining whether or not the subject of the Act is expressed in the title, the whole language of the Act should be considered *as well as its manifest purpose and scope*." *Klein* at 532 (emphasis added, citations omitted). Another important distinction is that *Klein* did not involve a facial challenge to the Constitution. This Court in *Albence v. Higgin* noted that any presumption that a statute is constitutional will not prevail when the statute is facially inconsistent with the Constitution:

> As the Court of Chancery noted, when evaluating the constitutionality of a challenged statute, the court shows "deference to legislative judgment in matters 'fairly debatable.'" . . . . But when such a construction discerns a conflict between the Constitution and a statute, the Constitution will prevail. Indeed, the foundation upon which our constitutional jurisprudence is built is the principle that "the constitution controls any legislative act repugnant to it." It follows that "an act of the legislature repugnant to the constitution is void."

Albence v. Higgin, 295 A.3d 1065, 1088–89 (Del. 2022) (citations omitted).

IV. SB 159 VIOLATES DUE PROCESS BY TRANSFORMING THE COUNTY'S CONDITIONAL USE REVIEW AND PERMITTING PROCESS, INTO AN ARBITRARY STATE GRANT OF A CONDITIONAL USE "AS OF RIGHT," WHICH ELIMINATES THE DUE PROCESS PROCEDURES WHICH THE ZONING AUTHORITY IS OBLIGATED TO PROVIDE.

Defendants avoid or mischaracterize Plaintiffs' arguments about due process in the context of zoning decision. Plaintiffs do not argue, as Defendants state that the *legislation* (SB 159) should itself provide the due process provisions. Rather, it is the very fact of mandating the "approval" of a "conditional" use zoning application by operation of law, that eliminates the specific due process guarantees which are required for all zoning decisions under both local and State law.

Sussex County Code specifically provides that certain uses in the county, including substations, are permissible only by conditional use, and further sets up detailed procedural requirements, including an application process and public hearings, by which one can apply for a conditional use permit -- a process that RRLLC itself went through in 2024. *See* Sussex County Zoning Code §115-13 (conditional uses in HI-1 District); Article XXIV, Conditional Uses, §115-173; Article XXVIII, §115-216 (Changes and Amendments, including requirements of ordinance and public hearings before Planning and Zoning Commission and County Council). As the name implies, even when a conditional use is approved, it may still

have "conditions" attached to it – conditions reflecting a response to the evidence heard during the permitting process.

Clearly these are valid procedural requirements duly adopted by Sussex County by virtue of the delegation of zoning powers to the County by Article II, Section 25 of the Delaware Constitution and 9 *Del.C.* §6902(a). Not only that, but *State law* as well requires that public hearings be held for conditional use applications and other zoning changes. 9 *Del.C.* §6910(a) specifically provides that "[b]efore the adoption of any zoning proposal or zoning regulations, the county government shall hold a public hearing in accordance with §7002(m) of this title." *See also* 9 *Del.C.* §6911(b) (requirement of at least 1 public hearing prior to changes to the zoning map). Clearly there are a host of legal requirements in both State and County law that set forth processes that must be followed before zoning changes are made.[5]

Defendants respond that there is no violation because "the General Assembly has imposed no such requirements on itself." This is certainly true – and it is *because*

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5 Indeed, many sections of Title 9, Chapter 69 are either disregarded or superseded by SB 159's attempt to exercise zoning decisions in the guise of "An Act Relating to Public Utilities." *See e.g.* 9 *Del.C.* §6902(a)(county government's authority to regulate zoning); §6903 (county's authority to regulate districts, and requirement that regulations must be uniform within districts); §6904 (purpose of zoning regulations is the local public welfare); §6910-6911 (zoning changes requiring public hearing and process); §6923 (resolution of conflicts between zoning regulations and other laws, with stricter enactment prevailing).

the General Assembly lacks the power to make quasi-judicial zoning decisions – the type of decisions to which such due process would be attendant.

Plaintiffs do not claim that they are entitled to some particular due process rights "relating to the legislative process" (that is, the passing of legislation). However, the substantive effect of SB 159 is not legislative, it is a directive to mandate approval of one type of zoning application, and to "grant" or "deem approved" one particular zoning permit – one that was previously denied under the proper procedural mechanisms in place for county zoning determinations.

Defendants distinguish the facts of *Citizens Coal., Inc. v. Cnty. Council of Sussex Cnty.*, 773 A.2d 1018, 1023 (Del. Ch. 2000), but fail to address or explain why the Court's central pronouncement in that case, as to Sussex County's *obligation* to "provide its citizens with procedural due process . . . in connection with zoning changes", does not undermine the legality of SB 159, which completely divests the County of its authority to provide due process as to a highly controversial zoning application, which has already been once denied.

V. FENWICK ISLAND HAS STANDING TO CHALLENGE SB 159 AS IT FACES A REAL RISK OF HARM TO ITS DELEGATED ZONING AUTHORITY, RIGHTS AND JURISDICTION BASED UPON THE COURT OF CHANCERY'S FINDING THAT THE STATE CAN ALTER ZONING DECISIONS ON A CASE-BY-CASE BASIS.

The preceding arguments, challenging the constitutionality of SB 159, lay out precisely why Plaintiff, the Town of Fenwick Island, has standing in this matter. The Town has expressed concern that, if this legislation is permitted to stand, the General Assembly will view that as endorsement of the right of the legislature to invade the Town's legally protected authority. As stated above, the authority to hear and determine zoning matters rests with the subdivision pursuant to authority fully delegated by the General Assembly. The harm is the intrusion into and infringement of the lawful exercise of the authority of the subdivisions of the State.

The Town of Fenwick Island, like the counties, has been delegated local zoning authority in Title 22 of the Delaware Code, Chapter 3, in language much like that found in Title 9, Chapter 69. Pursuant to that authority, the Town has adopted its own zoning ordinances and regulations, and regularly makes zoning determinations. Thus, Fenwick Island is affected in that there is a "real risk" that the exercise of their lawfully delegated authority to make zoning determinations within its jurisdiction is now called into question, rendering any decision the Town makes uncertain, and, because the case in question involves retroactive action, those decisions will remain uncertain indefinitely, potentially affecting existing zoning

classifications and property rights. *See Cont'l Auto. Sys., Inc. v. Nokia Corp.*, 2023 WL 1370523, *6 (Del. Ch. Jan. 31, 2023) (noting that Delaware courts take a flexible approach to standing, and a "'risk of real harm' may qualify as concrete."). The Town has demonstrated standing sufficient to challenge the legislation.

CONCLUSION

For the foregoing reasons and the reasons outlined in Appellants' Opening Brief, the Court of Chancery's denial of Plaintiffs' Motion for Summary Judgment was in error. this Court should declare that and permanently enjoin its application. Appellants respectfully request that this Court REVERSE the decision of the trial court and ORDER that SB 159, as enacted by the General Assembly, is unconstitutional and of no force or effect.

Respectfully submitted,

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DATED: May 14, 2026