



IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS DREW RUTLEDGE,

Plaintiff Below,
Appellant,

v.

CLEARWAY ENERGY GROUP
LLC, and CHRISTOPHER SOTOS,

Defendants Below,
Appellees,

and

CLEARWAY ENERGY, INC.,

Nominal Defendant Below,
Appellee.

No. 248, 2025

Certification of Questions of Law
from the Court of Chancery

C.A. No. 2025-0499-LWW

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TABLE OF CONTENTS

	Page
TABLE OF CITATIONS	iii
NATURE OF PROCEEDINGS.....	1
SUMMARY OF ARGUMENT	3
STATEMENT OF FACTS	6
I. Legal Background	6
A. The Historical Role of Legislatures in Matters of Equity	6
B. The Common-Law Standards Governing Fiduciary Duty Claims	9
C. Bipartisan Supermajorities in the General Assembly Amend Section 144.....	12
II. Facts And Procedural Background.....	16
ARGUMENT	17
I. Section 144 Comports with Article IV, Section 10.	17
A. Question Presented.....	17
B. Scope of Review	17
C. Merits of Argument.....	17
1. Article IV, Section 10 Allows the General Assembly to Enact Statutes Governing Fiduciary Duty Claims.....	18
2. Section 144 Does Not Violate Article IV, Section 10.	22
3. Plaintiff’s Contrary Arguments Are Unpersuasive and Would Unsettle Delaware Law.....	25
II. Section 144 Is Constitutional Under Article I, Section 9.....	33

A.	Question Presented.....	33
B.	Scope of Review	33
C.	Merits of Argument.....	33
1.	Section 144 Does Not Retroactively Eliminate a Cause of Action or Any Other Vested Right.....	34
2.	Even if Section 144 Affected Vested Rights, It Would Be Constitutional.	41
	CONCLUSION.....	44

TABLE OF CITATIONS

	Page(s)
Cases	
<i>A.W. Fin. Servs., S.A. v. Empire Rsch., Inc.</i> , 981 A.2d 1114 (Del. 2009).....	38, 39
<i>In re Am. Waste & Pollution Control Co.</i> , 597 So. 2d 1125 (La. Ct. App. 1992).....	40
<i>Artesian Water Co. v. Gov't of New Castle Cnty.</i> , 1983 WL 17986 (Del. Ch. Aug. 4, 1983).....	38
<i>In re Arzuaga-Guevara</i> , 794 A.2d 579 (Del. 2001).....	3, 19, 20
<i>ATP Tour, Inc. v. Deutscher Tennis Bund</i> , 91 A.3d 554 (Del. 2014).....	9
<i>Bach v. Longman</i> , 98 Eng. Rep. 1274 (1777).....	7
<i>Benihana of Tokyo, Inc. v. Benihana, Inc.</i> , 906 A.2d 114 (Del. 2006).....	12
<i>Berry v. Beech Aircraft Corp.</i> , 717 P.2d 670 (Utah 1985).....	38
<i>Bradley v. Sch. Bd. of Richmond</i> , 416 U.S. 696 (1974).....	36
<i>Brehm v. Eisner</i> , 746 A.2d 244 (Del. 2000).....	12, 23
<i>Brookfield Asset Mgmt., Inc. v. Rosson</i> , 261 A.3d 1251 (Del. 2021).....	35
<i>Burgess v. Wheate</i> , 96 Eng. Rep. 67 (1759).....	7
<i>Campbell v. State</i> , 1986 WL 8178 (Del. Super. Ct. July 18, 1986).....	41

<i>Cede & Co. v. Technicolor, Inc.</i> , 634 A.2d 345 (Del. 1993)	10, 11
<i>Cheswold Volunteer Fire Co. v. Lambertson Constr. Co.</i> , 489 A.2d 413 (Del. 1984)	4, 35, 37, 38
<i>Clark v. Teveen Holding Co.</i> , 625 A.2d 869 (Del. Ch. 1992)	27
<i>CML V, LLC v. Bax</i> , 28 A.3d 1037 (Del. 2009)	20, 28
<i>Corwin v. KKR Fin. Holdings LLC</i> , 125 A.3d 304 (Del. 2015)	12, 23
<i>In re Cox Commc 'ns, Inc. S'holders Litig.</i> , 879 A.2d 604 (Del. Ch. 2005)	11, 31
<i>Donaldson v. Beckett</i> , 1 Eng. Rep. 837 (1774)	7
<i>Douglas v. Thrasher</i> , 489 A.2d 422 (Del. 1985)	27
<i>Dunn v. Felt</i> , 379 A.2d 1140 (Del. Super. Ct. 1977)	37
<i>Dunn v. St. Francis Hosp., Inc.</i> , 401 A.2d 77 (Del. 1979)	37
<i>DuPont v. DuPont</i> , 85 A.2d 724 (Del. 1951)	3, 7, 8, 18, 19, 27
<i>DuPont v. Fam. Ct. of New Castle Cnty.</i> , 153 A.2d 189 (Del. 1959)	20
<i>Future Ford Sales, Inc. v. Pub. Serv. Comm'n</i> , 654 A.2d 837 (Del. 1995)	41
<i>Gallegher v. Davis</i> , 183 A. 620 (Del. Super. Ct. 1936)	35

<i>Glanding v. Indus. Tr. Co.,</i> 45 A.2d 553 (Del. 1945)	8, 20
<i>Glassman v. Unocal Expl. Corp.,</i> 777 A.2d 242 (Del. 2001)	3, 9, 20, 30
<i>Gottlieb v. Heyden Chem. Corp.,</i> 91 A.2d 57 (Del. 1952)	11
<i>Hazzard v. Alexander,</i> 173 A. 517 (Del. Super. Ct. 1934)	35
<i>Hughes v. Bd. of Pro. Resp. of Sup. Ct. of Tenn.,</i> 259 S.W.3d 631 (Tenn. 2008)	40
<i>Hunter v. Sch. Dist. of Gale-Ettrick-Trempealeau,</i> 293 N.W.2d 515 (Wis. 1980)	38
<i>Ieropoli v. AC&S Corp.,</i> 842 A.2d 919 (Pa. 2004)	40
<i>Justice v. Gatchell,</i> 325 A.2d 97 (Del. 1974)	17
<i>Kahn v. Lynch Commc’n Sys., Inc.,</i> 638 A.2d 1110 (Del. 1994)	11
<i>Kahn v. M&F Worldwide Corp.,</i> 88 A.3d 635 (Del. 2014)	11, 12, 15
<i>Malpiede v. Townson,</i> 780 A.2d 1075 (Del. 2001)	9, 29, 30
<i>In re Match Grp., Inc. Derivative Litig.,</i> 315 A.3d 446 (Del. 2024)	9, 11, 12
<i>McMahon v. New Castle Assocs.,</i> 532 A.2d 601 (Del. Ch. 1987)	9
<i>Monacelli v. Grimes,</i> 99 A.2d 255 (Del. 1953)	39, 40, 41

<i>New Enter. Assocs. 14, L.P. v. Rich</i> , 295 A.3d 520 (Del. Ch. 2023)	3, 21, 24, 26, 28, 29, 31, 32
<i>Pardo v. State</i> , 160 A.3d 1136 (Del. 2017)	17
<i>Perez v. Marshall</i> , 946 F. Supp. 1521 (S.D. Cal. 1996)	40
<i>Price v. All Am. Eng’g Co.</i> , 320 A.2d 336 (Del. 1974)	41, 42
<i>Rennick v. Glasgow Realty, Inc.</i> , 510 F. Supp. 638 (D. Del. 1981)	39, 40
<i>San Carlos Apache Tribe v. Super. Ct.</i> , 972 P.2d 179 (Ariz. 1999)	38
<i>Schoon v. Smith</i> , 953 A.2d 196 (Del. 2008)	31
<i>Seavitt v. N-Able, Inc.</i> , 321 A.3d 516 (Del. Ch. 2024)	39
<i>Sheehan v. Oblates of St. Francis de Sales</i> , 15 A.3d 1247 (Del. 2011)	17, 32, 34
<i>Smith v. Van Gorkom</i> , 488 A.2d 858 (Del. 1985)	9
<i>State v. Bates</i> , 2 Del. (2 Harr.) 18 (Del. Super. Ct. 1835)	8
<i>Sterling v. Mayflower Hotel Corp.</i> , 93 A.2d 107 (Del. 1952)	11
<i>In re Tesla Motors, Inc. S’holder Litig.</i> , 298 A.3d 667 (Del. 2023)	12
<i>Thorp v. Casey’s Gen. Stores, Inc.</i> , 446 N.W.2d 457 (Iowa 1989)	40

<i>Totta v. CCSB Fin. Corp.</i> , 2022 WL 1751741 (Del. Ch. May 31, 2022).....	3, 10, 20, 21, 24, 26, 28
<i>Town of Cheswold v. Cent. Del. Bus. Park</i> , 188 A.3d 810 (Del. 2018)	41
<i>In re Trados Inc. S’holder Litig.</i> , 73 A.3d 17 (Del. Ch. 2013)	10, 36
<i>Turner v. United States</i> , 514 F.3d 1194 (11th Cir. 2008)	40
<i>United States v. Bell</i> , 371 F.3d 239 (5th Cir. 2004)	40
<i>Unocal Corp. v. Mesa Petroleum Co.</i> , 493 A.2d 946 (Del. 1985)	15
<i>Usery v. Turner Elkhorn Min. Co.</i> , 428 U.S. 1 (1976).....	42, 43
<i>Van Winkle v. State</i> , 91 A. 385 (Del. 1914)	42
<i>Weinberger v. UOP, Inc.</i> , 457 A.2d 701 (Del. 1983)	11
<i>Wien v. State</i> , 882 A.2d 183 (Del. 2005)	17
<i>Woods v. Coty</i> , 180 A. 587 (Del. Ch. 1935)	8
Constitutional Provisions	
Del. Const., art. I, § 9	34
Del. Const., art. II, § 1	3, 20
Del. Const., art. IV, § 10	3, 18, 30
Del. Const., art. IX, § 1	3, 20

Statutes

8 Del. C. § 102	29
8 Del. C. § 122	29
8 Del. C. § 141	31
8 Del. C. § 144	1, 2, 13, 14, 15, 23, 26, 36
8 Del. C. § 174	31
8 Del. C. § 253	30
8 Del. C. § 327	31
8 Del. C. § 367	31
10 Del. C. § 341	3, 8, 19, 22, 27
10 Del. C. § 342	3, 8, 19
12 Del. C. § 3301	32
12 Del. C. § 3303	32
12 Del. C. § 3586	32
12 Del. C. § 3588	32
10 Del. Laws 445 (1899)	8
85 Del. Laws, ch. 6 (2025).....	1, 13, 33
42 U.S.C. § 2000e-2.....	26

Other Authorities

Andrew F. Tuch, <i>Reassessing Self-Dealing: Between No Conflict and Fairness</i> , 88 Fordham L. Rev. 939 (2019)	10, 11
21 C.J.S. Courts § 18 (2025).....	19
<i>Delaware’s 102(b)(7) Exculpation of Senior Officers - One Year Later</i> , Jenner & Block (Sept. 2023)	29

Emilio Ragosa, <i>Amendment to DGCL Section 102(b)(7): Implications for 2024</i> , DLA Piper (May 22, 2024).....	29
Eric S. Klinger-Wilensky et al., <i>Thirty Years Later—Why Corporations Continue to Choose Delaware: General Perspectives and Thoughts on Proposed Amendment</i> , Harv. L. Sch. Forum on Corporate Governance (Feb. 20, 2025).....	8, 9
Geoffrey P. Miller, <i>A Modest Proposal for Fixing Delaware’s Broken Duty of Care</i> , 2010 Colum. Bus. L. Rev. 319	29
Hearing On Senate Substitute 1 For Senate Bill 21 Before The Senate (Mar. 13, 2025)	12, 24, 43
Hearing On Senate Substitute 1 For Senate Bill 21 Before The House (Mar. 25, 2025)	12, 43
Howard L. Oleck, <i>Historical Nature of Equity Jurisprudence</i> , 20 Fordham L. Rev. 23 (1951)	6
Jill E. Fisch & Steven Davidoff Solomon, <i>Control and Its Discontents</i> , 173 U. Penn. L. Rev. 641 (2025)	13, 43
Owen W. Gallogy, <i>Equity’s Constitutional Source</i> , 132 Yale L.J. 1213 (2023)	6, 7
S. Substitute No. 1 For S.B. 21, 153rd Gen. Assemb. (Del. 2025)	24, 37
3 William Blackstone, <i>Commentaries</i>	7

NATURE OF PROCEEDINGS

Plaintiff seeks to invalidate a provision of the DGCL enacted by bipartisan supermajorities in the General Assembly, relying on sweeping constitutional theories that depart from centuries of precedent and, if accepted, would upend innumerable provisions of the DGCL and Delaware law more broadly. His arguments should be rejected, and the certified questions should be answered in the negative.

In March 2025, the General Assembly amended Section 144 of the DGCL by enacting Senate Bill 21 (“SB 21”).¹ Amended Section 144 provides a statutory framework for reviewing certain fiduciary-duty claims arising from transactions involving an interested officer, interested director, or controlling stockholder. The law codifies some standards of review developed by this Court, modifies others, and defines key terms. Under Section 144, covered transactions will not give rise to liability if they either: (1) satisfy “safe harbor” criteria ensuring informed, good-faith decision-making by disinterested directors and/or disinterested stockholders; or (2) satisfy traditional entire fairness review.

Plaintiff filed this derivative action in the Court of Chancery in May 2025, following enactment of SB 21. His claims relate to a 2024 transaction in which nominal defendant Clearway Energy, Inc. (“Clearway”) purchased a wind-energy

¹ 85 Del. Laws, ch. 6 (2025), codified in relevant part at 8 *Del. C.* § 144.

asset from its majority stockholder, defendant Clearway Energy Group LLC (“CEG”). Although the transaction was approved by a committee of disinterested directors, Plaintiff alleges that Clearway overpaid and CEG and Clearway’s former CEO (collectively, “Defendants”) violated their fiduciary duties. Because a committee of disinterested directors approved this transaction, it implicates Section 144’s safe harbor for controlling stockholder transactions approved in good faith and without gross negligence by disinterested directors apprised of material facts. 8 *Del. C.* § 144(b)(1).

Plaintiff, however, asked the Court of Chancery to declare amended Section 144 unconstitutional. He contends that it improperly strips the Court of Chancery of jurisdiction in violation of Article IV, Section 10 of the Delaware Constitution, and that it retroactively eliminates accrued causes of action in violation of Article I, Section 9. Clearway and Defendants moved to dismiss.

On May 22, 2025, Plaintiff filed an unopposed motion requesting that the Court of Chancery certify the constitutional questions to this Court. The Court of Chancery granted the motion, and on June 11, 2025, this Court accepted review.

SUMMARY OF ARGUMENT

I. Denied. Amended Section 144 does not strip the Court of Chancery of jurisdiction. Article IV, Section 10 of the Constitution of 1897 provides that the Court of Chancery “shall have all the jurisdiction and powers vested by the laws of this State in the Court of Chancery.” This provision has been interpreted to preserve the court’s authority to hear “all matters and causes in equity” within the general equity jurisdiction of the High Court of Chancery of Great Britain, except where an adequate remedy exists at law. *In re Arzuaga-Guevara*, 794 A.2d 579, 584-86 (Del. 2001) (quoting 10 *Del. C.* §§ 341-42); *see generally* *DuPont v. DuPont*, 85 A.2d 724 (Del. 1951). But the Constitution also vests the General Assembly with the “legislative power,” Del. Const., art. II, § 1, and authorizes it to enact corporate laws, *id.* art. IX, § 1. For centuries, the General Assembly has legislated on matters of equity, and it retains broad authority over fiduciary duty law—including standards of review the Court of Chancery applies to such claims. The Court of Chancery itself acknowledges this authority. *Totta v. CCSB Fin. Corp.*, 2022 WL 1751741, at *15 (Del. Ch. May 31, 2022), *aff’d*, 302 A.3d 387 (Del. 2023); *New Enter. Assocs. 14, L.P. v. Rich*, 295 A.3d 520, 543 (Del. Ch. 2023). This Court has likewise held that when a statute conflicts with traditional equitable principles, it will “resolve th[e] conflict by giving effect [to] the intent of the General Assembly.” *Glassman v. Unocal Expl. Corp.*, 777 A.2d 242, 247-48 (Del. 2001).

These principles compel the conclusion that amended Section 144 is constitutional. The law does not limit the Court of Chancery’s jurisdiction to hear and resolve fiduciary duty claims or other “matters or causes in equity.” Nor does it limit the remedies the Court of Chancery can issue. Indeed, it does not even modify the contours of any fiduciary duty. Amended Section 144 instead sets out a review framework for the Court of Chancery to apply when resolving fiduciary duty claims involving interested transactions—claims that undisputedly remain within the Court of Chancery’s jurisdiction.

Plaintiff cites no case holding that a statute governing equitable claims *within* the Court of Chancery’s jurisdiction violates Article IV, Section 10. This dearth of authority is unsurprising. If accepted, Plaintiff’s theory would upend the separation of powers in Delaware and render unconstitutional foundational provisions of the DGCL—including Sections 102(b)(7), 122(17), 141(e), 174(a), 253, 327, and 367—along with countless other laws. The Delaware Constitution does not require that profoundly destabilizing, antidemocratic result.

II. Denied. For two independent reasons, Section 144 is not unconstitutionally retroactive. *First*, Section 144 does not extinguish fiduciary duty claims; it prescribes the framework for adjudicating them. While Plaintiff may believe his claims stood a better chance under the prior common-law standards, “no one has a vested interest in a rule of the common law.” *Cheswold Volunteer Fire*

Co. v. Lambertson Constr. Co., 489 A.2d 413, 418 (Del. 1984). Because Section 144 does not substantively impair any vested right, applying it to pending cases involving past transactions is both unremarkable and constitutional.

Second, even if Section 144 were conceived as more substantive in nature, it does not extinguish any vested right, and longstanding precedent confirms that the General Assembly may constitutionally impose new obligations affecting vested rights if they rationally serve the public interest. Section 144 easily meets that test. Its framework for fiduciary duty claims involving interested transactions increases certainty and promotes the use of cleansing mechanisms—reinforcing Delaware’s preeminence in corporate law—and its effective date avoids opportunistic lawsuits.

Section 144 is constitutional under this Court’s precedents. The Court should answer both certified questions in the negative.

STATEMENT OF FACTS

I. Legal Background

Plaintiff's challenges implicate the General Assembly's authority to enact laws governing equitable claims. For centuries, Delaware's legislatures and courts have both played a role in shaping the rules governing equity, including fiduciary duty law.

A. The Historical Role of Legislatures in Matters of Equity

The English concept of equity arose in response to the increasing rigidity of the common law. Howard L. Oleck, *Historical Nature of Equity Jurisprudence*, 20 Fordham L. Rev. 23, 26-31, 35 (1951). Equitable powers originally were vested in the Chancellor—"keeper of the King's conscience"—and eventually in the Court of Chancery. *Id.* at 35-36. At first, the Chancellor acted as "a one-man legislature, creating novel remedies and enforcing them in accordance with his conscience." Owen W. Gallogy, *Equity's Constitutional Source*, 132 Yale L.J. 1213, 1244 (2023). But when Parliament assumed legislative supremacy in the seventeenth century, the Court of Chancery relinquished its unbounded discretion and "became like the common-law courts," "proceed[ing] only according to preestablished rules and principles." *Id.* at 1252-53.

Those rules and principles included laws enacted by Parliament. Parliament and the Court of Chancery "divided responsibility" for the "development" of equity.

Gallogy, *supra*, at 1255. “Parliament set policy by enacting general statutes,” including laws modifying “equitable remedies” and “the bounds of Chancery jurisdiction.” *Id.* at 1256. Chancery applied those policies in particular cases, developing equity incrementally by applying “settled rules in new contexts.” *Id.* at 1255-56. Blackstone explained that the Court of Chancery could not “rise above” the law, “either common or statute,” else it would “be a most arbitrary legislator in every particular case.” 3 William Blackstone, *Commentaries* *433. As the Master of the Rolls explained in *Burgess v. Wheate*, “in no case does [equity] contradict or overturn the grounds or principles” of duly enacted law. 96 Eng. Rep. 67, 80 (1759); *see, e.g., Bach v. Longman*, 98 Eng. Rep. 1274, 1274-75 (1777) (applying copyright statute); *Donaldson v. Beckett*, 1 Eng. Rep. 837 (1774) (same).

Delaware continued this tradition of the legislature and judiciary shaping matters of equity. The Court of Common Pleas originally exercised “general equity powers” understood to mirror those of the High Court of Chancery of Great Britain at the time of the founding. *DuPont*, 85 A.2d at 727-28. The Constitution of 1792 created the Court of Chancery as a separate court of equity, vesting it with jurisdiction over equitable matters ““heretofore”” exercised by the Court of Common Pleas. *Id.* at 728. The Constitutions of 1831 and 1897 similarly maintained the Court of Chancery as the court of equity. *Id.* at 729. A series of statutes established as a baseline that the Court of Chancery has jurisdiction over equitable matters where

there is no adequate remedy at law, and this Court held that the Constitution protects this baseline jurisdiction, at least absent a clear statement of contrary legislative intent, *id.*; *Glanding v. Indus. Tr. Co.*, 45 A.2d 553, 559 (Del. 1945). Today, the Court of Chancery’s jurisdiction is codified at 10 *Del. C.* §§ 341-42.

Meanwhile, the General Assembly, like Parliament, exercised legislative authority over matters of equity. As one early court observed, “even in a court of equity” an “act of assembly” would be followed. *State v. Bates*, 2 Del. (2 Harr.) 18, 22-23 (Del. Super. Ct. 1835). In 1899, the General Assembly enacted a comprehensive general corporate code that addressed several equitable matters. These included provisions specifying that an action against a corporation’s receiver does not abate upon the receiver’s death, 10 Del. Laws 445, 460 (1899); *see Woods v. Coty*, 180 A. 587, 588 (Del. Ch. 1935), prohibiting corporations from asserting a usury defense in the Court of Chancery, 10 Del. Laws at 479, 495-96, and requiring a receiver or trustee of an insolvent corporation to be paid “reasonable compensation,” *id.* at 461.

Though the enabling nature of the DGCL left much of Delaware’s corporate law to be developed by the Court of Chancery and this Court in common law, the General Assembly has “historically stepped in” when it determines that “a judicial outcome merits a legislative response.” Eric S. Klinger-Wilensky et al., *Thirty Years Later—Why Corporations Continue to Choose Delaware: General Perspectives and*

Thoughts on Proposed Amendment, Harvard Law School Forum on Corporate Governance (Feb. 20, 2025), <https://perma.cc/M85V-HMCF>. For example, after this Court held that a director’s violation of the duty of care may give rise to personal damages liability, *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985), the General Assembly enacted Section 102(b)(7), which allows corporations to “free directors of personal liability in damages for due care violations,” *Malpiede v. Townson*, 780 A.2d 1075, 1095 (Del. 2001). And after this Court’s decision in *ATP Tour, Inc. v. Deutscher Tennis Bund*, 91 A.3d 554 (Del. 2014), which some interpreted to bless “loser-pays” fee-shifting bylaws, the General Assembly adopted Section 102(f) and amended Section 109(b) to prohibit such provisions. *Klinger-Wilensky*, *supra*. By the same token, this Court has adhered to statutes drawing exceptions to common-law rules, even as the Court has continued developing those rules. *Glassman*, 777 A.2d at 244-48 (short-form merger statute).

As these examples illustrate, the interplay between the legislature and Delaware courts extends to the rules governing fiduciary duties of corporate directors—duties rooted in equity. *McMahon v. New Castle Assocs.*, 532 A.2d 601, 604 (Del. Ch. 1987).

B. The Common-Law Standards Governing Fiduciary Duty Claims

Delaware courts have developed “standards of review” to assess whether directors complied with fiduciary duties. *In re Match Grp., Inc. Derivative Litig.*,

315 A.3d 446, 459 (Del. 2024). These standards of review are distinct from standards of conduct. *In re Trados Inc. S’holder Litig.*, 73 A.3d 17, 35 (Del. Ch. 2013); *see Totta*, 2022 WL 1751741, at *15. A standard of conduct “describes what directors are expected to do”; it refers to the substantive principles defining their “duties of loyalty and care.” *Trados*, 73 A.3d at 35. A standard of review is “the test that a court applies when evaluating whether directors have met the standard of conduct.” *Id.* at 35-36.

The standard of conduct has always prohibited fiduciaries from placing their own interests over the corporation’s. *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 361-62 (Del. 1993). Interested transactions—those in which a fiduciary “appear[s] on both sides of a transaction” or “receive[s] a personal benefit from a transaction”—can cross that line. *Id.*

While that core standard of conduct has remained constant, the standards of review that courts apply to fiduciary duty claims have evolved over time, shaped through the combined efforts of the judiciary and General Assembly. Traditionally, English courts applied the “no-conflict rule,” which prohibited interested transactions altogether. Andrew F. Tuch, *Reassessing Self-Dealing: Between No Conflict and Fairness*, 88 Fordham L. Rev. 939, 945 & n.28 (2019). This rule “admit[ted] no inquiry into the merits of a self-dealing transaction”—directors could

not “save a transaction by showing that it is fair to the company.” *Id.* at 945; *see In re Cox Commc’ns, Inc. S’holders Litig.*, 879 A.2d 604, 614-15 (Del. Ch. 2005).

Delaware courts moved away from the no-conflict rule. By the early- to mid-twentieth century, Delaware embraced the fairness rule, which permits any transaction that is fair to the corporation—even if it would have constituted a breach of the duty of loyalty under historical equity jurisprudence. *See Sterling v. Mayflower Hotel Corp.*, 93 A.2d 107, 109-10 (Del. 1952); *Gottlieb v. Heyden Chem. Corp.*, 91 A.2d 57, 58 (Del. 1952).

In 1967, the General Assembly codified these principles. *Cede*, 634 A.2d at 365. The pre-amendment version of Section 144 “repealed the common law prohibition on self-dealing” by providing a “safe harbor for directors from incurable voidness for conflict transactions.” *Match*, 315 A.3d at 463 n.115. That law “deal[t] solely with the problem of *per se* invalidity,” leaving to the common law “[t]he somewhat different question of when an interested transaction might give rise to a claim for breach of fiduciary duty.” *Cox*, 879 A.2d at 614-15.

To address how interested transactions should be reviewed, courts developed cleansing mechanisms that, if followed, could shift the burden to the plaintiff to prove the transaction was unfair, *Weinberger v. UOP, Inc.*, 457 A.2d 701, 703 (Del. 1983); *Kahn v. Lynch Commc’n Sys., Inc.*, 638 A.2d 1110, 1117 (Del. 1994), or trigger a more deferential standard of review, *Kahn v. M&F Worldwide Corp.*

(“*MFW*”), 88 A.3d 635, 645 (Del. 2014). In the context of “freeze out mergers” involving controlling stockholders, for example, this Court held that business judgment review applied if the transaction was approved by both a majority of the disinterested stockholders and a committee of disinterested directors. *Id.*; see *In re Tesla Motors, Inc. S’holder Litig.*, 298 A.3d 667, 708 (Del. 2023) (summarizing this line of cases). For interested transactions not involving a controlling stockholder, by contrast, only one cleansing mechanism was required: Business judgment review applied if a transaction was approved by *either* a disinterested and independent board majority, *Brehm v. Eisner*, 746 A.2d 244, 257 (Del. 2000); *Benihana of Tokyo, Inc. v. Benihana, Inc.*, 906 A.2d 114, 120 (Del. 2006), or a “fully informed, uncoerced stockholder vote,” *Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304, 308-09 (Del. 2015). In *Match*, this Court held that all controlling stockholder transactions—not only freeze-out transactions—must be approved by both disinterested directors and minority stockholders to obtain business judgment review. 315 A.3d at 469.

C. Bipartisan Supermajorities in the General Assembly Amend Section 144

In recent years, some Delaware corporations—citing the “unpredictability” of Delaware law and rising transaction costs—publicly announced their intent to leave the State. Hearing On Senate Substitute 1 For Senate Bill 21 Before The Senate 2:49:20-40 (Mar. 13, 2025) (Sen. Townsend) (“Senate Hearing”); *id.* at 3:16:05-3:18:40 (Sen. Pettyjohn); Hearing On Senate Substitute 1 For Senate Bill 21 Before

The House 6:49:00-6:50:35 (Mar. 25, 2025) (Rep. Griffith) (“House Hearing”); *see also* Jill E. Fisch & Steven Davidoff Solomon, *Control and Its Discontents*, 173 U. Penn. L. Rev. 641, 642 (2025). Bipartisan supermajorities in the General Assembly responded to these concerns by amending Section 144 of the DGCL. Amended Section 144 establishes a framework for reviewing three categories of interested transactions: (1) transactions involving interested directors or officers, but not a controlling stockholder (“Interested Director Transactions”), 8 *Del. C.* § 144(a); (2) controlling stockholder transactions other than freeze-out transactions (“Controlling Stockholder Transactions”), *id.* § 144(b); and (3) controlling stockholder freeze-out transactions, which are called “going private transaction[s]” (“Going Private Transactions”), *id.* § 144(c), (e)(6). The law applies to all actions or proceedings commenced after February 17, 2025, the date SB 21 was introduced—thereby disincentivizing opportunistic lawsuits while the General Assembly considered the legislation. 85 Del. Laws, ch. 6, § 3 (2025) (A0090).

Amended Section 144 uses statutory cleansing mechanisms to specify the level of review that a court will apply to a covered transaction, codifying some common-law rules and modifying others. If the court finds that a transaction employed the cleansing mechanisms specified by Section 144, there is no breach of fiduciary duty, and the claim will be rejected; if, by contrast, the statutory safe-

harbor procedures were not followed, the court will apply entire fairness review to the transaction.

For Interested Director Transactions, the statute follows the common-law principle that only one cleansing mechanism is needed to trigger deferential review. *See supra*, at 12. Entire fairness review therefore is not required if an Interested Director Transaction is either: (1) approved by a committee of disinterested directors that is apprised of the material facts and acts “in good faith and without gross negligence”; or (2) approved by “an informed, uncoerced, affirmative vote of a majority of the votes cast by the disinterested stockholders.” 8 *Del. C.* § 144(a)(1)-(2); *see id.* § 144(e) (defining key terms). If neither cleansing mechanism is utilized, entire fairness review applies. *Id.* § 144(a)(3).

For Controlling Stockholder Transactions, Section 144 applies a framework similar to the one governing Interested Director Transactions. Thus, entire fairness review is not required if the transaction is approved by either: (i) a committee of disinterested, informed directors acting in good faith and without gross negligence, or (ii) an informed, uncoerced vote of disinterested stockholders. 8 *Del. C.* § 144(b)(1)-(2). Otherwise, entire fairness review applies. *Id.* § 144(b)(3).

For Going Private Transactions, Section 144 codifies the common-law rule that unless the transaction is approved by *both* a committee of disinterested directors

and minority stockholders, entire fairness review applies. 8 *Del. C.* § 144(c); see *MFW*, 88 A.3d at 645.

Under Section 144, the reviewing court decides whether the transaction satisfies the statutory criteria or is otherwise fair to the corporation under Delaware fiduciary law. For example, a Controlling Stockholder Transaction will not be upheld under Section 144(b)(1) unless the court is satisfied that the “material facts” were disclosed or known to a committee of disinterested directors, and that the directors approved the transaction “in good faith and without gross negligence.” 8 *Del. C.* § 144(b)(1). If the court concludes that the transaction either employed the safe-harbor procedures or satisfies entire fairness review, then the transaction “may not be the subject of equitable relief, or give rise to an award of damages.” *Id.* § 144(a)-(c). But otherwise, the statutory amendments do not limit the court’s ability to issue relief. Indeed, amended Section 144 expressly preserves *Unocal* claims and aiding-and-abetting claims. *Id.* § 144(d)(6)(b)-(c).²

As noted, these amendments to Section 144 received supermajority, bipartisan support. The Senate unanimously approved SB 21, and the House passed it 32-7. The Governor signed the bill into law on March 25, 2025.

² *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985).

II. Facts And Procedural Background

In May 2025—more than a month after Section 144 was amended—Plaintiff filed this derivative action purportedly on behalf of Clearway, alleging that Clearway overpaid in purchasing a project from its controlling stockholder, CEG. Compl. ¶¶ 2-3 (B0002-03). According to the Complaint, the Transaction was agreed to in 2023, and Clearway made its final payment in April 2024. *Id.* ¶ 4 (B0004). Because this case was filed after February 17, 2025, amended Section 144(b) governs review of this Controlling Stockholder Transaction.

Count I of the Complaint seeks a declaratory judgment that amended Section 144 “is unconstitutional on its face and as applied.” Compl. ¶¶ 13, 58-61 (B0007, 0022-23). Plaintiff claims that the law improperly (1) “divest[s]” the Court of Chancery of “equitable jurisdiction,” and (2) “eliminate[s] causes of action that had accrued or vested before Senate Bill 21 was adopted.” *Id.* ¶ 12 (B0007). Clearway moved to dismiss Count I, and Defendants moved to dismiss all counts. Plaintiff then moved to certify the constitutional questions to this Court, which Clearway and Defendants did not oppose, and this Court accepted review on July 11, 2025.

ARGUMENT

I. Section 144 Comports with Article IV, Section 10.

A. Question Presented

Does amended DGCL Section 144 violate Article IV, Section 10 of the Delaware Constitution by divesting the Court of Chancery of equity jurisdiction? See Compl. ¶¶ 54-55, 59 (B0020-21, 0023).

B. Scope of Review

This Court “review[s] claims challenging the constitutionality of a statute *de novo*.” *Pardo v. State*, 160 A.3d 1136, 1142 (Del. 2017). In doing so, it applies “a strong presumption that a legislative enactment is constitutional,” which the party challenging the statute must overcome. *Wien v. State*, 882 A.2d 183, 186 (Del. 2005); *Justice v. Gatchell*, 325 A.2d 97, 102 (Del. 1974). The Court “resolve[s] all doubts in favor of the challenged legislative act.” *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258 (Del. 2011).

C. Merits of Argument

This Court has interpreted Article IV, Section 10 to preserve the Court of Chancery’s original jurisdiction to hear all matters and causes in equity, except where an adequate remedy exists at law. Amended Section 144 is fully consistent with that provision. The statute makes no change to the Court of Chancery’s jurisdiction: It does not channel fiduciary duty claims to any other court or otherwise restrict the categories of cases that the Court of Chancery can hear. Nor does it limit

the court's authority to remedy a breach of fiduciary duty or even modify substantive fiduciary duty law. Section 144 merely establishes safe-harbor procedures by specifying a review framework for interested transactions. A holding that this legislation unconstitutionally strips the Court of Chancery of equity jurisdiction would distort the separation of powers in Delaware and upend many statutes (in the DGCL and otherwise) addressing equitable matters.

1. Article IV, Section 10 Allows the General Assembly to Enact Statutes Governing Fiduciary Duty Claims.

Article IV, Section 10 provides that the Court of Chancery “shall have all the jurisdiction and powers vested by the laws of this State in the Court of Chancery.” Del. Const., art. IV, § 10. This Court's decision in *DuPont* interpreted that language to preserve the Court of Chancery's “original jurisdiction” over all matters within “the general equity jurisdiction of the High Court of Chancery of Great Britain as it existed prior to the separation of the colonies,” unless a comparable remedy at law is provided. *DuPont*, 85 A.2d at 727. In other words, Section 10 constitutionalizes the general grant of equity jurisdiction conferred in the Colonial Act of 1726-1736, which is reflected (with minor changes) in Title 10 of the Delaware Code: “The Court of Chancery shall have jurisdiction to hear and determine all matters and causes in equity,” but “shall not have jurisdiction to determine any matter wherein sufficient remedy may be had by common law, or statute, before any other court or

jurisdiction of this State.” 10 *Del. C.* §§ 341-42; *see Arzuaga-Guevara*, 794 A.2d at 584-86.

The term “jurisdiction” speaks to “the court’s power to hear and determine cases of the general class to which the proceedings belong or of the particular type or category of case.” 21 C.J.S. Courts § 18 (2025). *DuPont* illustrates the point. There, this Court considered the constitutionality of a statute purporting to confer “exclusive jurisdiction” over certain family-law matters—including actions seeking decrees for separate maintenance—in the Family Court. 85 A.2d at 726-27. According to the majority, an action for separate maintenance was a matter within the Court of Chancery’s original equity jurisdiction, *id.* at 733, and therefore could be divested from the Court of Chancery and reposed in another “tribunal” only by legislation (i) expressly stating an intent to do so, and (ii) “creat[ing] in that tribunal remedies which are the equivalent of [what] would have been available in the Court of Chancery,” *id.* at 734. Because the Family Court remedy authorized by the General Assembly was not “sufficient,” the majority held that the statute could not divest the Court of Chancery of jurisdiction over the action. *Id.*³

³ Justice Tunnell dissented, arguing that Section 10 by its terms gives the Court of Chancery such jurisdiction and powers as the General Assembly may vest by statute in the Court of Chancery. 85 A.2d at 738-40 (Tunnell, J., dissenting). He explained that this reading of Section 10 gives meaning to the statutes defining the Court of Chancery’s jurisdiction (currently 10 *Del. C.* §§ 341-42) and respects a proper understanding of the separation of powers. *Id.* at 740-41.

Given Section 10's limited scope, it is unsurprising that this Court has never invalidated another statute under Section 10. In fact, this Court has held Section 10 inapplicable in nearly every case raising the argument, either because the matter did not fall within the "historic general equity jurisdiction" of the Court of Chancery, *Arzuaga-Guevara*, 794 A.2d at 586; *see CML V, LLC v. Bax*, 28 A.3d 1037, 1045 (Del. 2009), or because the statute should not be construed to divest the Court of Chancery of jurisdiction, *Glanding*, 45 A.2d at 513-14. In only one other case was it "crystal clear that the intention of the General Assembly was to confer an exclusive jurisdiction upon the Family Court and take that jurisdiction away from the Court of Chancery," but this Court resolved that case on other grounds. *DuPont v. Fam. Ct. of New Castle Cnty.*, 153 A.2d 189, 192 (Del. 1959).

No Delaware court has ever applied Section 10 to do what Plaintiff seeks—namely, to invalidate a statute that merely prescribes rules for the Court of Chancery to apply or that defines the elements of claims that remain within its jurisdiction. Article II vests "[t]he legislative power" in the "General Assembly," Del. Const., art. II, § 1; and Article IX specifically authorizes the General Assembly to enact statutes governing corporate law, *id.* art. IX, § 1. Thus, when a claim based on "settled principles" of equity "conflicts with [a] statute," this Court will "resolve th[e] conflict by giving effect [to] the intent of the General Assembly." *Glassman*, 777 A.2d at 247-48; *see Totta*, 2022 WL 1751741, at *15 (General Assembly may

“replace equity with statutory law” within constitutional limits). In the corporate context specifically, “the General Assembly has the authority to eliminate or modify fiduciary duties and the standards that are applied by [the Court of Chancery], or to authorize their elimination or modification through private ordering.” *Totta*, 2022 WL 1751741, at *15; *accord New Enter.*, 295 A.3d at 541-543 & n.50. That rule follows from “the hierarchy of law-making in a democratic regime,” in which “courts defer to legislatures.” *Totta*, 2022 WL 1751741, at *15.

In *Totta*, for example, the court considered a corporate charter provision that purported to require courts to apply business judgment review to certain board decisions. 2022 WL 1751741, at *1. While the court declined to enforce that provision, it made clear that the General Assembly could enact legislation authorizing an entity to “eliminate or modify fiduciary duties and the attendant judicial standards of review.” *Id.* at *14.

Similarly, in *New Enterprise*, the Court of Chancery reaffirmed that it would “enforce” legislation authorizing corporations to “eliminate or modify the fiduciary duty regime.” 295 A.3d at 542. The court explained that “corporate fiduciary duties are not immutable” and may be “tailored,” including by statute. *Id.* at 529-30, 542 n.50. These cases reaffirm the centuries-old tradition of the legislature and courts working in tandem to establish principles of equity. *Supra*, at 6-9.

Accordingly, Article IV, Section 10 does not prohibit the General Assembly from enacting statutory rules that govern equitable matters within the Court of Chancery's jurisdiction. It bars the General Assembly from removing historic matters and causes in equity from the Court of Chancery's jurisdiction without providing a sufficient remedy at law.

2. Section 144 Does Not Violate Article IV, Section 10.

Judged by that standard, amended Section 144 does not implicate, much less violate, Section 10. The law does not prevent the Court of Chancery from exercising jurisdiction over any “matters and causes in equity.” 10 *Del. C.* § 341. It does not, for example, purport to vest exclusive jurisdiction over fiduciary duty claims in a different court. Nor does it restrict remedies or even modify substantive rules of fiduciary conduct. It merely supplies the framework by which the Court of Chancery evaluates fiduciary duty claims involving interested transactions—claims that undisputedly remain within the court's equity jurisdiction.

As explained above, *supra*, at 13-15, Section 144 specifies safe-harbor procedures for three categories of interested transactions. If the applicable cleansing mechanisms are followed, the transaction is not subject to entire fairness review and will be upheld. But Section 144 does not remove the Court of Chancery's jurisdiction to determine whether these safe harbors are satisfied and, if not, whether the transaction is otherwise fair and what remedy, if any, is appropriate. *Supra*, at

13-15. To the contrary, Section 144’s safe-harbor procedures incorporate key elements of business judgment review that courts must apply to the transaction at issue.

For example, good faith is a “key ingredient of the business judgment rule.” *Brehm*, 746 A.2d at 264. In assessing disinterested-director approval under Section 144, the Court of Chancery must be satisfied that the directors authorized the transaction “in good faith and without gross negligence.” 8 *Del. C.* § 144(a)(1), (b)(1). Further, whereas business judgment review presumes the decisionmaker acted on an informed basis, *Brehm*, 746 A.2d at 264 n.66, Section 144 requires a court to conclude that the “material facts ... are disclosed or are known to all members of [the] committee,” 8 *Del. C.* § 144(a)(1), (b)(1). In addition, “grossly negligent” conduct falls outside both the business judgment rule and the statute. *Brehm*, 746 A.2d at 259; 8 *Del. C.* § 144(a)(1), (b)(1). And Section 144’s stockholder-approval mechanisms likewise draw from cases applying the business judgment rule to transactions that are “approved by a fully informed, uncoerced vote of the disinterested stockholders.” *Corwin*, 125 A.3d at 309. If a transaction does not satisfy the statutory requirements, the court asks whether the transaction was “fair as to the corporation”—which adopts the common-law entire fairness rule. 8 *Del. C.* § 144(a)(3), (b)(3), (c)(2).

Amended Section 144 thus retains the Court of Chancery’s jurisdiction over fiduciary duty claims and adopts “certain principles that have been foundational to Delaware law for quite a long time.” Senate Hearing at 2:52:55-2:53:15 (Sen. Townsend). Specifically, it codifies the common-law principle that “if there is a conflict in a transaction, then the court is going to apply heightened scrutiny,” but “if you put the decision in the hands of independent decisionmakers,” then courts “will defer to those independent decisionmakers, so long as they have complied with certain duties.” *Id.* at 2:53:15-50.

In all of this, Section 144 does not affect the Court of Chancery’s equity jurisdiction. It does not vest another court with authority to hear fiduciary duty claims or withdraw or limit equitable remedies available in the Court of Chancery. Indeed, the statute “does not displace the common law requirements regarding core fiduciary conduct,” S. Substitute No. 1 For S.B. 21, 153rd Gen. Assemb. (Del. 2025), at 9-10 (A0066-67)—even though the General Assembly “has the power” to do so, *Totta*, 2022 WL 1751741, at *16; *accord New Enter.*, 295 A.3d at 541-42 & n.50.

Both before and after Section 144 was amended, the same plaintiff (a stockholder) can bring the same claim (breach of fiduciary duty) against the same defendants (a director, officer, or controlling stockholder) in the same court (the Court of Chancery), and obtain the same remedy if a breach of duty is found. A plaintiff may also argue that an interested transaction did not follow Section 144’s

safe-harbor procedures—and undoubtedly some transactions will not attempt to follow them—in which case entire fairness review applies.

In short, Section 144 articulates the review framework courts will apply in determining whether a breach of fiduciary duty occurred. Because Section 144 does not strip equity jurisdiction from the Court of Chancery, it is constitutional.

3. Plaintiff’s Contrary Arguments Are Unpersuasive and Would Unsettle Delaware Law.

Plaintiff does not dispute that the Court of Chancery retains jurisdiction under Section 144 to hear and resolve fiduciary duty claims involving interested transactions. Rather, Plaintiff’s jurisdiction-stripping argument boils down to characterizing the amended law as a “check-the-box” statute that “eliminate[s] ‘the historic powers’ of the Court of Chancery ‘to fashion any form of equitable and monetary relief as may be appropriate’ for breaches of fiduciary duty.” Appellant’s Opening Br. 27-28 (“Br.”). This rhetoric misconstrues the statute and misapprehends the General Assembly’s historical role in establishing rules for equitable claims.

As explained, Section 144 does not limit the Court of Chancery’s power to fashion equitable relief for breaches of fiduciary duties—it establishes the review framework that courts apply to determine *whether* a breach occurred at all. *Supra*, at 22-25. This is true even if Section 144’s review framework has the practical effect of foreclosing certain claims. By way of analogy, federal law adopts a burden-

shifting framework for disparate-impact cases, which may have the effect of barring relief for some plaintiffs. 42 U.S.C. § 2000e-2(k). But no one would seriously contend that in doing so, Congress stripped courts of jurisdiction over these claims. Just so here.

Plaintiff resists this conclusion, noting that Section 144 provides that a transaction “‘may not be the subject of equitable relief, or give rise to an award of damages’ if” the statutory cleansing mechanisms are employed. Br. 26 (quoting 8 *Del. C.* § 144(b)(1)). But in reality, the statute says relief is unavailable if *either* the cleansing mechanisms are employed *or* entire fairness review is satisfied. 8 *Del. C.* § 144(b). In other words, it merely states the truism that there can be no relief when there has been no breach of duty under the applicable review framework. If, by contrast, the Court of Chancery holds the cleansing mechanisms inapplicable and finds a breach of fiduciary duty under entire fairness review, it will award equitable relief according to established principles, as it has always done.

Even if amended Section 144 went further and modified fiduciary duties themselves, Plaintiff’s claims would fail. The legislature “has the power” to enact such laws, consistent with historical practice. *Totta*, 2022 WL 1751741, at *15-16; *accord New Enter.*, 295 A.3d at 541-42 & n.50; *supra*, at 6-9, 20-22. These amendments would not violate Article IV, Section 10 because they would modify laws governing conduct, not the “jurisdiction” of the Court of Chancery—that is, not

its authority to “hear and determine all matters and causes in equity” that the “High Court of Chancery of Great Britain” could hear and determine in 1792, or its power to shape equitable remedies. 10 *Del. C.* § 341; *DuPont*, 85 A.2d at 733-34.

Plaintiff’s real complaint is *not* that Section 144 eliminates the Court of Chancery’s “ability to fashion equitable relief for breaches of fiduciary duty,” Br. 25, but that the law makes it difficult for him to *obtain* equitable relief *in this particular case*, because the Controlling Stockholder Transaction here was approved by a committee of disinterested directors under Section 144(b)(1). But Article IV, Section 10 does not prohibit the General Assembly from enacting statutes governing the Court of Chancery’s review of equitable claims—even if they make some claims less likely to succeed. Section 10 protects the court’s original equity jurisdiction, and amended Section 144 does not reduce that jurisdiction.

Tellingly, none of Plaintiff’s cases holds that Section 10 prohibits the General Assembly from enacting rules governing equitable cases that fall within the Court of Chancery’s jurisdiction. *Glanding, DuPont, Douglas v. Thrasher*, 489 A.2d 422 (Del. 1985), and *Arzuaga-Guevara* each addressed whether particular categories of claims could be filed in the Court of Chancery at all. Other cases simply address whether the availability of adequate legal remedies precludes the Court of Chancery from exercising jurisdiction over a particular lawsuit. *E.g., Clark v. Teveen Holding Co.*, 625 A.2d 869 (Del. Ch. 1992) (dismissing complaint where purchaser of

contaminated land had adequate remedy at law). And as Plaintiff acknowledges, *CML* upheld a statute limiting derivative standing to members or assignees of limited liability companies, “a business entity that did not exist in 1792.” 28 A.3d at 1045; Br. 18-19.

Plaintiff’s constitutional theory is not just novel; it is breathtakingly broad. If amended Section 144 were unconstitutional—meaning that bipartisan supermajorities in both legislative chambers were powerless to enact a statute that draws from common-law principles to establish a review framework for fiduciary duty claims within the Court of Chancery’s jurisdiction—then virtually no statute touching equitable claims could withstand constitutional scrutiny. The Court of Chancery itself has repudiated such boundless authority. *New Enter.*, 295 A.3d at 543; *Totta*, 2022 WL 1751741, at *15. This Court should likewise reject this antidemocratic vision of the Constitution. Indeed, while Plaintiff colorfully claims that upholding Section 144 would “permit the practical abolition of all courts,” Br. 25-26, it is Plaintiff’s theory that would produce sweeping and untenable consequences. Under his view of Article IV, Section 10, a broad array of Delaware statutes would be struck down—a radically destabilizing result that would render Delaware a uniquely inhospitable business climate.

Several examples illustrate the point. Plaintiff’s theory would invalidate Section 102(b)(7), which departs from the common law by allowing corporate

charters to “eliminat[e] or limi[t] the personal liability of a director or officer” in money damages for breaches of the duty of care. 8 *Del. C.* § 102(b)(7); *Malpiede*, 780 A.2d at 1079, 1095. “All, or virtually all,” corporations have approved exculpation-provision proposals for directors,⁴ and stockholders are approving similar provisions for officers following 2022 DGCL amendments.⁵ Indeed, it is now “standard practice” for Delaware corporations to adopt such provisions—which completely bar certain court-developed remedies—for both directors and officers.⁶ Plaintiff’s theory would invalidate this “fiduciary tailoring” statute. *New Enter.*, 295 A.3d at 549.

Section 122(17) similarly “contemplates fiduciary tailoring,” *New Enter.*, 295 A.3d at 552, by allowing Delaware corporations to renounce any interest in business opportunities, 8 *Del. C.* § 122(17). It therefore departs from the common law, which recognizes that “usurpation of a corporate opportunity” can support a fiduciary duty claim. *New Enter.*, 295 A.3d at 552. Because Section 122(17) allows corporations to eliminate those claims, rather than allowing the Court of Chancery to hear them, it too would violate Section 10 under Plaintiff’s view.

⁴ Geoffrey P. Miller, *A Modest Proposal for Fixing Delaware’s Broken Duty of Care*, 2010 Colum. Bus. L. Rev. 319, 322-23.

⁵ Emilio Ragoza, *Amendment to DGCL Section 102(b)(7): Implications for 2024*, DLA Piper (May 22, 2024), <https://perma.cc/QEU5-TTSZ>.

⁶ *Delaware’s 102(b)(7) Exculpation of Senior Officers - One Year Later*, Jenner & Block (Sept. 2023), <https://perma.cc/MLS3-SUGR>.

Plaintiff cites a letter suggesting that the constitutional analysis would be different here if, like Sections 102(b)(7) and 122(17), Section 144 merely allowed stockholders to “opt in” to rules that depart from the common law, rather than enacting the rules directly. *See* Br. 11-12. But that distinction makes no difference in this context. Article IV, Section 10 protects the “jurisdiction and powers” of the Court of Chancery, Del. Const., art. IV, § 10, and a rule’s impact (or lack thereof) on that jurisdiction does not turn on whether the General Assembly mandates it or merely authorizes it—an opt-in rule authorized by statute can restrict Chancery’s authority just as directly as a mandatory rule. *See Malpiede*, 780 A.2d at 1094 (Section 102(b)(7) authorizes dismissal as a matter of law).

In any event, numerous mandatory provisions of the DGCL would fail under Plaintiff’s theory. Section 253, for example, governs short-form mergers, “authoriz[ing] the elimination of the minority without notice, vote, or other traditional indicia of procedural fairness.” *Glassman*, 777 A.2d at 243; *see* 8 Del. C. § 253. Traditional principles of equity “plainly conflic[t] with the statute” because it allows elimination of minority stockholders “by a summary process that does not involve the ‘fair dealing’ component of entire fairness.” *Glassman*, 777 A.2d at 243, 247. Yet this Court “resolve[d] this conflict by giving effect [to] the intent of the General Assembly.” *Id.* at 248. Plaintiff’s theory would nullify Section 253 and overturn *Glassman*.

Sections 327 and 367 of the DGCL would also be unconstitutional. Both statutes limit which stockholders have standing to bring derivative suits, 8 *Del. C.* §§ 327, 367, and thereby “restric[t]” the judicially created “standing of a stockholder,” *Schoon v. Smith*, 953 A.2d 196, 204 (Del. 2008). The statutes thus “limit claims for breach of fiduciary duty” and prevent the Court of Chancery from awarding relief. *New Enter.*, 295 A.3d at 560-61.

Sections 141(e) and 174(a) would likewise fail. These statutes protect directors from liability when they “rel[y] in good faith upon” certain corporate records, 8 *Del. C.* § 141(e), or record dissents from unlawful dividend payments or stock purchases, *id.* § 174(a). Both provisions restrict Chancery’s ability to fashion equitable relief for fiduciary duty-related claims.

Indeed, under Plaintiff’s theory, the pre-amendment version of Section 144 would itself be unconstitutional. Former Section 144 prevented the Court of Chancery from reverting to “the common law principle that interested transactions were entirely invalid.” *Cox*, 879 A.2d at 614-15. That law—like the others addressed above—constrains the Court of Chancery’s authority to fashion relief. In fact, each of these laws goes *further* than current Section 144; some entirely bar claims or remedies, and others alter the substance of the underlying fiduciary duty itself.

These examples are just the tip of the iceberg—they are drawn only from the DGCL. But Plaintiff’s theory would undo statutes addressing many other aspects of traditional equity jurisprudence, including trusts, receiverships, the administration of estates, requests for specific performance, and aspects of family law. Indeed, in the context of trusts alone, the General Assembly has enacted statutes allowing agreements to “modify nearly every aspect of a trustee’s duties.” *New Enter.*, 295 A.3d at 545-46 & nn.64-66 (citing 12 *Del. C.* §§ 3301(g), 3303(a), 3586, 3588(a)). These and innumerable other laws would be in jeopardy under Plaintiff’s theory.

And Plaintiff’s theory goes further still. Beyond invalidating statutes that *modify* common-law equitable principles, Plaintiff’s theory of Section 10 would prevent the General Assembly from codifying even *current* common-law rules, as it did in amended Section 144(c). Such statutes necessarily limit the Court of Chancery’s authority to engage in further “evolution” of equitable doctrines, which Plaintiff suggests is impermissible. Br. 20.

Thus, far from preserving “constitutional equipoise among the three branches of government,” Br. 26 (quotation marks omitted), Plaintiff’s position would destroy it, transforming the Court of Chancery into an unaccountable “überlegislature” beyond any check by the General Assembly, *Sheehan*, 15 A.3d at 1259. Nothing in the Delaware Constitution requires that astounding outcome. This Court should hold that Section 144, as amended, complies with Article IV, Section 10.

II. Section 144 Is Constitutional Under Article I, Section 9.

A. Question Presented

Does the statute amending Section 144 violate Article I, Section 9 of the Delaware Constitution by eliminating causes of action that had already accrued or vested? Compl. ¶¶ 56-57, 60 (B0021-23).

B. Scope of Review

This Court reviews the constitutionality of a statute *de novo*, resolving any doubts in favor of its constitutionality. *Supra* Part I.B. Plaintiff must overcome the strong presumption that the statute is valid. *Supra* Part I.B.

C. Merits of Argument

The amendments to Section 144 govern all fiduciary duty cases filed after SB 21’s introduction on February 17, 2025, including cases where the underlying transaction occurred before the effective date. *See* 85 Del. Laws, ch. 6, § 3 (2025) (A0090). This statute does not retroactively eliminate vested rights for at least two independent reasons. *First*, the law does not “eliminate causes of action,” accrued or otherwise, Br. 29; it specifies the review framework that courts will apply to fiduciary duty claims filed after the February 17, 2025 effective date. As Plaintiff concedes, there is no vested right in common-law rules—such as the pre-amendment rules governing fiduciary duty claims—so the statute does not implicate vested rights. *Second*, even if the Court understood Section 144 to substantively affect

obligations associated with vested rights in accrued causes of action, it still would pass constitutional muster because it does not *eliminate* those rights, and it reasonably furthers the public interest by increasing certainty and incentivizing the use of cleansing mechanisms, while avoiding opportunistic lawsuits.

1. Section 144 Does Not Retroactively Eliminate a Cause of Action or Any Other Vested Right.

Plaintiff filed suit in May 2025, after the February 17 effective date for amended Section 144 and, indeed, after its enactment in March. But he nevertheless contends that Section 144 is impermissibly retroactive, arguing that it violates Article I, Section 9 of the Delaware Constitution because it purportedly “eliminate[s] causes of action that had already accrued or vested” when it was enacted. Br. 29. Once again, Plaintiff’s argument misunderstands the statute and the Delaware Constitution.

Article I, Section 9—the “due process clause of the Delaware Constitution,” *Sheehan*, 15 A.3d at 1258-59 & n.50—provides in relevant part:

All courts shall be open; and every person for an injury done him or her in his or her reputation, person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land, without sale, denial, or unreasonable delay or expense.

Under that clause, the General Assembly is generally free to enact and amend statutes, including laws that “limit or expunge common law rights,” but it may not

“arbitrarily extinguish a right of action” that “has accrued or vested before the effective date of the statute.” *Cheswold*, 489 A.2d at 418.

When a “vested or accrued right is not at issue,” by contrast, the due process clause is not implicated. *Cheswold*, 489 A.2d at 418; *see* Br. 29-39. A vested right is “more than a mere expectation based upon an anticipated continuance of the existing law”—it is a right that “is absolute, complete, and unconditional ... which is immediate and perfect in itself and not dependent upon a contingency.” *Hazzard v. Alexander*, 173 A. 517, 518-19 (Del. Super. Ct. 1934).

Rules of law do not qualify: “No one has a vested right in a public law,” *Hazzard*, 173 A. at 519, and—as Plaintiff concedes—“no one has a vested interest in a rule of the common law,” *Cheswold*, 489 A.2d at 418 (cited at Br. 37). Indeed, the common law can change unexpectedly and with immediate effect, even in pending cases. *See, e.g., Brookfield Asset Mgmt., Inc. v. Rosson*, 261 A.3d 1251 (Del. 2021) (overruling precedent resulting in dismissal of direct cause of action). Thus, while common-law property rights are protected by due process, “the law itself, as a rule of conduct, ... may be changed at the will of the legislature.” *Gallegher v. Davis*, 183 A. 620, 624 (Del. Super. Ct. 1936), *overruled in part on other grounds by Wagner v. Shanks*, 194 A.2d 701, 706 (Del. 1963) (definition of wantonness).

Section 144 does not implicate the due process clause because it does not extinguish any cause of action or other vested right. As explained above, the law establishes a review framework for courts. *Supra*, at 22-25. If a transaction was approved pursuant to the cleansing mechanisms in amended Section 144—*i.e.*, by disinterested directors acting in good faith, informed and disinterested stockholders, or both, depending on the transaction—then the transaction is lawful, with no need for further review. 8 *Del. C.* § 144(a)(1)-(2), (b)(1)-(2), (c)(1); *supra*, at 13-15. Otherwise, the court will apply entire fairness review. *Id.* § 144(a)(3), (b)(3), (c)(2).

Because Section 144 governs judicial proceedings—*i.e.*, “the test that a court applies” to a pending case, not the “standard of conduct” that defines underlying fiduciary obligations, *Trados*, 73 A.3d at 35-36—the law is not being applied retroactively here. Plaintiff filed suit in May 2025, more than a month after Section 144 was amended. A court will ordinarily “apply the law in effect at the time it renders its decision,” even when the law changes during the pendency of the case. *Bradley v. Sch. Bd. of Richmond*, 416 U.S. 696, 711 (1974). Amended Section 144 therefore would govern Plaintiff’s case even if it were purely prospective.

Even if amended Section 144 were deemed “retroactive” on the ground that it establishes the review framework for claims involving pre-enactment transactions, the law certainly does not extinguish any vested right. The statute does not bar any plaintiff from filing an accrued cause of action on behalf of a corporation for breach

of fiduciary duty, and it leaves undisturbed the standard of conduct—that is, the underlying fiduciary obligations owed by directors and controlling stockholders. *See* S. Substitute No. 1 For S.B. 21, 153rd Gen. Assemb. (Del. 2025), at 9-10 (A0066-67) (amendments do not “displace” “the common law requirements regarding core fiduciary conduct”). Likewise, if a court were to find a breach of fiduciary duty, Section 144 would not constrain its authority to award appropriate relief.

Section 144 is thus far removed from impairing vested rights—much more so than statutes Delaware courts have already considered and deemed not to implicate due-process concerns. This Court has held, for example, that statutes of limitation do not “extinguish” any vested right, even though these “procedural mechanism[s]” can “nullify a party’s remedy.” *Cheswold*, 489 A.2d at 421; *see also Dunn v. St. Francis Hosp., Inc.*, 401 A.2d 77 (Del. 1979) (statute of limitations enacted in 1976 barred relief for malpractice claim based on 1970 operation).⁷ Unlike these statutes, Section 144 does not categorically nullify any remedies. *Supra*, at 26. It simply

⁷ The principal constitutional question in *Dunn* was whether a statute of limitations that runs from the date of wrongful occurrence can bar relief when the injury is discovered after the limitations period. 401 A.2d at 80. But this Court affirmed in part “for the reasons indicated” by the Superior Court, *id.*, which observed that applying the statute of limitations “does not eliminate a remedy for a civil wrong” in the constitutional sense or “abolish” a “vested” right, *Dunn v. Felt*, 379 A.2d 1140, 1141 (Del. Super. Ct. 1977).

establishes the review framework for fiduciary duty claims. Section 144 therefore does not disturb vested rights protected by the due process clause.

None of Plaintiff's authorities supports a contrary conclusion. Several involved statutes of repose, which—unlike statutes of limitations—are “substantive provision[s]” that “extinguish” the entire cause of action, *i.e.*, “both the remedy and the right,” after a specified time. *Cheswold*, 489 A.2d at 421.⁸ *A.W. Financial Services, S.A. v. Empire Research, Inc.* (cited at Br. 30), involved an amendment to an escheat statute that allowed the State to completely “divest a stockholder” of its “ownership interest in the stock” two years sooner. 981 A.2d 1114, 1120 (Del. 2009).⁹ Section 144, by contrast, does not extinguish any right of action (or remedy), *Cheswold*, 489 A.2d at 421, nor does it divest stockholders of any “property right,” *A.W. Fin. Servs.*, 981 A.2d at 1120. *Supra*, at 36-37.

The Court of Chancery in *Artesian Water Co. v. Government of New Castle County* (cited at Br. 37) held that a statute restoring a county's sovereign immunity *could* be applied retroactively because the purported right to sue the county stemmed from a statute and therefore was not vested. 1983 WL 17986, at *10-12 (Del. Ch.

⁸ See also *Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 676 (Utah 1985); *Hunter v. Sch. Dist. of Gale-Ettrick-Trempealeau*, 293 N.W.2d 515, 521 (Wis. 1980).

⁹ See also *San Carlos Apache Tribe v. Super. Ct.*, 972 P.2d 179 (Ariz. 1999) (divesting water rights).

Aug. 4, 1983). Unlike the sovereign-immunity statute, Section 144 does not even “ba[r] claims” for damages. *Id.* at *6.

Plaintiff relies on other statutory-construction cases addressing *whether* statutes apply retroactively; unlike the amendments to Section 144, these statutes did not clearly specify an effective date. *E.g.*, *Rennick v. Glasgow Realty, Inc.*, 510 F. Supp. 638 (D. Del. 1981) (cited at Br. 29-30); *Monacelli v. Grimes*, 99 A.2d 255, 266 (Del. 1953) (cited at Br. 38-39). In those cases, courts considered whether the statute is “substantive” or “remedial”: Substantive statutes typically are construed to apply prospectively only, whereas remedial statutes—those “relat[ing] to ‘practice, procedure or remedies and [that do] not affect substantive or vested rights’”—apply to all cases. *A.W. Fin. Servs.*, 981 A.2d at 1120. The presumption against retroactivity resolves doubts in favor of prospective application where the statute is silent. *Id.*

Because the law amending Section 144 directly addresses the extent to which it applies retroactively, these statutory-interpretation cases are inapt—“Delaware courts will follow” the act’s “express language.” *Seavitt v. N-Able, Inc.*, 321 A.3d 516, 557 (Del. Ch. 2024). And even if the substantive/remedial analysis were relevant, case law confirms that Section 144 is not “substantive” and therefore can apply retroactively. As explained, the law specifies the review framework courts apply to fiduciary duty claims. *Supra*, at 13-15, 22-25, 36. Courts addressing the

issue have overwhelmingly held that a change in the “standard of review,” like a change in the burden of proof, is “remedial” (“procedural”) rather than substantive and therefore “should be applied retrospectively.” *Hughes v. Bd. of Pro. Resp. of Sup. Ct. of Tenn.*, 259 S.W.3d 631, 639-40 (Tenn. 2008); *see, e.g., In re Am. Waste & Pollution Control Co.*, 597 So. 2d 1125, 1129 (La. Ct. App. 1992) (standard of review); *United States v. Bell*, 371 F.3d 239, 241-42 (5th Cir. 2004) (standard of review); *Turner v. United States*, 514 F.3d 1194, 1199 n.3 (11th Cir. 2008) (burden of proof). They have reached this conclusion because these rules “only affect[t] the court’s decision-making process, not the rights of the parties.” *Perez v. Marshall*, 946 F. Supp. 1521, 1530 (S.D. Cal. 1996). A party has no vested right “to any particular form of judicial proceeding,” such as one applying *de novo* review, so a law like Section 144 cannot be substantive. *Am. Waste*, 597 So. 2d at 1130.

Rennick and *Monacelli* are consistent with these cases. *Rennick* held that an amendment to a premises guest statute was substantive because it “enlarge[d] th[e] duty of care and exposure to liability” of the premises owner—“impos[ing] a new duty upon defendants which did not exist at the time of the accident.” 510 F. Supp. at 641-42.¹⁰ *Monacelli* involved a statute governing a plaintiff’s “substantive right” to “subject a non-resident to a judgment *in personam* in a jurisdiction where he has

¹⁰ *See also Thorp v. Casey’s Gen. Stores, Inc.*, 446 N.W.2d 457, 462 (Iowa 1989) (altering duty of dramshops); *Ieropoli v. AC&S Corp.*, 842 A.2d 919, 922, 930 (Pa. 2004) (liability cap for asbestos successors).

not been personally served.” 99 A.2d at 267. Although that right was effectuated through statutory service procedures, “the procedure itself creates a substantial legal right” that implicates “the fundamental notion of due process of law.” *Id.* By contrast, Section 144 does not impose new substantive duties or alter Plaintiff’s right to bring a claim. It simply specifies the test courts will apply in reviewing fiduciary duty claims.

Because Section 144 does not extinguish any accrued cause of action, and because Plaintiff has no vested right in the review framework that predated the amendments, Section 144 does not violate the due process clause.

2. Even if Section 144 Affected Vested Rights, It Would Be Constitutional.

Even if Section 144 were understood to substantively affect an accrued or vested cause of action, it plainly does not *eliminate* the cause of action and is still constitutional. A “statute may retroactively reach property rights which have vested and may create new obligations with respect thereto, provided that the statute is a valid exercise of police power.” *Price v. All Am. Eng’g Co.*, 320 A.2d 336, 340 (Del. 1974). This Court has thus “disagree[d]” with the view that “rights vest only once and thereafter are immune to legislative action.” *Town of Cheswold v. Cent. Del. Bus. Park*, 188 A.3d 810, 821 n.58 (Del. 2018). Courts have upheld statutes affecting vested rights where they “preserve and promote public welfare” or “reasonably ten[d] to correct some evil or promote some public interest,” *Campbell*

v. State, 1986 WL 8178, at *3 (Del. Super. Ct. July 18, 1986), *aff'd* 520 A.2d 669 (Del. 1987) (“reasonable means to protect the public safety and welfare”); *see Future Ford Sales, Inc. v. Pub. Serv. Comm’n*, 654 A.2d 837, 844 (Del. 1995) (“public welfare”); *Van Winkle v. State*, 91 A. 385, 394 (Del. 1914) (police power encompasses laws that “are reasonable and proper to protect the lives, health, comfort, and property of [the] citizens and to promote the order, morals, safety, and welfare of society”). As the U.S. Supreme Court put it, “[i]t is enough to say that the [retroactive statute] approaches the problem” that it aims to address “rationally.” *Usery v. Turner Elkhorn Min. Co.*, 428 U.S. 1, 19 (1976).

In *Price*, for example, this Court rejected employers’ and insurers’ challenges to a statute that retroactively increased benefits for disabled employees. 320 A.2d at 337-39. The Court held that it was “obliged to effectuate [the] clear legislative intent” that the statute apply retroactively, given “the State’s manifest and proper concern for providing an economically adequate level of compensation benefits”—an effort undermined “by an inflationary economy.” *Id.* at 341.

Here, amended Section 144 does not extinguish any cause of action; courts must decide whether the safe harbors apply. *Supra*, at 22-25, 36. And like the legislation in *Price*, amended Section 144 reasonably furthers the public interest. In response to concerns that Delaware corporate law had become unpredictable in ways that made transaction planning impractical, bipartisan supermajorities amended

Section 144 and applied the law to *all* transactions in *all* cases filed after SB 21’s introduction, whether they predated or postdated enactment.¹¹ The legislature thereby provided Delaware corporations and stockholders greater certainty about how courts would evaluate fiduciary duty claims, while avoiding opportunistic lawsuits during SB 21’s pendency. By thus increasing “balance and predictability” in fiduciary duty cases, the General Assembly reasonably concluded that the amendments would continue to “dra[w] corporations to Delaware” and protect and benefit stockholders by incentivizing cleansing mechanisms in interested transactions. Senate Hearing at 3:16:20-26 (Sen. Pettyjohn); *see also id.* at 2:49:20-40; House Hearing at 6:49:00-6:50:35 (Rep. Griffith) (certainty needed to “stop the exodus” of corporations).

Plaintiff suggests the legislation was misguided. Br. 7-12. But as Plaintiff concedes, the question is not whether a law “is good policy or bad policy.” *Id.* at 1. The General Assembly reasonably concluded that the amendments—including a bright-line effective date—would increase clarity and stability for corporations and stockholders. The question whether the legislature could have “been wiser” or “more practical” is “not a question of constitutional dimension.” *Turner Elkhorn*, 428 U.S. at 19. Section 144 therefore does not violate Article I, Section 9.

¹¹ Senate Hearing at 2:49:20-40, 3:16:05-3:18:40; House Hearing at 6:49:00-6:50:35; *see* Fisch & Solomon, *supra*, at 642.

CONCLUSION

The Court should answer both certified questions in the negative.

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