

# Delaware Supreme Court Upholds Constitutionality of Statutory Safe Harbor

February 27, 2026

On February 27, 2026, the Delaware Supreme Court issued a decision in *Rutledge v. Clearway Energy Group, et al.*, upholding the constitutionality of Sections 1 and 3 of Senate Bill 21 (“SB 21”), which amended Delaware General Corporate Law Section 144 to create statutory safe harbors for interested director and officer and controlling stockholder transactions. The decision helps quell the upheaval in Delaware over the past several years regarding the standard of review for conflict transactions and improves clarity for transaction planning going forward.

**Background of SB 21 & the Constitutional Challenge.** SB 21 created a statutory safe harbor for transactions involving conflicted directors, controlling stockholders, or control groups, pursuant to which these transactions “may not be the subject of equitable relief, or give rise to an award of damages” against a corporation’s directors, officers, or controlling stockholders for a breach of fiduciary duty. SB 21 further provided statutory definitions for “controller,” “control group,” and “disinterested director,” and created a rebuttable presumption of disinterest for directors if the board had determined that a director was independent under applicable stock exchange rules. The amended Section 144 has retroactive effect on transactions that were not subject to pending litigation as of February 17, 2025, when the bill was introduced to the Delaware General Assembly.

A stockholder plaintiff challenged SB 21’s constitutionality, arguing that SB 21 (i) improperly divested the Court of Chancery of its equitable jurisdiction by removing the court’s ability to award equitable relief and damages when the safe harbor is met; and (ii) stripped him of his property right in his breach of fiduciary duty claim that had vested prior to the amendments.

**Decision of the Delaware Supreme Court.** The Delaware Supreme Court held that the amendments did not violate the Delaware constitution. Instead, the Court determined that SB 21 was a “legitimate exercise of the General Assembly’s authority to enact substantive law that, in its legislative judgement, serves the interests of the citizens of our State.” The Court rejected arguments that SB 21 divested the Court of Chancery of its equitable jurisdiction, noting that breach of fiduciary claims (including the

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plaintiff's) remain within the undisputed jurisdiction of the Court of Chancery, albeit subject to a different review framework. The Court likened the amended Section 144 to other exercises of permissible legislative power, such as Section 102(b)(7) of the DGCL, which allows corporate charters to exculpate directors and officers from personal liability for breaches of the duty of care, as well as other DGCL provisions, such as Section 253, which authorizes a streamlined process for short-form mergers.

The Court also upheld SB 21's retroactivity provisions, explaining that while laws can apply retroactively "only where the General Assembly has made its intent plain and unambiguous," the General Assembly here had done so, and that nothing about the provision offended due process because SB 21 was reasonably related to a permissible legislative objective. The Court rejected the plaintiff's argument that SB 21 extinguished his right of action, explaining that his fiduciary duty arguments could still be made, albeit reviewed under a different standard.

While not strictly at issue in this case, the Court devoted several pages of its decision to explaining how SB 21 "redirects the . . . judicial development of the concept of 'control' by defining the term 'controlling stockholder.'" While the amended Section 144's statutory controller definition was welcomed by many as providing much-needed clarity, some have argued that Section 144(e)'s definition of "controller" applied only to transactions that satisfied the safe harbor, leaving the common law concept of transaction-specific control otherwise intact. The Court's language here—while not definitive—did not suggest any such limitation and suggests that it might view the statutory definition of controller as comprehensively displacing prior case law.

### Takeaway

The Supreme Court's decision marks an important step toward resolving the considerable recent upheaval in Delaware—what Vice Chancellor Zurn described as an "annus horribilis"—and provides welcome clarity going forward.

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Please do not hesitate to contact us with any questions.



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