



# EXHIBIT A

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

**BRIEF OF CORPORATE LAW PROFESSORS AS *AMICI CURIAE* IN  
SUPPORT OF APPELLEES AND THE STATE OF DELAWARE AND IN  
SUPPORT OF UPHOLDING THE CONSTITUTIONALITY OF SECTION 1  
OF SENATE BILL 21, CODIFIED AS 8 *DEL. C.* § 144**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES .....	ii
INTERESTS OF <i>AMICI</i> .....	1
RULE 28(C)(4) CERTIFICATION.....	3
SUMMARY OF ARGUMENTS.....	4
ARGUMENT .....	9
I.    SB21 Was The Product Of The General Assembly’s Article IX Power To Adopt A General Corporation Law And To Amend That Law—And Necessarily The Corporate Charters Created Under It—When Perceived To Be In The Best Interests Of The State. ....	9
II. <i>DuPont</i> Does Not Prohibit The General Assembly From Amending The Corporate Contract To Provide Safe Harbors For Certain Conflict Of Interest Transactions.....	16
III.  Extending <i>DuPont</i> In The Manner Urged By Appellant Would Do Violence To Nearly Six Decades Of Actions Taken By The General Assembly To Maintain Delaware’s Status As The Premier Forum For Incorporations. ....	22
IV.  Appellant’s Reliance On A Putative Event Study Is Irrelevant, Incomplete, And Misguided. ....	23
CONCLUSION.....	26

## TABLE OF AUTHORITIES

	<u>Page</u>
<b>Cases</b>	
<i>Arbaugh v. Y &amp; H Corp.</i> , 546 U.S. 500 (2006).....	19
<i>Christiana Care Health Servs., Inc. v. Carney</i> , 2025 WL 1541638 (Del. Ch. May 30, 2025).....	13
<i>DuPont v. DuPont</i> , 85 A.2d 724 (Del. 1951).....	<i>passim</i>
<i>Gandhi-Kapoor v. Hone Cap. LLC</i> , 307 A.3d 328 (Del. Ch. 2023) .....	19
<i>Gunderson v. Trade Desk, Inc.</i> , 326 A.3d 1264 (Del. Ch. 2024) .....	13
<i>In re Fox Corporation/Snap Inc.</i> , 312 A.3d 636 (Del. 2024) .....	14
<i>Lawson v. Household Fin. Corp.</i> , 152 A. 723 (Del. 1930).....	11
<i>Morris v. Am. Pub. Utils. Co.</i> , 122 A. 696 (Del. Ch. 1923) .....	11
<i>Philadelphia, W. &amp; B.R. Co. v. Bowers</i> , 9 Del. 506 (1873).....	12, 17
<i>Prices Corner Liquors, Inc. v. Delaware Alcoholic Beverage Control Com'n</i> , 705 A.2d 571 (Del. 1998).....	23
<i>Sheehan v. Oblates of St. Francis de Sales</i> , 15 A.3d 1247 (Del. 2011).....	23
<i>STAAR Surgical Co. v. Waggoner</i> , 588 A.2d 1130 (Del. 1991).....	13

<i>The Charitable Corporation v. Sutton</i> , 26 Eng. Rep. 642, 9 Mod. 350 (Ch. 1742).....	<i>passim</i>
<i>Totta v. CCSB Fin. Corp.</i> , 2022 WL 1751741 (Del. Ch. May 31, 2022), <i>judgment entered</i> , (Del. Ch. 2022), <i>and aff'd CCSB Fin. Corp. v. Totta</i> , 302 A.3d 387 (Del. 2023).....	14
<i>Trustees of Dartmouth College v. Woodward</i> , 17 U.S. 518 (1819).....	<i>passim</i>
<i>Wilmington City Ry. Co. v. Wilmington &amp; B.S. Ry. Co.</i> , 46 A. 12 (Del. Ch. 1900) .....	12, 13, 15
<b>Other Authorities</b>	
30A C.J.S. Equity § 130 (2025).....	19
C.B. Rhoads, <i>The Police Power as a Limitation upon the Contractual Right of Public Service Corporations</i> , 69 U. PA. L. REV. 317 (1921).....	12
Charles R.T. O’Kelley, <i>What Was the “Dartmouth College” Case Really About?</i> , 74 VAND. L. REV. 1645 (2021) .....	11
David Chan Smith, <i>The Beginning of History for Corporate Law: Corporate Government, Social Purpose and The Case of Sutton’s Hospital (1612)</i> , 45 SEATTLE U.L. REV. 367 (2021).....	17
Kenneth Khoo and Roberto Tallarita, <i>The Price of Delaware Corporate Law Reform</i> (June 24, 2025).....	23
Lyman Johnson, <i>Delaware’s Non-Waivable Duties</i> , 91 B.U.L. REV. 701 (2011).....	17
Mohsen Manesh & Joseph A. Grundfest, <i>The Corporate Contract and Shareholder Arbitration</i> , 98 NYU L. REV. 1106 (2023).....	11
RANDY J. HOLLAND, <i>THE DELAWARE STATE CONSTITUTION: A REFERENCE GUIDE</i> (1st ed. 2002).....	12
Restatement (Second) of Judgments § 11 (Am. L. Inst. 1982) .....	19

Restatement (Third) of Trusts (Am. L. Inst. 2003).....	22
Stephen A. Siegel, <i>Understanding The Nineteenth Century Contract: The Role Of The Property-Privilege Distinction And “Takings” Clause Jurisprudence</i> , 60 S. CAL. L. REV. 1 (1986).....	12
Tiago Duarte-Silva and Aaron Dolgoff, <i>Did SB21’s Changes to Delaware Corporate Law Harm Shareholders?</i> (Apr. 16, 2025) .....	23
<b>Statutes</b>	
8 <i>Del. C.</i> § 102(b)(7).....	14
8 <i>Del. C.</i> § 124 .....	14
8 <i>Del. C.</i> § 141(e).....	14
8 <i>Del. C.</i> § 144 .....	14, 15
8 <i>Del. C.</i> § 172 .....	14
8 <i>Del. C.</i> § 174 .....	14
8 <i>Del. C.</i> § 281(c).....	14
8 <i>Del. C.</i> § 325(b).....	14
8 <i>Del. C.</i> § 326 .....	14
8 <i>Del. C.</i> § 327 .....	14
8 <i>Del. C.</i> § 394 .....	13
12 <i>Del. C.</i> § 3806(c).....	22

## INTERESTS OF *AMICI*

*Amici curiae*, Lawrence A. Cunningham, Joseph A. Grundfest, Lawrence A. Hamermesh, Jonathan R. Macey, Robert T. Miller, Charles R.T. O’Kelley, and D. Gordon Smith, are law professors, lecturers, and fellows who teach and write about corporate law. *Amici* have no financial interest in this case and express no views on the underlying merits of Senate Bill 21 (“SB21”). Rather, *Amici* submit this brief because they share two core beliefs: first, that Delaware’s corporation law is important to the orderly functioning of capital markets and, second, it is critical to ensure that the General Assembly be permitted to exercise its constitutional authority to continue to refine Delaware’s corporation law in the manner it determines is appropriate, ensuring that Delaware’s corporation law remains optimal for those market participants who choose to charter their corporations in this State.

*Amici* therefore write in support of Appellees’ and the State of Delaware’s answer to Certified Question No. 1: “Does Section 1 of Senate Bill 21, codified as 8 *Del. C.* § 144— eliminating the Court of Chancery’s ability to award ‘equitable relief’ or ‘damages’ where the Safe Harbor Provisions are satisfied— violate the Delaware Constitution of 1897 by purporting to divest the Court of Chancery of its equitable jurisdiction?” This question falls within the expertise and scholarly interests of *Amici*, who offer their academic perspective and experience to

aid in the Court's evaluation. *Amici* respectfully ask this Honorable Court to answer Certified Question No. 1 in the negative.

RULE 28(C)(4) CERTIFICATION

Pursuant to Supreme Court Rule 28(c)(4), no party, party's counsel, or other person (other than *Amici* and their undersigned counsel) authored this brief in whole or in substantial part or contributed money that was intended to fund preparing or submitting this brief.

## SUMMARY OF ARGUMENTS

I. Since the founding of our republic, the law of corporations has rested upon three bedrock principles that flow from a centuries-old understanding of the corporate form and which were first enshrined in American corporation law by the United States Supreme Court's landmark decision of *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819) ("*Dartmouth College*"). Those principles bear on the constitutional question before this Court, and are as follows: First, the act of incorporation and the resulting charter form a contract protected against impairment by a state under the Contracts Clause of the U.S. Constitution. Second, the corporation's charter is both a contract between the corporation and the state, and among the corporation and its stockholders. Third, and importantly for the question now before the Court, when granting a corporate charter, a state may reserve the right to later amend the law governing the charter it grants, binding the state, the corporation, and the stockholders to those amended terms.

The implications of *Dartmouth College* reverberated across the Union, causing the States, including Delaware, to adopt provisions in their constitutions that reserved to the State the maximum flexibility to regulate corporations, while not running afoul of *Dartmouth College*. Article IX of Delaware's Constitution was born of that history, and today it embodies the General Assembly's exclusive authority to grant corporate charters and to amend the terms of those charters when

perceived to be in the best interests of the State to do so. Against, this backdrop, it becomes clear that SB21 is the product of the General Assembly's Article IX power, and it should be upheld as constitutional on that ground.

II. Appellant's argument that SB21 violates Section 10 of Article IV of Delaware's Constitution must be rejected. In a two-stepped argument Appellant argues that under the holding of *DuPont v. DuPont*, 85 A.2d 724 (Del. 1951) ("*DuPont*"), "the General Assembly may not enact legislation that reduces the Court of Chancery's equitable powers below the general equity jurisdiction of the High Court of Chancery of Great Britain as it existed prior to the separation of colonies[.]" D.I. 9 ("Appellant's Opening Br.") at 13-14. Appellant then cites *The Charitable Corporation v. Sutton*, 26 Eng. Rep. 642, 9 Mod. 350 (Ch. 1742) ("*Sutton*") and argues that because the British High Court of Chancery's equitable powers in 1792 included the ability to fashion equitable relief for breaches of directors' fiduciary duties, no act by the General Assembly can prevent "the judges of the Delaware Court of Chancery from applying fiduciary duties as those judges think best." *Id.* at 18 (internal quotation omitted).

Appellant is wrong. *DuPont* was decided in the context of family law, not the thoroughly distinct field of corporation law. Furthermore, adoption of a safe harbor for corporate action, like SB21, cannot be seen as impinging upon the equity jurisdiction of the High Court of Chancery of Great Britain, and thus cannot run

afoul of Article IV, Section 10 under *DuPont*'s majority holding. It was never the province of the High Court of Chancery's jurisdiction to proscribe the rights the chartering sovereign could create in a particular corporation. Rather, the High Court of Chancery's jurisdiction extended only to doing equity within the confines of the charters granted. That historical interplay defined the High Court of Chancery's equitable jurisdiction then; thus, it is engrafted upon the equitable jurisdiction of the Delaware Court of Chancery today: the General Assembly has the constitutional power to enact a safe harbor for corporate conduct, and it remains the province of the Court of Chancery to police that conduct within the confines of any such safe harbors.

Moreover, nothing in SB21 divests the Court of Chancery of subject matter jurisdiction to adjudicate alleged breaches of fiduciary duty by officers, directors or controlling stockholders. The Court of Chancery still holds the exclusive jurisdiction and power to determine: (i) if the safe harbors granted under SB21 apply, (ii) when the safe harbors do not apply, whether a breach of fiduciary duty has occurred, and (iii) the relief that is required if a fiduciary breach has occurred.

Finally, even if the Court concludes that SB21 somehow touches upon the Court of Chancery's equitable jurisdiction, SB21 must still be upheld because, as *DuPont* held, Article IV, Section 17 of the Delaware Constitution of 1897 allows

the General Assembly to remove jurisdiction from the Court of Chancery, if that jurisdiction had previously been added to the Court of Chancery's jurisdiction by the General Assembly. Corporations do not exist naturally. Instead "[a] corporation is an artificial being ... existing only in contemplation of law." *Dartmouth College*, 17 U.S. at 636. As such, the Court of Chancery's jurisdiction to police the fiduciary duties of directors, officers, and controlling stockholders exists only because of the legislative act of chartering a corporation. Thus, Article IV, Section 17 protects SB21 without offense to Article IV, Section 10.

For all these reasons, SB21 does not violate Article IV, Section 10 of the Delaware Constitution.

**III.** If the Court concludes that *DuPont*, as extended to corporation law, would bar passage of SB21, *DuPont* should be overturned, thereby upholding the constitutionality of numerous other legislative safe harbors in the Delaware General Corporation Law ("DGCL") that have stood for nearly six decades and reaffirming what has long been understood as the General Assembly's primary authority as this State's democratically elected legislative body to ensure Delaware corporation law remains optimal for those who choose to incorporate in this State.

**IV.** Appellant's reliance on a putative event study regarding the impact that SB21 had on the value of Delaware corporations is irrelevant to the constitutional question before this Court, incomplete, and misguided.

Accordingly, Certified Question No. 1 should be answered in the negative.

## ARGUMENT

- I. SB21 Was The Product Of The General Assembly’s Article IX Power To Adopt A General Corporation Law And To Amend That Law—And Necessarily The Corporate Charters Created Under It—When Perceived To Be In The Best Interests Of The State. \_\_\_\_\_

*Dartmouth College* supplies the core constitutional support for SB21.

That dispute concerned the charter of Dartmouth College, granted by King George III in 1769, before the Revolution. *Dartmouth College*, 17 U.S. at 626. To settle a dispute between warring factions on the governing board, and to give New Hampshire’s governor greater oversight, the New Hampshire legislature remodeled the college’s charter, increasing the size of the board from 9 to 21, and appointing new members who would effect the governor’s desired personnel changes. *Id.* The losing faction sued, asserting the rights granted under the King’s charter constituted a contract subject to protection of Article I, Section 10 of the U.S. Constitution, which provides that “no state shall pass any ... law impairing the obligation of contracts” (the “Contracts Clause”). *Id.* at 625. New Hampshire’s highest court of appeal ruled in favor of the legislative action. *Id.* at 625. In a 5-1 decision, the United States Supreme Court reversed.

Writing for the majority, Chief Justice Marshall ruled that Dartmouth College’s royal charter was a contract protected by the Contracts Clause. *Id.* at 650. Chief Justice Marshall observed that when the King granted a charter “every

ingredient of a complete and legitimate contract is to be found.” *Id.* at 627. Thus, because the charter was a contract, and because the New Hampshire law impaired the obligations of that charter by, among other things, changing the structure of the college’s board of trustees, the New Hampshire law violated the Contracts Clause.

Concurring, Justice Story traced the history of corporation law through English precedent and observed that “it is perfectly clear, that any act of a legislature which takes away any powers or franchises vested by its charter in a private corporation, or its corporate officers, or which restrains or controls the legitimate exercise of them, or transfers them to other persons, without its assent, is a violation of the obligations of that charter.” *Id.* at 712. But Justice Story understood that the States would have a paramount interest in maintaining the ability to regulate the corporations formed under their laws, and, thus, further stated that “[i]f the legislature mean to claim such an authority [i.e. the authority to revoke or to amend the terms of a corporate charter], it must be reserved in the grant.” *Id.* In the *Dartmouth College* case, such a reservation was not taken by the King in the charter. *Id.*

*Dartmouth College* thus established three bedrock principles of corporation law: (i) the act of incorporation forms a contract protected by the Contracts Clause against impairment by a state; (ii) the contractual relationship exists between the corporation and the state, and among the corporation and its

stockholders; and (iii) when granting a corporate charter, a state may reserve the right to later amend its terms. See Charles R.T. O’Kelley, *What Was the “Dartmouth College” Case Really About?*, 74 VAND. L. REV. 1645, 1713-18 (2021); see also, Mohsen Manesh & Joseph A. Grundfest, *The Corporate Contract and Shareholder Arbitration*, 98 NYU L. REV. 1106, 1111-12 (2023) (“[O]ver two centuries of American jurisprudence has recognized that when a state grants a corporate charter, the state becomes a party to the corporate contract that governs the legal relationships between the corporation, its directors, and its shareholders.”).

The implications of *Dartmouth College* on the States’ power to regulate corporations reverberated across the Union, including Delaware.

First, echoing *Dartmouth College*, Delaware has long acknowledged that corporate charters form a contract. See, e.g., *Lawson v. Household Fin. Corp.*, 152 A. 723, 726-27 (Del. 1930) (citing *Dartmouth College*).

Second, Delaware has long acknowledged that the contract, when formed, is among the State, the corporation and its stockholders:

[A] dual contract--one between the state and the corporation and its stockholders, the other between the corporation and its stockholders. That there is a third aspect in which the contract may be regarded would appear clear, for not only is there a contractual tie binding in the two respects observed . . . but there is as well a contractual relation in many particulars existing between the stockholders *inter se*.

*Morris v. Am. Pub. Utils. Co.*, 122 A. 696, 700 (Del. Ch. 1923) (internal quotes omitted).

Third, and importantly for the question now before the Court, a clear result of *Dartmouth College* “was the early passage in nearly all of the States of general corporation laws, whereby the state specifically reserved to itself the right to amend, alter or repeal corporate charters.” C.B. Rhoads, *The Police Power as a Limitation upon the Contractual Right of Public Service Corporations*, 69 U. PA. L. REV. 317, 319 (1921); Stephen A. Siegel, *Understanding The Nineteenth Century Contract: The Role Of The Property-Privilege Distinction And “Takings” Clause Jurisprudence*, 60 S. CAL. L. REV. 1, 33 (1986) (observing that *Dartmouth College* implies that under a reservations clause the states would not be barred from imposing even the most major changes to the charters they grant).

Delaware was counted among those states. *Philadelphia, W. & B.R. Co. v. Bowers*, 9 Del. 506, 534 (1873) (observing that it was “undoubtedly competent for the Legislature, by a provision in the charter, to reserve to itself the right to supervise and regulate in the future this power of the company”). Thus, “to accommodate”<sup>1</sup> the *Dartmouth College* decision, Article II, Section 17 of the Delaware Constitution of 1831 vested the General Assembly “with a reserved power

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<sup>1</sup> RANDY J. HOLLAND, *THE DELAWARE STATE CONSTITUTION: A REFERENCE GUIDE* 197 (1st ed. 2002).

of revocation” over the charters it granted. *Wilmington City Ry. Co. v. Wilmington & B.S. Ry. Co.*, 46 A. 12 (Del. Ch. 1900). Then, in 1897, the provisions regarding the State’s power to form corporations was “substantially revised and expanded” and Article IX was adopted, providing for incorporation only by “general law.” See HOLLAND, *supra* note 1 at 197.

The product of this history and the constitutional authority vested exclusively in the General Assembly under Article IX was the creation of the Delaware General Corporation Law, 8 *Del. C.* §§ 101 *et seq.*, from which the corporate contract springs. And as the DGCL makes clear, it, and any amendments to it, form part of every corporation’s certificate of incorporation—*i.e.*, the contract among the state, the corporation, and stockholders.<sup>2</sup>

It thus follows that if the General Assembly holds the exclusive constitutional power to create the corporate contract and to amend its terms, then it is within the General Assembly’s constitutional power to amend the DGCL to include certain safe harbors for corporate conduct. *Wilmington City Ry. Co.*, 46 A.

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<sup>2</sup> See 8 *Del. C.* § 394; *STAAR Surgical Co. v. Waggoner*, 588 A.2d 1130, 1136 (Del. 1991) (“[T]he General Corporation Law is a part of the certificate of incorporation of every Delaware company.”); *Christiana Care Health Servs., Inc. v. Carney*, 2025 WL 1541638, \*9 (Del. Ch. May 30, 2025) (“Section 394 reserves for the legislature the right to amend a charter through an amendment to the DGCL.”); *Gunderson v. Trade Desk, Inc.*, 326 A.3d 1264, 1280 (Del. Ch. 2024), *as corrected* (Nov. 8, 2024) (same).

at 16 (interpreting the General Assembly’s authority under Del. Con. 1831, art. 2, § 17 and observing “[a]s the greater power includes every less power which is a part of it, the right to withdraw a franchise must authorize a withdrawal of every or any right or privilege which is a part of the franchise”); *Totta v. CCSB Fin. Corp.*, 2022 WL 1751741, at \*16 (Del. Ch. May 31, 2022) (“Although the General Assembly has the power to wholesale displace the foundational role of equity in corporate law, it has not done so.”), *judgment entered*, (Del. Ch. 2022), and *aff’d CCSB Fin. Corp. v. Totta*, 302 A.3d 387 (Del. 2023). Indeed, the power to sue emanates from the DGCL. *See In re Fox Corporation/Snap Inc.*, 312 A.3d 636, 648 & n.63 (Del. 2024) (observing that the power to sue for breaches of fiduciary duty to police corporate misconduct is best understood as a power “‘incidental’ to the status of being a stockholder” under Section 121 of the DGCL). And it has long been understood that the General Assembly can amend the DGCL to include safe harbors that may affect the power to sue.<sup>3</sup>

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<sup>3</sup> *See, e.g.*, 8 *Del. C.* § 102(b)(7) (eliminating damages for breaches of the duty of care); § 124 (limiting equitable relief for corporate acts challenged for corporation’s lack of power to take the action); § 141(e) (directors are fully protected when relying on experts); prior § 144 (limitations on acts being void or voidable if criteria satisfied); § 172 (directors fully protected for reliance on experts and information to determine surplus to pay dividends and repurchase stock); § 174 (statute of repose for claims that dividends or stock repurchases are unlawful); § 281(c) (limiting director liability if procedures are followed in dissolving and winding up a corporation); § 325(b) (barring suits against directors, officers and stockholders for corporate debts until  
(Continued . . .)

For these reasons, Section 144 of the DGCL, as amended by SB21, cannot be seen as an unconstitutional encroachment on the Court of Chancery's historical equitable jurisdiction. Rather, SB21 embodies an exercise of the General Assembly's exclusive authority under its Article IX powers to amend the terms of the corporate contract because it has perceived such amendment to be in the best interests of this State. *Wilmington City Ry. Co.*, 46 A. at 15-16 (holding the general reservation of the power to alter, revoke, or repeal a grant of special privileges necessarily implies that the power may be exerted "at the pleasure of the legislature").

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judgment is obtained against the corporation); § 326 (additional limitations on stockholder liability for debts of corporation); § 327 (limitations on derivative standing).

II. *DuPont* Does Not Prohibit The General Assembly From Amending The Corporate Contract To Provide Safe Harbors For Certain Conflict Of Interest Transactions.

*DuPont* resolved a question regarding whether a spouse could maintain an equitable action for separate maintenance, despite a statute enacted by the General Assembly that had conferred on the Family Court exclusive jurisdiction over non-support actions between husband and wife. *DuPont*, 85 A.2d at 726-27. The decision did not address the thoroughly distinct realm of corporation law.

*DuPont*'s holding rests on the interpretation of Article IV, Section 10 of the Delaware Constitution, which reads in relevant part: "This court shall have all the jurisdiction and powers **vested by the laws of this State in the Court of Chancery.**" (emphasis added). In construing that provision, the *DuPont* majority held that the jurisdiction and powers "vested" by the laws of Delaware included all the general equity jurisdiction of the High Court of Chancery of Great Britain as it existed before the separation of the colonies, "subject to the proviso, originally contained in Section 25 of the Colonial Act and now found as Section 4367, R.C.1935, to the effect that the Chancellor shall not hear and determine any cause where a sufficient remedy exists at law." *Id.* at 727.

Appellant seizes on *DuPont*'s holding and argues that under *Sutton*, the historical equitable powers of the High Court of Chancery in England included the ability to fashion equitable relief for breaches of directors' fiduciary duties; and,

thus, carrying that jurisdiction forward to today means, “the Delaware General Assembly is constitutionally prohibited from preventing the judges of the Delaware Court of Chancery from applying fiduciary duties as those judges think best.” Appellant’s Opening Br. at 18 (citing Lyman Johnson, *Delaware’s Non-Waivable Duties*, 91 B.U.L. REV. 701, 702 (2011)). Appellant’s arguments miss their mark for at least three reasons.

*First*, if this Court traces the Court of Chancery’s jurisdiction to what the general equity jurisdiction of the High Court of Chancery of Great Britain was as it existed before the separation of the colonies, then that jurisdiction must be understood through the interplay between the sovereign’s primary power to define the corporate contract and the High Court of Chancery’s secondary power to police corporate actors’ conduct within the confines of the charters the sovereign creates. *DuPont* did not address that history.

Yet, as far back as the seventeenth century, it was understood under English precedents that a corporation did not exist in a state of nature but rather “required a royal or parliamentary charter.” David Chan Smith, *The Beginning of History for Corporate Law: Corporate Government, Social Purpose and The Case of Sutton’s Hospital (1612)*, 45 SEATTLE U.L. REV. 367, 387 (2021). Indeed, “at common law charters of incorporation had always been recognized and treated as contracts between the crown and the grantees.” *Philadelphia, W. & B.R. Co.*, 9 Del.

at 531 (discussing *Dartmouth College*). And the sovereign's power to create the corporate contract included "the controlling authority [to] ... amend and repeal its statutes, remove its officers, correct abuses, and generally superintend the management" of the entities it chartered. *Dartmouth College*, 17 U.S. at 676 (discussing the historical underpinnings of the corporate form); *see also* O'Kelley, at 1715-18 (discussing the impact of English precedent on Justice Story's concurrence in *Dartmouth College*). But it was equally understood that the courts of equity did not possess "a visitatorial power, or a right to control" the corporation's affairs but rather only "a general jurisdiction, in all cases of an abuse of trust, to redress grievances and suppress frauds." *Id.*

What these precedents show is that within the law of corporations, it has always been understood that a corporation was what the sovereign made it, and the High Court of Chancery's jurisdiction was not based on some baseline immutable jurisdiction over corporate affairs, but rather to do equity solely within the confines of the charters that were granted. Indeed, even the *Sutton* decision Appellant relies on recognizes the sovereign's primary authority to optimize corporation law in the first instance, and that the Court of Chancery's role in doing equity in the context of corporation law was not superior, but only supplementary:

The King's Courts are to redress every wrong and protect every innocent person; and if the laws do not extend to do this, new and more ample ones will be provided, for two mischiefs are to be avoided: first, not to make it unsafe or

too perilous for honest men to accept offices of trust, by making them liable to losses in the execution of them; and secondly, to prevent the frauds of dishonest men in such employments.

*Sutton*, 26 Eng. Rep. 642, 9 Mod. at 356. *See generally*, 30A C.J.S. Equity § 130 (2025) (“Equitable doctrines conform to contractual and statutory mandates, not vice versa.”).

Thus, regardless of the Court’s holding in *DuPont* as applied to family law, the general equity jurisdiction of the High Court of Chancery of Great Britain as applied to corporations was always secondary to the sovereign’s primary power to define the contours of the corporate charters it grants. Accordingly, the jurisdiction and powers that were vested in the Court of Chancery by the laws of this State under Article IV, Section 10 when Delaware first adopted its Constitution in 1792, must equally exist within this hierarchy.

**Second**, SB21 does not divest the Court of Chancery of its equitable jurisdiction and powers to apply equity within the confines of the corporate charters granted by the General Assembly. Jurisdiction is the legal authority to hear a particular kind of case. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (explaining that subject matter jurisdiction refers to a court’s “power to hear a case”); *accord Gandhi-Kapoor v. Hone Cap. LLC*, 307 A.3d 328, 338 (Del. Ch. 2023) (*citing* Restatement (Second) of Judgments § 11 (Am. L. Inst. 1982)). Yet, SB21 does not remove from the Court of Chancery the jurisdiction to hear breach of

fiduciary duty cases. There is no case that, before SB21, the Court of Chancery could decide that after SB21 it cannot decide. Rather, the Court of Chancery still has the exclusive jurisdiction to determine whether SB21's safe harbors apply, to determine whether a breach has occurred when the safe harbors do not apply, and to grant equitable relief if a breach of fiduciary duty has occurred.

Harkening back to the language of *Sutton*, SB21 appears to clarify what steps can be taken to better address every "wrong" and protect every "innocent person" (apparently to better strike a proper balance between incentivizing directors and controlling stockholders to accept the responsibility of those positions while preventing dishonest persons from committing fraud) than did the preexisting contract. In other words, the legislature perceived a need to provide "new and more ample" laws to address "every wrong and protect every innocent person." Yet, it remains the role of the Court of Chancery in cases where protections of the safe harbor are claimed, to determine whether the claimants have carried out their safe harbor obligations with the requisite care, loyalty and transparency that the General Assembly has determined will entitle them to be considered as "honest men" within the meaning of the concerns outlined in *Sutton*. And it remains the role of the Court of Chancery in cases where the protections of the safe harbor are not claimed, or are ineffectively claimed, to exercise its jurisdiction to strike the proper balance between protecting "honest" men or women who seek to serve the corporation, while

preventing “dishonest” men or women from using their position to defraud the corporation and its stockholders.

*Third*, even if this Court concludes that SB21 does somehow touch upon the Court of Chancery’s equitable jurisdiction, SB21 must still be upheld as constitutional because, as *DuPont* held, Article IV, Section 17 of the Delaware Constitution of 1897 allows the General Assembly to remove jurisdiction from the Court of Chancery, if that jurisdiction had previously been added to the Court of Chancery’s jurisdiction by the General Assembly. That is certainly the case here.

Again, corporations do not exist naturally. *See Dartmouth College*, 17 U.S. at 636. Accordingly, the fiduciary duties that the Court of Chancery maintains jurisdiction to police only spring into existence after the corporation is chartered under the DGCL, which under Article IX of Delaware’s Constitution, is a power first carried out by the General Assembly. And because the “general law” of corporations defines the scope of corporate activity and creates the stockholders’ right to sue, the General Assembly can amend that general law to expand or limit the actions taken by or on behalf of corporations and its constituents with Article IV, Section 17 protecting that legislative act without offense to Article IV, Section 10.

III. Extending *DuPont* In The Manner Urged By Appellant Would Do Violence To Nearly Six Decades Of Actions Taken By The General Assembly To Maintain Delaware's Status As The Premier Forum For Incorporations.

*Amici* join with the State of Delaware in its argument that if *DuPont* is extended to prohibit the General Assembly from adopting SB21, that decision should be overturned and Justice Tunnell's well-reasoned dissent adopted. D.I. 30 at 25-27. Doing so would uphold the constitutionality of numerous other legislative safe harbors that have stood for nearly six decades,<sup>4</sup> and it would reaffirm what has long been understood as the General Assembly's primary authority as this State's democratically elected legislative body to ensure Delaware corporation law remains optimal for those who choose to incorporate in this State.

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<sup>4</sup> For example, it is beyond contention that the High Court of Chancery's jurisdiction extended to resolve fiduciary claims for breach of trust. Restatement (Third) of Trusts Ch. 1, Intro. note (Am. L. Inst. 2003). Yet, the Delaware General Assembly has enacted 12 *Del. C.* § 3806(c), which permits the elimination of fiduciary duties in a statutory trust. Under Appellant's extension of *DuPont*, that legislative act runs afoul of Article IV, Section 10—a nonsensical result that either exposes the fallacy of extending *DuPont* beyond its narrow holding or one that demonstrates why the majority's holding in *DuPont* must be overturned.

IV. Appellant’s Reliance On A Putative Event Study Is Irrelevant, Incomplete, And Misguided.

Appellant claims that “around the date of SB21’s announcement, Delaware companies experienced abnormal negative returns, resulting in a loss of ‘approximately \$700 billion’ of value for the 1,000 largest publicly traded Delaware corporations.” Appellant’s Opening Br. at 8 (citing Kenneth Khoo and Roberto Tallarita, *The Price of Delaware Corporate Law Reform* at 5-6, 39 (June 24, 2025), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5318203](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5318203)); *see also* D.I. 15 (Brief of Amici Curiae Corporate Law Academics in Support of Appellant) at 20-21. This argument fails for at least three reasons:

The argument is irrelevant. The constitutionality of any legislative act does not turn on the stock market’s response. “It is not a proper judicial function to decide or even to express an opinion on what is or is not wise legislative policy.” *Prices Corner Liquors, Inc. v. Delaware Alcoholic Beverage Control Com’n*, 705 A.2d 571, 575 (Del. 1998). Indeed, the General Assembly is entitled to deference when determining where that balance lies. *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1259 (Del. 2011) (“[W]e do not sit as an überlegislature to eviscerate proper legislative enactments. . . . Rather, we must take and apply the law as we find it, leaving any desirable changes to the General Assembly.”).

The argument is incomplete. It fails to cite a second event study that examines precisely the same question but concludes that there is “[n]o support for the notion that SB21 has hurt shareholders.”<sup>5</sup>

The argument is misguided. Every event study that seeks to measure SB 21’s stock price impact will fail to prove causation. A negative stock price response to SB21’s announcement could reflect disappointment that it did not include more aggressive reforms, including limits on attorneys’ fee awards.<sup>6</sup> The two contradictory event studies should therefore be ignored for purposes of deciding the questions certified to this Court.<sup>7</sup>

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<sup>5</sup> See Tiago Duarte-Silva and Aaron Dolgoff, *Did SB21’s Changes to Delaware Corporate Law Harm Shareholders?* (Apr. 16, 2025), <https://clsbluesky.law.columbia.edu/2025/04/16/did-sb21s-changes-to-delaware-corporate-law-harm-shareholders/>.

<sup>6</sup> See, e.g., <https://corpgov.law.harvard.edu/2025/04/06/delaware-revamps-its-general-corporation-law-will-it-stop-companies-from-leaving/> (“[I]t remains to be seen whether the changes under SB 21 will be enough to stem the tide of departures.”); <https://a16z.com/were-leaving-delaware-and-we-think-you-should-consider-leaving-too/> (“Although the Delaware Legislature has taken some exception to these developments, its actions fail to take full measure of the problem.”).

<sup>7</sup> The Khoo-Tallarita study is also susceptible of many additional detailed critiques. In particular, the authors’ own data shows that the economic characteristics of the Delaware subsample differed significantly from the characteristics of the non-Delaware subsample (*see* Khoo-Tallarita at 35 (Table 2)) raising concern that the study fails adequately to control for exogenous factors, particularly because the week of the announcement included multiple macro-economic disclosures that could have also

(Continued . . .)

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influenced stock prices, including the February 19, 2025 release of the Federal Open Market Committee minutes and each of the S&P 500, Dow Jones, and Nasdaq recording drops of 4.6%, 3.1%, and 7.5% respectively, during the week between February 19 and 27. The authors also recognize that SB21 was long expected by the market, and therefore did not come as a clean “shock” of the form that traditionally supports the most rigorous event studies. Khoo-Tallarita at 33.

CONCLUSION

For all the foregoing reasons, *Amici* respectfully ask that this Court answer Certified Question No. 1 in the negative.

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Dated: September 12, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that, on September 12, 2025, true and correct copies of the foregoing *Brief of Corporate Law Professors as Amici Curiae in Support of Appellees and the State of Delaware and in Support of Upholding the Constitutionality of Section 1 of Senate Bill 21, Codified as 8 Del. C. § 144* were caused to be served via File&ServeXpress on the following counsel of record:

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