

Delaware Supreme Court Rejects Constitutional Challenges to DGCL Safe Harbor Amendments

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On February 27, 2026, the Delaware Supreme Court upheld [two key amendments](#) to Section 144 of the Delaware General Corporation Law (DGCL) passed as part of Senate Bill 21 (SB21). The ruling – issued in [Rutledge v. Clearway Energy](#) – was a win for the Clearway defendants and supporters of SB21, preserving both a bar on equitable relief and money damages for transactions that fall within the new safe harbor and the statute’s retroactivity provision.

Enacted on March 25, 2025, SB21 was [widely viewed as an effort to win back companies](#) considering corporate relocation in response to [recent decisions by Delaware courts](#). Among other changes, SB21 contained important amendments to DGCL Section 144’s safe harbor provisions for conflicted transactions, clarifying what constitutes a conflicted transaction and setting forth the steps that must be taken for the safe harbor protection to apply. While Cooley has [cataloged elsewhere](#) the full set of changes to Section 144, the *Clearway* case focused on two amendments:

1. The addition of language protecting directors and officers against “equitable relief, or ... an award of damages ... by reason of a claim based on a breach of fiduciary duty” where the safe harbor is satisfied.
2. A retroactivity provision specifying that the changes to Section 144 apply retroactively except as to proceedings pending on or before February 17, 2025 (the date [SB21 was introduced](#)).

In its recent *Clearway* opinion, the Delaware Supreme Court rejected constitutional challenges to both provisions. Read on to learn more.

Constitutional challenges

Background

Shortly after being signed into law, SB21 came under attack in a trio of derivative actions, including *Clearway*, challenging the validity of the two amendments discussed above on state constitutional grounds. In *Clearway*, Vice Chancellor Lori Will certified the following questions to the Delaware Supreme Court:

1. “Does ... 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?”
2. “Does ... applying the Safe Harbor Provisions to plenary breach of fiduciary claims arising from acts or transactions that occurred before the date that Senate Bill 21 was enacted—violate the Delaware Constitution of 1897 by purporting to eliminate causes of action that had already accrued or vested?”

In other words, do the amendments run afoul of the Delaware Constitution by ruling out money damages and equitable relief for safe harbor transactions, and applying these substantive changes retroactively? The Delaware Supreme Court accepted the two certified questions on June 11, 2025. Briefing closed in September, and oral argument was held on November 5, 2025.

The parties’ arguments

Remedies: On the first question, the plaintiff’s arguments focused on Section 10 of Article IV of the Delaware Constitution. Section 10 provides, in relevant part, that the Court of Chancery “shall have all the jurisdiction and powers vested by the laws of this State in the Court of Chancery.” The seminal case on point, *DuPont v. DuPont*, 85 A.2d 724 (Del. 1951), explains that Section 10’s grant of “general equity jurisdiction of the Court of Chancery ... is a constitutional grant not subject to legislative curtailment.” Thus, attempts by the legislature to strip the Court of Chancery of jurisdiction are presumed invalid, unless some non-Chancery tribunal is available to provide “the equivalent of the remedy available in the Court of Chancery.” The plaintiff in *Clearway* argued that the elimination of equitable remedies and money damages for safe harbor transactions improperly impinged the “jurisdiction and powers” granted to the Court of Chancery.

In response, the defendants – as well as Delaware’s governor, who intervened to defend SB21’s constitutionality – sought to emphasize the amendments’ limited scope. In particular, they argued that the elimination of certain remedies should be viewed, not as a curtailment of the Court of Chancery’s **jurisdiction**, but rather as an adjustment to the **standard of review** the court applies to conflicted transactions. They also argued that the plaintiff’s argument would threaten the viability of other provisions of the DGCL.

Retroactivity: On the second question, the plaintiff in *Clearway* argued that, by applying the changes to pre-amendment acts and occurrences, the legislature was depriving would-be-plaintiffs of a vested right, in contravention of due process and Section 9 of Article I of the Delaware Constitution. The defendants countered that no one has a vested right in particular **remedies**, and that, in any event, the retroactivity provision did not violate due process because it reflected a rational legislative purpose.

The Delaware Supreme Court’s decision

On February 27, 2026, the Delaware Supreme Court upheld the constitutionality of the two challenged amendments in a unanimous en banc opinion.

Remedies: As to the plaintiff’s first claim – that SB21’s elimination of equitable relief and damages for safe harbor transactions represented unconstitutional jurisdiction-stripping – the court answered in the negative. Among the key reasons underlying the court’s analysis were the following:

- Delaware recognizes a “strong judicial tradition” of presuming the constitutionality of legislative enactments, which will be upheld unless their “invalidity is beyond doubt.”
- Because fiduciary duty claims are still adjudicated by the Court of Chancery – even where the safe harbor requirements are satisfied – the amendment “does not strip the court of its **jurisdiction** over equitable claims.” In this regard, the court distinguished its decision in *DuPont*. The court reasoned that in *DuPont*, unlike here, the statute purported to grant to the Family Court exclusive jurisdiction over support and maintenance actions, depriving the Court of Chancery of the ability to adjudicate such claims. The court likewise distinguished the plaintiff’s other main case, *In re Arzuaga-Guevara*, 794 A.2d 579 (Del. 2001), on the grounds that it too concerned a statute that purported to vest exclusive jurisdiction in the Family Court.
- The court accepted the defendants’ framing of the amendments as a change to the standard of review for fiduciary claims, noting that, “Rutledge’s **claim itself** remains with the Court of Chancery’s jurisdiction.”
- Adopting the plaintiff’s more expansive view of jurisdiction stripping and *DuPont* would imperil other settled provisions of the DGCL, including the short-form merger procedures upheld in *Glassman*.
- Pulling back, “adopt DGCL provisions that shape the contours of equitable claims and affect the relief available in intra-corporate litigation” is a core prerogative of the legislative branch.

Retroactivity: The court’s analysis of the retroactivity provision rejected the plaintiff’s contention that the amendment effected an unconstitutional deprivation of a vested right. Key points included the following:

- SB21 “does not **extinguish** right of action,” even if “the court must now review the challenged transaction under statutory standards.”
- Although the court stopped short of resolving the question of whether the amendment effected the extinguishment of a vested right, it characterized the proposition as “highly questionable” and observed that the plaintiff’s interest instead “appears to be more ‘an anticipated continuance of the existing law.’”
- In any event, even if a would-be-plaintiff **did** have a vested right in the availability of particular remedies, for economic legislation like SB21, due process only “requires that the statute bear a reasonable relation to a permissible legislative objective.” And the court easily concluded that SB21 was designed to further a permissible legislative objective, namely the exercise of the General Assembly’s “constitutional authority to create and modify the general corporate law of Delaware.”

Moving forward

Key takeaways for practitioners:

- The principal takeaway here is, of course, that the safe harbor amendments and retroactivity provision of SB21 remain intact, providing corporate decision-makers with greater dealmaking certainty via the statutory safe harbors.
- More broadly, the Delaware Supreme Court has in recent years repeatedly served as a ballast to the Chancery Court, paring or rejecting some of the Chancery Court decisions that had driven companies to consider other

alternatives for incorporation. This decision is in line with that trend. SB21 provides much needed clarity to dealmakers undertaking conflict transactions. As always, however, we can expect the plaintiffs' bar to continue probing for avenues to challenge conflicted transactions.

- Accordingly, it remains critical for companies considering strategic transactions that could implicate material conflicts to consult with experienced counsel as early as possible in transaction planning, and ensure corporate/M&A counsel is working hand in glove with their litigation colleagues to devise appropriate processes to mitigate risk from the outset.
- The court's decision also reflects some measure of deference to legislative decision-making. In so doing, it highlights one of the advantages that Delaware can offer to corporate decision-makers: namely, the ability of the Delaware legislature to respond to concerns of practitioners and corporations.

For guidance on navigating conflicted transactions in Delaware and Nevada, see [this February 25 Cooley article](#).

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