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OPTIMIZING DELAWARE'S CORPORATE LAW AMENDMENT PROCESS: IDEAS FOR THE NEXT 20 YEARS

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Since the enactment of the 1967 amendments to the General Corporation Law of the State of Delaware (the "DGCL"), our State has consistently kept its business law statutes up to date with annual amendments.[1] The process has historically been conducted in a deliberate way, largely driven by technical, rather than political, considerations.[2] That model, the hallmarks of which are a rigorously apolitical and expert technical approach, has regularly created a nonpolitical legislative product that has obtained bipartisan approval by a purely political body—the Legislature.[3] This model has served Delaware well for more than a half-century.[4] But if the last two years' DGCL amendments are any indication, the historical model and its benefits to Delaware's corporate law are at risk and must be reassessed. We begin that reassessment here.

Leading practitioner Lewis Black, Jr. described Delaware's amendment process as an "unwritten compact" between the Legislature and the Bar in his pamphlet, *Why Corporations Choose Delaware*, which the Delaware Secretary of State's office has distributed since at least 2007:

> The Delaware General Corporation Law is the great beneficiary of an unwritten compact between the bar and the state legislature. In broad outline, its terms recognized that the legislature will call upon the expertise of the Corporation Law Section of the Delaware State Bar Association to recommend, review and draft almost all amendments to the statute. It is understood that the bar is obligated to leave parochial client interests behind when proposing corporate legislation, to present issues fairly and in an even-handed fashion, and always to deal candidly with the legislature on matters involving the corporation law.[5]

Until recently, Delaware was able to point to a constitutional mandate that required political balance in the membership of its courts as further evidence that the formulation and application of Delaware

[1] S. Samuel Arsht, *A History of Delaware Corporate Law*, 1 DEL. J. CORP. L. 1, 17 (1976).

[2] *See id.* at 18–22.

[3] *About Delaware's General Corporation Law*, DEL. CORP. L., https://corplaw.delaware.gov/delawares-general-corporation-law/ (last visited May 23, 2025).

[4] JEFFERY W. BULLOCK, DEL DEP'T OF STATE, DIV. OF CORPS., 2023 ANNUAL REPORT (2023), https://corp.delaware.gov/stats/2023-annual-report/ ("[T]he First State continues to lead as the domicile of choice for Fortune 500 companies at nearly 67.6 percent.").

[5] LEWIS S. BLACK, JR., WHY CORPORATIONS CHOOSE DELAWARE 4 (2007), corpfiles.delaware.gov/whycorporations_web.pdf.

corporate law was apolitical.[6] But recent federal rulings created concerns about the continued vitality of the political balance requirement,[7] consequently impacting the state's continued ability to hold itself out as having a politically balanced judiciary. The continuation of that political balance in the future will likely depend primarily on the wisdom and voluntary discretion of our elected officials, rather than on a constitutional mandate.

A foundational theme that pervades Mr. Black's article is the described "unwritten compact" that requires the Bar "to leave parochial client interests behind when proposing corporate legislation," making Delaware unique among the states.[8] This theme has been a largely unrecognized, but critically important, element of Delaware's success.[9] A departure, or even the perception of a departure, from that compact would undermine the ability of Delaware to credibly hold itself out as apolitical in the drafting of its corporate laws.[10] Such undermining threatens at least one anchoring element of the institutional structure that has allowed Delaware to claim its enviable position as the favored domicile of business entities nationwide.[11]

Given the historic success of this model, destabilizing changes to that approach understandably cause concern. Two such destabilizing changes have recently occurred: (1) the process used in 2024 to adopt SB 313, (the so called "Market Practice Amendments" or *Moelis* amendments), which strained the historic model to its breaking point[12] and (2) the 2025 "DExit Amendments" worked by SB 21, which broke entirely from that model.[13] The enactment of SB 21 thrust Delaware's legislative adoption process into a new, uncharted direction that supplanted the measured and time-tested process with one driven largely by vigorous

[6] *See* DEL. CONST. art. IV, § 3(b).

[7] *See* Adams v. Governor of Del., 922 F.3d 166 (3d Cir. 2019), *rev'd and remanded in part sub nom.*, Carney v. Adams, 592 U.S. 53 (2020) (reversing for lack of standing, without addressing the merits).

[8] BLACK, JR., *supra* note 5, at 6.

[9] *See id.* at 4.

[10] *Id.*

[11] *Id.*

[12] *See* Letter from Hon. Kathaleen St. J. McCormick, Chancellor, to The Del. State Bar Ass'n Exec. Comm. (Apr. 12, 2024), https://s3.documentcloud.org/documents/24692528/mccormick-ltr-to-dsba.pdf.

[13] *See* Michael Barry, *A Member of Corporation Law Council's Statement in Opposition to SB 21*, LINKEDIN (Mar. 3, 2025), https://www.linkedin.com/pulse/member-corporation-law-councils-statement-opposition-sb-michael-barry-vqfme/?trackingId=kdQH2CHqTBWMSpCrHhGcDA%3D%3D.

partisan politics never before experienced in the normally -arid corporate law terrain.[14]

These unprecedented developments—which have disarrayed the customarily civil and predictable business law amendment process that characterized the interactions of the Delaware corporate bar for over sixty years—give rise to this article. The article's purp ose is not to reargue the methods by which SB 313 and SB 21 were adopted, nor the substance of either amendment. Rather, its purpose is to analyze the corporate law amendment *process* in order to objectively explore and formulate an optimal model to address the disruptive issues that gave rise to SB 313 and SB 21, and to spotlight a more stable consensus -based approach. The authors hope that the proposals made herein will persuade the various constituencies who participate in this process to recommit to the "unwritten compact" by setting aside client objectives, reaching across political and other divides, and arriving collegially at a workable solution. Renewing the compact will allow Delaware to continue to hold out its corporate law amendment process as ap olitical, and thereby maximally enable the Delaware Legislature to continue to keep the DGCL updated and market-leading. The Legislature will thus be able to assure that the amendment proposals it receives truly reflect the best interests of the State and all its key constituencies.

We first proceed by discussing Delaware's 1967 amendments and the ensuing stewardship of the DGCL over the next half -century. We identify both the positive and negative political and social compromises that made that system of technical amendments an aspir ational goal of every state that sought to compete with Delaware in chartering new corporations. Next, we focus on the processes that led to the Market Practice Amendments and DExit Amendments, including how those processes adhered to and departed from the traditional approach to DGCL amendments.[15] Finally, we conclude by recommending what we view as an optimized amendment process, including modernized changes to the pre-2024 Delaware model. We hope these proposed changes, or others that emerge from a healthy and robust discussion, can become a consensus model that will secure Delaware's statutory preeminence for decades to come.

We recognize that on a topic so sensitive and complex, reasonable minds will differ about which model is "optimal." Our goal, therefore, is not to end debate, but to encourage it. If we are to change a model that has worked well for more than a half-century, should we not do so in a deliberate and thoughtful way? Investors in Delaware corporations deserve at least that much from the DGCL's guardians.

The 1967 Amendments to the DGCL

The General Corporation Law of the State of Delaware, adopted by the Delaware General Assembly in 1899, was largely a copy of the New Jersey corporate statute.[16] Delaware sought new sources of revenue and looked to offer the same product as New Jersey, but at a lower cost.[17] Thereafter, the Delaware courts crafted a body of corporate law that often looked to New Jersey courts' decisions to resolve questions that Delaware courts had not previously addressed.[18]

By the early 1960s, widespread economic and social change was impacting every aspect of the nation's life.[19] From those tectonic forces, corporate law was not immune. Although the previous six decades had brought statutory amendment and the continued evolution of Delaware corporate law, by that point a consensus had emerged: a general overhaul of the law was nee ded.[20] Influencing that perception, among other things, were the facts that the Model Business Corporation Act was gaining traction and that the New York Legislature had adopted changes to the New York corporate code that were receiving broad attention.[21]

In 1963, the Delaware General Assembly responded by forming the Delaware Corporation Law Revision Committee.[22] The Committee set about its work by first consulting Ernst L. Folk, III, a Professor at the University of Virginia Law School and a leading corporate law scholar of

[14]*See* Kenneth Khoo & Robert Tallarita, *The Price of Delaware Corporate Law Reform*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Aug. 4, 2025), https://corpgov.law.harvard.edu/2025/08/04/the-price-of-delaware-corporate-law-reform/.

[15]*See* J. Travis Laster, *An Eras Tour of Delaware Corporate Law*, 50 J. CORP. L. 1190, 1260 (July 2, 2025) (reviewing the development of the DGCL since its inception). The Vice Chancellor identifies recent DGCL amendments (specifically, the 2022 amendments to Section 102(b)(7) allowing officer level exculpation and the 2023 amendments to Section 242(b) lowering the voting threshold for certain corporate acts) as the beginning of the "Legislative Era" in the statute's ongoing development. *Id.* at 1259–60. Importantly—and visibly in contrast to the amendments enacted in 2024 and 2025, which are a subject of this article —the 2022 and 2023 amendments were accomplished in accordance with the customary historic process for amending the DGCL. *Id.*

[16]Arsht, *supra* note 1, at 7.

[17]Charles M. Yablon, *The Historical Race Competition for Corporate Charters and the Rise and Decline of New Jersey: 1880-1910*, 32 J. CORP. L. 323, 354 (2007).

[18]*See* Wilmington City Ry. Co. v. People's Ry. Co., 47 A. 245, 253 (Del. Ch. 1900).

[19]Mark Lytle, *Making Sense of the Sixties*, 10 IR. J. AM. STUD. 1 (2001).

[20]*Dogsbodies of the DGCL: Revisiting Roles in the Landmark Achievement*, DEL. LAW., Spring 2008, at 10.

[21]*See, e.g.*, Jeffrey M. Gorris, Lawrence A. Hamermesh & Leo E. Strine, Jr., *Delaware Corporate Law and the Model Business Corporation Act: A Study in Symbiosis*, L. & CONTEMP. PROBS., Winter 2011, at 107, 111.

[22]Arsht, *supra* note 1, at 14.

his time.[23] With a stipend of $5,000, [24] Professor Folk proceeded to study each provision of the pre -1967 DGCL and compare them to the leading corporate law statutes around the country. In a detailed and nowlegendary report ("the Folk Report"), Professor Folk meticulously analyzed each section of the DGCL, recommended amendments to update the statute, and explained each change he proposed with specific references to other leading corporate statutes.[25]

After reviewing Professor Folk's detailed recommendations, the Revision Committee established a three -member subcommittee charged with finalizing the proposal to be formally made to the Legislature. [26] The subcommittee consisted of three of the leading corporate lawyers of the time: S. Samuel Arsht of Morris, Nichols, Arsht & Tunnell; Henry M. Canby of Richards, Layton & Finger; and Richard F. Corroon of Potter Anderson & Corroon. [27] The Committee received extensive commentary from the national corporate bar concerning the proposed revisions, including letters from leading practitioners in New York, Philadelphia, and Washington.[28] The full Revision Committee adopted the subcommittee's final product without comment, and the Delaware General Assembly approved it unanimously, as submitted, on July 3, 1967.[29]

By this unique process, a model for making substantive changes to the DGCL emerged: a third-party neutral expert drafted, and leading experts in other legal communities reacted to, the proposed changes. Leading Delaware corporate lawyers then considered th at input and prepared a set of amendments designed to keep the Delaware statute at the forefront of national corporate law. [30] Importantly, the process was

[23]Arsht, *supra* note 1, at 15.

[24]Minutes of Meeting of Del. Corp. L. Study Comm., at 1 (Mar. 20, 1964), https://www.law.upenn.edu/live/files/13148-delaware-1967-committee-minutes (scroll to the fifth page of the PDF to find the first page of the source) (author 's calculation estimating the amount as about $48,000 in inflation-adjusted dollars).

[25]*See* ERNEST FOLK, REVIEW OF THE DELAWARE CORPORATION LAW (1967).

[26]Arsht, *supra* note 1, at 16.

[27]*Id.* at 16 n.96. Each member of the drafting sub-committee, in turn, recruited younger lawyers from their firms to help in the process.*Id.* Each of those junior assistants eventually rose to prominence at the bar: Walter K. Stapleton and David A. Drexler of Morris Nichols; E. Norman Veasey and Charles F. Richards, Jr. of Richards Layton; and Charles S. Crompton, Jr. and Robert K. Payson of Potter Anderson.

[28]Minutes of Meeting of Del. Corp. L. Study Comm., at 1 -2 (Jul. 14, 1964), https://www.law.upenn.edu/live/files/13148-delaware-1967-committee-minutes (scroll to the seventh page of the PDF to find the first page of the source); *see also* Randy J. Holland, *Delaware Corporation Law: Judiciary, Executive, Legislature, Practitioners,* 72 BUS. L. 943, 946 (2017) (noting that the Committee sought comment from more than 100 law firms and corporate legal departments across the US).

[29]Arsht, *supra* note 1, at 16.

[30]*See generally* Holland, *supra* note 28.

technical rather than political. [31] This is not to suggest, naïvely, that none of the leading practitioners' comments received were informed by client wishes.[32] But, even assuming such influences, commentators appear to be motivated by their good faith belief that their proposals would improve the larger body of Delaware corporate law that was then emerging as the nation's *de facto* corporate law, and that public discourse around those proposals was important. [33] The distinction made here is critical. It was from this period that the good faith desire to improve Delaware Corporate law became a guiding principle that informed the process of keeping the DGCL current.[34]

The process utilized to amend the DGCL in 1967 was extremely commendable.[35] To reiterate, a disinterested, neutral expert—who enjoyed the respect of all parties —conducted a thorough review of the existing statute and compared each provision to leading counterpart corporate codes throughout the country.[36] Prominent Delaware corporate practitioners then considered and assimilated the suggestions of that expert and sought comments from leading law firms and corporations, all to improve and update a statute intended to be cutting-edge.[37].

Of Critical importance, the Legislature did not address the proposed process—which had been led by a neutral academic with input from leading practitioners—through riders and amendments offered to placate one interest group or another. [38] Instead, with no reason to believe the proposed legislation was intended to advance the interests of any particular constituency, the Legislature deferred to the submitted bill as the carefully crafted product of leading experts whom the legislators trust ed to act in good faith by serving the interests of the State and all its constituents.[39]

In hindsight, the process may not be a realistic model for today. It was remarkable that the then -leadership of the corporate bar could agree that Professor Folk was sufficiently knowledgeable and unbiased about the DGCL, and its desirable future direction, and that his suggestions merited careful consideration and, in many cases, enactment into law.[40] That

[31]*See* Holland, *supra* note 28 at, 947–48.

[32]*See, e.g.*, Arsht, *supra* note 1, at 14 (suggesting that the annual stockholder meetings were eliminated at the behest of Ford Motor Company).

[33]*See id.* at 10–11.

[34]*See* Holland, *supra* note 28, at 945 ("Delaware has followed this general paradigm for more than a century.").

[35]*See* Arsht, *supra* note 1, at 15–16 (discussing further the 1976 amendment process of the DCGL).

[36]*See id.* at 15.

[37]*Id.*

[38]*See id.* at 16.

[39]*See* Arsht, supra note 1, at 16.

[40]*See id.* at 15.

serendipitous fact was, in retrospect, historical accident not likely repeatable or easily replicable. In the mid1960s, there were comparatively fewer academic corporate governance experts outside Delaware, as compared to today, where there are dozens of preeminent corporate academics throughout the country.[41] Those corporate academics disagree, however, on even fundamental doctrinal points, let alone the proper application of those doctrines to highly complex corporate transactional settings.[42] It is far from clear that the neutral expert selection process, as utilized in the early 1960s, could be replicated in today's corporate environment.

Keeping the Statute Cutting Edge After 1967

After 1967, there were sporadic amendments to the DGCL in 1969, 1970, 1973, and 1974.[43] These sets of amendments were tightly focused on technical improvements to the 1967 statute and were not presented or treated as political bills.[44] The leadership of the Delaware Bar and Legislature focused their collaboration on such technical improvements partly due to their lack of concern regarding special interests infecting the bill.[45] The Bar submitted to the Legislature the product of a deliberate and thoughtful technical process, and the Legislature adopted it without change.[46]

[41] *See generally* Dan Byrne, *What is the History of Corporate Governance*, CORP. GOVERNANCE INST., https://www.thecorporategovernanceinstitute.com/insights/lexicon/why-does-corporate-governance-matter-a-look-back-at-history/?srsltid=AfmBOop8hqyqZD6Dj1kS2cAYBWTkawfvYK7JGhgUIqHYlEWBc_fEBteX (last visited Oct. 20, 2025).

[42] *See e.g.*, Claire L. Parins, *How Disagreement Remade Corporate Law*, U. CHI. L. SCH. (Apr. 12, 2023), https://www.law.uchicago.edu/news/how-disagreement-remade-corporate-law (discussing an example of corporate academics' disagreements regarding approaches to different corporate law questions).

[43] Arsht, *supra* note 1, at 17, n.103.

[44] *See, e.g.*, S. Samuel Arsht & Walter K. Stapleton, *Analysis of the 1969 Amendments to the Delaware Corporation Law*, PRENTICE-HALL CORP. 347 (1969), https://www.law.upenn.edu/live/files/6906-analysis-1969-delaware-corp-law-amendments.

[45] *See* Arsht, *supra* note 1, at 17–18.

[46] *See id.* Within the Revision Committee, changes were introduced via letter from a Committee member to the Chair, who then placed the matter on a meeting agenda. *Id.* If the proposal was not rejected upon initial review and was substantive, a subcommittee was often formed to draft revisions, working through multiple drafts before submitting the proposal to the full Committee. *Id.* The Committee might approve the subcommittee's draft for submission to the Delaware State Bar Association and then to the legislature, revise it further, or return it for additional drafting. *See* Arsht, *supra* note 1, at 17–18. Minor changes, by contrast, were typically drafted by the proposing member and brought directly to the full Committee for consideration. *Id.*

The Emergence of the Corporation Law Council

At some point after the 1967 amendments, a new DGCL amendment model emerged, most likely because the need for more frequent technical changes to the statute became more apparent. Not only had the pace and dynamics of business increased, but the world also became, metaphorically, a smaller place, as domestic and international constituents gradually began suggesting changes to Delaware law that they, or their clients, desired.[47]

As the need for regular and more frequent amendments to the DGCL became evident, the leadership of the Delaware corporate bar reached consensus on a new, informal structural process: Leading Delaware firms would hold seats on a "Council" of the Delaware St ate Bar Association.[48] The Council would propose DGCL changes to the Legislature, after review by and on behalf of the Bar.[49] The leading corporate law firms at the time—including Morris, Nichols, Arsht & Tunnell; Richards, Layton & Finger; Prickett Jones & Elliott; and Young, Conaway, Stargatt & Taylor, among others—held seats on the Council, filled by highly specialized attorn eys representing their particular firm.[50] Over time the composition of the Council did change somewhat. Seats were provided to new law firm entrants that specialized in corporate law, such as Skadden Arps; Heyman Enerio; Delaware Counsel Group; Ross Aronstam & Moritz; and Grant & Eisenhofer.[51] But even so, the Council did not embrace every new entrant into the market, nor could it reasonably have done so.[52]

[47] Arsht, *supra* note 1, at 17–18.

[48] *See* Holland, *supra* note 28, at 947–48.

[49] *See id.* at 947.

[50] *See* Lawrence A. Hamermesh, *The Policy Foundations of Delaware Corporate Law*, 106 COLUM. L. REV. 1749, 1755–56, 1755 n.23 (2006) (noting the by-laws of the Corporation Law Section of the Delaware State Bar Association contemplate that the members of the Council will be elected annually by the Section). In practice, it appears that the four firms note d have always had an equal number of seats and that, as the size of the Council expanded over time, so did the number of seats held by the four firms. *See, e.g.*, *id.* at 1775. Writing in 2006, Professor Hamermesh described a Council made up of 21 members "formally elected annually." *Id.* At that point, Hamermesh noted that "[a]s a matter of practice, and in recognition of the size of their corporate practice groups, seven of the large commercial firms in Wilmington have nominated two members each . . . ." *Id.* By the time this article was drafted, the four firms noted in the text each held three seats on the Council, and the recent proposal to expand the Council gave Skadden Arps three seats as well. *See Corporation Law Section*, DSBA, https://www.dsba.org/sections-committees/sections-of-the-bar/corporation-law/ [https://perma.cc/48UL-EC9Y] (last visited November 8, 2025).

[51] *See, e.g.*, Hamermesh, *supra* note 50, at 1755 n.23.

[52] *Id.* at 1755–56.

Viewed through the prism of today's governance standards, the Council is highly idiosyncratic. First, many firms that hold seats on the Council do so as a matter of historical fiat, almost as if those seats were hereditary titles passed from one generation to the next.[53] To be sure, individual practitioners representing each firm holding seats on the Council change as elder lawyers retire or move on.[54] But rarely do the active practitioners who comprise the Council change, and most continue to have long tenures on the body.[55] Likely for that reason, the outlook and orientation of the Council has remained largely unchanged, perhaps arguably ossified, despite the corporate practice having evolved significantly over the decades. More specifically, the original Council was weighted almost entirely in favor of defense firms. Prickett Jones, a firm mostly, but not exclusively, recognized for its investor side representation, was one of the few early, diverse viewpoints.[56] Although at least one "plaintiff's side" seat was later added, the Council still consists primarily of defense lawyers, who substantially outnumber plaintiff's practitioners.[57] At the time that this article was drafted, the Council had 26 members, of which 13 are appointed by four large firms: Morris Nichols, Potter Anderson, Richards Layton, and Young Conaway.[58] Although the balance of the Council consists mostly of smaller firms, the math remains the same: because Council proposals are subject to majority vote, the "big four" defense firms, who hold half the seats, can approve anything they desire unless the remaining 13 Council members unanimously oppose it.[59]

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[53]Hamermesh, *supra* note 50, at 1755 (attributing this to "a matter of practice" which he ascribes to a "recognition of the size of their corporate practice. "); *id.* (describing in genteel terms the same structural understanding that we have described in text).

[54]*See id.*

[55]*See id.* at 1751 n.5, 1756–57.

[56]*See* Holland, *supra* note 28, at 947 (suggesting that among corporate litigation practitioners on the Council, there was a "near even split . . . between those who represent shareholder plaintiffs and those who defend corporations"). With respect, the attempt to be "near even" between plaintiff and defense side litigators may have once been aspirational, but it was not close. Hamermesh correctly describes the plaintiff 's side representation as "a small minority." Hamermesh, *supra* note 50, at 1756.

[57]Hamermesh, *supra* note 50, at 1756.

[58]*See Corporation Law Section*, *supra* note 50 (showing one additional *ex officio* Council seat currently occupied by the Deputy Secretary of State, and among the thirteen seats held by four large firms, is one seat currently held by a retired Morris Nichols partner, now associated with *The Shareholder Commons*).

[59]*See id.*; *see also By-Laws of the Section of Corporation Law of the Delaware State Bar Association,* DEL. ST. BAR ASS'N, 2 (May 15, 2025), https://www.dsba.org/sections-committees/sections-of-the-bar/corporation-law/ (select hyperlink that says "click here to view the Bylaws of the Corporation Law Section"). While this article was being prepared for print and after it was circulated to several leading defense practitioners, the Delaware State Bar Association gave notice to its members that a vote was being scheduled to consider revisions to the make-up of the Council. *Corporation Law Section, supra* note 50. Three seats were added and one nominee

The Council is also unusual in that it operates under a veil of strictest secrecy.[60] Drafts of complex statutory amendments, which, as a practical matter, have nationwide impact, are wholly outside of public scrutiny.[61] Council members abide by the shared understanding that their work is secret, and they adhere to that unsworn commitment with the same level of fidelity resembling that of other, more notorious secret societies.[62] Although it is generally known that the Council follows an annual cadence when considering and proposing revisions to the DGCL, the specifics of what the Council is working on and the direction it is heading with respect to any particular proposed amendment are not disclosed.[63]

Another unusual, and quite creditworthy, hallmark of the Council is that each member serves entirely without compensation and often devotes long hours to the task.[64] All members are distinguished experts in the DGCL, which, as mentioned, has become the nation's *de facto* corporation law.[65] A compensating benefit is that service on the Council, although highly demanding and requiring hard work, confers a certain prestige on the Council member.[66]

We explore below the positives and negatives of these hallmarks of the Council. But whatever view one may hold, history shows that the Council has operated almost without exception in a manner that its members honestly believe to be in the best interests of the State.[67] That is a commendable mode of operation, made easier by the Council's historical task of focusing on technical and incremental amendments, rather than sweeping, politically-charged ones.[68] To be sure, the Council has turned down amendments that some of the group's clients very much wanted and, at other times, proposed legislation to which one client or another was

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for a new seat is an investor-side lawyer. *Id.* Rather than the four original firms now controlling a majority of the Council seats, the majority now rest with the four identified defense firms plus three representatives from the Delaware office of Skadden Arps. *Id.* Regardless, the point remains the same.

[60]Hamermesh, *supra* note 50, at 1755.

[61]Holland, *supra* note 28, at 948.

[62]*See id.*

[63]Hamermesh, *supra* note 50, at 1756–57.

[64]Madinah Wilson-Anton (@MadinahForDE), X (May 24, 2024, at 19:15 ET), https://x.com/MadinahForDE/status/1794145114266222946 [https://perma.cc/NFR3-TFXM]; *see also* Karl Baker, *'Major Surgery'–Wave of Outcry Erupts Over Delaware Corporate Law Bill,* SPOTLIGHT DEL. (June 10, 2024), https://spotlightdelaware.org/2024/06/10/delaware-corporation-law-debate/.

[65]Holland, *supra* note 28, at 945, 956.

[66]*See generally id.* (explaining membership on the Council is extended to a small group of attorneys with expertise in corporate law and Council members have significant influence in shaping Delaware's corporate law).

[67]*See id.* at 946–47.

[68]*See id.* at 949.

opposed.[69] While always bonded and incented by a common interest in keeping Delaware corporate law current and at the forefront of competing corporate law jurisdictions, the Council and its process have been regarded as operating in the public interest.[70]

In our view, the Council process has historically worked because of a commonly held belief that the Council's recommendations reflect only the best interests of Delaware. This belief allows the Legislature to repose such sufficient trust and confidence in the Council that they are willing to vote its recommendations into law without alteration or even meaningful debate.[71] Because the Delaware legislators are citizens who span many disciplines and backgrounds, and because the subject matter of amendments to the DGCL is highly technical and specialized, it is understandable how the Legislature and the Council came to a shared, but unwritten, "understanding" regarding how Council -drafted amendments should best be enacted into law.[72]

We claim that the Council model, as described above, has important positives supporting its continued use. First, the highly technical nature of the DGCL dictates that amendments to the Code must be constructed with care, and a level of technical sophistication that few possess.[73] The Council has traditionally satisfied this requirement with volunteer lawyers from leading law firms who specialize in the DGCL.[74]

Second, the level of trust the Legislature reposes in the Council is likely unique in American state and federal politics. The Delaware Legislature, like any political body, holds public hearings and takes testimony with respect to each corporate law bill presented to it.[75] Yet, since the Council's formation, it does not appear that any single piece of legislation the Council has submitted to the Legislature has ever been the subject of a floor fight, amendment, or other political wrangling —except SB 313, which was later adopted as the Market Practice Amendments.[76]

[69] Hamermesh, *supra* note 50, at 1756–59.

[70] *See* Holland, *supra* note 28, at 949.

[71] *See* Hamermesh, *supra* note 50, at 1758.

[72] *Id.* at 1759. It should be noted that the Council 's bills, once drafted, are typically presented to the Corporation Law Section of the Delaware State Bar Association, which include, among others, lawyers from firms with seats on the Council. *Id.* at 1758. The Section votes on the bills. *Id.* In recent memory, no bill proposed by the Council has been voted down by the Bar Association, although some have engendered spirited debate. That should come as no surprise. With the defense firms holding seats on the Council outnumbering those held by an y other interest group the result is pre-ordained.

[73] Hamermesh, *supra* note 50, at 1755.

[74] *Id.*

[75] *See id.* at 1756.

[76] *See Hearing on SB 313 Before Del. S. Judiciary Comm.*, 152nd Gen. Assemb. (Del. 2024) (statement of Brian Quinn, Professor, B.C. L. Sch.), https://sg001harmony.sliq.net/00329/harmony/en/PowerBrowser/PowerBrowserV2/20240611/-1/4247?startposition=20240611105721&mediaEndTime=20240611113815&viewMode=3&globalStreamId=3.

SB 21, which was not drafted by the Council, was the subject of highly intense, public political wrangling.[77]

Third, the quasi -hereditary nature of Council membership and the long service of each of its individual members provide an institutional memory and directional perspective on the law that is hard to duplicate. Council amendments to the DGCL are often crafted with prior amendments in mind, to hone or minimize changes previously made, and always with a view towards promoting continuity in the law.[78]

Fourth, under a model where the Council consists of primarily defense attorneys who make their living serving the interests of paying clients, the secrecy of the body serves a purpose.[79] Absent secrecy, one could imagine the Council members' work being scrutinized by clients, increasing the chances that unwanted interests or politics would influence the Council's deliberations and proceedings.[80]

Despite these virtues, the Council process is not perfect: many of its "positives" also have potential downsides. Secrecy, for example, has served the Council well in the past, but is premised on the idea that all participants, including the Legislature, trust that the Council members will invariably put all personal interests aside.[81] That includes the interests of paying clients and requires subordinating those interests to what the Council considers the best interests of the State.[82] That premise appears to have operated well in the past —when amendments to the DGCL were technical rather than transformative—but does that remain the case when amendments are less incremental?[83] Will these technical experts be able to withstand, in whatever circumstance, requests by colleagues for this -or- that amendment requested by important current or prospective clients?

Consider, also, the tenure of Council members which, although having positive attributes, tends to ossify perspectives on change that might be at variance with the best interests of the State. Our legislative bodies are normally subject to election every two years.[84] Although many legislators stand for reelection and serve far longer than two years, each is

[77] *See* Barry, *supra* note 13.

[78] *See, e.g.*, Arsht, *supra* note 1, at 17 n.103.

[79] Hamermesh, *supra* note 50, at 1756–57; *see also* Holland, *supra* note 28, at 947–48 (explaining the nature of privacy when it comes to the Council's internal deliberations process).

[80] *See* Hamermesh, *supra* note 50, at 1756–58.

[81] *Id.* at 1758–59.

[82] *See* Holland, *supra* note 28, at 948.

[83] William J. Carney & George B. Shepherd, *The Mystery of Delaware Law's Continuing Success*, 1 U. ILL. L. REV. 1, 62 (2009).

[84] DEL. CONST. art. II, § 2.

subject to replacement regularly.[85] This is not the case for the Council, whose members can serve for extended periods, limited only by the pleasure of the firm whose "seat" they hold.[86] Although the Council is "formally" re-elected annually, in practice, so long as the individual remains in the good graces of his or her firm, he or she could theoretically serve for decades, and often has.[87]

An important new reality that must be addressed is that the make - up and professionalism of the corporate bar has changed radically since the Council was formed. During the last two decades, an organized and highly professional investor bar has emerged.[88] That investor bar is comprised of many lawyers, both within and outside of Delaware, who are every bit as experience in the DGCL as the defense lawyers currently sitting on the Council.[89] The investor bar is smaller in size than the defense bar, yet the current composition of the Council tilts overwhelmingly in favor of career defense practitioners and includes only a small smattering of investor advocates.[90] Necessarily, that structural reality will bias the perspective of the Council as a whole and the content of its legislative proposals.[91]

Because the Council operates on a simple majority vote standard and five large defense firms currently hold half of the Council seats, where any particular piece of proposed legislation becomes disputed and leads to debate, the majority voting standard ena bles a less-than-consensus bill to emerge and be viewed, misleadingly, as the collective view of the entire body.[92] Because investor side firms are greatly outnumbered by defense firms on the Council, the current voting structure renders any significant diversity in viewpoints a chimera.[93]

To recap, the Council -based model has undergirded the corporate legislative process in Delaware for decades. Despite its drawbacks, the model reflects a collaborative approach within the Bar and between the

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[85]DEL. CONST. art. II, § 2.

[86]*Corporation Law Section, supra* note 50.

[87]*See* Hamermesh, *supra* note 50, at 1751 (noting that as of 2006, the author had served on the Council for eleven years).

[88]*See* Brian Cheffins, John Armour & Bernard Black, *Delaware Corporate Litigation and the Fragmentation of the Plaintiffs' Bar*, 2012 COLUM. BUS. L. REV. 427, 466–67 (2012).

[89]*See id; see also Corporation Law Section, supra* note 50.

[90]*See Corporation Law Section, supra* note 50; *see also* Hamermesh, *supra* note 50, at 1756.

[91]*See* Charles K. Whitehead, *Delaware's Agency Problem*, VAND. L. REV. (forthcoming 2025) (manuscript at 1–3), https://dx.doi.org/10.2139/ssrn.5380168.

[92]David C. McBride and Rolin P. Bissell, *Delaware's Flexible Approach to Majority Voting for Directors*, 10 WALL ST. LAW., 1 (2006); *see Corporation Law Section, supra* note 50; *see also* Whitehead, *supra* note 91.

[93]*Corporation Law Section, supra* note 50; *see* Whitehead, *supra* note 91, at 2.

Bar and the Legislature.[94] Historically, the Council's non -partisan efforts to keep the DGCL current, and market -leading, enabled Delaware lawmakers to adopt needed changes while deferring to an expert body, typically without the politics that often dominates the lawmaking process.[95]

How Did the 2024–25 Amendments Meet, or Depart from, the Model?

We turn next to the question of how the two recent and highly publicized rounds of amendments to the statute did, and did not, conform to the accepted model, wherein the Council initiates bills and the Legislature adopts them as proposed.

The Market Practice Amendments of 2024

The Market Practice Amendments were the last significant amendments to the Code that proceeded consistent with the amendment process that the Council utilized over the past half -century.[96] To repeat, those amendments were considered and drafted by the Council, presented to the Bar Association for approval, and then submitted to the Legislature for adoption.[97]

The Market Practice Amendments also departed significantly from tradition, however, in that they were expressly designed to overturn a pre-trial ruling issued in an ongoing case.[98] Although occasionally the Council had proposed legislation to overrule specific case law, until the Market Practice Amendments, that typically occurred only after a case had proceeded through the trial and appellate courts, and received a final result.[99] The Market Practice Amendments were proposed, however, in response to a non-final pre-trial ruling on the law by the Court of

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[94]*See* Hamermesh, *supra* note 50, at 1758.

[95]*See* Holland, *supra* note 28, at 949.

[96]*2024 Proposed Amendments to the General Corporation Law of the State of Delaware* RICHARDS, LAYTON & FINGER (Mar. 28, 2024) [hereinafter *2024 Proposed Amendments*], https://www.rlf.com/2024-proposed-amendments-to-the-general-corporation-law-of-the-state-of-delaware/ ("Section 122 . . . is being amended in response to the Delaware Court of Chancery's opinion in West Palm Beach Firefighters' Pension Fund v. Moelis & Co.").

[97]*Id.*

[98]*Id.* Professor Hamermesh's 2006 article described it as a "longstanding policy" of the Council "to avoid proposing legislation that would directly or even indirectly affect the outcome of litigation pending in the Delaware courts." Hamermesh, *supra* note 50, at 1757–76; *see id.* at 1776–77 (detailing the longstanding tradition that Council "will not put forward legislative recommendations relating to a matter that is in active litigation").

[99]*See* Laster, *supra* note 15 (accurately pointing out that the 2023 amendments to Section 242(b) of the DGCL took place while cases challenging workarounds to the existing statute were still pending in the Delaware courts).

Chancery.[100] The Council did not await either an interlocutory or final appeal of that ruling before proposing a legislative intervention.[101]

The Council's drafting process also proceeded with great haste, evidently driven by a perception that the Court of Chancery's interlocutory ruling had upset many companies that had adopted governance contracts of the type the Court had invalidated, even though the decision merely applied decades-old precedent to a bespoke and rather extreme stockholders agreement.[102] Not surprisingly, as with any hastily conducted drafting process, the Market Practice Amendments left many questions unanswered and arguably fell below the high standard of statutory draftsmanship that typifies the Council's efforts.[103]

Most regrettably, the process became highly politicized.[104] The remarks by proponents of SB 313 on the floor of the Legislature involved, *inter alia*, unprecedented personal attacks on sitting Delaware judges, thus imparting an unnecessary political character to the DGCL amendment process.[105] In this respect, the Market Practice Amendments strained the customarily deliberate and apolitical amendment process to the breaking point. Exacerbating that departure from civility was the proponents' insistence that the legislation was so vital to the well-being of the State that both the customary deference to the judicial branch's development of the common law and public respect for members of the bench had to be jettisoned to achieve an immediate result.[106]

The DExit Amendments

If the Market Practice Amendments strained the established process, the SB 21 process broke it. The bill's proponents drafted the so-called DExit Amendments in secret, completely outside the Council's purview and involvement, and without notice to any constituency other

[100]*See 2024 Proposed Amendments, supra* note 97.

[101]*See id.*

[102]S.B. 313, 152d Gen. Assemb., Reg. Sess. (Del. 2024), https:// legis.delaware.gov/BillDetail/141480 (the Market Practice Amendments were proposed March 28, 2024, a mere five weeks after the *Moelis* decision was published).

[103]*See generally* Jonathan Lipson & Eli Alexander Evans, Corporate Due Process (July 14, 2025) (unpublished manuscript) (on file with author) (evaluating DGCL 122(18) conflicts of duty and contract, oral governance agreements, indemnification of stockholder agreement rights holders, assessing damages of breached governance agreements , specific performance clauses, efficient breach, and de facto controlling stockholders to name a few).

[104]*See* Joel Edan Friedlander, *William Chandler's Unjust Criticism of Chancellor McCormick and Vice Chancellor Laster: What Does It Signify?*, 51 J. CORP. L. (forthcoming), https://ssrn.com/abstract=4901375.

[105]*See id.*

[106]*See id.* at 8.

than a closed group of draftsmen and politicians.[107] After being drafted and formally introduced in the Delaware Senate, the bill was submitted to the Council for its "review." But even that ex post facto review was apparently made subject to a prior restraint.[108] To quote one Council member who published a "dissent" to the Council's action, the body was advised that the "Council was not allowed to consider changes that would have protected the Delaware Courts' role in the development of corporate law."[109]

Having bypassed an unhobbled review by the Council, the process surrounding the DExit Amendments became entirely political.[110] Like other political acts, it provoked a firestorm of criticism, lobbying, and commentary.[111] One commentator noted that no fewer than 21 lobbyists registered to lobby on the bill before the General Assembly.[112] When the bill's opponents offered a compromise solution that would have kept the bill intact, but allow corporations to "opt in" to its coverage, rather than apply immediately and mandatorily to all Delaware companies, the bill's proponents declined to engage or compromise and pushed their bill through in an exercise of raw political power.[113]

What Might be Optimal for Future Amendments?

So far we have identified several types of processes utilized over time to amend the DGCL: (a) the 1967 model involving apolitical amendments, generated through the work of a mutually agreed upon neutral expert, or experts, and overseen by leading Delaware corporate practitioners; (b) the pre-2024 Council process; (c) the politicized process deployed to pass the 2024 Market Practice Amendments; and (d) the purely political process for the 2025 DExit Amendments, drafted by partisan experts. The question becomes: of these models, which is optimal

[107]Lora Kolodny, *Meta's Potential Exit from Delaware Had Governor Worried Enough to Call Special Weekend Meetings*, CNBC (Mar. 19, 2025), https://www.cnbc.com/2025/03/19/meta-billions-of-dollars-at-stake-in-overhaul-delaware-corporate-law.html.

[108]Barry, *supra* note 13, at 1.

[109]*Id.*

[110]Karl Baker, *Lobbying on Corporate Law Change SB21 Enters Final Stretch* , SPOTLIGHT DEL. (Mar. 21, 2025), https://spotlightdelaware.org/2025/03/21/sb21-final-stretch/.

[111]Ann M. Lipton, *Delaware Decides Delaware Law Has No Value* , BUS. L. PROF. BLOG (Feb. 17, 2025), https://www.businesslawprofessors.com/2025/02/delaware -decides-delaware-law-has-no-value/.

[112]Baker, *supra* note 110.

[113]*See* H. Amend. 1 to Sen. Substitute 1 for S.B. 21, 153d Gen. Assemb., Reg. Sess. (Del. 2025); *see also* DELAWARE HOUSE OF REPRESENTATIVES, Testimony of Robert J. Jackson, SEC Commissioner before the 153d Delaware General Assembly, at 5:30:02 PM (Sliq Media Tech., Mar. 24, 2025), https://sg001harmony.sliq.net/00329/harmony/en/PowerBrowser/PowerBrowserV2/20250324/-1/4988?startposition=20250325174130&mediaEndTime=20250325174240&viewMode=3&globalStreamId=3.

and will best position Delaware to continue as the leader in corporate law in the future?

To begin, we note that a process like the 1967 Folk Report model, predicated on the work of purely outside neutral experts, was effective then, but would neither be optimal nor feasible today. In today's quite different environment, who would be accepted a s qualified enough to identify and hire the outside neutral experts? Would those experts be academics? If so, there are now dozens of eminent law professors who specialize in teaching and writing on Delaware corporate legal issues. Some agree on core princ iples while disagreeing about particular approaches and the future direction of the law. Moreover, because law professors have "day jobs," it is unrealistic to presume that a panel of outside neutral experts could be quickly assembled and marshalled within the often short time required to react to, and address, the needs of a rapidly moving corporate law market.

Turning to the 2024 Market Practice Amendments, the process utilized there is fairly described as focused on a speedy result at the price of what, for over 60 years, had been the Council's legacy of cautious, deliberate, and largely apolitical draftsmanshi p.[114] The 2024 Market Practice Amendment process ran roughshod over a co -equal branch of government by forcing legislative action before the final adjudication of an ongoing case.[115] That process, which will long be remembered for its proponents' highly unusual and personal criticism of sitting judges, cannot be regarded as an optimal model for future DGCL amendments.[116]

As a consequence, the realistic choices narrow down to two: (1) the drafting of legislation by partisan experts and the use of political power to enact it into law, as occurred with SB 21,[117] or (2) an improved reformulation of the traditional approach involving the use of a Council of experts to prepare and submit a bill for legislative approval.[118] Each approach has advantages.

The partisan expert model has the benefit of moving quickly.[119] SB 21 was apparently drafted in very short order and was approved in virtually

[114]*See* Holland, *supra* note 28, at 947–49.

[115]*See supra* pp. 21–23 and accompanying notes. Awaiting a final result from the Court system before determining whether to overturn or change the case law makes practical sense. It avoids a legislative "fix" to a "problem" that is not yet final and could work itself out through the trial and/or appellate process. First allowing the common law to work affords proper deference to a co-equal branch of government.

[116]*See* McCormick, *supra* note 12, at 5.

[117]Baker, *supra* note 111, at 2, 4–5; *see* McCormick, *supra* note 12, at 5.

[118]*See* Holland, *supra* note 28, at 947–48.

[119]Baker, *supra* note 111, at 4–5.

the minimum time required to have legislative hearings.[120] But a secretive, purely partisan exercise of this kind, by its very nature, breaks from the "unwritten compact," undermines the perception that the amendment process operates as apolitical, and invites bitter legislative battles that place enormous pressu re on the members of the Legislature on a topic largely beyond their expertise.[121] A prime benefit of the Council model is that Council bills rarely encounter opposition precisely because they have the imprimatur of impartiality.[122] Therefore, any modest debate about the substance of a Council bill typically took place within the Bar Association and among Wilmington practitioners, *not* before the Legislature.[123] That changed in 2024 and 2025 as the amendments became less incremental, and the process departed from the norm.[124] With SB 21, we have witnessed how political a corporate law amendment can become when it lacks indicia of impartiality. We submit that institutionalizing a partisan expert model of legislating changes to the DGCL would not serve the best interests of the State.

That leaves the Council model: volunteer experts, working presumably in the best interests of the State and all of its constituencies to draft and present a ready-to-adopt bill to the Legislature with the blessing and approval of the organized Bar.[125] The Council model is fundamentally sound, but its specifics need updating to reflect the changes in our society and the law since the model emerged over a half-century ago.

First, the time has come to rethink the Council's composition. That body need not be comprised nearly exclusively of Wilmington, Delaware defense lawyers. Members of the investor -side practice and a representative group of Delaware corporate law professorsare prepared to add knowledgeable representatives to the Council. Greater diversity of viewpoints will likely generate better, consensus-based legislation, thereby relieving political pressure on the Legislature when considering Council-sponsored bills.

Second, we propose changing the voting standard from a bare majority standard to a super-majority standard, such as 75%. A change in voting the standard, combined with a change in the structural make -up of

[120]DEL. CODE ANN. tit. 8, §§ 144, 220 (West 2025).

[121]BLACK, JR., *supra* note 5; *see supra* note 3.

[122]*See supra* note 114 and accompanying text.

[123]*See supra* note 114 and accompanying text.

[124]*See* Holland, *supra* note 28, at 949 (describing the "lack of partisan politics" as "another unique characteristic of the Council and its process); *see* McCormick, *supra* note 12, at 4–5; *see also* Hamermesh, *supra* note 50, at 1753 ("[T]he Delaware General Assembly has not perceived the content of the DGCL as an appropriate subject for partisan controversy.").

[125]*See supra* p. 10.

the Council, will restore confidence that proposed amendments from Council reflect a consensus outcome rather than a cramdown.

Third, the Council selection process itself should be rethought. The notion that a limited number of firms 'own' seats on the Council is about as modern as the English hereditary lordship system. Indeed, even England largely eliminated the hereditary right to sit in the House of Lords —*in 1999*![126] Is it not it time to focus on choosing the leading experts, whether or not they practice at one of the old-line firms? Precisely how the membership of the Council should be reorganized, and periodically refreshed, ought to be a matter for internal debate within the Bar. Continuing to insist that a pact made a half-century ago should guarantee particular firms inherited representation is an outmoded practice whose time is long past interment.

Regarding the composition of the Council, we further suggest that a structure in which five firms collectively occupy half of the 30 seats on the Council now seems unjustified and paternalistic. Perhaps, rather than guaranteeing each firm a fixed number of seats, it makes more sense to periodically invite the leading corporate counselors and corporate litigation attorneys at the Bar to join the Council, regardless of which firm they are currently associated with.

A related proposal to consider would be to set term limits on individual Council membership. Governance lawyers will certainly recall advising large public company board clients about whether to adopt term limits. Is it not, perhaps, time for us to take our own advice?

* * *

Having proposed reconstituting the Council and creating the possibility of functionally beneficial change over time, we next turn to how the Council should conduct its work. As noted above, while we doubt the ability of one or more law professors to replicate the Folk amendments, we believe that there is a role for law professors to play, particularly when it comes to the more transformative amendments. Accordingly, we suggest that the Council seek feedback from a *diverse* group of law professors before publicizing proposed non-incremental amendments, so that the public version the Council puts forward reflects the expertise of those professors.

Additionally, although secrecy is functionally beneficial and important, we suggest that opening the proceedings of the Council —at

[126]*House of Lords Act 1999: Twenty Years On*, UKHL LIBR. (Nov. 5, 2019), https://lordslibrary.parliament.uk/research-briefings/lln-2019-0151/.

least to a limited extent—could further restore trust and confidence in the Council's work. Specifically, the Bar should consider having the Council post notice of its agendas and solicit comments from members of the Bar on any bill it is considering.

Likewise, after the passage of an appropriate period of time, it is worth considering making the Council's working materials public. Perhaps 3 to 5 years might be an appropriate interval of time to ensure the confidentiality of the Council's materials. By that point, the sensitivity of those materials would likely no longer be of concern and the materials could be posted publicly.

Lastly, but also of high importance, the recent political battles over the content of corporate law amendments evidence unseemly politicking over what should, or should not, be included in the "Synopsis." We suggest that, going forward, the "Synopsis" should be far more detailed than it was for the Market Practice and DExit Amendments. Less detailed synopses—including those that do not specify the intent of the drafters and list all of the cases that the legislation intends to overturn, as was historically done—undermine the predictability the amendments are attempting to achieve.[127]

Protecting the Optimized Model

Finally, we suggest that whatever model is agreed upon as optimal should include structural protections against the type of power politics surrounding the DExit Amendments. One way to guard against such unwelcome incursions would be for the Bar Association to resolve and uniformly, without exception, oppose any corporate law amendment not proposed initially by the Council and approved by the Association.[128] While there is no guarantee that such an amendment would not pass, at least there would be no question about the provenance of such a bill or its support from the organized Bar.

[127]*See* Friedlander, *supra* note 104, at 44 (quoting Chancellor McCormick's letter as criticizing the process for being rushed and lacking Delaware's traditional "cautious and highly deliberative process that allow[s] time for countervailing views to inform the policy discussion", and noting that prior interventions were "targeted and, by the time of adoption, uncontroversial," features that "insulate the process from the whims, pressure, and politics of private interests" and "prevent collateral attacks on the rule of law").

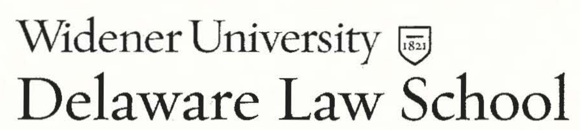
[128]*See* Kolodny, *supra* note 108 (noting that the drafting of SB 21 did not follow Delaware's traditional practice of review by the Bar Association and its Corporation Law Council).

Conclusion: The Start of a Discussion

As to these suggestions, others will surely have different ideas to add. Our purpose in writing this article is to identify issues for further thought and consideration among the leadership of the Bar, the Legislature, and the Executive branch. It is time to rethink how we amend the DGCL and, in our view, critically important that Delaware reaffirm and, for some, reestablish its commitment to impartial and apolitical corporate law amendments. Allowing the process to appear political has severely weakened Delaware's ability to hold itself out as unique.

The question of what makes Delaware the pre -eminent corporate domicile in the nation is often answered by pointing to our outstanding and highly expert judiciary and Bar, and more than 100 years of case law development.[129] We agree and add that, as Lew Black pointed out long ago (and as the Delaware Secretary of State markets today), a distinct but equally essential element of that formula is the perception, and the reality, that the amendment process is reliable, apolitica l, and balanced.[130] If we expect the Legislature to abide by its side of the "unwritten compact" and expect Delaware to maintain its place at the forefront of national corporate law, then we must restore public faith in our amendment process before it slips away irrevocably.

[129] BLACK, JR., *supra* note 5, at 5–8.
[130] *Id.* at 4.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