

# Delaware's Corporate Law Shakeup – Causes, Consequences, and Lessons for the Sunshine State

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Business Law Section Labor Day Retreat

8/30/25

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## What just happened – SB 21

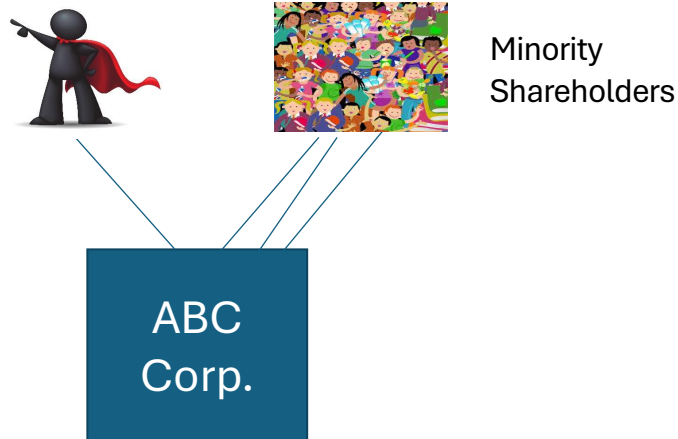
“If adopted, these measures would mark the most significant single-year revision of Delaware’s corporate code since at least 1967, reshaping everything from how controlling stockholders negotiate major transactions to the mechanics of derivative litigation and shareholder access to corporate records.”



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# Vocabulary

- Controlling Shareholder (CSH)

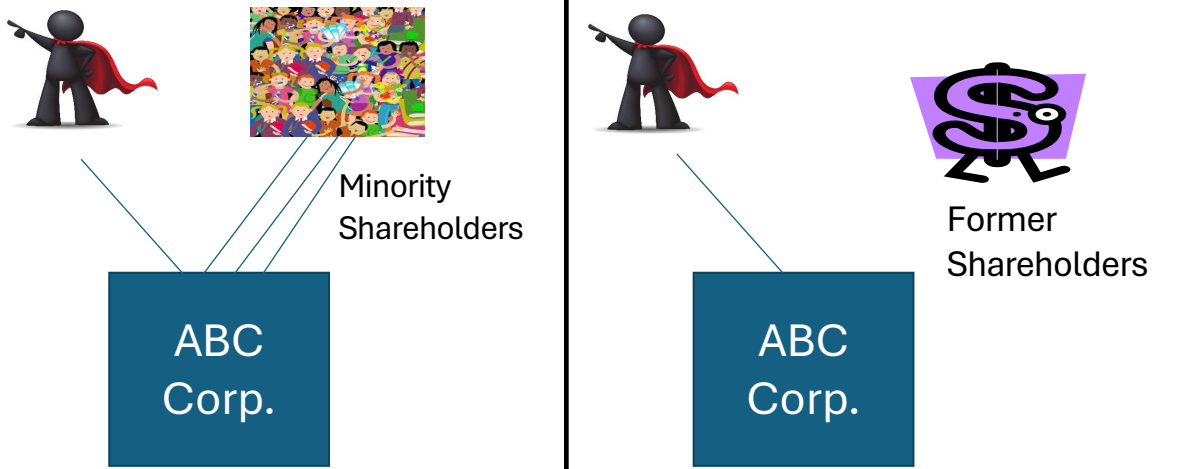


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# Vocabulary

- CSH Freezeout

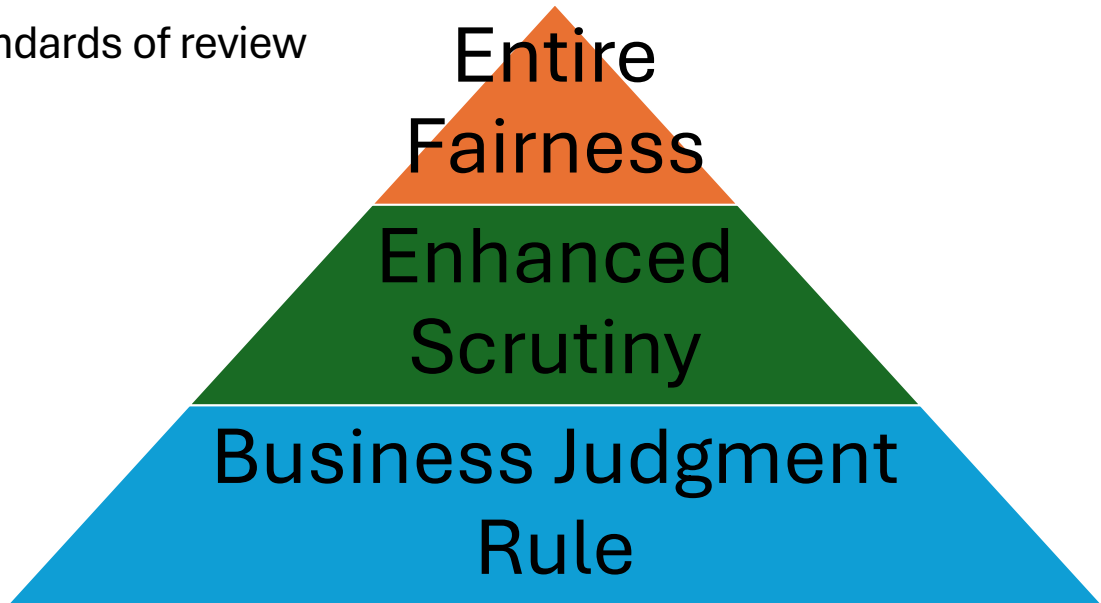


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## Vocabulary

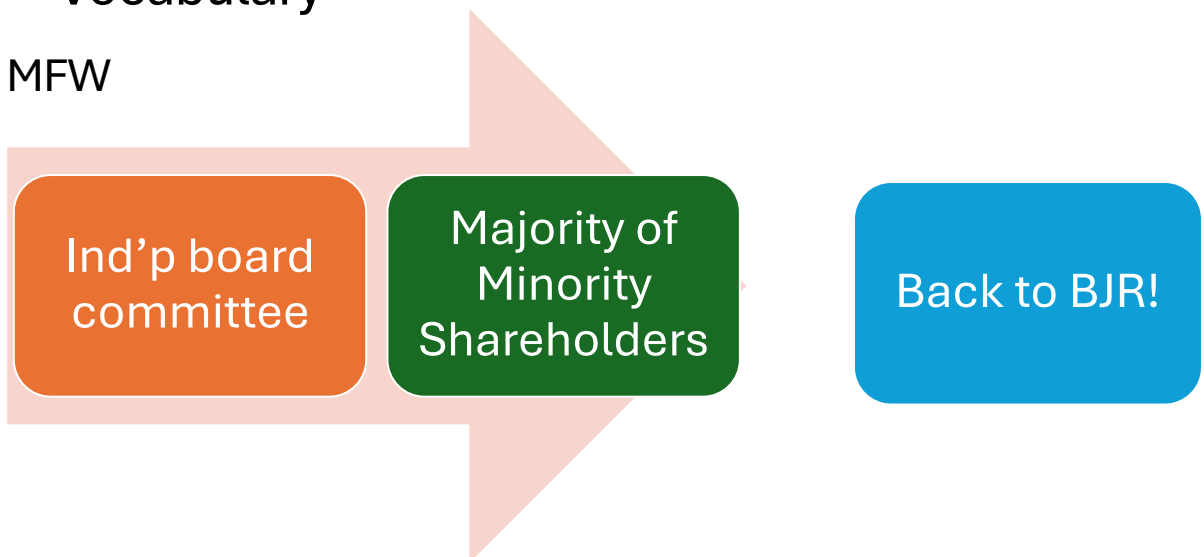
- Standards of review



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## Vocabulary

- MFW

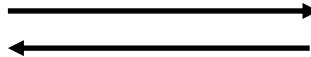
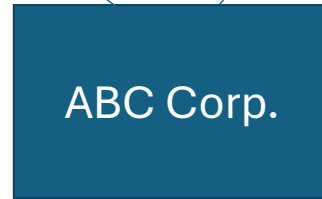
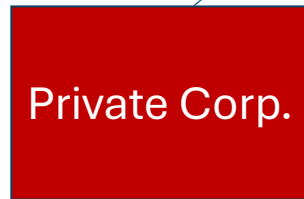


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# Vocabulary

- Non-freezeout self-dealing



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## Triggers for entire fairness review

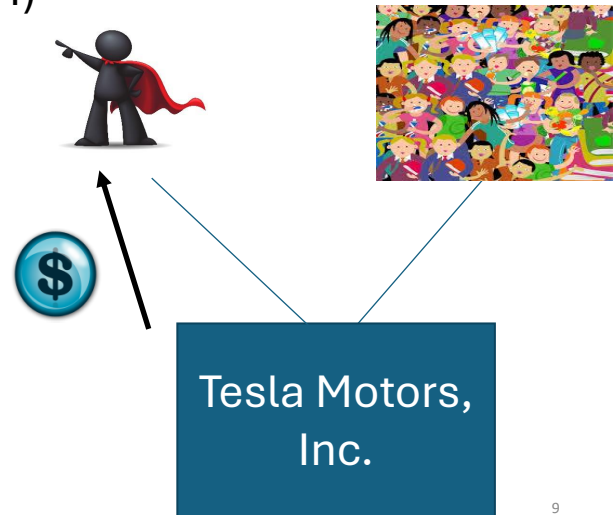


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## Expansion of control

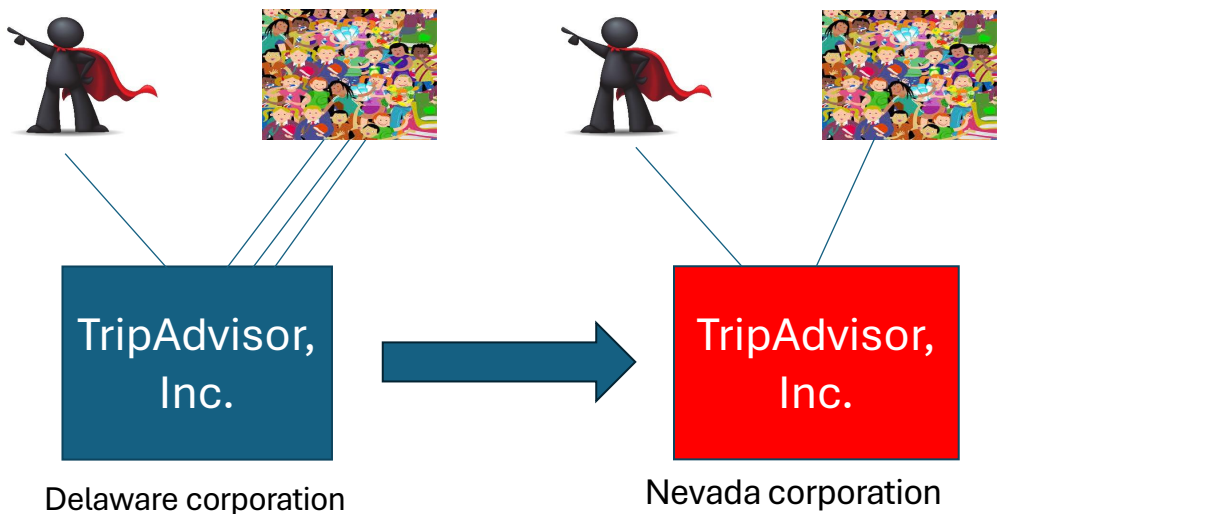
- Tornetta v. Musk (Del. Ch. 2024)



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## Expansion of self-dealing

- Palkon v. Maffei (Del. Ch. 2024)



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## Result #1 – “MFW Creep”



Ind’p board  
committee

Majority of Minority  
Shareholders

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## Result #2 – Sunlight overload

### **BUSINESS INSIDER**

Here are the chummy behind-the-scenes text messages between Mark Zuckerberg and Marc Andreessen that surfaced in a Facebook lawsuit

By [Alex Heath](#)

Dec 12, 2016, 7:05 PM ET

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Marc Andreessen's text messages to Facebook CEO Mark Zuckerberg are filled with smiley face emoticons and odd turns of phrase.

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@elonmusk

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## What just happened – SB 21

“If adopted, these measures would mark the most significant single-year revision of Delaware’s corporate code since at least 1967, reshaping everything from how controlling stockholders negotiate major transactions to the mechanics of derivative litigation and shareholder access to corporate records.”

- Lowering the standard for **non-freezeout transactions**
  - Board committees no longer required to be fully independent
  - Approval by **\*either\*** board committee or stockholder vote
- Bright-line rule for controllers (33% + actual control)
- Board independence presumption
- Narrowing the scope of information requests

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# Lessons for the Sunshine State?



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