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## Thoughts on Those TransPerfect Ads

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# Thoughts on those TransPerfect ads



**DELAWARE VOICE**  
LAWRENCE A.  
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If you're reading this, you've no doubt seen a steady stream of full-page ads in this newspaper about the TransPerfect company case.

This message comes from a group called Citizens for a Pro-Business Delaware – although it's not clear that any members of that group are actually Delaware citizens. Their message, however, is clear: unless the General Assembly forbids our state's judges from directing this company to be sold, Delaware's incorporation revenues will dry up, your taxes will go up, schools won't be funded, etc.

Because the TransPerfect case involves Delaware's corporate laws, several people have asked me whether the ad campaign identifies a serious problem for our state. My short answer is: it doesn't.

Sometimes the participants in our corporate law system – the courts, the General Assembly, and Delaware's corporate lawyers – do things that do cause concern among Delaware businesses and their advisers. But the ruling directing the sale of TransPerfect isn't one of them. I regularly speak to lawyers and law professors throughout the country and beyond, and not one of them has ever expressed any concern about the TransPerfect case; in fact, very few of them have even heard about it.

There's a reason for that lack of attention: the TransPerfect case isn't and shouldn't be controversial, based on the facts as determined by the Chancellor of our world-renowned Court of Chancery. When two 50-50 owners of a company systematically try to undermine each other's management of the company, resulting in declining employee morale and losing employees and customers alike – and this is the situation the court observed – it is time for those business owners to get a divorce. for the

sake of the business and all those who benefit from it. And when those owners are incapable of working things out on their own, Delaware's statutes enable the Court of Chancery to step in and grant a divorce.

If and when that divorce happens, either side will be free to buy out the other; what matters is who's willing to make the biggest investment to keep the company going. And either way, if TransPerfect really is a valuable company because of its employees' efforts and talents, then it would be irrational for any buyer to fire the very employees who make the company profitable.

So I'm not convinced that the Court of Chancery made a mistake in this case. But I'm open to considering whether additional statutory guidance to the court would be useful.

What I'm not open to – and what would do real damage to this state's well deserved reputation for stable, predictable corporate law – would be for the General Assembly to advertise its willingness to become a super court of appeals to oversee any court decision that some well-heeled litigant willing to finance a public relations campaign wants to overturn.

So for the sake of Delaware and its citizens, I would urge the General Assembly to remain true to its long tradition of refraining from adopting corporate laws to change the results in a pending case. If the Court of Chancery has made a mistake, the Delaware Supreme Court can correct it in the appeal that is current pending. But it's not up to the General Assembly to change the law in midstream, and we all ought to resist any efforts to cause that to happen, no matter how many full-page ads call for that result.

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