

Dear Members of the Delaware Bar Association:

Several lawyers have forwarded me the letter from Delaware Bar Association President William Patrick Brady, dated September 20th, regarding the transparency and diversity efforts of Citizens for a Pro Business Delaware. We also wanted to applaud the Multicultural Judges and Lawyers for their efforts to further the cause of diversity on the Supreme Court.

We wanted to share our thoughts with you about the first Bar Association email about our efforts:

We are highly disappointed that the Bar Association's immediate response to calls for transparency and diversity are to circle the wagons and attack the credibility of the organization as opposed to hearing the valid concerns of thousands of Delaware residents. Your conclusions are correct, that we believe that the Chancery Court acted in an unprecedented way to force the sale of a company without the approval of shareholders, and cost over \$250 million dollars in unnecessary legal fees to the company and more importantly, its employees. However, thousands of Citizens for a Pro-business Delaware members are also concerned that their courts can force the sale of a person's company and spend tens of millions of dollars without any documentation for how the money is being spent. The thousands of new Delaware residents have join our supporters and have actively engaged to voice concern for transparency, accountability and diversity.

It seems that every time we start to make progress, and gain momentum, the entrenched interests of the Bar Association and the Corporate Bar Committee go on the attack instead of just answering the concerns. I would think you would be proud of your record on transparency and diversity, or at least pretend to be enough to defend it.

Here are some of our concerns:

First, why does the Delaware Chancery Court not use randomized selection process for judges, known as wheel spin? In a state as small as Delaware, where everyone knows everyone, it is essential to show that the selection process is randomized to prevent judges from selecting cases that best suit their own self-interest. Further, judges should not be allowed to name a custodian from a firm where they used to work. There are plenty of capable law firms in the state, there's no reason judges should be able to give millions of dollars in business to their former business partners. The Federal Government uses wheelspin, as do dozens of other states in the country. What is the rationale for not using randomized judicial selection?

Second, why is there no audio or video recording in the Court? The National Radio and TV association has been pushing for years for transparency, yet the Chancery Court refuses to implement this simple measure to give the public more access. The Delaware Supreme Court has this. Why is the Chancery Court and the Bar Association so scared of transparency?

Third, why are custodians in Delaware court proceedings not required to itemize their invoices? Legislation was finally introduced in the legislature this year to require itemized invoices, which will put companies at-ease because they will actually know where their money is going. What rational basis could the courts have for continuing to assert that itemizing invoices is not good public policy? Two years after the sale process has ended in the TransPerfect case, there are still bills coming each month from Skadden Arps in the \$60,000 to \$140,000 range that are under seal from everyone, yet being ordered to be paid. Of course, once the TransPerfect filed a lawsuit in its new home state of Nevada demanding to see the bills, the next month's bill went down to \$3,000. Remarkable. Will you support that legislation?

Fourth, why are judges not required disclose conflicts of interest and then require the consent of all parties in litigation to move forward? This is a common-sense practice which will help restore public confidence in the judicial system.

Lastly, why does every piece of legislation involving the Chancery Court go through the Corporate Bar Committee before the legislature gets to decide whether or not to move forward?

Clearly, the system is in place to protect the interests of a select few corporate lawyers who profit off a system with little transparency. That's like putting lobbyists in charge of ethics laws. It should be about what's best for Delawareans, not what's best for a select few insiders.

Delaware has routinely scored horrendously in transparency surveys, getting an F from the Center for Public Integrity in Judicial Accountability . When the TransPerfect case was on the forefront of headlines, Delaware dropped out of the Top 10 to number 11 in the Chamber of Commerce's business climate rankings.

And lest you think the TransPerfect case was routine, we challenge you to find a precedent in Delaware history where a profitable company in no legal or financial trouble was forced it into sale.

TransPerfect was and is one of the fastest growing companies in the country. Before, during and after the sale process, the company's revenue, number of employees, and customer base grew consistently and rapidly quarter-to-quarter.

Chancellor Bouchard liked one side more than the other and he made his decision that way. Please read the case transcripts and see if you disagree. If you read it with an open mind, you will see that it was a farce from start to finish that resulted in years of uncertainty for thousands of employees – our members – who feel as though they have suffered from PTSD.

Further, the executives have been nothing but consummate professionals throughout their careers, some tenured as long as 20 years -- yet, in a witness-less case, tried by law firms with close ties to Chancellor, they were falsely maligned as "dysfunctional" perhaps damaging their job opportunities for life and creating years long uncertainty about their futures.

And with this backdrop, the employees were routinely turned away by Chancellor Bouchard. Health care costs went up during the sale years to support the \$250 million in outrageous money that went to lawyers, M&A advisors, and accounting, all for a case which the most experience judge on the New York Court decided in 3 hours. Yet, here we are--5 years later and \$250 million later. And, the Custodian's law firm Skadden Arps is not seeking Contempt of Court, for TransPerfect's insistence that it see the bills before they pay -- a right Skadden contractually guaranteed TransPerfect, yet sits in flagrant breach of.

Pretending the TransPerfect case was just a routine ground ball does a disservice to your Association. You may think you have to flack for your judge, but as members of the Bar you have an obligation to serve justice and fairness first and foremost. That obligation has not been served well here.

Citizens has raised other serious concerns about the state of affairs in the Delaware courts. In a state with a population of nearly 40% African-American, there are zero African Americans or persons of color on the Supreme Court, now and for Delaware's entire history. For too long, the path to the Supreme Court has gone through firms like Skadden Arps, where lawyers make millions of dollars filing and defending lawsuits, becoming more and more out of touch with everyday Delawareans. There have been some strides in diversity in the Chancery Court after the TransPerfect fiasco, but what a major step back it would be to name another wealthy white man of privilege to head the highest court in the land.

To be clear, we will continue with our efforts. We will not go away until our transparency and diversity measures are addressed, not silenced. We have signed up 2,000 Delawareans in the last 6 weeks alone to sign our petition, and support our platform. Our message is clearly resonating. We will keep going door to door, stay on the airwaves and in the papers. We will keep putting out yard signs, and we will keep pushing for change. We will send mail, make phone calls, and rally our members, just as you have tried to do against us, and against transparency, accountability, and diversity. And if we are not successful in having a real conversation, we will look at leading a nationwide effort to ask companies to stop incorporating in Delaware until progress has been made.

Our members feel like an injustice was done to them, and we refuse to see it happen again without changing the system for the better. And while you may think you have to be of the system to change the system, we can show you plenty of examples in history of folks who felt the same way until the change happened under their feet. The Chancery Court is the business court of the country. The idea that you have to be one of several hundred Delaware lawyers to have a voice in its future is simply archaic. You can't have it both ways, acting as the nation's business court and then claiming that only Delawareans should have a say in its future. The same people have kept transparency out of Delaware for too long. It's 2019. It's time for transparency.

I look forward to hearing from you about why the state should not take on some of the measures we have called for in our platform. But I expect instead to hear you call us names, question our motives, and attempt to malign us. It would be nice if I was at least wrong about that. We are happy to get together anywhere, anytime to talk about the issues. Thank you.

Chris Coffey,
Campaign Manager, Citizens for Pro Business Delaware