

MEMORANDUM

TO: Members of the General Assembly

FROM: A. Gilchrist Sparks, III, Chairman of the Corporation
Law Section of the Delaware State Bar Association

DATE: January 25, 1988

A question has been raised by some legislators as to whether the bar association's proposed Section 203 comports with traditional liberal democratic concepts. The answer is an emphatic "yes".

Section 203 preserves the concept of majority rule in that it permits a majority of disinterested stockholders to "opt-out" and has no effect whatsoever upon the right of a majority of stockholders by their votes to replace an incumbent board and run the company.

What Section 203 does limit is the ability of a single majority stockholder to utilize its power to oppress the minority. As Bruce Stargatt testified at the hearings, Section 203 is an anti-self dealing statute, not an anti-takeover statute. As such it operates to limit the ability of a majority stockholder to impose its views as to a cash-out price upon the minority, much as the First Amendment to the U.S. Constitution protects the minority from having the majority impose its religious views upon them. In short, Section 203 is entirely consistent with the theme that runs through our Bill of Rights and other enlightened democratic legislation of protecting the minority from the tyranny of the majority.