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# Delaware or Texas? Corporate Law, Governance, and the New Texas Landscape

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## Coinbase Op-Ed

OPINION

COMMENTARY

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# *Why Coinbase Is Leaving Delaware for Texas*

We're reincorporating in a state whose legal climate is far friendlier to business.

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By Paul Grewal

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## Texas Reincorporations and IPOs in 2024 through 2026

- **Reincorporations**

- Tesla, Inc.
- Dillards Inc.
- Zion Oil and Gas
- United States Antimony Corporation
- Exodus Movement, Inc.
- Coinbase Global, Inc.
- Eightco Holdings Inc.

- **Initial Public Offerings**

- Caris Life Sciences, Inc.
- Fermi Inc.
- Black Rock Coffee Bar, Inc.
- EquipmentShare.com Inc.



# What Happened in Delaware?

## Evolution of Delaware Legislation and Case Law Prior to 2025

- **1986** – DGCL §102(b)(7) permits exculpation for duty of care violations
  - Delaware’s share of Fortune 500 bumps from sub-50% to 56% (1987) with steady rise to mid-to-high 60s percent thereafter
- **2014-2016** – *Cornerstone*, *MFW*, *Corwin*, *Trulia*
- **Early 2020s** – Increased use of §220 demands and focus on “conflicts” cases
- **2022** – §102(b)(7) expanded to permit exculpation of officers
- **2024** - Difficulty satisfying *MFW*, chatter about “*MFW* creep,” *Tornetta v. Musk* (January 2024), *Sears Hometown* (January 2024), *Match Group* (April 2024)
- **2024-2025** – DExit by controlled companies, SB 21 (supersedes *Match*, *Sears*, and *MFW*) (March 2025), Andreesen Horowitz memo (July 2025)
  - 12 DExits to TX/NV in 2025 by issuers on major US indices\*: 3 to Texas, 9 to Nevada

## Musk Pay Package

- Delaware Court of Chancery invalidated Tesla Inc.'s (NASDAQ: TSLA) \$55.8 billion equity compensation package for Elon Musk in 2024.
- Musk successfully moved to reincorporate Tesla and Space Exploration Technologies Corp. from Delaware to Texas in 2024.



## *Maffei v. Palkon* (“TripAdvisor”)

- TripAdvisor and Liberty TripAdvisor directors voted to redomicile both entities from Delaware to Nevada
- Minority stockholders sued, arguing the decision would provide non-ratable benefits in the form of reduced litigation exposure to the Board and TripAdvisor’s controlling stockholder
  - Stockholders argued the self-interested decision should be subject to entire fairness standard of review
- The Chancery Court applied the entire fairness doctrine, holding that potential insulation from litigation could conceivably confer a non-ratable benefit to the controller.

**Ruling:** The Delaware Supreme Court overruled and held the business judgment rule (and its protective presumption) should apply to the re-domicile decision. The decision to apply a deferential business judgment rule review means that corporations can leave Delaware without probing judicial inquiries into the Board’s business decision.

- “[T]he hypothetical and contingent impact of Nevada law on unspecified corporate actions that may or may not occur in the future is too speculative to constitute a material, non-ratable benefit triggering entire fairness review”
- But the Court emphasized that temporality plays a critical role in determining the materiality (and existence) of the alleged non-ratable benefit. ***In particular, the court will assess whether the reincorporation decision is “made to avoid any existing or threatened litigation or made in contemplation of any particular transaction.”***

## The Delaware Legislature Reacts

- In March 2025, the Delaware legislature passed Senate Bill 21 (“SB 21”) to amend DGCL §144, providing certain safe harbors for transactions involving conflicted directors, officers, and controlling stockholders if certain criteria is met:
  - The Transaction is approved by an informed majority of disinterested directors serving on a committee
  - Or the Transaction is approved by a majority of votes cast by disinterested stockholders
  - Or the Transaction is fair to the corporation and the corporation’s stockholders
- Under the DGCL amendments, directors are “disinterested” if they (1) are not a party to the act or transaction at issue, (2) do not derive any personal benefit from the act or transaction that is separate and distinct from any benefit that the corporation or all stockholders receive and (3) do not have a material relationship with a person that has a material interest in the act or transaction.
- Any director of a listed public company shall be presumed to be a disinterested director with respect to an act or transaction to which such director is not a party if:
  - The Board has determined that the director satisfies the listing exchange’s criteria for determining director independence from (a) the corporation and (b) the controlling stockholder, if applicable.
  - Such presumption shall be heightened and may only be rebutted by “substantial and particularized facts” that the director has (a) a material interest in such act or transaction or (b) has a material relationship with a person with a material interest in such act or transaction.

# What Happened in Texas?

## Texas Corporation Law Prior to 2025

- **Texas cases apply the business judgment rule:** Texas courts have not adopted a standard of review similar to Delaware's enhanced scrutiny or entire fairness
  - But lore was that Texas courts applied a higher standard for duty of loyalty than Delaware
- **Derivative suits must demand on the corporation:** Stay of proceedings if the corporation investigates; the decision of independent and disinterested directors binds courts, challengeable only for (1) whether those directors are independent and disinterested; (2) good faith of the inquiry and review; and (3) reasonableness of the procedures
- **Expanded constituency statute** (only state that lists “environmental” considerations as relevant consideration for director duties)
- **Texas constitution says right to jury trial is “inviolable,”** but cases indicate waiver is enforceable with informed consent
- **Mandatory class voting rights,** including for fundamental business transactions
- **Stockholders have a statutory right to call a special meeting:** Charter (not bylaws) may set the ownership threshold up to 50% but not less than 10% of stock entitled to vote

## Texas Business Organizations Code Amendments

In May 2025, Texas significantly reformed the Texas Business Organizations Code (“TBOC”) to promote Texas as a preferred state of incorporation.

*“Texas is the reigning and undisputed champion for doing business in the United States of America...To remain at the highest level requires constant innovation and improvement, and that is what we constantly work at to keep Texas as the best business climate in America.”*

*Senate Bill 29 provides business decision makers the certainty that sound business judgments made in the best interest of shareholders will not be second-guessed by courts. Business decisions are to be made by the elected officers and shareholders, not by unelected judges. These three laws will solidify our status as the best state for doing business for many years to come.”*



Governor Abbott, May 14, 2025

## Texas Business Organizations Code Amendments

- **Codification of the Business Judgment Rule:** Codifying the business judgment rule makes it unlikely that Texas courts will review actions under enhanced scrutiny or entire fairness, two heightened standards of review formally adopted by Delaware courts. The business judgment rule applies automatically to public Texas corporations, but private Texas corporations may opt into this provision by including in their governing documents a statement affirmatively electing to be governed by TBOC § 21.419.
- **Defending Against Derivative Suits:** Public Texas corporations may adopt a minimum share ownership percentage for individual shareholders or groups of shareholders in order to institute or maintain a derivative proceeding. The threshold may not exceed 3% of a company's outstanding shares.
- **Independent and Disinterested Directors:** The 2025 TBOC Amendments expressly authorize the board of directors of public Texas corporations, as well as private Texas corporations that elect into the codified business judgment rule, to form a committee of independent and disinterested directors to review and approve transactions with a controlling shareholder, director or officer. The Texas Business Courts have a procedure to preapprove independent and disinterested committees.
- **Waiver of Jury Trials for Internal Entity Claims:** Any Texas corporation may amend its governing documents to include a waiver of the right to a jury trial concerning any internal entity claim, defined to include derivative claims and other claims that relate to the internal affairs of the corporation.

## Texas Business Organizations Code Amendments

- **Exclusive Forum Provision:** Texas corporations may designate in their governing documents a Texas court with jurisdiction over the matter, including the Texas Business Court, as the exclusive forum for internal entity claims.
- **Elimination of Required Class Voting for Fundamental Business Transactions:** Texas corporations may waive class-by-class share voting in their certificates of formation for the purposes of approving any matter, including in connection with any fundamental business transaction.
- **Shareholder Proposals:** Public Texas corporations that either have their principal office in Texas or are listed on a stock exchange incorporated in Texas may opt in to shareholder proposal requirements that are more stringent than federal law requirements under Rule 14a-8. Qualifying corporations may opt in by amending their governing documents and providing notice to shareholders in their proxy statement.
- **Proxy Advisor Rule:** Texas recently passed a novel regulation that will require significant disclosure obligations for proxy advisors, such as ISS and Glass Lewis, for their voting recommendations for Texas-based corporate issuers. ISS and Glass Lewis each filed suit challenging the law, and enforcement of the law against ISS and Glass Lewis is currently stayed in federal court while litigation proceeds.

# Delaware vs. Texas: Choose Your Corporate Battlefield

# Choose Your Corporate Battlefield

| Topic   | Delaware   | Texas   |
|---|--|---|
| <b>Codification of the Business Judgment Rule</b>                   | <p style="text-align: center;">✘</p> <p>Delaware courts use three different standards of review: (i) the Business Judgment Rule, (ii) Enhanced Scrutiny and (iii) Entire Fairness.</p> | <p style="text-align: center;">✔</p> <p>Texas has codified the Business Judgment Rule for public entities (automatically) and private entities that opt into this provision.</p>              |
| <b>Controlling Stockholder Fiduciary Duties</b>                     | <p style="text-align: center;">✘</p> <p>Controlling stockholders owe fiduciary duties to other stockholders. (Recent amendments limit which stockholders qualify as controllers.)</p>  | <p style="text-align: center;">✔</p> <p>Controlling stockholders generally do not owe fiduciary duties to other stockholders.</p>   |
| <b>Controlling Stockholder Transactions – Statutory Safe Harbor</b> | <p style="text-align: center;">✔</p> <p>Delaware law defers to the decision of an independent and disinterested committee.</p>   | <p style="text-align: center;">✔</p> <p>Texas law defers to the decision of an independent and disinterested committee.</p>   |
| <b>Derivative Proceeding – Ownership Threshold</b>                  | <p style="text-align: center;">✘</p> <p>No ability to adopt a minimum share ownership percentage to institute a derivative proceeding.</p>   | <p style="text-align: center;">✔</p> <p>Public corporations may adopt a minimum share ownership percentage to institute a derivative proceeding (not to exceed 3% of outstanding shares).</p> |
| <b>Sophisticated Business Courts</b>                                | <p style="text-align: center;">✔</p> <p>Judiciary highly expert in corporate disputes with robust case law.</p>  | <p style="text-align: center;">?</p> <p>Newly-created specialized Texas Business Court; Limited case law, currently under development.</p>  |

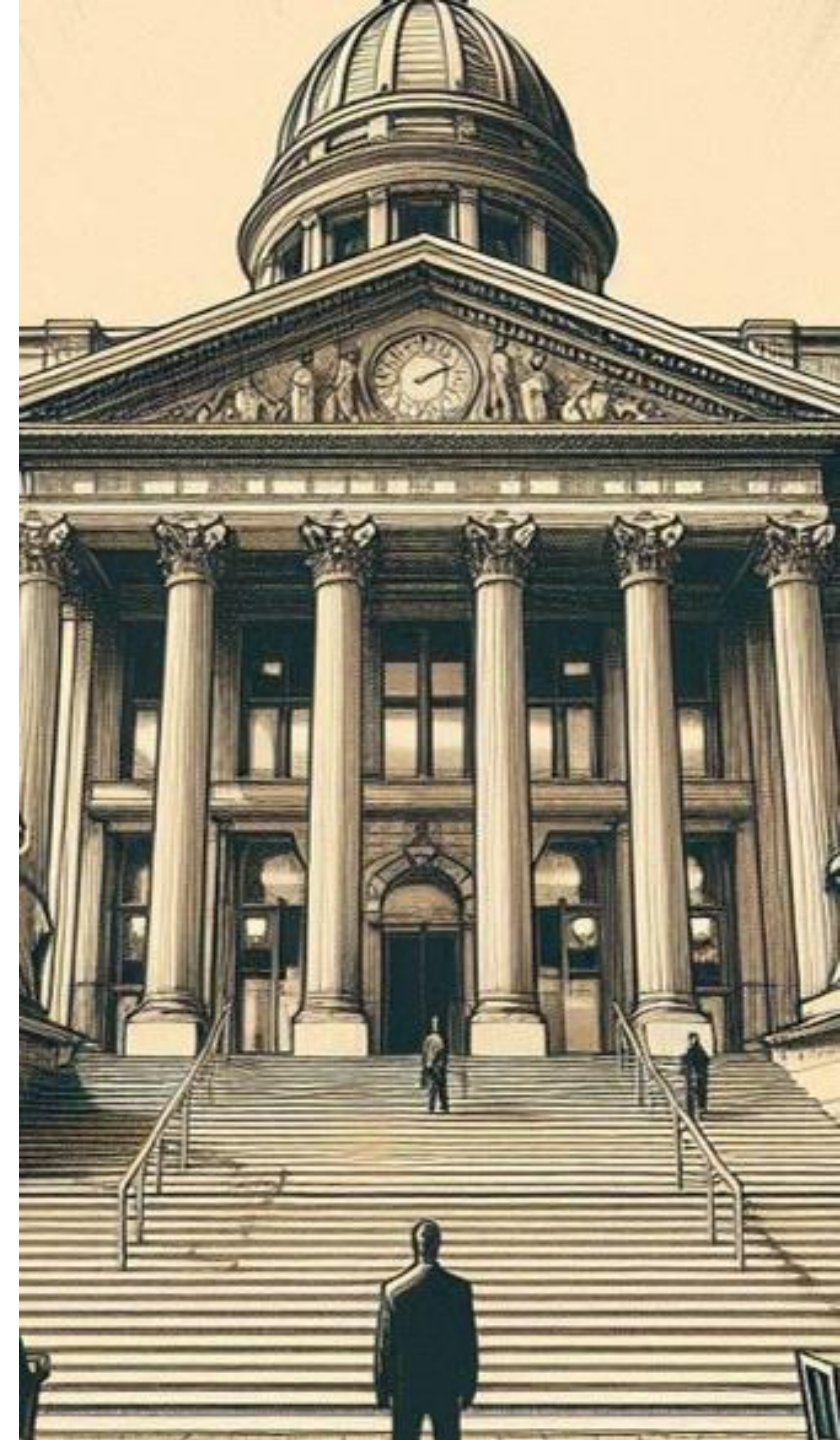
# Choose Your Corporate Battlefield

| Topic   | Delaware   | Texas  |
|---|--|--|
| <b>Pro-Business Jurisdiction</b>                | <p style="text-align: center;">?</p> <p>Long seen as preferred forum due to its predictability and expertise, some recent decisions have called this into doubt. Delaware has passed legislation to address some of these concerns, but it remains to be seen whether they are fully assuaged.</p> | <p style="text-align: center;">✓</p> <p>While the track record is short, Texas is demonstrating clear commitment to attracting companies with pro-business policies.</p>   |
| <b>Exclusive Forum Provisions</b>               | <p style="text-align: center;">✓</p> <p>May designate in governing documents Delaware courts as the exclusive forum and venue for resolving internal entity claims.</p>  | <p style="text-align: center;">✓</p> <p>May designate in governing documents Texas courts as the exclusive forum and venue for resolving internal entity claims.</p>   |
| <b>Proxy Advisor Rules</b>                      | <p style="text-align: center;">✗</p> <p>No special laws governing the voting recommendations of proxy advisors.</p>  | <p style="text-align: center;">✓</p> <p>Proxy advisors must make certain disclosures about their voting recommendations for publicly-traded entities if they rely on nonpecuniary factors (*enforcement currently stayed).</p>   |
| <b>Criteria to Submit Shareholder Proposals</b> | <p style="text-align: center;">✗</p> <p>No special laws governing shareholder criteria to submit proposals beyond what federal law requires.</p>   | <p style="text-align: center;">✓</p> <p>Certain qualifying corporations may opt into greater protections than what federal law provides (<i>i.e.</i>, shareholders must hold at least \$1M in MV or 3% of shares entitled to vote on the proposal).</p>  |
| <b>Special Meetings</b>                         | <p style="text-align: center;">✗</p> <p>Stockholders do not have a statutory right to call a special meeting (*but this right may be granted by the governing documents).</p>  | <p style="text-align: center;">✓</p> <p>Stockholders have a statutory right to call a special meeting. Charter may set percentage of shares (not to exceed 50% of shares entitled to vote) required to call the meeting. If no percentage is specified, at least 10% of shares entitled to vote must call the meeting.</p> |

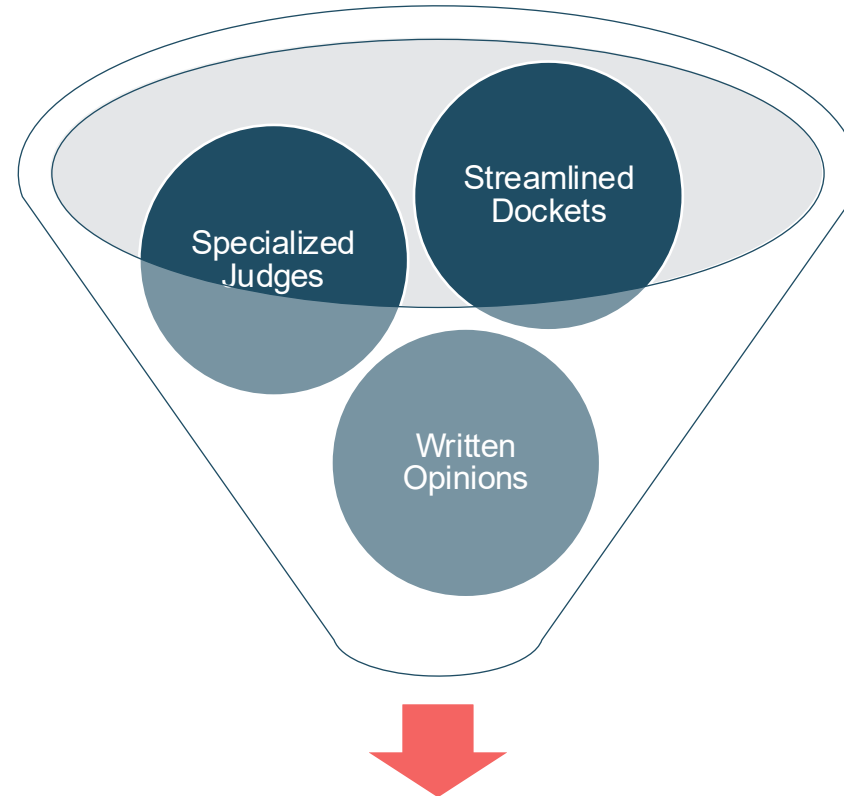
# Texas's Business Court

## Texas Business Court

- Texas established the Texas Business Court in 2024 to preside over certain corporate and commercial claims.
- The Texas Business Court aims to promote predictability and expediency of resolving commercial disputes.
- The Texas Business Court is already hearing cases but will need time to develop reputationally and build a body of case law that provides comparable levels of guidance to directors and officers.



## Potential Benefits of Litigating in Business Court



- Faster Pace of Litigation
- Robust Jurisprudence
- More Predictable Legal Outcomes
- Potentially Lower Litigation Costs

## Litigation Considerations

### Dispositive Motion Practice:

- As the jurisprudence advances, it might develop avenues for litigants to quickly resolve actions guided by purely legal issues
- Early litigants in the Business Court might have the opportunity to shape and influence such development with their arguments

### Forum Selection Clauses:

- Parties may agree that the Business Court has authority to hear disputes regarding a particular contract or transaction
- Must still meet \$5 million amount in controversy requirements for general “qualified transactions,” i.e., contract disputes

### Incorporation in Texas:

- Certain corporate actions can be heard in the Business Court—*regardless of amount in controversy*—if a party is a public company incorporated in Texas
- If the Business Court proves to be a stable and reliable forum for such matters, Corporations might consider reincorporation options

# Stock Exchange Updates

## NYSE Texas

- Announced February 12, 2025, as a reincorporation and renaming of NYSE Chicago, moving to Dallas.
- By March 31, 2025, it had officially commenced operations at its new headquarters in Dallas.
- Texas hosts more NYSE-listed companies than any other state, representing over \$3.7 trillion in market value.
- Listings on NYSE Texas are suitable for dual-listed issuers, with those already on NYSE or Nasdaq exempt from many governance requirements.
- While a primary listing application technically exists, the exchange is structured as a co-listing venue in practice.

## Texas Stock Exchange

- TXSE filed its initial Form 1 in January 2025, and on September 30, 2025, received formal SEC approval to operate as a national securities exchange.
- The exchange plans to commence trading as soon as 2026.
- Backed by BlackRock, Citadel Securities, Charles Schwab, Fortress, and JPMorgan, with total capital raised exceeding \$250 million — making it the most well-capitalized exchange ever to file with the SEC.
- Upon launch, the exchange initially plans to focus only on dual listings for companies already listed on another exchange, with original primary listings expected to be offered at a later date.
- The headline quantitative differentiator is TXSE's \$4.00 minimum bid price requirement — meaningfully higher than the \$1.00 floor at NYSE and Nasdaq.

## Nasdaq Texas


- On March 18, 2025, Nasdaq announced plans to open a new regional headquarters in Dallas.
- In November 2025, Nasdaq launched Nasdaq Texas as a new dual-listing financial exchange, with operations expected in 2026 pending regulatory approvals.
- Nasdaq Texas is a dual-listing venue designed to expand Nasdaq's services for companies across the state while bringing new growth and investment opportunities to U.S. investors.
- No primary listing pathway has been announced for Nasdaq Texas.

# Summary and Conclusions


## Considerations for Incorporating or Reincorporating in Texas


- Delaware's increasing litigious environment
- Texas' business-friendly mindset/nexus to Texas
- Franchise tax cost savings in Texas
- Established Delaware Chancery Court and extensive case law
- Public perception
- Procedural requirements for reincorporation proceedings
- Litigation risk of reincorporation
- Careful drafting of Texas governing documents

# Thank you!

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