



Texas Rewrites the Corporate Landscape



Boards should pay close attention to developments in the Lone Star State as it tries to woo companies away from Delaware.

By Noah Kirsch

FOR DECADES, DELAWARE HAS BEEN THE DOMINANT LOCALE for companies seeking to incorporate. The state offers tax exemptions for out-of-state firms, its chancery court has well-established case law, and its legislature prioritizes regulations that are attractive to businesses.

But in recent years, some companies have decided to move elsewhere. Most prominently, Elon Musk's two largest firms, Tesla and Space Exploration Technologies Corp., or SpaceX, reincorporated in Texas. This followed a 2024 decision by the Delaware Court of Chancery to invalidate Musk's nearly \$56 billion compensation package, which shareholders had previously approved.

To Musk and other observers, the court's decision raised concerns about whether it had overreached, prompting Musk's companies to pivot to a state that would perhaps be more deferential to board decisions.

Texas has enacted many measures to appeal to large businesses. Policymakers have touted the state's lack of personal income taxes, its softer approach to regulation, its central location within the United States, and the Texas Enterprise Fund, which offers grants to companies that plan to invest or expand in the state. The Texas Business Court also opened in 2024, and the Texas Stock Exchange is expected to launch in 2026.

"You're starting to see a movement," said Thomas C. Leppert, chair of Austin Industries, a construction firm headquartered in Dallas. Many boards are beginning to ask questions about where the companies they serve are incorporated and whether a company's culture or operational footprint would justify shifting its incorporation, Leppert continued. Some will opt to change nothing, while others may realize that "indeed a change is appropriate."

A Diversifying Economy

Roughly 15 years ago, former Texas governor Rick Perry helped popularize the term "Texas Miracle," which described the state's flourishing economy. Since then, growth hasn't slowed. Texas's gross domestic product has surged 50 percent since 2010, after accounting for inflation, and the state has diversified its economy beyond its image as one reliant on oil and gas.

That image "is not the Texas of this century," said Travis Wofford, vice chair of the global Merger and Acquisitions Practice at Baker Botts, a global law firm founded in Houston. He cited the diverse mix of prominent businesses headquartered in the state, such as Dell Technologies, Charles Schwab Corp., and Hewlett Packard Enterprise Co.,

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and noted that Houston is home to one of the world's largest hospital systems, Texas Medical Center.

Texas has also worked to attract start-ups and technology talent through grants and tax incentives. This includes cash grants from the state enterprise fund for projects that will create jobs and tax refunds for investments in certain parts of the state through the Texas Enterprise Zone Program.

In November, voters in the state approved constitutional amendments to ban taxes on capital gains and certain stock transactions. Glenn Hamer, president and CEO of the Texas Association of Business, noted that the proposals were designed to further appeal to corporate leaders.

Leppert said he recently spoke with the CEO of one of America's largest companies after the leader calculated how much it would cost to operate in California compared to Texas. After factoring in salary and benefit costs, regulations, and other obligations, it was 40 percent cheaper to move to Texas, Leppert said. He attributed part of the affordability to Texas's budget surpluses, which allow the state to keep taxes and fees comparatively low.

A New Stock Exchange

One of Texas's most buzzed-about developments is its planned stock exchange. The exchange's parent company, TXSE Group, announced in January 2025 that it had raised \$161 million in capital from investors, including Citadel Securities, Charles Schwab, BlackRock, Dell Family Office Management, and Susquehanna Private Equity Investments.

According to an August 2025 briefing from the Texas Economic Development Corp., the exchange claims to offer advantages over its long-established rivals, such as Nasdaq or the New York Stock Exchange (NYSE). These include "lower listing and compliance costs," additional opportunities for local and retail investors, and the ability to tap into a "strong regional identity."

Both Nasdaq and the NYSE have recently taken steps to expand their own footprints in the Lone Star State. In February 2025, the NYSE announced that it would move its Chicago-based operation to Texas. President Donald Trump's publicly traded media firm, Trump Media & Technology Group Corp., was the first entity to list on NYSE Texas. In March, Nasdaq followed suit, opening a new regional headquarters in Dallas.

Part of the appeal of the Texas Stock Exchange is its stated commitment to minimizing regulation, Leppert said. Nasdaq, for example, previously required boards to meet certain diversity requirements, or otherwise explain the absence of diversity. The Texas Stock Exchange, in contrast, plans to give businesses "the degrees of freedom to succeed and operate as the board of directors and management see appropriate," Leppert said.

Turbulence in Delaware

In 1986, Delaware's legislature established Section 102(b)(7) of the Delaware General Corporation Law, which prevents directors from being held personally liable for decisions made as part of their role, "unless they're acting in bad faith or for their own personal interests," said Ethan Klingsberg, cohead of US corporate and mergers and acquisitions at Freshfields. Since then, more than 60 percent of Fortune 500 companies have decided to incorporate in Delaware.

Beyond Musk's frustration with the Delaware Court of Chancery, other cases have made ripples in the corporate world. For instance, an October 2024 briefing from the law firm K&L Gates noted that in recent years, judges have "issued several notable opinions" about so-called *Caremark* claims, which seek to hold directors liable for failures of oversight.

The "pleading standard is high," the briefing noted, but in recent years, "Delaware courts have sustained *Caremark* claims at the pleading stage, exposing corporate directors ... to a higher potential for liability." This has raised alarms in some boardrooms.

For companies seeking to reincorporate, perhaps in part because of these issues, the dominant Delaware alternatives are Nevada and Texas, said Will Anderson, a partner at Bracewell.

A September 2025 article from Gaurav Jetley and Nick Mulford at Analysis Group quantified the migration, which has been nicknamed "DExit." Between 2024 and the first half of 2025, "five public companies with a market capitalization greater than \$250 million reincorporated to Delaware," the authors found using data from the US Securities and Exchange Commission EDGAR database. Meanwhile, 16 businesses of that size reincorporated from Delaware to other states, equating to a "net loss of 11 large public firms."

Texas's 'Regulatory Restraint'

According to Anderson, Texas has sought to alleviate anxiety about the issue of director liability by codifying its own business judgment rule for the state's business courts. This sets a "pretty high bar to holding directors and officers accountable for violations," Anderson said.

The measures were part of Texas's Senate Bill 29, passed in May, which also made other regulatory changes, such as raising the threshold to bring derivative lawsuits and restricting shareholders' access to electronic records during litigation. Additionally, the law allows companies to set Texas courts as the exclusive venue for internal disputes and to create jury trial waivers in their governance documents.

The restrictions allow firms to enact a threshold of "up to 3 percent for derivative actions," Anderson explained, "meaning that a shareholder would have to own at least 3 percent of the outstanding shares" of a company to file a derivative lawsuit. "That would be,

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I think, very attractive to directors that are concerned about frivolous litigation," he said.

Proponents of these measures argue that they will allow boards to spend more time overseeing their companies, rather than dealing with costly distractions.

"Instead of a board and a management team having to worry about an extreme minority of shareholders waging an ideological campaign, or an activist judge upending a sound business decision, the management team and the board can focus on maximizing shareholder value," Hamer said.

Shane Goodwin, executive director of the Southern Methodist University Corporate Governance Initiative, emphasized that reducing regulation does not mean that Texas intends to be the corporate Wild West.

"It's not people just doing whatever they feel like," he said. The guiding philosophy, in Goodwin's view, is more about "regulatory restraint."

Meanwhile, new judges are appointed to the Texas Business Court by the governor, which raises potential concerns about political influence.

"This doesn't give us an independent judiciary," Michael Smith, former president of the East Texas chapter of the American Board of Trial Advocates, told the *Texas Tribune* in 2023. "It gives us employees of the executive branch which are serving two-year terms."

When asked about this issue, Leppert said it is a "fair concern when any action of a judge can be politicized," though he believes Texas policymakers are working to create a fair environment in which judges "are interpreting the law and not creating additional legislation."

Judge Sofia Adrogué, who serves in the Eleventh Division of the Texas Business Court, added that judges who have been appointed to the court have extensive experience, are "consummate professionals, and, I believe, above reproach." She noted that these judges are also under immense scrutiny, given the nascence of the court, and that they "will deliver with impartiality."

Realistically, the Texas Business Court is unlikely to overtake the Delaware Court of Chancery soon, Adrogué acknowledged, though it can offer companies more choices as they navigate legal issues. Already, she said, the court has evaluated a wide range of topics, "everything from autonomous vehicles to port issues."

Some companies have been persuaded of the value of shifting their incorporation to Texas. In August, Dillard's won shareholder approval to reincorporate from Delaware. Latin American firm MercadoLibre also publicly floated a move from Delaware to Texas last spring, while Meta Platforms reportedly considered relocating, too. Meanwhile, Coinbase Global announced in November that it plans to reincorporate in Texas.

"It's not going to work for every particular company, but at the very least, [board members] should be getting informed and at least asking the questions," Goodwin said.

Advantages for Controlled Companies

Musk's firms are by far the most influential entities that have shifted to Texas. According to Klingsberg, the billionaire's influence over shareholders played no small part in the successful petition to relocate.

Musk only holds about 15 percent of Tesla's shares, Klingsberg noted, meaning that he could not unilaterally dictate the outcome of a stockholder vote. Still, "Tesla has a greater percentage of retail shareholders" than any other firm with a large market capitalization, "and these retail holders are extremely loyal followers of Elon

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Musk's directions on how to vote," he said. At many companies, Klingsberg continued, "retail holders don't even vote."

He noted that there are multiple perceived advantages for controlling shareholders when considering reincorporating from Delaware.

"Texas and Nevada have, at least in their statutes, articulated more deferential standards than those that apply in Delaware when it comes to review of whether directors have fulfilled their fiduciary duties when approving related-party transactions with a controlling shareholder," Klingsberg said. In his experience, companies considering shifting their state of incorporation have largely been controlled companies, where the outcome of a vote on whether to move is "assured."

Anderson believes that Texas is further marketing itself to companies concerned about jurisprudence in Delaware by creating a streamlined process for approving related-party transactions.

"If you're a board and you create a special committee for some interested party transaction ... you could go to a Texas court and have a determination that the directors are in fact independent, and that way it wouldn't be second-guessed later by a court," Anderson said. In Delaware, he added, "sometimes you can create a committee, have it do all of its work, enter into a transaction, and then later, the court finds some sort of problem with independence."

To prevent frustrated firms from leaving, Delaware has amended its statutes to create a clearer safe harbor for boards and companies engaging with a controlling shareholder, Klingsberg said. Now, "if the board and the controlling shareholder of a Delaware corporation satisfy certain procedural hurdles," they will have additional legal protections; if other shareholders seek to file a lawsuit over alleged breaches of fiduciary duties, the claims could be quickly dismissed.

The Role of Proxy Advisory Firms

Texas's rising prominence dovetails with cultural changes happening around the country that have been spurred by Washington and a push for corporations to engage less in political advocacy.

This summer, Texas passed Senate Bill 2337, which would require proxy advisory firms, such as Institutional Shareholder Services (ISS) and Glass, Lewis & Co., to disclose when their voting recommendations involving Texas-based firms are not strictly based on financial criteria. For instance, it may be that "if a proxy advisory firm makes a recommendation based on ESG [environmental, social, and governance] factors, it needs to be flagged," said Elizabeth Bieber, head of shareholder engagement and activism defense at Freshfields. The guidance "capitalizes on some of the current cultural considerations," she added.

The new rules face legal obstacles, however. In late August, a federal judge in Texas issued a preliminary injunction preventing the

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regulations from being enforced, following a lawsuit from ISS and Glass Lewis. The case is expected to head to trial in February 2026.

Bieber thinks the landscape may make proxy firms less likely to encourage companies to pivot away from Delaware.

"ISS and Glass Lewis were a little bit more receptive in their recommendations for companies to move the state of incorporation prior to this year," she said. "I expect they'll be even less friendly,

specifically to Texas, next year, as a result of the view of the recent amendments to the Texas corporate statute.”

Risks of Reincorporating

Multiple experts consulted for this story said that directors and shareholders often pay little attention to where the companies they serve and own are registered. About one-third of Fortune 500 companies are not incorporated in Delaware; many firms are domiciled in locations heavily affiliated with their brand identities. Starbucks Corp. is incorporated in Washington, for example, and Apple in California.

However, Bieber said, investors likely will “pay attention if you ask them to move, which is a separate question.”

Klingsberg outlined several potential risks for boards considering shifting to Texas or another state. For starters, he said, retail shareholders may be skeptical of the “prospect of lowering the standard for review of related-party transactions with a controlling shareholder or, at companies without controlling shareholders, related-party transactions with a director or officer.”

He encouraged directors to contemplate in advance how investors might react to a proposal to relocate.

“It’s quite embarrassing to go out and ask for a shareholder approval of something as fundamental as changing the jurisdiction of incorporation and then be rejected by your shareholders,” Klingsberg said.

Furthermore, he noted, the nascence of the Texas Business Court means that judges have so far created limited case law. As a result, it is not yet clear how the state’s courts will rule on particular issues.

Klingsberg offered the example of the business judgment rule: In Texas’s courts, “what are examples of facts and circumstances where you’ve stepped out of bounds and failed to comply with your duties” as a director? Still, he expects that over time, states with new business courts will develop their own precedents, similar to Delaware.

Lastly, Klingsberg said, Delaware legislators are exceptionally motivated to keep business leaders happy. The state collects roughly one-third of its budget, “about \$2 billion a year, from the franchise taxes of companies that incorporate [there],” he said. “So, Delaware is very, very sensitive to what’s going on in other states, and the legislature meets multiple times a year to consider amendments to the Delaware corporate law.”

There are other potential considerations. Wofford acknowledged that “many shareholders are not sufficiently educated in the differences between Texas law and that of other states like Delaware.”

Moreover, he continued, “there are times when proposing reincorporation to Texas may be inappropriate.” One possible example

The Emergence of Y’all Street

Texas’s goal of rivaling New York as a center of American financial power has earned its financial center the nickname “Y’all Street.” Its efforts have shown steady progress, and billions in capital have flowed to the Lone Star State.

Goldman Sachs Group is investing \$500 million in a new facility in Texas for thousands of employees; Wells Fargo & Co. is constructing a massive campus in Irving, Texas, just outside of Dallas; and Bank of America Corp. is erecting a 30-story tower in Dallas. Meanwhile, Fisher Investments moved its headquarters to Plano, Texas, in 2023, attributing its relocation to the state’s business-friendly regulations.

Collectively, these developments are more than individual decisions; they represent a potential cultural shift. Dealmakers, family offices, venture capitalists, and fund managers are no longer looking to Texas only as a secondary location, but also as a primary hub for capital, talent, and innovation. New financial infrastructure has quickly followed.

would be when a firm faces an activist shareholder campaign. The decision to suddenly reincorporate away from Delaware could be taken as “evidence that a company is trying to limit their ability to bring shareholder proposals,” Wofford said. These risks will require boards and management teams interested in relocating to sufficiently educate and persuade their investor bases.

For companies seriously considering the advantages of incorporating in a state such as Texas, Bieber stressed the importance of weighing the potential upsides and risks. For instance, “the board and management team will have to reorient itself in multiple ways, relating to taxes, fiduciary duties, [and] compliance with corporate law mechanics,” Bieber said.

The discussion on what route to take is nonetheless important, Bieber believes. “Part of satisfying fiduciary duties is acting with due care, which means doing the due diligence to understand the current trends and why other companies might be making the choices they are making,” she said.

Leppert concurred. “The important thing is to start asking questions and demand of general counsels to give boards the appropriate information to make a judgment,” he said. Every company will have different needs, “but to have a board that doesn’t pursue these questions until it’s too late, that’s a problem.” 



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