Anti-Woke Corporate Governance

Law Working Paper N° 959/2026
September 2026

Ann M. Lipton
University of Colorado Law School

ECGI Working Paper Series in Law

Anti-Woke Corporate Governance

Working Paper N° 959/2026
September 2026

Ann M. Lipton

Abstract

In the modern era, corporate law has not been viewed as particularly partisan. To some extent, this is likely due to the fact that Delaware, the dominant state for the generation of corporate law, has built nonpartisanship into its corporate law design. Recently, however, Texas has begun to position itself as a competitor to Delaware by offering an explicitly conservative corporate governance platform. The approach has had some success, drawing big name companies to the state such as Exxon, Dell Technologies, and Coinbase. This Essay, written for SMU's Irving L. Goldberg Symposium: Welcome to Y'all Street: Texas Corporations and Texas Shareholders, will discuss the background and nature of Texas's strategy, as well as the risks and benefits of red state/blue state corporate governance, both to corporations and to the corporate chartering system in general.

Ann M. Lipton

University of Colorado Law School

Anti-Woke Corporate Governance

by Ann M. Lipton[*]

Abstract

In the modern era, corporate law has not been viewed as particularly partisan. To some extent, this is likely due to the fact that Delaware, the dominant state for the generation of corporate law, has built nonpartisanship into its corporate law design. Recently, however, Texas has begun to position itself as a competitor to Delaware by offering an explicitly conservative corporate governance platform. The approach has had some success, drawing big name companies to the state such as Exxon, Dell Technologies, and Coinbase. This Essay, written for SMU's *Irving L. Goldberg Symposium: Welcome to Y'all Street: Texas Corporations and Texas Shareholders*, will discuss the background and nature of Texas's strategy, as well as the risks and benefits of red state/blue state corporate governance, both to corporations and to the corporate chartering system in general.

[*] Professor of Law and Laurence W. DeMuth Chair, University of Colorado Law School. I am grateful to all of the participants in the Irving L. Goldberg Symposium: *Welcome to Y'all Street: Texas Corporations and Texas Shareholders*, as well as the comments of Patrick Corrigan and Andrew Jennings.

I. Introduction

In the modern era, corporate law has not been viewed as particularly partisan. Most states have corporate codes that are broadly similar, and differences based on the party-affiliation of state governments are minor. For example, there have occasionally been forays into a kind of left-leaning corporate law, usually via legislative creation of certain business forms that are designed to pursue a social mission alongside a profit-seeking one,[1] but these forms are entirely voluntary, and their impact is somewhat limited given the legal freedom that even purely for-profit entities have to incorporate social welfare into the business models.[2] Democratic legislators may also be slightly more likely to insulate boards from takeover attempts (by allowing boards to consider values beyond shareholder wealth maximization when entertaining offers[3]), and Republican legislators may be slightly more likely to enact certain barriers to shareholder litigation,[4] but on the whole, most states' corporate law has for decades born a strong family resemblance.

To some extent, this is likely due to the fact that Delaware, the dominant state for the generation of corporate law, has built nonpartisanship into its corporate law design. Delaware's constitution mandates that no more than a bare majority of the judges on its major courts can be of one party,[5] and changes to its corporate code originate in technocratic fashion from the Corporation Law Council of the Delaware State Bar Association,[6] before requiring a two-thirds majority to pass in the state legislature.[7] These features of Delaware law are no accident: they were adopted intentionally, beginning in the late 19th century, specifically so that Delaware could present itself as an attractive jurisdiction in which to incorporate.[8] Thus, although corporate founders can choose any state in which to organize, overwhelmingly, the organizers of publicly traded companies – as well as companies with professionalized investor backing, such as those sponsored by private equity or venture capital firms – have chosen to incorporate in Delaware.[9]

To be sure – in part in response to challenges posed from other states – Delaware's technocratic approach has recently given way to a more political process, with the governor's office directly consulting with corporations as to how best to move Delaware law in their preferred direction.[10] Nonetheless, the state's approach in general has been to confine corporate lawmaking to expert practitioners and a nonpartisan judiciary rather than elected officials. And the law that Delaware has produced has been enormously influential: precisely because Delaware dominates the market for public company charters, it also generates the most caselaw, which is often persuasive in other jurisdictions. Model corporate codes, such as the Model Business

---

[1] There is evidence that these forms are more slightly likely to be adopted in states with democratic legislators. *See* Ofer Eldar & Gabriel Rauterberg, *Is Corporate Law Nonpartisan?*, 2023 Wis. L. Rev. 177, 193.
[2] *See* Lucian A. Bebchuk, Kobi Kastiel, & Roberto Tallarita, *Does Enlightened Shareholder Value Add Value?*, 77 Bus. Law. 731, 751-52 (2022).
[3] *See* Eldar & Rauterberg, *supra*, at 197.
[4] *Id.* at 193.
[5] *See* Stipulated Consent Judgment and Order at 5–6, Adams v. Carney, No. 20-1680 (D. Del. Jan. 30, 2023).
[6] Eldar & Rauterberg, *supra*, at 213.
[7] Eldar & Rauterberg, *supra*, at 210.
[8] *Id.* at 209-13.
[9] Anat Alon-Beck, *Delaware Beware*, 2025 U. Ill. L. Rev 363, 382.
[10] Lora Kolodny, *Meta's potential exit from Delaware had governor worried enough to call special weekend meetings*, CNBC (March 19, 2025).

Corporation Act, though they differ from Delaware law in various particulars, often follow Delaware's lead when it comes to adjusting for new developments.[11]

Until now. Recently, Texas has begun to position itself as a competitor to Delaware in the market for corporate charters by offering an explicitly conservative corporate governance platform, and it has already had some success, drawing big name companies to the state such as Exxon, Dell Technologies, and Coinbase.

This Essay will discuss the background and nature of Texas's approach, as well as the risks and benefits of red state/blue state corporate governance, both to corporations and to the corporate chartering system in general.

II. Corporate Governance Goes Partisan

Since the rise of the giant corporations, there have been efforts to enlist shareholders in the effort to exert "democratic discipline" over their behavior as a means of making them more socially responsible.[12] The socially responsible investing movement gained a particular prominence in the 1970s in reaction to the Vietnam War, and again in the 1980s, in reaction to South African apartheid.[13] But with most shareholders dispersed and rationally passive, it was very difficult to organize them into a particularly influential force.[14] Beginning in the 1980s, that began to change, with the rise of the institutional investor. These institutions held concentrated power in multiple firms, under professional management, and therefore had the potential exert a significant amount of control over their portfolio companies.[15]

Asset managers, however, are legally required to act on behalf of their beneficiaries, which typically means to maximize investor wealth.[16] They are not generally free to use the investments entrusted to them to pursue some greater notion of the social good – one likely tethered to the values of the particular individuals who head investment policy.[17] Largely in response to this dynamic, the United Nations developed a new twist on an old idea: for "integrat[ing] environmental, social and corporate governance issues in asset management,

[11] Philosophically, the lack of partisan difference is perhaps traceable to the fact that the main axis of corporate regulation – making boards more or less accountable to shareholders – is something of a double-edged sword. Greater accountability to shareholders diminishes the power of the managerial class, but may also cause boards to focus on profit-seeking to the exclusion of all other values; less accountability to shareholders may free managers to pursue social ends, but may also permit the accumulation of oligarchic wealth and power.

[12] Dalia T. Mitchell, *From* Dodge *to* eBay*: The Elusive Corporate Purpose*, 13 Va. L. & Bus. Rev. 155, 174-75 (2019); *see also* Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 Stan. L. Rev. 381, 392-95 (2020).

[13] Schanzenbach & Sitkoff, *supra*, at 393.

[14] Harwell Wells, *A Long View of Shareholder Power: From the Antebellum Corporation to the Twenty-First Century*, 67 Fla. L. Rev. 1033, 1081-82 (2015).

[15] Ann M. Lipton, *Of Chameleons and ESG*, 107 Marq. L. Rev. 597, 610-11 (2024) [hereinafter, "*Chameleons*"].

[16] Schanzenbach & Sitkoff, *supra*, at 403; Oliver Hart & Luigi Zingales, *The New Corporate Governance*, 1 U. Chi. Bus. L. Rev. 195, 205-07 (2022)

[17] William W. Bratton, *Shareholder Primacy versus Shareholder Accountability*, 47 Seattle U. L. Rev. 405, 450 (2024) (arguing that large asset managers have only pursued social change with respect to "the agendas of self-interested members of society's economic elite").

securities brokerage services and associated research functions."[18] Under this new conception, social responsibility is not pitched as a way to make corporations more moral, but as a way to make them *more profitable*. The claim is that corporations that behave in a broadly prosocial manner – such as treating its labor force well, adapting to environmental risks, and developing a governance structure that is accountable to shareholders – will in the long run earn higher returns by developing stronger community relationships, avoiding regulatory penalties, and responding to investors' priorities.[19] Thus, though the term "ESG" is sometimes used to describe a values-based approach to investing, adherents in the professional investing world maintain that ESG is a type of financial analysis, intended to determine the firm's potential for long term profitability.[20]

For a brief period, it seemed as though the ESG argument had carried the day.[21] Asset managers eagerly marketed ESG-themed products[22] and voting and engagement policies,[23] corporate managers were compensated based on achieving ESG metrics,[24] underwriters and proxy advisors incorporated ESG priorities into their governance assessments,[25] and boards created sustainability committees to focus on ESG issues.[26] Notably, however, the typical "ESG" platform tends to equate politically liberal priorities with prosociality, such as gender and racial diversity, attendance to climate change, and gun control, and whether or not these measures directly contribute to increased profitability, the suggestion that they do so – so much so that asset managers at least publicly went on record as supporting them[27] – sent a softer signal, one that suggested these concerns were broadly shared by society in general, and that it was

[18] Elizabeth Pollman, *The Making and Meaning of ESG*, 14 Harv. Bus. L. Rev. 403, 413 (2024) (*quoting* The Global Compact, Who Cares Wins: Connecting Financial Markets to a Changing World vii (2004), https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf); *see also* Schanzenbach & Sitkoff, *supra*, at 388 ("in the late 1990s and early 2000s … proponents of [socially responsible investing] rebranded the concept as ESG").
[19] Schanzenbach & Sitkoff, *supra*, at 433-36.
[20] Lisa M. Fairfax, *The Perils and Promise of Shareholders as Stakeholder Advocates*, in Board-Shareholder Dialogue: Policy Debate, Legal Constraints and Best Practices 214, 217-19 (Luca Enriques & Giovanni Strampelli eds., 2024).
[21] Mark J. Roe, *Why Shareholder-Driven Corporate Social Responsibility Failed*, 176 U. Pa. L. Rev. (forthcoming), at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6329838.
[22] Dana Brakman Reiser & Anne M. Tucker, *Buyer Beware: Variation and Opacity in ESG and ESG Index Funds*, 41 Cardozo L. Rev. 1921 (2020).
[23] Natalya Shnitser, *The 401(k) Conundrum in Corporate Law*, 13 Harv. Bus. L. Rev. 301, 304 (2023); Fairfax, *supra*, at 228.
[24] Lucian A. Bebchuk & Roberto Tallarita, *The Perils and Questionable Promise of ESG-Based Compensation*, 48 J. Corp. L. 37 (2022).
[25] Laura Noonan & Patrick Temple-West, *Goldman to Insist Companies it Takes Public have Diverse Boards*, Fin. Times (Jan. 23, 2020), https://www.ft.com/content/9a301780-3dfb-11ea-a01a-bae547046735?syn-25a6b1a6=1; ISS, *United States: Proxy Voting Guidelines Benchmark Policy Recommendations* (2019), https://www.iss-stoxx.com/file/policy/2020/americas/US-Voting-Guidelines.pdf.
[26] Fairfax, *supra*, at 236.
[27] Fairfax, *supra*, at 223. Whether asset managers did or did not believe their own rhetoric is another issue. *See, e.g.*, Aneesh Raghunandan & Shiva Rajgopal, *Do ESG funds make stakeholder-friendly investments?*, 27 Rev. Acctg. Studies 822 (2022); Roni Michaely, Guillem Ordonez-Calafi, & Silvina Rubio, *Mutual funds' strategic voting on environmental and social issues*, 28 Rev. Fin. 1575 (2024); Jason Zweig, *You Want to Invest Responsibly. Wall Street Smells Opportunity*, Wall St. J. (Apr. 16, 2021), https://www.wsj.com/finance/investing/you-want-to-invest-responsibly-wall-street-smells-opportunity-11618586074; Asjylyn Loder, *Funds Don't Always Vote for Policies They Publicly Back*, Wall St. J. (Apr. 2, 2019), https://www.wsj.com/articles/funds-dont-always-vote-for-policies-they-publicly-back-11554206401.

necessary to make gestures toward addressing them as part of a businesses' social license to operate.[28]

It turned out, however, these concerns were not, in fact, broadly shared by society, and by treating ESG priorities as a barometer of popularity, proponents inspired a backlash among those who neither shared them nor accepted the premise that they represented a societal consensus regarding their contributions to corporate value. Critics accused asset managers who advocated for ESG – and boards that responded to them – as having abandoned profitability in favor of advancing their personal political commitments.[29] The truth almost certainly more complex; while no doubt some actors have used ESG to advance a political cause,[30] for many large institutions it was more like reading the societal room,[31] and later years suggested the room was more heterogeneous than they had assumed.

Nonetheless, the stage was set for treating any corporate behavior espousing liberal priorities – or even priorities that could be painted as liberal[32] – as something like per se evidence that corporate managers had abandoned their fiduciary duties to shareholders and were no longer seeking to maximize profits.[33] Florida Governor Ron DeSantis directed the state pension fund to investigate whether a beer manufacturer had breached its duties to shareholders by seeking the endorsement of a transgender influencer.[34] A court accepted allegations that Target's board had misled shareholders by downplaying the risks to its reputation of marketing Pride merchandise.[35] A Texas judge ruled that American Airlines violated its fiduciary duties under the Employee Retirement Income Security Act (ERISA) by including BlackRock funds in its 401(k) plan, because, at the time, BlackRock had generally adopted a voting and engagement policy to encourage its portfolio companies to prepare for a climate transition.[36] And when a Delaware court rejected an attempt by a Disney shareholder to investigate whether the board's

---

[28] Lipton, *Chameleons*, *supra*, at 620.

[29] *E.g.*, Brendan Walsh & Danielle Moran, *BlackRock and State Street Grilled by Texas Lawmakers in ESG Debate*, Bloomberg (Dec. 15, 2022), https://www.bloomberg.com/news/articles/2022-12-15/blackrock-state-street-grilled-by-texas-lawmakers-in-esg-debate; Tim Fitzpatrick, *Anti-ESG Bills Roll Out to Target "The Weaponization of Capital"*, Salt Lake Trib. (Feb. 24, 2023), https://www.sltrib.com/news/2023/02/24/anti-esg-bills-roll-out-target/; Dawn Lim, *Republicans Ask Federal Retirement Plan for Details on BlackRock, StateStreet's Votes*, Wall St. J. (July 1, 2021), https://www.wsj.com/finance/investing/republicansask-federal-retirement-planfor-details-on-blackrock-state-streets-votes-11625139430.

[30] Schanzenbach & Sitkoff, *supra*, at 388; Pollman, *supra*, at 421-22.

[31] Steven Pearlstein, *Top CEOs are reclaiming legitimacy by advancing a vision of what's good for America*, Wash. Post (Aug. 19, 2019), https://www.washingtonpost.com/business/2019/08/19/top-ceos-are-reclaiming-legitimacy-by-advancing-vision-whats-good-america/; Jeff Schwartz, *Stewardship Theater*, 100 Wash. U. L. Rev. 393 (2022).

[32] Patrick Coffee, *Bot Networks Are Helping Drag Consumer Brands Into the Culture Wars*, Wall St. J. (Sept. 26, 2025), https://www.wsj.com/articles/bot-networks-are-helping-drag-consumer-brands-into-the-culture-wars-63dffa04.

[33] Charles Gasparino, Go Woke, Go Broke: The Inside Story of the Radicalization of Corporate America (2024); Marco Rubio, *Proposed Legislation to Address the Problem of Woke Corporations*, Harv. L. Sch. Forum on Corp. Gov. (Oct. 6, 2021), https://corpgov.law.harvard.edu/2021/10/06/proposed-legislation-to-address-the-problem-of-woke-corporations/.

[34] Letter from Ron DeSantis, Governor of Fla., to Lamar Taylor, Interim Exec. Dir., State Bd. of Admin. (Jul. 20, 2023) (asking the head of Florida's state pension system to investigate potential breaches of fiduciary duty by the directors of InBev, Bud Light's parent company, to investors).

[35] Craig v. Target Corp., 2024 WL 4979234 (M.D. Fla. Dec. 4, 2024).

[36] Spence v. American Airlines, 775 F. Supp. 3d 963 (N.D. Tex. 2025).

opposition to Florida's "Don't Say Gay" law – thus incurring the wrath of Florida Governor Ron DeSantis – was rooted in the board's personal preferences,[37] commenters accused Delaware of elevating a liberal political agenda over holding boards accountable to shareholders.[38]

And just as a board's embrace of liberal priorities could be read as a corporate governance failure, so too could accusations of actual governance failures be read as an objection to the political outcomes that governance had produced. Specifically, in recent years, a number of business moguls – especially in the tech industry and Silicon Valley – have embraced an outspoken right-leaning politics.[39] Thus, when shareholder lawsuits challenging corporate governance in these firms began to meet with some degree of success[40] – culminating in the lawsuit that persuaded a Delaware Court of Chancery to rescind Elon Musk's 2018 pay package, worth roughly $56 billion at the time[41] – accusations flew that Delaware courts were in fact objecting to the politics of the firm leaders, rather than the corporate governance of the firms themselves.[42]

In response to the Musk pay decision (which was eventually reversed on appeal),[43] Musk sought and received shareholder approval to redomesticate Tesla to Texas,[44] after which Texas revised its corporate law in an earnest effort to compete with Delaware for corporate charters.[45] But where Delaware has always made a concerted effort to denude its corporate law of partisan politics and imbue it with an aura of technical expertise,[46] Texas did something quite different: it

[37] Simeone v. Walt Disney Co., 302 A.3d 956 (Del. Ch. 2023).
[38] Michael Toth, *Why the Corporations are Fleeing Delaware*, The Hill (June 12, 2024), https://thehill.com/opinion/finance/4715117-why-the-corporations-are-fleeing-delaware/mlite; William P. Barr & Jonathan Berry, *Delaware Is Trying Hard to Drive Away Corporations*, Wall St. J. (Nov. 24, 2023), https://www.wsj.com/opinion/delaware-is-trying-hard-to-drive-away-corporations-business-environmental-social-governance-investing-780f812a.
[39] Joe Miller, George Hammond, & Chris Cook, *The price of Palantir's politics*, Fin. Times (July 7, 2026), https://www.ft.com/content/21038b20-646e-4773-a473-110c2d62ab15?syn-25a6b1a6=1; Olivia Farrar, *Why Is Silicon Valley Turning Conservative?*, Harvard Magazine (Apr. 28, 2026), https://www.harvardmagazine.com/harvard-kennedy-school-of-government/harvard-silicon-technology-conservative.
[40] *E.g.*, Tom Hals, *Zuckerberg, Meta directors agree to $190 million settlement of shareholder privacy case*, Reuters (Nov. 20, 2025), https://www.reuters.com/world/zuckerberg-meta-directors-agree-190-million-settlement-shareholder-privacy-case-2025-11-20/; Jonathan Stempel, *Dell reaches $1 billion settlement over disputed 2018 stock swap*, Reuters (Nov. 16, 2022), https://www.reuters.com/legal/dell-reaches-1-billion-lawsuit-settlement-2022-11-16/; Tom Hals, *Judge approves Tesla directors' deal to end excess pay case*, Reuters (Jan. 8, 2025), https://www.reuters.com/legal/judge-approves-tesla-directors-deal-end-excess-pay-case-2025-01-08/. Even cases that did not ultimately result in a victory for plaintiffs often made it past a motion to dismiss, resulting in costly litigation for defendants. *See, e.g.*, *In re* Tesla Motors S'holder Litig., 298 A.3d 667 (Del. 2023); *In re* Oracle Corp. Deriv. Litig., 339 A.3d 1 (Del. 2025).
[41] Tornetta v. Musk, 310 A.3d 430 (Del. Ch. 2024).
[42] Ann M. Lipton, *The Legitimation of Shareholder Primacy*, 51 J. Corp. L. 83, 101 (2025) [hereinafter "*Legitimation*"].
[43] *In re* Tesla Inc. Deriv. Litig., 2025 WL 3689114 (Del. Dec. 19, 2025).
[44] Tesla, Inc. Definitive Proxy Statement (Apr. 29, 2024); Tesla, Inc. Report on Form 8-K (June 13, 2024).
[45] *See* Office of the Texas Governor, *Governor Abbott Signs Pro-Growth Business Legislation Into Law* (May 14, 2025), https://gov.texas.gov/news/post/governor-abbott-signs-pro-growth-business-legislation-into-law; State Sen. Tan Parker, *Senator Tan Parker applauds signing of SB 1057 to position Texas as the national leader for business registrations and capital market formation* (May 20, 2025), https://senate.texas.gov/members/d12/press/en/p20250520a.pdf.
[46] Eldar & Rauterberg, *supra*.

created a corporate law that embeds political preferences as the only potential path to profitability and thus the only representation of authentic social preferences.

There are no doubt reasons why some corporate boards may find such an approach attractive, but though Texas law promises boards less accountability to shareholders, it comes at – perhaps – the price of greater accountability to the conservative leanings of the Texas legislature.

III. Texas's New Corporate Law

At the time of Tesla's redomestication to Texas, Texas's corporate law was roughly similar to Delaware's; indeed, that point was one of the arguments the Tesla board made when pitching the move to Tesla shareholders.[47] However, the new Business Organizations Code creates a number of points of divergence.

A. Limits on Shareholder Litigation

As above, Texas's competition with Delaware was initially occasioned by a perception that Delaware courts had become too critical of corporate boards – especially Silicon Valley boards[48] – and too receptive to shareholder lawsuits alleging various governance failures.[49] That fact not only threatened boards with liability and restrained their choices, but was also portrayed, at least publicly, as resulting from a politically liberal bias that had somehow infected its court system.[50] Thus, when Texas revamped its Business Organizations Code, the most dramatic set of changes were to place new limits on shareholders' ability to bring lawsuits alleging that boards breached their fiduciary duties.

Conflicts of interest. Under its old law, Texas would allow shareholders to bring claims based on alleged self-dealing. Specifically, if a director or officer engaged in a self-dealing with the corporation, and the transaction was not "cleansed" via approval of disinterested directors or a vote of the disinterested shareholders, then, in the event of a shareholder lawsuit, the defendant would be required to prove that the transaction was "fair" to the corporation to avoid paying damages or being subject to other court-ordered remedies.[51] Under Texas's amended code, however, the shareholder must first establish that the director or officer's conduct involved "fraud, intentional misconduct, an ultra vires act, or a knowing violation of law."[52]

[47] Tesla, Inc. Definitive Proxy Statement (Apr. 29, 2024); *see also id.* Exh. D (Report of Professor Anthony J. Casey).
[48] Amy Simmerman, William B. Chandler III & David Berger, *Delaware's Status as the Favored Corporate Home: Reflections and Considerations*, Harv. L. Sch. F. on Corp. Governance (May 8, 2024), https://www.wsgr.com/en/insights/delawares-status-as-the-favored-corporate-home-reflections-and-considerations.html.
[49] Most concerned either conflicted transactions, *see, e.g.*, *In re* Oracle Corp. Deriv. Litig., 339 A.3d 1 (Del. 2025), or board acquiescence in illegal conduct, *see, e.g.*, Roberta Ann K.W. Wong Leung Revocable Trust v. Amazon.com, Inc., 345 A.3d 965 (Del. 2025).
[50] Lipton, *Legitimation*, *supra*, at 101.
[51] TX Bus. Org. § 21.418(b), (e). In most cases, however, shareholders bringing such a challenge would also be subject to certain procedural requirements that would have added an extra layer of difficulty to the claim. TX Bus. Org. §§ 21.553; 21.554
[52] TX Bus. Org. §§ 21.418(f); 21.419.

Minimum holding requirements. The amended code introduced a new provision permitting public companies to require that any shareholder, or group of shareholders, suing in the right of the corporation hold a minimum of 3% of the company's stock.[53] In a large corporation like Tesla, this would require the plaintiffs to hold a minimum of $30 billion to $40 billion merely to file a lawsuit alleging self-dealing – a nearly impossible threshold.

Limitations on information. Corporate shareholders have traditionally had rights to access internal information, known as rights of inspection. Though states have placed different limits on these rights over the years, Texas's old law – like Delaware's –permitted shareholders to access internal information upon a showing of a proper purpose, such as investigation of suspected wrongdoing.[54] Shareholders in Delaware frequently used their inspection rights to gather evidence in support of a shareholder lawsuit, often one involving allegations of illegal conduct.[55] Likely for that reason, Texas amended its code to deny shareholders access to information intended for use in a lawsuit, and to deny access to e-mails and text messages across the board.[56]

B. Limits on Shareholder Voice

If Texas had merely stopped there, it would have resembled Nevada, which has long shielded directors and officers from liability absent a showing of "intentional misconduct, fraud or a knowing violation of law,"[57] and does not grant public company shareholders any inspection rights at all.[58] However, Texas went further, by marrying hostility to shareholder lawsuits to an anti-ESG stance.

Shareholder proposals. Since 1938, the Securities and Exchange Commission has required corporations to include certain shareholder-sponsored proposals in their proxy materials for shareholders to vote upon at the annual meeting.[59] The SEC's position has been that, under most states' corporate law, shareholders are entitled to attend the annual meeting and, from the floor, propose certain items for a vote. However, this right became somewhat vestigial when shareholding became widespread and dispersed, because shareholders stopped physically attending annual meetings and became accustomed to casting their votes in advance on proxy ballots distributed by corporate management.[60] To restore vitality to shareholders' state-created governance rights, the SEC promulgated what is now Rule 14a-8, requiring that corporations include on their proxy ballots any shareholder proposal that meets certain criteria, including that

[53] TX Bus. Org. § 21.552(a)(3).
[54] Roberta Ann K.W. Wong Leung Revocable Trust v. Amazon.com, Inc., 345 A.3d 965 (Del. 2025); Tesla, Inc. Definitive Proxy Statement (Apr. 29, 2024). Under Texas law, the shareholder would have to hold either 5% of the company's shares, or have held their stake for at least six months. Tesla, Inc. Definitive Proxy Statement (Apr. 29, 2024).
[55] Roberta Ann K.W. Wong Leung Revocable Trust v. Amazon.com, Inc., 345 A.3d 965 (Del. 2025); *In re* Facebook, Inc. Section 220 Litig., 2019 WL 2320842 (Del. Ch. May 30, 2019).
[56] TX Bus. Org. § 21.218.
[57] Nev. Rev. Stat. § 78.138(7)
[58] Nev. Rev. Stat. § 78.257(7)
[59] Jill E. Fisch, *From Legitimacy to Logic: Reconstructing Proxy Regulation*, 46 Vand. L. Rev. 1129, 1143-44 (1993).
[60] *Id.*

it be submitted in a timely fashion, and be compliant with state corporate law.[61] Most shareholder proposals are nonbinding, meaning, they only request – and do not demand – action from corporate boards, largely because state corporate law would not permit shareholders to direct how boards exercise their authority.[62] Though shareholder proposals can cover a wide variety of topics, they have frequently been associated with requests that corporations behave in a more socially responsible (read, politically left-leaning) manner.[63] Thus, proposals have been a critical mechanism by which shareholders advocate and express a preference for ESG initiatives.[64] A 2023 study, for example, found that ESG proposals garnered anywhere from 25% to 40% support from shareholders on average, which is a substantial showing.[65]

Apparently in response to this trend, as part of its package of reforms, Texas authorized public companies organized in Texas, and with a Texas headquarters,[66] to require that any shareholder proponent hold either $1 million worth of stock or 3% of the company's voting shares, and also to solicit votes from holders of at least 67% of the company's voting power.[67] This is a much higher bar than that set by the SEC, which does not require shareholders to undertake solicitation efforts, and requires a proponent to hold no more than $25,000 worth of stock.[68]

Proxy advisors. Large institutional investors frequently hold stock in thousands of corporations, making it difficult for them to closely monitor all items up for a shareholder vote. Thus, they hire proxy advisors, i.e., firms that specialize in analyzing ballot items and providing recommendations as to how to vote.[69] Two firms, Institutional Shareholder Services (ISS) and Glass Lewis dominate the market for proxy advice, and they operate by offering standardized "benchmark" recommendations, as well as more tailored advice to clients who request specialized analysis on topics of interest.[70] Their reports, which include detailed descriptions and analysis of all items on a given corporate ballot in a given year, are made available to paying clients for a fee.

---

[61] *Id.*; 17 CFR § 240.14a-8.
[62] Alan R. Palmiter, *The Shareholder Proposal Rule: A Failed Experiment in Merit Regulation*, 45 Ala. L. Rev. 879, 890-91 (1994).
[63] Margaret V. Sachs, 2 UC Irvine L. Rev. 931, 933 (2012); *see also* Harwell Wells, *Shareholder Meetings and Freedom Rides: The Story of* Peck v. Greyhound, 45 Seattle U. L. Rev. 1 (2021); Sarah C. Haan, *Shareholder Proposal Settlements and the Private Ordering of Public Elections,* 126 Yale L.J. 262, 276 (2016); Dalia Tsuk Mitchell, *Shareholders as Proxies: The Contours of Shareholder Democracy*, 63 Wash. & Lee L. Rev. 1503, 1565 (2006).
[64] Fairfax, *supra*, at 216, 226.
[65] Chuck Callan & Mike Donowitz, Broadridge, *Highlights from the 2023 Proxy Season*, Harv. F. on Corp. Gov. (Oct. 13, 2023), https://corpgov.law.harvard.edu/2023/10/13/2023-proxy-season-review/. Even proposals that do not pass, but have a significant amount of shareholder support, can influence managerial behavior. *See* Lisa M. Fairfax, *The Ideal Shareholder: Competing Norms on the Appropriate Characteristics of Public Company Shareholders*, 50 J. Corp. L. 1019, 1022 (2025).
[66] The provision also applies to Texas organized companies that are listed on the forthcoming Texas Stock Exchange, described below.
[67] TX Bus. Org. § 21.373
[68] 17 CFR § 240.14a-8. The federal rule also permits proposals by shareholders with smaller stakes, if they hold for longer periods.
[69] Edwin Hu, Nadya Malenko, & Jonathon Zytnick, *Other People's Votes: The Law and Economics of Proxy Advice*, 115 Geo. L.J. (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6798600.
[70] *Id.*

Conservatives have begun to accuse proxy advisors of pursuing a liberal agenda, in part because advisors occasionally recommend in favor of ESG-style shareholder proposals.[71] For example, for many years, ISS generally recommended in favor of proposals calling for climate-related and diversity disclosures, a policy it only recently adjusted in 2026.[72]

In response, Texas passed a first-of-its-kind law to regulate proxy advice.[73] The law, which applies to advice about a corporation (1) headquartered in Texas; (2) organized in Texas; or (3) proposing to redomesticate to Texas, provides that if a proxy advisor "takes into account" any "nonfinancial factors," which include "an environmental, social, or governance (ESG) goal, factor, or investment principle [or] diversity, equity, or inclusion (DEI)," the advisor will become subject to a variety of new disclosure requirements.[74] Specifically, the advisor must disclose to its client, and the corporation, that "the service is not being provided solely in the financial interest of the company's shareholders," and explain that the advice "subordinates the financial interests of shareholders to other objectives, including sacrificing investment returns or undertaking additional investment risk to promote one or more nonfinancial factors."[75] The proxy advisor must also announce on its website that "that the advisor's proxy advisory services include advice and recommendations that are not based solely on the financial interest of shareholders."[76] Further obligations are imposed for "conflicting voter advice," as described in more detail below, including a requirement that the advisor notify the attorney general of the State of Texas of its proxy voting advice.[77] At roughly the same time, the Texas Attorney General launched an investigation into Glass Lewis's and ISS's proxy voting recommendations, accusing them of "potentially misleading institutional investors and public companies by issuing voting recommendations that advance radical political agendas rather than sound financial principles."[78] He has since filed a lawsuit against ISS for "false, deceptive, and misleading practices of advertising independent and objective advice while secretly prioritizing" its own "environmental, social, and governance agenda."[79]

Additional features. Texas is also offering an "anti-woke" approach to corporate governance in aspects of its corporate environment that are not strictly related to chartering or

[71] *E.g.*, Exec. Order No. 14,366, Protecting American Investors From Foreign-Owned and Politically-Motivated Proxy Advisors, 90 Fed. Reg. 58,503 (Dec. 11, 2025); Complaint, Florida v. ISS & Glass Lewis, Fla. 14th Cir., filed Nov. 20, 20250.
[72] ISS, *Proxy Voting Guidelines Benchmark Policy Changes for 2026: U.S., Brazil Canada, and Americas Regional* (Nov. 25, 2025), https://www.iss-stoxx.com/file/policy/current/updates/americas-policy-updates.pdf.
[73] TX Bus. Org. T. 1, Ch. 6A.
[74] TX Bus. Org. §§ 6A.001, 6A.101. Similar burdens are imposed on any recommendation to vote against a company-nominated director, "unless the proxy advisor affirmatively states that the proxy advisory service solely considered the financial interest of the shareholders in making such advice," or any recommendation that contravenes the management recommendation with respect to a shareholder proposal without providing a "written economic analysis of the financial impact on shareholders of the proposal." TX Bus. Org. § 6A.101.
[75] TX Bus. Org. § 6A.101.
[76] TX Bus. Org. § 6A.101.
[77] TX Bus. Org. § 6A.102.
[78] Ken Paxton, *Attorney General Ken Paxton Investigates Proxy Advisors Glass Lewis and ISS for Misleading Public Companies to Push Radical Agenda* (Sept. 16, 2025), https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-investigates-proxy-advisors-glass-lewis-and-iss-misleading-public.
[79] Complaint, State of Texas v. ISS, No. 471-03459-2026 (Collin Cty D. Ct.) filed May 20, 2026.

boards' fiduciary obligations. A new Texas Stock Exchange (TXSE) was formed to compete with established venues such as the New York Stock Exchange and the NASDAQ. Part of its pitch to attract securities listings is to offer a lighter regulatory touch, which it (somewhat) bills as "anti-woke."[80] For example, the TXSE's CEO singled out the Nasdaq's now-defunct diversity requirement as the type of regulation corporations can avoid on the Texas exchange.[81] Significantly, the TXSE worked to persuade the Texas legislature to pass the proxy advisor legislation,[82] and filed legal briefs defending it, arguing, among other things, that it was necessary to protect TXSE's "prospective listees" from harm caused by "false and misleading proxy advice" that "promotes "policy and ideological agendas," and that "undermines shareholder value; degrades Texas's business environment; and impedes TXSE's … efforts to attract companies to Texas, and … to its exchange."[83]

At the same time, in 2024, Texas Attorney General Ken Paxton took the lead in a multistate lawsuit against the three largest asset managers – BlackRock, Vanguard, and State Street – alleging that their ESG decarbonisation goals functioned as an antitrust conspiracy to reduce coal output at their portfolio companies.[84] In August 2025, a Texas district court sustained most of the claims[85]; Vanguard has since settled, but the case continues against BlackRock and State Street.

The combined effect, then, is that Texas's political establishment has signaled that it equates shareholder voice and oversight with liberal politics, and managerial insulation from shareholder voice as a form of conservative politics. Notably, in 2023, Texas established a dedicated business court that – like Delaware's Court of Chancery – has jurisdiction over shareholder litigation, as well as other commercial matters. Like Delaware judges, the Texas business judges are appointed by the governor, and confirmed by the Texas Senate.[86] But whereas Delaware judges are required to be politically balanced, and serve terms of 12 years, the

[80] Chris Morris, *Texas hopes to start its own 'anti-woke' stock exchange to take on NYSE and Nasdaq*, Fortune (June 5, 2024), https://fortune.com/2024/06/05/texas-anti-woke-stock-exchange/; Corrie Driebusch, *New Texas Stock Exchange Takes Aim at New York's Dominance*, Wall St. J. (June 4, 2024), https://www.wsj.com/finance/regulation/new-texas-stock-exchange-takes-aim-at-new-yorks-dominance-e3b4d9ba; Sharon Kehnemui, *Texas 'Y'all Street' Ready To Challenge 'Woke' NYSE, Nasdaq as First New American Stock Exchange in Decades*, N.Y. Sun (Oct. 6, 2025), https://www.nysun.com/article/texas-yall-street-ready-to-challenge-woke-nyse-nasdaq-as-first-new-american-stock-exchange-in-decades; Jordan Finneseth, *'Anti-woke' trading: BlackRock and Citadel Securities back Texas exchange to challenge NYSE and Nasdaq*, Kitco News (June 6, 2024), https://www.kitco.com/news/article/2024-06-06/anti-woke-trading-blackrock-and-citadel-securities-back-texas-exchange; Max Zahn, *What to know about the new Texas Stock Exchange*, ABC News (June 5, 2024), https://abcnews.com/Business/new-texas-stock-exchange/story?id=110855561; *see also* Onnig H. Dombalagian, *Let's NMS with Texas: The Implications of the Texas Stock Exchange for Self-Regulation*, 5 U. Chi. Bus. L. Rev. 87, 97 (2026) ("A Texas exchange could nevertheless credibly signal a philosophical stance against imposing additional nonfinancial standards on its listed firms.").
[81] Chris Morris, *Texas hopes to start its own 'anti-woke' stock exchange to take on NYSE and Nasdaq*, Fortune (June 5, 2024), https://fortune.com/2024/06/05/texas-anti-woke-stock-exchange/
[82] Opposed Emergency Motion of the Texas Stock Exchange & the Texas Ass'n of Business to Intervene as Defendants, ISS v. Ken Paxton, No. 1:25-cv-01160-ADA (W.D. Tex.), filed Aug. 22, 2025, at 11.
[83] Opposed Emergency Motion of the Texas Stock Exchange & the Texas Ass'n of Business to Intervene as Defendants, ISS v. Ken Paxton, No. 1:25-cv-01160-ADA (W.D. Tex.), filed Aug. 22, 2025.
[84] Texas et al. v. BlackRock et al., No. 6:24-cv-00437-JDK (E.D. Tex.).
[85] Texas v. BlackRock, 2025 WL 2201071 (E.D. Tex. Aug. 1, 2025).
[86] TX Govt § 25A.009

Texas judges serve only two year terms, and there is no political balance requirement. As a result, the Texas business judges are structurally accountable to the political branches.

IV. The Costs and Benefits of Politicization

A. Technical Flaws

Texas's preference for culture war corporate governance over technical expertise has come at a price in terms of the quality of the product it offers to corporations. Many of its new laws – not, apparently, drafted by corporate practitioners but by politicians – are poorly written, which leaves them both difficult to understand and vulnerable to legal challenge.

Take, for example, Texas's proxy advisor law. It broadly categorizes "environmental, social, and governance" advice as nonfinancial, with no further clarification. It should go without saying that "governance" advice – on such matters as conflicted or nonindependent directors, directors who overcommit by serving on multiple boards, executive pay packages that do not align managerial interests with those of shareholders, and similar matters – are generally considered the bread and butter of financial shareholder concerns, and yet they are apparently swept within the ambit of Texas's proxy advisor law. Indeed, it is difficult to imagine what kind of advice a proxy advisor could give, on any subject, that would not fall under Texas's definition of "nonfinancial."

Texas's legislature apparently also considered it suspicious or problematic if proxy advisors offer different advice to different clients,[87] and so the final portion of the statute, titled "Disclosures if Providing Conflicting Voter Advice or Recommendations," mandates additional disclosures, as well as a notification to the Texas Attorney General, where clients receive different recommendations. But that section enigmatically defines "materially different" advice to include not only advice that diverges from client to client, but also a recommendation that "one or more clients vote for or against the proposal in opposition to the recommendation of the company's management."[88] In other words, disclosure requirements are triggered whenever a proxy advisor simply recommends against management, on any topic, for any reason. It is unclear why the Texas legislature singled out such recommendations, let alone why they were included in the section of the statute that would seem to be addressing a different issue.[89] It also

[87] The bill analysis states, "Proxy advisory firms … provide irreconcilably conflicting recommendations (e.g., 'yes' and 'no') to different clients on the same company or shareholder proposals, both of which necessarily cannot be in the financial interest of the shareholders." S.B. 2337 Author's/Sponsor's Statement of Intent (Apr. 22, 2025). In fact, it is not surprising that proxy advisors would give different advice to different clients; clients select different voting policies, or custom policies, based on their investment goals. *See* Hu, Malenko, & Zytnick, *supra*. Moreover, investors with different portfolio mixes may have different preferences to maximize the value of their holdings overall. *See* Ann M. Lipton, *Shareholder Divorce Court*, 44 J. Corp. L. 297, 310-12 (2019).

[88] TX Bus. Org. § 6A.102.

[89] There are other minor irregularities in the drafting. For example, though Section 6A.101 of the statute defines "nonfinancial" and "solely in the financial interest of the shareholders" for the purposes of that section only, the same terms are repeated in the following section, TX Bus. Org. § 6A.102. One can only assume they carry the same meaning. Similarly, the statute defines advice as "not provided solely in the financial interest of the shareholders" if it "is wholly or partly based on, or otherwise takes into account, one or more nonfinancial factors" such as "an environmental, social, or governance (ESG) goal, factor, or investment principle," but this language could be read to mean only ESG investing from a values perspective, rather than a financial perspective, is covered (though that does

stands in some tension with an earlier section of the statute, which triggers disclosure requirements when a proxy advisor recommends that clients vote for a shareholder-sponsored proposal over management objections, but only if that recommendation is not accompanied by a "written economic analysis" of the proposal.[90] Finally, the law defines the term "proxy proposal" to mean "a proposal made by a company's shareholder that is included in the company's proxy statement,"[91] but the statute frequently uses the undefined phrase "shareholder-sponsored proposal,"[92] and it is unclear whether these are intended to be synonymous, as not all shareholder proposals are submitted for inclusion on the corporate ballot (shareholders may choose to circulate their own proxy materials containing their proposals).[93]

The provisions regarding shareholder proposals are similarly ambiguous. The statute does not define "proposal," which would suggest all shareholder proposals – whether or not submitted for inclusion in the corporate proxy – can be restricted. Yet the legislative history suggests it was only intended to target proposals submitted for inclusion on the corporate proxy using federal Rule 14a-8.[94] The requirement that a proponent solicit holders of 67% of the voting shares is also difficult to parse; the legislative history suggests a requirement that the proponent conduct their own "outreach," and thus bear the costs of solicitation,[95] but a proposal included on a corporate ballot, distributed to all shareholders, necessarily "solicits" far more shares than the 67% threshold.[96] Even if more efforts are required, it is unclear what efforts would suffice: a website? A social media posting? The law permits corporations to ban shareholder proposals by persons holding less than 3%, or $1 million worth, of stock but does not even clarify whether the lesser, or the greater, must be met.[97] Nor is there any explanation why the law regarding shareholder proposals applies only to companies organized and either headquartered in Texas or listed on the TXSE, while the proxy advisor law applies to companies organized, headquartered, or proposing to organize in Texas (but not companies listed on the TXSE).

not seem to have been the intent of the Texas legislature, *see* Second Amended Complaint ¶ 12 Glass, Lewis & Co. v. Paxton, No. 1:25-cv-01153-ADA (W.D. Tex.) filed Nov. 20, 2025). The statute also deems investing based on "social credit scores" to be nonfinancial, TX Bus. Org. § 6A.101, but provides no definition of the term. The phrase is not commonly used in proxy advisory services or the investment industry. Second Amended Complaint ¶ 51 Glass, Lewis & Co. v. Paxton, No. 1:25-cv-01153-ADA (W.D. Tex.) filed Nov. 20, 2025).

[90] TX Bus. Org. § 6A.101.

[91] TX Bus. Org. § 6A.001

[92] TX Bus. Org. § 6A.101

[93] Lillian Laubenthal, Comment, *The Universal Proxy and Its Unexpected Impact on Shareholder Proposals*, 100 Tul. L. Rev. 203 (2025).

[94] S.B. 1057 Author's/Sponsor's Statement of Intent (June 6, 2025).

[95] *Id*.

[96] The federal definition of solicitation means any communication designed to procure a proxy, 17 CFR § 240.14a-1(l), and proposals included in corporate proxy materials – complete with supporting statements – surely meet that definition. Presumably the 67% solicitation requirement was taken from a similar federal requirement in the context of the universal proxy, but the universal proxy requirements were developed to address proxy contests, where the proponent *does not* include their own proposals on the corporate proxy statement.

[97] The legislative history suggests an intention that the *lesser* of $1 million or 3% would suffice, but at the same time, refers to a requirement of *both* thresholds. *See* S.B. 1057 Author's/Sponsor's Statement of Intent (June 6, 2025) ("Under the bill, shareholders must hold at least $1 million in voting securities or three percent of the corporation's voting stock for a minimum of six months prior to and through the shareholder meeting. If these thresholds are not met…").

The lack of clarity threatens to generate extensive (and expensive) litigation over the statutes' meaning and enforceability. For example, Texas's proxy advisor law is so vague and unfocused that a judge recently issued a preliminary injunction against its enforcement,[98] agreeing with ISS and Glass Lewis that it likely violates the First Amendment. That ruling should not have come as a surprise to the Texas legislature, as a Missouri law regulating "ESG" advice in the context of securities brokerage services was invalidated a few years ago on similar grounds[99] – yet the Texas legislature enacted its law regardless.

The additional costs are those of opportunity. The Texas legislature only holds regular sessions every two years, which presumably will make it difficult to keep up with changes to corporate practice.[100] The proxy advisor law was passed in the final days of the 2025 legislative session, having gone through multiple amendments.[101] But while the Texas legislature was occupying its time with a law very likely destined to be permanently enjoined by the courts, it did not even consider an obvious amendment to its corporate law that would have been of demonstrable importance to corporations as well as venture capital and private equity investors: namely, authorization of shareholder agreements.

These days, investors increasingly are structuring their relationships with portfolio companies contractually, through shareholder agreements. These agreements often give investors significant governance rights, such as board seats and veto power over various corporate actions,[102] even when doing so would displace the authority boards of directors typically have to govern the firm. In *West Palm Beach Firefighters' Pension Fund v. Moelis*,[103] a Delaware court invalidated such an agreement, ruling that it violated a Delaware statute requiring that governance authority remain with the board of directors.[104] The Delaware bar – fearing that the decision threatened to upend the governance arrangements at multiple companies – immediately proposed amendments to the Delaware code that would overrule *Moelis*, and these were passed mere months after the decision.[105]

But under the Texas Business Organizations Code Sections 21.101(b) and 21.109, these types of shareholder agreements are prohibited in public companies, and can only be reached in private ones with the agreement of all shareholders (a difficult standard in larger businesses, which frequently have many investors with different types of interests,[106] and who may not even

---

[98] *See* Lamar Johnson, *Preliminary injunction halts enforcement of Texas' latest anti-ESG law*, ESG Dive (Sept. 2, 2025), https://www.esgdive.com/news/judge-grants-iss-glass-lewis-preliminary-injunction-halts-enforcement-texas-anti-esg-law-sb2337/759013/.
[99] Securities Industry and Fin. Markets Ass'n v. Ashcroft, 745 F. Supp. 3d 783 (W.D. Mo. 2024).
[100] By contrast, Delaware's legislature updates its corporation law every year, and adopts immediate reforms when it perceives the need, as discussed *infra*.
[101] *See* History for 89(R) SB 2337 by Hughes (89th Legislature Second Called Session).
[102] Gabriel Rauterberg, *The Separation of Voting and Control: The Role of Contract in Corporate Governance*, 38 Yale J. on Reg. 1124 (2021); Gladriel Shobe & Jarrod Shobe, *The Dual-Class Spectrum*, 39 Yale J. on Reg. 1343 (2022).
[103] 311 A.3d 809 (Del. Ch. 2024).
[104] *Id*. at 821 (citing Del. Code. Ann. tit. 8, § 141(a)).
[105] Jeff Montgomery, *Delaware's Corporate Law Debate Left 'Blood On The Floor'*, Law360 (June 21, 2024), https://www.law360.com/articles/1850449.
[106] Elizabeth Pollman, *Startup Governance*, 168 U. Pa. L. Rev. 155 (2019).

be aware of the agreements reached by their co-investors[107]). Nonetheless, the Texas legislature has not (yet) demonstrated an interest in repealing these provisions, while its attention is devoted to culture war governance.

To be fair, in response to the competitive threat posed by Texas and Nevada, Delaware rapidly overhauled aspects of its corporate law, in a manner that departed from its usual procedures,[108] and likely will raise several interpretive challenges in the future.[109] Nonetheless, Delaware's ability to act with haste, as well as its institutional commitment to developing its corporate law specifically, likely will make it far easier to clarify newly-discovered ambiguities.

B. Political Advantages

Notwithstanding these potential drawbacks, a number of corporate boards have chosen to reincorporate their firms out of Delaware and into Texas, especially after finding themselves on the wrong end of shareholder lawsuits. Examples abound: After a Delaware court refused to dismiss claims alleging that Coinbase officers and directors had traded on inside information,[110] Coinbase announced it would reincorporate to Texas.[111] After a Delaware court sustained shareholder claims that the board of eXp, a real estate firm, ignored allegations that top agents had engaged in rape and sex trafficking,[112] the company also announced it would move to Texas.[113] And after Dell and its controllers were forced to pay $1 billion to settle a claim that they had engineered a redemption of publicly traded Dell stock at an unfair price,[114] Dell, as well, announced a Texas move.[115]

---

[107] Jill E. Fisch, *Stealth Governance: Shareholder Agreements and Private Ordering*, 99 Wash. U. L. Rev. 913 (2021).
[108] Lipton, *Legitimation*, *supra*, at 102.
[109] *E.g.*, Mike Leonard, *Cloudflare Stock Case Points to Corporate Overhaul's Blind Spots*, Bloomberg Law News (July 8, 2026), https://news.bloomberglaw.com/esg/cloudflare-stock-case-points-to-corporate-overhauls-blind-spots-100.
[110] Grabski on behalf of Coinbase Global v. Andreessen, 2024 WL 390890 (Del. Ch. Feb. 1, 2024).
[111] Paul Grewal, *Why Coinbase is Leaving Delaware*, Wall St. J. (Nov. 12, 2025), https://www.wsj.com/opinion/why-coinbase-is-leaving-delaware-for-texas-3a6c34a3?st=ZxiUGW. As Coinbase is a controlled company, it did not seek or require the votes of public stockholders to make the move. Coinbase Definitive Information Statement (Nov. 24, 2025).
[112] Los Angeles City Employees' Ret. Sys. v. Sanford, 352 A.3d 276 (Del. Ch. 2026).
[113] eXp World Holdings Definitive Proxy (March 9, 2026). The company denied that the move was occasioned by the Delaware lawsuit. *See* Paul Cobler, *Companies moving their legal homes to Texas is good PR, but don't expect many new jobs*, Texas Tribune (May 12, 2026), https://www.texastribune.org/2026/05/12/texas-reincorporation-delaware-dell-exxon/. Though a shareholder vote was necessary, at the time, the company's ownership was significantly concentrated among insiders. *See* eXp World Holdings Definitive Proxy at 109.
[114] Jonathan Stempel, *Dell reaches $1 billion settlement over disputed 2018 stock swap*, Reuters (Nov. 16, 2022), https://www.reuters.com/legal/dell-reaches-1-billion-lawsuit-settlement-2022-11-16/.
[115] Dell, Inc. Definitive Proxy Statement (May 15, 2026). Dell is also a controlled company.

Additional non-corporate entities have announced redomestications into Texas, including Energy Transfer LP. *See* Energy Transfer, *Energy Transfer LP, Sunoco LP, Sunococorp LLC and USA Compression Partners, LP Announce Redomiciliation to Texas*, July 2, 2026, https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-lp-sunoco-lp-sunococorp-llc-and-usa-compression. Energy Transfer recently lost a high profile battle in Delaware over a failed merger with The Williams Companies. *See* Energy Transfer, LP v. Williams Companies, 346 A.3d 1089 (Del. 2023).

But these boards – and even boards whose moves were not, apparently, precipitated by shareholder litigation[116] – could have obtained at least as much legal protection in Nevada, which suggests they saw some additional benefit to embracing the other aspects of Texas's legal environment.

For some, Texas may be a natural home simply because they already have close ties to the state: Tesla and Dell, as well as some other firms recently to reincorporate into Texas, such as TTEC Holdings, Forward Industries, and FirstCash Holdings, are all headquartered in Texas. Beyond that, however, corporations may find value in the political branding that comes from allying with the Texas approach to corporate governance. Leaning in to a particular political identity can attract consumers and employees who share those values,[117] and even help cultivate an investor base that aligns with management and is hostile to challengers.[118] Exxon, for example, previously incorporated in New Jersey, chose to move to Texas after finding itself the target of a significant amount of activism from shareholders seeking a more robust response to climate change.[119] A Texas move may signal a credible commitment to adopting a conservative approach to operational decisions, with a political mission entrenched alongside a profit-seeking one, in a manner not dissimilar from how publicly traded benefit corporations – organized to pursue social missions in addition to profit-seeking – entrench founder control to prevent mission drift.[120]

Alliance with Texas governance standards – and thus the Texas legislature – may even provide a degree of regulatory protection. SpaceX and Tesla, for example, have leveraged their numerous Texas ties into regulatory forbearance.[121] And Coinbase attributed the choice of Texas specifically to Texas's "recognition as one of the most crypto-friendly states in the nation."[122] Usually, the state of incorporation has little to do with a company's substantive operations (which is how Delaware has able to maintain its status for so long) but Coinbase may very well have perceived that reincorporating into Texas might help cement a political alliance against forces that seek greater crypto regulation, especially given Texas's current alignment with a

[116] *E.g.*, Dillard's, Inc. Definitive Proxy Statement (July 29, 2025).
[117] Verena Schoenmueller, Oded Netzer, & Florian Stahl, *Polarized America: From Political Polarization to Preference Polarization*, 42 Marketing Science 48 (2023); Suzanne Kapner & Dante Chinni, *Are Your Jeans Red or Blue? Shopping America's Partisan Divide*, Wall St. J. (Nov. 19, 2019), https://www.wsj.com/articles/are-your-jeans-red-or-blue-shopping-americas-partisan-divide-11574185777; Stephen M. Bainbridge, The Profit Motive: Defending Shareholder Value Maximization 87, 100, 112 (2023).
[118] Caleb N. Griffin, *Extrinsic Value*, 75 Ala. L. Rev. 423 (2023); Edward B. Rock, *Shareholder Eugenics in the Public Corporation*, 97 Cornell L. Rev. 849 (2012); Gunjan Banerji, *Red vs. Blue Is Dividing Stock Portfolios Like Never Before*, Wall St. J. (June 15, 2025), https://www.wsj.com/finance/investing/investment-portfolios-politics-6d186f91.
[119] Jamie Smyth & Kenza Bryan, *The King of Big Oil*, Fin. Times (July 2, 2026), https://www.ft.com/content/df23c041-d506-44fc-9ff7-80c50218426f?syn-25a6b1a6=1. Exxon, of course, is an oil company with headquarters in Texas; it is therefore significantly integrated with the state's politics and infrastructure.
[120] Patrick M. Corrigan, *The corporate governance trilemma*, 17 J. Legal Analysis 141, 160 (2025).
[121] *E.g.*, Melia Masumoto, *Concerns after Tesla uses new Texas law to avoid Austin's environmental regulations*, KVUE News (Apr. 26, 2024), https://www.kvue.com/article/news/local/tesla-avoids-texas-law-concerns/269-19de0eff-73c8-4231-891c-0b0a78b9dcf8; Brandon Lingle, *Texas grants SpaceX long-needed permit for Starship launch tower wastewater*, San Antonio Express-News (Feb. 14, 2025), https://www.expressnews.com/business/article/spacex-tceq-wastewater-permit-starship-texas-20163187.php.
[122] Coinbase Definitive Information Statement (Nov. 24, 2025).

White House that has also taken a deregulatory approach to cryptoassets.[123] Especially at a time when conservatives control most of the regulatory levers of the federal government, corporate boards may believe they can incur favorable treatment by committing to a partisan governance structure.

For similar reasons, corporate boards may believe they are more likely to win shareholder approval of a Texas move than a move to a jurisdiction like Nevada that provides similar board-insulation but also is less partisan-coded. Large asset managers like BlackRock and Vanguard have come under an enormous amount of regulatory pressure over perceptions that have endorsed "woke" corporate policies, such as reducing carbon emissions and promoting racial and gender diversity.[124] Recently, they have retreated from these commitments,[125] and it is certainly plausible that they might fear that rejecting a Texas move would risk more conservative ire.

Even for boards that are indifferent on the subject of ESG or conservative branding, the protection that Texas offers from shareholder voice may be attractive. For example, proxy advisors have angered corporate managers not merely because of their stance on liberal-coded shareholder proposals, but because they often advise shareholders to vote against managerial proposals on other matters, such as approval of executive compensation.[126] Boards are often irked by shareholder proposals, as well, simply because they represent an avenue by which shareholders can express dissatisfaction with current governance arrangements and spur reforms.[127] Even politically neutral – or liberal – boards may therefore value the shields that Texas has sought to provide. Viewed through this lens, the provision of Texas's proxy advisor law that burdens any voting recommendation that clients vote "in opposition to the recommendation of the company's management" makes more sense; the law does not simply target liberal politics – it protects management from any shareholder dissent.

C. Political Risks

For corporations that do not wish to lean in to a conservative political strategy, however, a Texas move may present significant risks. First and most obviously, firms that adopt a liberal political identity, either as part of their branding,[128] or because they produce products popular with liberal audiences,[129] may find themselves legally vulnerable.

Simeone v. Walt Disney Co.,[130] described above, provides a useful example. After Florida governor Ron DeSantis backed a proposal to ban discussion of sexual identity in schools, Disney

[123] Exec. Order No. 14,178, Strengthening American Leadership in Digital Financial Technology, 90 Fed. Reg. 8647 (Jan. 31, 2025).
[124] Mark J. Roe, *Why Shareholder-Driven Corporate Social Responsibility Failed*, 176 U. Pa. L. Rev. (forthcoming), at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6329838.
[125] *Id.*
[126] Michael Cappucci, *The Proxy War Against Proxy Advisors*, 16 N.Y.U. J.L. & Bus. 579 (2020).
[127] *Id.*
[128] Suzanne Kapner & Dante Chinni, *Are Your Jeans Red or Blue? Shopping America's Partisan Divide*, Wall St. J. (Nov. 19, 2019), https://www.wsj.com/articles/are-your-jeans-red-or-blue-shopping-americas-partisan-divide-11574185777.
[129] These might include popular media with themes more likely to appeal to liberal audiences, or products pitched as "green" or "sustainable."
[130] 302 A.3d 956 (Del. Ch. 2023).

employees began to engage in periodic strikes to protest the company's silence on the matter. When the disruptions proved too difficult for the company to manage, CEO Bob Chapek finally announced Disney's opposition to the law. In response, DeSantis and the Florida legislature stripped Disney of control over a special tax district that encompassed Disney World, an economic blow that caused Disney's stock price to suffer.[131] A Disney shareholder then filed a lawsuit in Delaware, where Disney is incorporated, seeking internal corporate records to investigate whether the board had pursued its own political priorities over the financial well-being of shareholders. Vice Chancellor Will dismissed the complaint, concluding there was no basis to believe that the board's decision had been anything other than a reasonable business judgment.[132]

It is not obvious that a Texas court would reach the same conclusion.[133] And though, under Texas's new corporate laws, shareholders may not obtain internal information in preparation for a lawsuit, shareholders are free to seek it for other purposes.[134] It is also possible a Texas court might be more receptive to a lawsuit for breach of fiduciary duty due to a board's adoption of ESG, diversity, or sustainability policies. And though Texas now allows corporations to bar derivative lawsuits by shareholders who hold less than 3% of the stock,[135] the distinction between derivative and direct suits is notoriously slippery,[136] which might provide enough of an opening to a shareholder advancing a political claim.

This is not merely hypothetical: as described above, *Simeone* was one of several politically-motivated investor lawsuits filed in recent years, some of which have met with success.[137] Indeed, after Texas Attorney General Ken Paxton led his lawsuit against BlackRock, Vanguard, and State Street for allegedly conspiring to suppress coal production through their ESG policies, a BlackRock shareholder filed a lawsuit against the BlackRock board – in the same Texas court – alleging that the conduct alleged by Paxton violated BlackRock's fiduciary obligations to its own shareholders.[138] BlackRock, which is not organized in Texas, was recently successful in having that case transferred to New York, where it is headquartered,[139] something that may very well have been impossible had BlackRock been organized in Texas. It is certainly no stretch to imagine that shareholders of Texas-incorporated firms might at least find those companies to be tempting targets if they stray from the state's political orthodoxy. And, given the Texas legislature's commitment to combatting ESG in all its forms, there would remain the risk that Texas could revise its corporate law once again to further ease the path for such suits.

---

[131] 302 A.3d at 958.
[132] 302 A.3d at 959.
[133] At least some Texas federal judges have demonstrated an antipathy for ESG corporate governance. *See* Spence v. American Airlines, 775 F. Supp. 3d 963 (N.D. Tex. 2025); Texas v. BlackRock, 2025 WL 2201071 (E.D. Tex. Aug. 1, 2025); Exxon Mobil Corporation v. Arjuna Capital LLC, 735 F. Supp. 3d 709, 716 (N.D. Tex. 2024) (shareholder proposals give "activist shareholders a platform to push their agendas—often with little regard to their proposal's implications for other shareholders' portfolios").
[134] TX Bus. Org. § 21.218
[135] TX Bus. Org. § 21.55
[136] Ann M. Lipton, *Not Dead Yet: A Reply to Professors Manesh and Grundfest*, 79 Bus. Law. 1071, 1078-80 (2024). Moreover, shareholder claims based on misleading proxy statements are frequently treated as direct, rather than derivative. *See id.*
[137] *See supra*; *see also* Lipton, *Legitimation*, *supra*, at 121-22.
[138] *See* Crognale v. Fink, No. 26-cv-085 (E.D. Tex.).
[139] Transfer Order, Crognale v. Fink, No. 26-cv-085 (E.D. Tex. filed July 10, 2026).

Such threats have been made before: In two consecutive legislative sessions, a Texas legislator has proposed amending the state's corporate code to require that corporate boards prove the propriety of their actions if subject to a shareholder accusation that they included ESG considerations in their decisionmaking,[140] and in 2022, several Texas legislators endorsed proposed legislation that would have allowed Texas shareholders of public companies to sue corporate boards that included elective abortion care in employee medical plans.[141] As a law firm blog post delicately put it, one drawback of a Texas home would be "[p]otential exposure to partisan legislation."[142]

The threat does not just come from shareholders. Texas's current attorney general, Ken Paxton, has frequently lobbed legal attacks on what he has deemed "woke" corporate governance. In addition to the above-mentioned lawsuits against ISS and Glass Lewis, and his coal antitrust lawsuit, he has alleged that firms have broken the law via the pursuit of "divisive and discriminatory ideology" and ESG policies,[143] and he sought to force Kenvue, the manufacturer of Tylenol, to suspend dividend payments after Donald Trump declared that Tylenol may cause autism in fetuses if taken during pregnancy.[144] A company that chose to organize in Texas would only risk further interference in its business, because Texas, like most states, allows the attorney general to seek to rescind a corporation's charter for illegal conduct.[145] Attorney General Paxton recently sought to rescind the charter of a nonprofit for sheltering undocumented immigrants,[146] and to rescind the charter of a nonprofit created by his political rival, Beto O' Rourke, on the ground that the organization allegedly used fundraising to pay personal expenses.[147] And though Paxton will no longer occupy the office of Texas Attorney General once his term expires at the end of 2026, there is every risk that a successor might similarly attempt to revoke the charters of corporations perceived as pursuing a liberal political agenda at the expense of shareholder wealth.

Notably, corporations are subject to general jurisdiction in the state where they are chartered,[148] and so any corporation that selected to be subject to Texas corporate law would also be subject to the jurisdiction of the Texas courts over any other kind of dispute, further raising

[140] Tex. H.B. 4794, 2023-2024 Sess., 88th Leg. (Tex. 2023); Tex. H.B. 872, 2025-2026 Sess., 89th Leg. (Tex. 2025).
[141] Zach Despart, *Businesses that help employees get abortions could be next target of Texas lawmakers if Roe v. Wade is overturned*, Texas Tribune (May 23, 2022), https://www.texastribune.org/2022/05/23/texas-companies-pay-abortions/.
[142] Kealan Santistevan, Michael Mencher & Liz Dunshee, *Choosing Your Corporate Home: A Trade-Off Guide for Founder-Led Tech Companies*, CapitalXchange (Aug. 12, 2026), https://capx.cooley.com/2026/08/12/choosing-your-corporate-home-a-trade-off-guide-for-founder-led-tech-companies/.
[143] Ken Paxton, *Attorney General Ken Paxton Calls on Costco to End Woke DEI Practices and Unlawful Discrimination* (Jan. 30, 2025), https://www.oag.state.tx.us/news/releases/attorney-general-ken-paxton-calls-costco-end-woke-dei-practices-and-unlawful-discrimination; Ken Paxton, *Attorney General Ken Paxton Warns Major Financial Institutions that DEI and ESG Commitments Could Lead to Enforcement Actions if Found to Violate State or Federal Laws* (Jan. 23, 2025), https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-warns-major-financial-institutions-dei-and-esg-commitments-could-lead.
[144] Charles Gorrivan & Redd Brown, *Texas Asks Court to Halt Kenvue Tylenol Marketing, Dividend*, Bloomberg Law News (Nov. 6, 2025), https://news.bloomberglaw.com/esg/texas-asks-court-to-halt-kevnues-tylenol-marketing-dividend.
[145] TX Bus. Org. § 11.301; Tex. Civ. Prac. & Rem. Code § 66.001
[146] Paxton v. Annunciation House, Inc., 719 S.W.3d 555 (Tex. 2025).
[147] *In re* Powered by People and Robert Francis O'Rourke, 2025 WL 5094568 (Tex. Ct. App. Sept. 12, 2025).
[148] Daimler A.G. v. Bauman, 571 U.S. 117 (2014).

the risks of political litigation by plaintiffs hoping that Texas's reputation for conservatism extends to its judiciary, state or federal. This is, perhaps, an oft-unremarked aspect of Delaware's commitment to nonpartisanship: until the recent controversies, it also made Delaware something of a neutral forum for any kind of dispute, not merely ones involving the state's corporate law.

V. The Center Cannot Hold

The question going forward is not merely whether states develop reputations for red or blue corporate law, but whether a system that permits corporate promoters to choose their own regulatory regime can withstand such perceptions.[149]

When a legal dispute spans multiple states, in general, the law of the state with the greatest interest in the dispute will control.[150] And though parties can sometimes contract to override the default selection, there are limits on parties' ability to choose the law of a jurisdiction that is entirely foreign to them.[151]

Corporate law, however, is different. Matters that concern corporate governance – or, the corporation's "internal affairs," namely, relationships between shareholders and managers – are governed by the state of incorporation, even if that state has no other connection to the dispute.[152] This principle is how Delaware has been able to maintain its dominance: though the state itself has few or no substantive connections to most of the entities it charters, its law can control their legal structure solely because the firm's founders selected that state in which to organize. Thus, Delaware has frequently applied its law to conduct that occurred, and affected parties, wholly outside of its borders, such as whether the board of BlueBell Creameries ignored signs of listeria in its ice cream, sickening customers in Kansas and Texas,[153] whether the board of Wal-Mart permitted the company to dispense opioid prescription medication in violation of federal law,[154] whether – as above – the board of Disney appropriately balanced the interests of its Florida employees against its political relationship with the Florida legislature,[155] and whether the board of Tesla (headquartered in California at the time, with shareholders dispersed around the world and certainly not concentrated in Delaware) overpaid to acquire SolarCity, another California-based company with a similarly dispersed shareholder base.[156]

Notably, this "internal affairs" doctrine has hardened over time. Even a few decades ago, states recognized it only inconsistently, often referring to their own law, rather than the law of the state of incorporation, to settle corporate disputes, especially for firms that were chartered in a

---

[149] *Cf.* Edward Rock & Marcel Kahan, *The New Political Economy of Delaware Corporate Lawmaking*, 51 J. Corp. L. 865 (2026) (arguing that if Delaware's corporate lawmaking is perceived as political, there is no reason for other states (or the federal government) to defer to the state as the de facto standard setter).
[150] Ann M. Lipton, *Inside Out (Or, One State to Rule Them All): New Challenges to the Internal Affairs Doctrine*, 58 Wake Forest L. Rev. 321, 323 (2023) [hereinafter, "*Inside Out*"].
[151] *Id.*
[152] *Id.*
[153] Marchand v. Barnhill, 212 A.3d 805 (Del. 2019).
[154] Ontario Provincial Council of Carpenters' Pension Trust Fund et al. v. Walton, 2023 WL 3093500 (Del. Ch. Apr. 26, 2023).
[155] Simeone v. Walt Disney Co., 302 A.3d 956 (Del. Ch. 2023).
[156] *In re* Tesla Motors S'holder Litig., 298 A.3d 667 (Del. 2023).

state with little connection to its substantive business operations.[157] Similarly, the scope of matters deemed to be encompassed by the internal affairs doctrine – and thus governed by the state of incorporation rather than ordinary choice of law rules – has also expanded over time.[158] The point being, notwithstanding Delaware's somewhat spurious claim that the internal affairs doctrine is constitutionally mandated,[159] a chartering state's right to dictate entity governance exists only by the grace of *other states* willing to recognize it.

In recent years, states have found it convenient to defer to Delaware on matters concerning Delaware-chartered entities,[160] which is to say, most public entities or entities backed by professionalized investment. In some cases, they may have avoided difficult political choices by ceding them to Delaware,[161] in others, generalist state courts may have preferred to allow specialist Delaware courts to decide matters within their area of technical expertise. But when corporate law takes on an obviously *partisan* character, there is every possibility that some courts – or legislatures – will begin to question why a chartering state should be able to dictate the legality of conduct that occurs elsewhere. To some extent, this is already occurring; Texas's proxy advisor law purports to regulate advice about companies that are not organized in the state so long as they either propose to redomesticate to Texas or are headquartered there,[162] and other states have followed suit with their own proxy advisor regulations that apparently apply to corporations organized outside the state.[163] It may only be a matter of time before more serious disputes arise over which states have jurisdiction to legislate entity governance – or even which matters count as "governance" disputes in the first place.[164]

The obvious solution would be to take corporate governance out of state hands entirely; nothing bars Congress from passing a uniform federal corporate law, and in fact, it has tended to do so piecemeal, with incremental changes to the securities laws, typically in response to

---

[157] Deborah A. DeMott, Perspectives on Choice of Law for Corporate Internal Affairs, 48 Law & Contemp. Probs. 161, 167-72 (1985); *see also* Ezrasons Inc v. Rudd, 2025 WL 1436000 (N.Y. May 20, 2025) (Wilson, C.J., dissenting).
[158] Lipton, *Inside Out*, *supra*, at 341-72.
[159] McDermott Inc. v. Lewis, 531 A.2d 206, 216 (Del. 1987); Daniel J.H. Greenwood, *Democracy and Delaware: The Mysterious Race to the Bottom/Top*, 23 Yale L. & Pol'y Rev. 381, 413-14 (2005); Vincent S.J. Buccola, *States' Rights Against Corporate Rights*, 2016 Colum. Bus. Rev. 595, 639-44.
[160] Lipton, *Inside Out*, *supra*, at 351-52.
[161] *Id.* at 352.
[162] TX Bus. Org. § 6A.001.
[163] *See* K.S.A. Ch. 146, § 4; KY ST §§ 367.367; 367.368; IN ST 24-4-27.5-11. In response to challenges by ISS and Glass Lewis, Indiana and Kansas have offered some narrowing constructions, but they have not, apparently, argued that the laws only apply to advice about in-state organized companies (or advice given only to in-state clients). *See* Defendants' Memorandum in Support of Motion to Dismiss, ISS v. Rokita, No. 1:26-cv-00717-MPB-MKK (S.D. Ind.) filed July 10, 2026), at 14; Reply in Support of Motion for Preliminary Injunction, ISS v. Kobach, 2:26-cv-02254-HLT-RES (D. Kan.) filed June 8, 2026), at 11.
[164] For example, corporations have begun to include in their governing documents forum selection provisions for complaints alleging claims under the federal securities laws. Delaware blessed these provisions in *Salzberg v. Sciabacucchi*, 227 A.3d 102 (Del. 2020), and other courts have, with little comment, followed Delaware's lead, Lipton, *Inside Out*, *supra*, at 362-66, but Elon Musk's SpaceX recently took matters a step further by going public with bylaws purporting to require that certain federal claims be arbitrated on an individualized basis, *see* SpaceX Amendment No. 2 to Form S-1 (June 3, 2026), Exh. 3.2. It is certainly possible that, if these provisions are challenged, some courts may question why the entity law of Texas should govern the question whether these provisions are binding on public shareholders suing under federal law.

scandals.[165] The Trump Administration has been making forays along these lines; recent Department of Labor guidance would expand the regulatory ambit of ERISA to encompass proxy advisors that serve ERISA-governed retirement plans.[166] Similarly, the SEC is investigating whether to amend or repeal Rule 14a-8,[167] and has warned that large asset managers may be violating federal law by engaging with corporate managers on ESG topics.[168] But there are limits to how much can be accomplished via administrative action alone, and Congress seems unlikely to reach a consensus on reforms in the near future. In the meantime, then, the fracturing of the corporate governance universe may not only mean different regimes for different firms, but more vigorous disputes over the right to regulate in the first place.

VI. Conclusion

In some ways, the turn toward partisan corporate law is a restoration of the original order. Before the rise of the regulatory state, corporate law was "the technique par excellence for state regulation of economic activity."[169] It was precisely because of this history that Delaware was able to distinguish itself with a commitment to nonpartisanship.[170] But corporate law directs how billions or trillions of dollars will be allocated across the nation, and across the world; it was perhaps inevitable that partisan divisions would eventually resurface.

---

[165] William W. Bratton, *A History of Corporate Law Federalism in the Twentieth Century*, 47 Seattle U. L. Rev. 781 (2024).
[166] Department of Labor, *US Department of Labor Issues Guidance Declaring Proxy Advisors May Be Investment Advice Fiduciaries* (Apr. 15, 2026), https://www.dol.gov/newsroom/releases/ebsa/ebsa20260415.
[167] Paul S. Atkins, Remarks by Chair Atkins on Disclosure Reform and Shareholder Proposal Policy, Harv. L. Sch. Forum on Corp. Gov. (July 10, 2026), https://corpgov.law.harvard.edu/2026/07/10/remarks-by-chair-atkins-on-disclosure-reform-and-shareholder-proposal-policy/.
[168] SEC Corporate Finance Division, Corporation Finance Interpretations, Question 103.12, https://www.sec.gov/rules-regulations/staff-guidance/corporation-finance-interpretations/exchange-act-sections-13d-13g-regulation-13d-g-beneficial-ownership-reporting
[169] Mariana Pargendler, *Veil Peeking: The Corporation as a Nexus for Regulation*, 169 U. Pa. L. Rev. 717, 727 (2021).
[170] Eldar & Rauterberg, *supra*, at 208.

About ECGI

ECGI is an international non-profit membership organisation that provides a platform for debate and dialogue among academics, policymakers, and business leaders, with a focus on major corporate governance, ESG, and stewardship issues.

The views expressed in this working paper are those of the authors, not those of the ECGI or its members.