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Commentary

Forget Delaware—‘Y’all Street’ Is Open for Business

Companies are moving to Texas as the Chancery Court makes the First State a hostile climate.

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Two hundred years ago, American families huddling on the East Coast packed up and left. They pushed across Appalachia, traversed the Mississippi River, and braved marauding bands terrorizing the Plains, all in search of the promised land—Texas, where there was fertile soil and room to grow.

Today, a similar migration is afoot—this time for American businesses huddling in Delaware. For decades, Delaware’s business climate was a model for the country. Its famed Chancery Court boasted jurists steeped in corporate law. Doctrines developed over a century formed the firm foundation for companies to do business and were models for courts and classrooms across the country. The First State was also a short train ride from Wall Street. Most of the Fortune 500 chose to make Delaware their first home.

But Delaware has squandered its inheritance. American business law is built on a simple premise: Shareholders invest capital in a corporate enterprise, and officers and directors have a fiduciary duty to shepherd that capital wisely by maximizing profits. There are countless ways to shepherd wisely; no two C-suites take the same approach. So while courts should play an important role in policing matters like fraud and self-dealing, they must have a limited role in second-guessing the countless workaday decisions made inside a business. Delaware used to understand this principle, embodied in the “business judgment rule.”

Recently, however, the Delaware Chancery Court has subjected routine business decisions—even ones repeatedly approved by shareholders—to second-guessing. In *Tornetta v. Musk*, the court rescinded a years-old compensation package awarding Tesla CEO Elon Musk a 6% increase in shares for generating \$600 billion in growth for shareholders. Sounds like a win-win. The Chancery Court, however, thought there was a problem. In a 200-page post-trial opinion issued

Jan. 30, 2024, Chancellor Kathaleen St. J. McCormick vacated the award because Mr. Musk is a “Superstar CEO” whose “ownership stake gave him every incentive to push Tesla to levels of transformative growth.” The lesson? Don’t be too much of a visionary or too motivated to increase shareholder value, or we might have to dock your pay.

Or take *In re Fox Corp. Derivative Litigation*. There, the Chancery Court permitted a claim against Fox Corp.’s board of directors, complaining that Fox News hosted guests who echoed President Trump’s concerns over the integrity of the 2020 election. Never mind that both the common law and Supreme Court precedent protect media outlets reporting the allegations of others. (Fox Corp. and Wall Street Journal parent News Corp share common ownership.)

The bigger problem is that despite seeing ghosts of conflicted interests in Fox’s boardroom, the Chancery Court ignored flesh-and-blood conflicts in its own courtroom: To lead the plaintiff class, the court tapped blue-state officials likely at odds with the typical Fox shareholder and attorneys that one vice chancellor praised in now-hidden posts on LinkedIn. Conflicts for thee but not for me.

Businesses read the writing on the wall. In June 2024, Tesla left Delaware and reincorporated in Texas. Tripadvisor also tried to leave, but the Chancery Court sought to turn Delaware into Hotel California: It claimed the power to “enjoin the Company . . . from departing Delaware” to reincorporate in Nevada, boasted of being merciful by opting to impose money damages instead, and then refused to allow Tripadvisor an appeal. The Delaware Supreme Court was forced to clean up the mess in *Maffei v. Palkon*, undoing this “exit tax” on businesses preferring laws of other states.

Businesses domiciled in Delaware have a choice to make. They can stay and be subjected to increasingly unpredictable theories of liability. Or, like Americans before them, they can come to Texas. Unlike Delaware, the Lone Star State is open for business.

In 2023, I signed a law establishing the Texas Business Court—the state’s first new court system in more than half a century—to specialize in corporate governance disputes, derivative actions and complex commercial transactions. The judges I appointed to stand up this historic court share a vision of efficient and equal justice under law. Texas’ Supreme Court, where any business appeals may ultimately land, is second to none.

Courts, though, are only as stable as the laws they apply. Delaware’s late, great Chancery Court has taught us that. To prevent similar backsliding here, the Texas Legislature is actively considering amendments to the Business Organizations Code. Proposals include codifying the business-judgment rule and setting sensible ownership thresholds for derivative claims. I look forward to signing such legislation later this year when it reaches my desk.

Additionally, Wall Street’s duopoly over financial markets via the New York Stock Exchange and Nasdaq shouldn’t limit access to capital for the world’s eighth-largest economy. That’s why I recently announced the creation of the Texas Stock Exchange. In 2026, TXSE will begin

facilitating trades and listings in Dallas, America's emerging financial hub. Y'all Street will reduce barriers for all businesses and refocus on core investment principles instead of ESG and DEI mandates.

With its dedicated courts, clear legal rules and on-site capital markets, Texas still offers fertile soil and room to grow. To paraphrase a great Texan who also trekked west: Delaware may go to hell, but businesses should come to Texas. Here, the American dream lives on.

Mr. Abbott, a Republican, is governor of Texas.