DExit for Dollars: A Response to Professor Bainbridge

By Benjamin P. Edwards* & Carliss N. Chatman**

In DExit Drivers, Professor Stephen Bainbridge offers a careful assessment of Delaware's corporate-law dominance and concludes that recent departures pose little serious threat to the First State. We agree with much of his analysis but write to refine and update it considering recent developments. Since the article went to print, several of the differentiators Bainbridge identified have shown new signs of erosion: Andreessen Horowitz has publicly left Delaware and urged others to follow; Delaware's share of IPOs appears to have fallen from a historical mean near 87% to 61.8% in 2025; Texas has created a dedicated business court; and Nevada has launched dual-track reforms aimed at facilitating efficient adjudication of business cases.

Our principal contribution is expanding on the impact of Delaware's franchise tax, methods to mitigate it and implications for capital formation. The recurring annual nature of Delaware's franchise tax warrants additional attention. Because corporations are theoretically perpetual and the tax recurs every year, we believe it helps to think about it as something akin to a perpetuity. Framed this way, Delaware's franchise tax may be a material recurring cost that can justify the expense and disruption of reincorporation for a sizeable group of public companies. To explore the issue, we consider two mitigation strategies—authorized-share reductions and outright DExit—and analyze how each interacts with capital-raising flexibility and stockholder voting dynamics and rules. We close by showing that corporations operating in Texas face a distinct calculus because Texas's margin-based franchise tax cannot be avoided through reincorporation, Texas firms must weigh whether Delaware's governance infrastructure offers some outstanding marginal benefit over what Texas offers to justify a domicile tax stacked atop an unavoidable activity-based one.

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I. INTRODUCTION

Professor Bainbridge correctly explains many of the reasons for Delaware's towering dominance over the corporate law landscape, and we generally agree with much of his analysis.[1] Delaware is too big, too strong, and has hung around too long to fall precipitously. Yet this does not mean that competitors cannot now accrue more market share. We focus on Nevada and Texas as alternatives to Delaware.

Consider some core Delaware differentiators Professor Bainbridge identified in *DExit Drivers* that may no longer provide as much differentiation as they did when Professor Bainbridge sat down to write.[2] He explained that venture capital firms generally preferred "founders to incorporate in Delaware."[3] In July of 2025, Andreessen Horowitz, the nation's largest venture capital firm, announced it was leaving Delaware and encouraged others to consider leaving too.[4] To be sure, this does not mean that venture capital, as a whole, has turned its back on Delaware, but we may be seeing cracks in the foundation as some law firms now showcase non-Delaware expertise.[5]

Consider another standout strength Professor Bainbridge rightly identified—dominance in the initial public offering (IPO) market. He found that Delaware "consistently captured 80% or more," of IPOs in the 2012-2022 period.[6] His statistics found that the "mean for the period [wa]s 86.6%," with 89% as the median with a standard deviation of 4.7.[7] 2022 was the weakest year for Delaware at 79% of the IPO market.[8] Yet 2025 came and went with different results for Delaware. Data from *Houlihan Lokey* found that Delaware had declined to 61.8% of non-SPAC IPOs in 2025 with Nevada pulling in 16.8% and Texas collecting the next most at 3.8%.[9]

Delaware's own 2025 statistics, announced that Delaware had captured "[n]early 70%" of U.S. IPOs.[10] This provides another datapoint suggesting that Delaware's share of

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1. We write in response to Stephen M. Bainbridge, *DExit Drivers: Is Delaware's Dominance Threatened?*, 50 J. CORP. L. 823 (2025) (hereinafter "*DExit Drivers*").

2. Law review publishing usually involves substantial lag time. Professor Bainbridge posted his article to SSRN around the middle of 2024, meaning it was written before then. It went to print in 2025. We now write this response from 2026 and have the benefit of observing another few years of data.

3. *Dexit Drivers*, *supra* note 1, at 832.

4. Jai Ramaswamy, Andy Hill & Kevin McKinley, *We're Leaving Delaware, And We Think You Should Consider Leaving Too*, ANDREESEN HOROWITZ (July 9, 2025), https://a16z.com/were-leaving-delaware-and-we-think-you-should-consider-leaving-too/ [https://perma.cc/RGM4-M6YN].

5. Notably, Cooley LLP, a large law firm specialized in representing startups and venture capital firms now makes model Nevada documents available for free on its website. *Incorporation Package (Nevada)*, COOLEY GO, https://www.cooleygo.com/documents/incorporation-package-nevada [https://perma.cc/D7PP-JS7T].

6. *DExit Drivers*, *supra* note 1, at 835.

7. *Id.*

8. *Id.*

9. Benjamin P. Edwards, *PLI Panel – Reincorporations and Redomestications*, BUS. L. PROF BLOG (Feb. 11, 2026), https://www.businesslawprofessors.com/2026/02/pli-panel-reincorporations-and-redomestications/ [https://perma.cc/5TMM-6JJ6].

10. DEL. DIV. OF CORP., DELAWARE DIVISION OF CORPORATIONS: 2025 ANNUAL REPORT 1 (2026), https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2025-Annual-Report.pdf [https://perma.cc/HS84-SVN8].

the IPO market may be in decline. Although Delaware deviated from its past practice by failing to provide a more precise number for its percentage of the IPO market, the 2025 figure lands at least more than three standard deviations away from Professor Bainbridge's mean figure.

Professor Bainbridge also identified a range of concerns with Nevada's existing business courts that placed Nevada at a competitive disadvantage including: (1) a lack of written decisions; (2) an elected judiciary; (3) jury trials; and (4) heavy caseloads.[11] But both Nevada and Texas have been busy since Professor Bainbridge picked up his pen. Nevada has launched dual-track reforms with a partially-passed constitutional amendment to authorize the creation of a dedicated, appointed business court and a Nevada Supreme Court Commission now examines ways to make adjudication more predictable and efficient within the existing constitutional structure.[12] The Commission's initial discussion draft proposed having trial courts issue written opinions.[13] And a recently launched pilot program consolidated the overwhelming majority of Nevada's business court cases before two experienced judges who have committed to post significant business court decisions online.[14] Texas, for its part, has already launched a dedicated, appointed business court.[15] And both Nevada and Texas now allow corporations to opt out of jury trials and into bench trials.[16]

We cannot fault Professor Bainbridge for not having a crystal ball and he did recognize that "making DExit predictions is a risky proposition."[17] Foreseeing this flurry would have been difficult for anyone. At the time of his writing in 2024, most reincorporation activity flowed to Delaware with only 23.5% of reincorporating firms seeking to leave Delaware.[18] By 2025 the statistic had shifted with 64.3% of reincorporation proposals seeking to leave Delaware according to Glass Lewis' data for the 2025 proxy season.[19] As of this writing, the outflow has continued in 2026 with 32 companies either announcing or finalizing departures from Delaware so far this year.[20] Overall, over 70% of the firms deciding to shift their jurisdiction of incorporation have departed Delaware.[21]

To be sure, the overall number of public companies moving from one jurisdiction to another remains low relative to overall numbers. Delaware has many public companies

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11. *DExit Drivers*, *supra* note 1, at 865.

12. A.J.R. 8, 83d Leg., Reg. Sess. (Nev. 2025); *Commission to Study the Adjudication of Business Law Cases*, NEV. ADMIN. OFF. OF THE CTS., https://nvcourts.gov/aoc/committees_and_commissions/commission_to_study_the_adjudication_of_business_law_cases [https://perma.cc/6CVM-3CQE].

13. *In re* Adoption of the Creation of a Comm'n to Study the Adjudication of Bus. Law Cases, ADKT 0626 (Nev. Sept. 24, 2025).

14. *Business Court Pilot*, EIGHTH JUD. DIST. CT. CLARK COUNTY, NEV., https://www.clarkcountycourts.us/departments/business-court/ [https://perma.cc/36GX-7TK9].

15. *Business Court*, TEX. JUD. BRANCH, https://www.txcourts.gov/businesscourt/ [https://perma.cc/37UH-VCW5].

16. NEV. REV. STAT. § 78.046(4) (2023); TEX. BUS. ORGS. CODE ANN. § 2.116 (2025).

17. *DExit Drivers*, *supra* note 1, at 828.

18. Sam Nolledo, Sarah Wenger & Aaron Wendt, *The State of US Reincorporation in 2025: The Growing Threat and Reality of "DEXIT"*, GLASS LEWIS (Oct. 9, 2025), https://www.glasslewis.com/article/state-of-us-reincorporation-2025-growing-threat-reality-dexit [https://perma.cc/S5EL-PE3C].

19. *Id.*

20. Benjamin P. Edwards, *July Reincorporation Update*, BUS. L. PROF BLOG (July 8, 2026), https://www.businesslawprofessors.com/2026/07/july-reincorporation-update/ [https://perma.cc/J9F9-3CUZ].

21. *Id.*

incorporated in the state. One proxy advisor's count put Delaware's total at 2,686 with Nevada at 229, and Texas at 48 in 2025.[22] A few dozen departures should not trouble Delaware much given its massive pile of public companies. If Nevada picks up 25 companies in a season, it represents less than 1% of Delaware's total. But the 25 public companies shifting to Nevada likely matter to Nevada and represent more than a 10% increase in its total number of public companies. Similarly, Texas may soon double its number of public companies incorporated in the state. As other jurisdictions accumulate more public companies, it allows them to develop the expertise and supporting ecosystems that have long supported Delaware's market dominance.

Having set the stage, we now turn to how Delaware's franchise tax may create a drag on returns for smaller public companies. To his credit, Professor Bainbridge engages with Delaware's fees and costs, but we believe the work may be improved by framing Delaware's franchise taxes clearly as a recurring expense.[23] We believe evaluating it as akin to a perpetuity provides a better way to think about the economic consequences of Delaware incorporations. Our approach differs from Professor Bainbridge's in that we do not focus principally on firms that have left Delaware. Instead, we focus on the costs incurred by firms staying in Delaware.

The number of companies for which incorporation fees may be material has also likely been substantially underestimated, and proxy adviser coverage does not capture the entire market. We accessed data through *Wharton Research Data Services* and found 2,873 Delaware-incorporated public companies overall.[24] There were 521 nanocaps with market caps under $50 million, 544 microcaps with market caps between $50 million and $300 million, and 739 small caps with market caps between $300 million and $2 billion. Overall, 1,243 public companies, roughly 40% of Delaware's total number of public companies, have market caps of under $500 million.

Why so many small firms have picked Delaware and remained there despite its costs presents a puzzle. This market subset likely finds franchise tax costs more significant than the substantially larger multi-billion-dollar corporations attracting the most attention and litigation. This regular franchise-tax-paying population may also not appear in Delaware's courts as often simply because they do not have as much money to pay out to resolve litigation, making concerns about Delaware's litigation environment less relevant.[25] If we assume that they have collectively made value-maximizing decisions, it may be that these firms value Delaware's other known benefits and that they believe Delaware's cost premium to be worth it, on balance.

It might also be possible that inertia, conflicts, or other inefficiencies explain why these firms linger in Delaware. Bankers may have recommended that these firms use Delaware law to go public because many other clients had used Delaware law and underwriters

22. ISS Governance, *The U.S. Reincorporation Race: Who's in the Lead?*, ISS STOXX (July 16, 2025), https://www.iss-stoxx.com/insights/articles/the-us-reincorporation-race-whos-in-the-lead/ [https://perma.cc/KR5P-QKUW].

23. *DExit Drivers*, *supra* note 1, at 854–56.

24. Delaware-Incorporated Public Companies by Market Capitalization (2026) (unpublished spreadsheet compiled by the authors from *S&P Global Market Intelligence*, COMPUSTAT NORTH AMERICA) (on file with authors).

25. *See* Kobi Kastiel & Yaron Nili, *The Corporate Governance Gap*, 131 YALE L.J. 782, 821 (2022) (explaining that rational plaintiff-side lawyers prefer to sue firms with money to pay them).

believed that it would be easier to sell shares in a Delaware-incorporated entity. For bankers advising on an offering, the cost of Delaware's franchise tax over time may not matter much as the bankers receive their fees in connection with the offering. Concerns about the feasibility of winning reincorporation votes may also contribute to this inertia if small companies fear institutional investor skepticism about proposed moves.

Critically, we do not disagree with Professor Bainbridge's conclusion that companies with controlling stockholders may be most inclined to exit Delaware because of liability and litigation concerns.[26] While firms with significant stockholders may be the first out the door on account of perceived litigation risks, regular franchise taxes still matter. Corporate boards may support jurisdictional changes for multiple reasons.[27] Even when a substantial stockholder aims to redomicile to mitigate Delaware litigation and judicial oversight risks, quantifiable benefits from reduced franchise taxes may provide a separate rationale. Notably, proxy advisory firms and institutional investors preferring Delaware's familiar system may still support these moves if they see franchise tax savings as a material financial benefit for a subset of companies.[28]

To make the case that franchise tax fees may be more material than previously appreciated, Part II of this Response overviews how Delaware calculates franchise tax fees for public companies. Part III explains how to calculate the true value to Delaware of a company opting to incorporate in Delaware, and the true cost to the company. Part IV reviews DExit and authorized share reduction options for companies to consider how to mitigate or eliminate their franchise tax burden. Part V considers how Texas' tax structure interacts with this analysis for companies with Texas operations.

II. DELAWARE'S FRANCHISE TAX FEE STRUCTURE

As Professor Bainbridge noted, Delaware imposes "the highest franchise tax rate in the country," and "charges most public corporations $250,000 in franchise taxes per year."[29] He also correctly noted an odd omission from the legal literature—"savings relative to revenues and earnings" from reincorporations.[30] We heartily agree that the possible savings from DExit has been understudied.

There are different measures Delaware uses to identify which companies to tax most heavily.[31] For large filers, Delaware extracts $250,000 annually.[32] Companies qualify as large filers if they: (1) list their stock on a national securities exchange; and (2) meet annual gross revenue and asset thresholds.[33] Essentially, a listed company will be classified as a

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26. *DExit Drivers*, *supra* note 1, at 883.

27. While significant stockholders may have views, decisions about whether to reincorporate must secure board approval. *See* Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 NW. U.L. REV. 547, 550 (2003) (explaining that corporate boards ultimately control a corporation's affairs).

28 Delaware's franchise tax is not an income tax, meaning it must be paid even if the corporation has no taxable income or operates at a loss.

29. *DExit Drivers*, *supra* note 1, at 854. If Professor Bainbridge is right that most public corporations are paying Delaware $250,000 annually, it's a staggering amount of money.

30. *Id.*

31. *See* Mohsen Manesh, *Delaware and the Market for LLC Law: A Theory of Contractibility and Legal Indeterminacy*, 52 B.C. L. REV. 189, 197 (2011) (discussing Delaware's franchise tax structure).

32. DEL. CODE ANN. TIT. 8, § 503(b) (2026).

33. DEL. CODE ANN. TIT. 8, § 503(c) (2026).

large corporate filer if their gross annual assets or revenues exceed $750 million and neither their gross annual assets nor revenues come in below $250 million.[34]

Delaware's tax for other corporations caps out at $200,000 annually. For these corporations, Delaware's franchise tax may be calculated in two different ways, and companies can pay the lower amount.[35] Delaware guidance classifies these as either the "Authorized Shares Method" or the "Assumed Par Value Capital Method."[36] Both scale the franchise tax off the total number of shares a corporation's charter authorizes.[37] Under the Authorized Shares Method, Delaware charges $175.00 for the first 5,000 shares. If a corporation has between 5,001 and 10,000 shares, the annual fees go to $250.00. Then it's a mere $85 for "each additional 10,000 shares or portion thereof."[38]

The Assumed Par Value Capital Method requires more math. The calculation begins by dividing a corporation's gross assets by its total issued shares to identify assumed par value.[39] The corporation must then multiply its assumed par value by the total number of shares its charter authorizes.[40] The resulting figure is the "assumed par value capital."[41] Delaware assesses its franchise tax "by dividing the assumed par value capital, rounded up to the next million if it is over $1,000,000, by 1,000,000 and then multiply[ing it] by $400.00." The resulting figure is the franchise tax for corporations under this method if their stock has a lower par value than the assumed par value. Ultimately, the franchise tax can be no less than $400 and no more than $200,000.[42]

Delaware's tax structure for corporations creates a strong incentive for Delaware to attract as many public corporations as possible because Delaware makes its money off volume. Two small public corporations with market caps in the tens of millions that pay $150,000 annually generate more revenue for Delaware than a single major, multi-billion-dollar corporation paying $250,000—even though the relative burden for the smaller public companies incorporated in Delaware is much heavier.

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34. Delaware law requires its Secretary of State to prepare an annual list of large corporate filers. DEL. CODE ANN. tit. 8, § 503 (2026) ("As of December 1 of each calendar year, the Secretary of State shall compile a list of each corporation that, as of such date, met the criteria of a large corporate filer"). Although we requested a copy of the list, Delaware declined to provide it on the ground that the request came from a non-Delaware citizen. E-mail from Tyler Micik, Dir. of Pol'y & Commc'ns, Del. Dep't of State, to Benjamin Edwards (June 5, 2026, 12:20 PM) (on file with author) ("As the right to access documents pursuant to FOIA is not guaranteed for non-Delaware citizens, the Department of State is denying your request"). Notably, guidance from Delaware's Attorney General's office explains that "public bodies are only *required* to comply with FOIA when the requesting party is a citizen of the State of Delaware. In all other cases, public bodies *may, and are encouraged to*, fulfill FOIA requests." Del. Op. Att'y Gen. No. 16-IB20 (Sept. 30, 2016), https://attorneygeneral.delaware.gov/2016/09/30/16-ib20-9302016-foia-opinion-letter-to-mr-russell-carollo-re-foia-complaint-concerning-the-office-of-the-state-bank-commissioner/ (emphasis in original).

35. DEL. CODE ANN. TIT. 8, § 503(a) (2026).

36. *How to Calculate Franchise Taxes*, DEL. DIV. OF CORPS., https://corp.delaware.gov/frtaxcalc/ [https://perma.cc/2DBH-KT7Q].

37. *Id.*

38. *Id.*

39. *Id.* Gross Assets are determined by reference to a federal tax form. *Id.*

40. *How to Calculate Franchise Taxes*, DEL. DIV. OF CORPS., https://corp.delaware.gov/frtaxcalc/ [https://perma.cc/2DBH-KT7Q]. The calculation will be a bit different if the formal par value is more than the assumed par value.

41. *Id.*

42. *Id.*

III. Delaware's Franchise Tax Hits Corporations Every Year

Professor Bainbridge's analysis on Delaware's franchise tax could be expanded by focusing on the recurring nature of Delaware's franchise tax.[43] As corporations may theoretically live forever and pay Delaware's franchise tax every year, we believe the appropriate way to consider Delaware's franchise tax is as something similar to a perpetuity.[44]

Of course, the franchise tax and a perpetuity are not exactly the same. Delaware could change the taxes it imposes.[45] Corporations could alter their capital structure to lower the tax burden. Companies may go out of business and no longer need to pay any franchise tax. Yet, even with these distinctions, it may help to think about the franchise tax as though it were a perpetuity.

There is a simple formula to calculate the present value of a perpetuity.[46] It takes the annual cost and divides it by a discount rate. Consider how to value a nano-cap or micro-cap incorporation from Delaware's perspective where the corporation pays Delaware $200,000 annually for the privilege of being a Delaware corporation.[47] The true present

43. *See DExit Drivers*, *supra* note 1, at 854–55. In his analysis, Professor Bainbridge reviewed franchise taxes for corporations over a number of years. His analysis principally considered whether corporations were using franchise tax disclosures to cloak other driving considerations. For example, he discusses Rezolute, Inc.'s franchise tax savings as amounting "to reductions of only 0.98% and 0.77% in the annual losses in those years." *Id.* He is correct that this is not an enormously significant shift in a single year's results. But we argue a different, complementary point—that shifting every year's results by an additional .5% might drive compounding gains for these companies and stockholders over time. This remains true even though Rezolute, Inc.'s proxy did not spell out this analysis. *See* Rezolute, Inc., 2021 Annual Meeting Proxy Statement (Schedule 14A) 23 (Apr. 28, 2021) (stating that " effecting the Reincorporation should result in significant cash savings for the Company").

44. *See* Trs. of Dartmouth Coll. v. Woodward, 17 U.S. 518, 636 (1819) (describing a corporation as "an artificial being, invisible, intangible, and existing only in contemplation of law," and explaining that, because it is "the mere creature of law," it possesses only the properties conferred by its charter); DEL. CODE ANN. TIT. 8, § 102(b)(5) (2025) (providing that a certificate of incorporation may contain "[a] provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence"); *Id.* § 122(1) (providing that every Delaware corporation has the power to "[h]ave perpetual succession by its corporate name, unless a limited period of duration is stated in its certificate of incorporation"); *Id.* § 614 (providing, for professional corporations, that "[a] professional corporation shall have perpetual existence until dissolved in accordance with other provisions of this chapter"); McRitchie v. Zuckerberg, 315 A.3d 518, 584–85 (Del. Ch. 2024) (explaining that "a Delaware corporation, by default, has a perpetual existence," that stockholders make investments of "presumptively permanent capital in a presumptively perpetual firm," and concluding that "[t]he perpetual entity model is how Delaware law has traditionally viewed corporations").

45. Although this is possible, it would substantially lower the franchise tax revenue Delaware depends on and it seems unlikely.

46. RICHARD A. BREALEY ET AL., PRINCIPLES OF CORP. FIN. 77–79 (2025) (explaining perpetuity valuation); John C. Coates IV, *Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications*, 124 YALE L.J. 882, 944 (2015).

47. *See Market Cap Explained*, FINRA (Sept. 30, 2022), https://www.finra.org/investors/insights/market-cap [https://perma.cc/98D3-4FWQ] (explaining that market capitalization is the total value of a company's outstanding shares and identifying typical market-cap categories as mega-cap, $200 billion or more; large-cap, $10 billion to $200 billion; mid-cap, $2 billion to $10 billion; small-cap, $250 million to $2 billion; and micro-cap, less than $250 million); *Microcap Stock: A Guide for Investors*, SEC (Sept. 17, 2013), https://www.sec.gov/about/reports-publications/investorpubsmicrocapstock [https://perma.cc/8DND-WNWM] (explaining that microcap stocks are typically defined as companies with market capitalization below $250 million or $300 million and that companies below $50 million are sometimes referred to as nanocap stocks).

value of that incorporation depends on the discount rate used.[48] At a 5% discount rate, a company selecting Delaware is worth about $4 million to Delaware if it pays $200,000 annually.[49] Even higher discount rates show substantial benefits. For example, an 8% discount rate yields a $2.5 million present value benefit for Delaware under its franchise tax.

Selecting the right discount rate for each company matters. For many small public companies, an 8% discount rate may still be too low, and a higher rate may be appropriate to account for the risk that the firm will go out of business or be acquired. As the franchise tax fee itself is mostly fixed, knowable, and due every year, the discount rate should be tied to the likelihood the company will be around to pay the tax. Still, even a much higher discount rate yields substantial sums.[50] A company paying $200,000 a year to Delaware with a high 20% discount rate still yields a $1 million present value calculation. Ultimately, any company considering whether it makes economic sense to move to mitigate Delaware's franchise tax burden must select its own discount rate. Smaller companies making this move now may want to show this calculation to help stockholders understand the move with different discount rates.

Thinking about the franchise tax as akin to a perpetuity makes sense because Delaware must budget for its future with an expectation that most firms incorporated there will stay.[51] A firm deciding to incorporate there has real value that underwriters would consider when deciding whether to loan Delaware money.

The inverse of this analysis is the present value of costs avoided by a public company reincorporating out of Delaware. A microcap paying $200,000 annually shifting to Nevada doesn't just save about $199,000 the year after it DExits. It saves $199,000 every year. The same present discount value formula guides decisions about whether it is worth spending the time, money, and effort on reincorporating out of Delaware or taking other steps to lower recurring annual costs.

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48. *See* Matthew Edward Cavanaugh, *Legal Applications of Modern Finance*, 31 QUINNIPIAC L. REV. 119, 135 (2013) ("Present value calculations are extremely sensitive to variations in the discount rate used.").

49. Of course, smaller public companies will not endure forever, but as none are likely planning to fail in the near term, evaluating the franchise tax as a perpetuity may be easiest for structuring decisions. Companies might also consider the cost over a period of years to make their decision.

50. Selecting the right discount rate for a calculation is a complex process and beyond the scope of our analysis here. *See* Richard A. Booth, *Appraisal Rights and Economic Growth*, 73 BUS. LAW. 1011, 1015 (2018) (discussing considerations related to discount rate selection).

51. *See* STATE OF DEL., GOVERNOR'S RECOMMENDED BUDGET: FISCAL YEAR 2026 FINANCIAL SUMMARY 7–8 (Dec. 2024), https://budget.delaware.gov/budget/fy2026/documents/operating/financial-summary.pdf?ver=0115 [https://perma.cc/4WKQ-7TBL] (identifying "Incorporation Revenue," including corporate franchise taxes, business entity fees, and limited partnership and limited liability company taxes, as 27.6% of Delaware's projected fiscal year 2026 sources of funds, and forecasting $1.3289 billion in franchise-tax revenue for fiscal years 2025 and 2026); *Official Statement: $316,940,000 General Obligation Bonds, Series 2025*, STATE OF DEL. app. B, at B-32–B-34 (May 2025), https://financefiles.delaware.gov/Bond/Official_Statement_Final_Series_2025.pdf [https://perma.cc/YM43-XJLT] (describing Delaware's corporation franchise tax as an annual tax levied on business corporations organized under Delaware law and presenting DEFAC revenue forecasts for fiscal years 2025 through 2027 that include franchise taxes and limited partnership and LLC taxes as major budgetary General Fund revenue categories); *Investor Information*, DEL. DEP'T OF FIN., https://finance.delaware.gov/investor-information/ [https://perma.cc/9HXM-PKD8] (directing investors to Delaware's annual reports, operating and capital budgets, rating-agency analyses, official statements, and revenue forecasts as resources concerning the State's financial position).

The profitability of expending funds to DExit cannot be measured by simply looking at a single year's financials. Spending money to DExit may be a profitable investment by positioning the corporation to avoid an annual financial drain. From this perspective, it may make sense to pay more than a single year's Delaware franchise tax in attorney fees to accomplish a jurisdiction swap.

Investors considering whether to buy or sell on news of a DExit balance a range of factors, and many cannot easily be calculated with a simple formula.[52] In addition to the present value of escaping the franchise tax, investors and corporate leaders must consider the economic value of a corporation being overseen by Delaware's vibrant, vigilant, and zealous stockholder plaintiffs' bar. It is hard to know whether this constant threat protects profitability by policing misconduct or if it tends to dissipate corporate resources through value-destroying litigation and over-lawyering transactions to mitigate Delaware litigation risk.[53] But this is not the only factor to consider—investors must also consider the loss of being governed by the equitable wisdom of Delaware's famed Court of Chancery embodied in its voluminous case law against the laws, institutions, and judiciaries of other states.[54]

From an expense perspective, Delaware's franchise tax operates as the annual floor on Delaware-related fees and costs. There may be other areas where Delaware-incorporated entities incur higher costs. One recent study found "that Delaware judges give plaintiffs' attorneys a meaningfully higher return on their investment than their federal counterparts," when awarding fees.[55] Of course, Delaware has also responded by making legislative changes to its corporate law designed to enhance predictability and manage litigation costs.[56]

How significant a move will be for a company depends on its situation. Consider Thunder Power Holdings (Thunder Power), a small public company that recently

52. *See* Christine Hurt, *Texas, Delaware, and the New Controller Primacy*, 67 ARIZ. L. REV. 693, 749 (2025) (arguing that Texas's emergence as an incorporation alternative may reflect a shift toward a more controller-protective corporate-law model); Anat Alon-Beck, *Delaware Beware*, 2025 U. ILL. L. REV. 363, 384–91 (Apr. 30, 2025) (analyzing corporate law as a product within the market for state corporate charters and examining how large private and public firms navigate incorporation choices); Shane Goodwin, *The Texas Two-Step: Rewriting the Rules in the Battle for Corporate Domicile,* SMU COX SCH. OF BUS. (Apr. 27, 2025), https://scholar.smu.edu/business_finance_research/276/ [https://perma.cc/4YTU-4SYD] (arguing that Texas is combining legislative reform with a specialized business court to compete for corporate domicile).

[53] Although we are not currently aware of any insurers offering discounts for Nevada incorporation, the idea has been discussed. *See* Kevin M. LaCroix, *Does a Del. Corp.'s Reincorporation in Another State Reduce D&O Liability Exposure?*, THE D&O DIARY (Mar. 19, 2024), https://www.dandodiary.com/2024/03/articles/director-and-officer-liability/does-a-del-corp-s-reincorporation-in-another-state-reduce-do-liability-exposure/ [https://perma.cc/7XA2-RMRV] (discussing possible discounts for Nevada incorporation).

54. *See* Maffei v. Palkon, 339 A.3d 705, 743 (Del. 2025) (recognizing that many different factors go into jurisdictional comparisons).

55. Jessica Erickson, Adam C. Pritchard & Stephen J. Choi, *Is Delaware Different? Stockholder Lawyering in the Court of Chancery,* 52 J. Corp. L. (forthcoming 2027).

56. *See* Stephen Bainbridge, *The (State) Constitutionality of Delaware SB 21's Safe Harbors for Conflicted Controller Transactions*, BAINBRIDGE ON CORPS. (Nov. 5, 2025), https://www.bainbridgeoncorporations.com/p/the-state-constitutionality-of-delaware [https://perma.cc/SDE2-7WJD] (discussing recent changes to Delaware law).

announced a shift from Delaware to Nevada.[57] Thunder Power explained that it recently paid Delaware "approximately $92,682.99 in franchise taxes."[58] By shifting to Nevada, it stated that its annual fees will "consist of an annual state business license fee of $500 and a fee of $675 for filing the Company's annual list of directors and officers based on the current number of authorized shares and their par value."[59] Although Professor Bainbridge correctly identified that Nevada's statute allows fees to go as high as $11,125, most companies will never pay this amount. Nevada's fee scales off par value, and Nevada allows companies to declare par values as low as "one-tenth of a cent" for fee calculations.[60]

The financial significance of Thunder Power's move depends on the timescale considered. In 2025, Thunder Power had a net loss of $2,119,417.[61] The annual cost difference between Nevada and Delaware fees is $91,507.99. In the short term, shifting from Delaware to Nevada will not solve Thunder Power's main problem—losing buckets of money. It may be unwise to expend funds on a reincorporation if the additional expenditure will render a firm unable to meet its obligations.

But if Thunder Power remains in business, avoiding Delaware's franchise tax may support its growth over time. The present value of avoiding that cost annually at a 10% or 15% discount rate comes to roughly $915,080 or $610,000, respectively. For a smaller company, it may make sense to expend a few hundred thousand in funds to reincorporate to a lower-cost jurisdiction.[62] If the company has reasonable long-term prospects, it may make sense to pursue reincorporation even if the associated costs of a reincorporation exceed its annual franchise tax burden for a single year.

IV. Options to Mitigate Delaware's Franchise Tax

Companies concerned about managing Delaware's franchise tax essentially have two options—reduce their authorized shares or shift their jurisdiction of incorporation elsewhere.

A. Reducing Authorized Shares Forces Unpleasant Tradeoffs

As Delaware's franchise tax scales off a corporation's authorized shares, reducing the number of shares authorized in a corporation's certificate of incorporation reduces a corporation's Delaware franchise tax liability. And corporations have made this move in the past. U.S. Industrial Services reduced its authorized shares in 1999 by 50% "to save on the

57. Thunder Power Holdings, Inc., Preliminary Information Statement (Schedule 14C) (May 2026), https://www.sec.gov/Archives/edgar/data/1912582/000121390026058537/ea0290137-pre14c_thunder.htm [https://perma.cc/RM4W-W6XW].

58. *Id.*

59. *Id.*

60. *DExit Drivers*, *supra* note 1, at 854 (citing to NEV. REV. STAT. § 78.150(4) (2017)); NEV. REV. STAT. § 78.760(4) (2017) ("The Secretary of State shall calculate filing fees pursuant to this section with respect to shares with a par value of less than one-tenth of a cent as if the par value were one-tenth of a cent.").

61. Thunder Power Holdings, Inc., Annual Report (Form 10-K) (Apr. 7, 2026), https://www.sec.gov/Archives/edgar/data/1912582/000121390026041108/ea0285006-10k_thunder.htm [https://perma.cc/HL67-A379].

62. *See* Ofer Eldar, *Can Lax Corporate Law Increase Shareholder Value? Evidence from Nevada*, 61 J. L. & ECON. 555, 597 (2018) (finding that research "suggest[s] that Nevada's promanagerial system may be conducive to the value of the firms that choose to incorporate in Nevada" in part because of "lower costs of corporate governance and less monitoring by shareholders").

annual franchise tax payable by the Corporation to the State of Delaware since the franchise tax is based in part upon the number of shares of capital stock which are authorized by the Corporation's Certificate of Incorporation."[63] Although U.S. Industrial Services noted that the reduction still left room "sufficient for any future transactions or other corporate needs," other corporations may not have as much flexibility.[64]

Reducing authorized shares decreases a corporation's ability to raise money in the future by decreasing the number of shares the corporation may issue. Of course, a corporation may later ask its stockholders to authorize it to amend its charter again to increase its number of authorized shares. Yet this approach will force Delaware-incorporated corporations to bet they will be able to secure additional amendments should a certificate of incorporation without as many authorized shares prove insufficient in the future. Because of the time it takes to secure shareholder approval, some corporations may be unable to take advantage of favorable market conditions for raising capital if they must wait for shareholder approval before acting.

More recently, another smaller company, GeoVax Labs, reduced the shares authorized in its Delaware certificate "from 600,000,000 to 150,000,000" to cut its franchise tax from $200,000 annually to under $100,000.[65] This generated significant savings, but the company also recognized the tradeoff Delaware's franchise tax forces. To cut costs, GeoVax accepted decreased flexibility to issue stock in the future and a possible need to amend again if "it would be in the Company's best interests to issue a number of shares of common stock in excess of the number of shares then authorized."[66]

Remaining in Delaware with a reduced number of authorized shares may generate additional risk if a company becomes popular with retail stockholders. Amending a corporate charter to increase the number of authorized shares under Delaware law requires "a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class," to succeed.[67] Companies with significant retail stockholder bases have had proposals to amend their charters fail even when proxy advisory firms recommend in favor, simply because they cannot secure adequate turnout.[68]

Consider Plug Power's experience as an example.[69] It proposed three charter amendments that needed to pass by a majority of the outstanding shares.[70] All three failed despite

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63. U.S. Indus. Servs., Inc., Current Report (Form 8-K) (Jan. 10, 2000), https://www.sec.gov/Archives/edgar/data/855424/000095012000000007/0000950120-00-000007.txt [https://perma.cc/NU8Q-W9MS].

64. *Id.*

65. GeoVax Labs, Inc., Definitive Proxy Statement (Schedule 14A) (Nov. 27, 2023), https://www.sec.gov/Archives/edgar/data/832489/000143774923033055/govx20231120_def14a.htm [https://perma.cc/M54J-CBEJ].

66. *Id.*

67. DEL. CODE ANN. tit. 8, § 242(b)(1) (2024).

68. *See* Stephen M. Bainbridge, *Director Primacy and Shareholder Disempowerment*, 119 HARV. L. REV. 1735, 1745 (2006) (explaining that shareholders are often rationally apathetic and fail to participate in governance decisions).

69. Plug Power Inc., Current Report (Form 8-K), Item 5.07 (July 9, 2025), https://www.sec.gov/Archives/edgar/data/1093691/000110465925066527/tm2520053d2_8k.htm [https://perma.cc/XNU5-LMXW].

70. *Id.*

securing substantial majorities of the votes cast.[71] In contrast, if Plug Power were a Nevada corporation today, winning a majority of the votes cast would be sufficient to increase its number of authorized shares.[72]

B. DExit as Expense Management

Smaller public companies also use DExit to cut expenses while maintaining flexibility. Recently, Gaxos.ai simultaneously proposed an authorized share reduction for its Delaware certificate and an exit to Nevada.[73] It noted that under its current capital structure, Delaware would extract $200,000 annually from it and proposed reducing authorized shares.[74] At the same time, it proposed shifting to Nevada to bring its overall fee burden down to under a thousand dollars.[75] It also noted that shifting to Nevada incorporation would offer other benefits, including the protection of Nevada's statutory business judgment rule.[76]

Notably, Gaxos.ai's proposed Nevada articles of incorporation gave Gaxos.ai more flexibility by allowing it to maintain its then-current level of authorized shares without the reduction it proposed were it to remain a Delaware incorporated entity.[77]

In practice, many corporations might prefer to take the Gaxos.ai dual-track approach to reduce expenses. Although a DExit might be the superior cost-reduction strategy and also preserve flexibility to issue additional stock, some institutional investors might prefer maintaining Delaware incorporation over the savings generated by shifting to a different jurisdiction for other reasons.[78] Presenting an option to reduce authorized shares simultaneously offers a way to achieve a partial franchise tax reduction even if DExit fails and

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71. *Id.* ("As the Authorized Share Increase Proposal, the Class Vote Amendment Proposal and the Officer Exculpation Amendment Proposal each failed to receive the affirmative vote of a majority of shares outstanding entitled to vote on each such matter, such proposals were not approved.").

72. *See* NEV. REV. STAT. § 78.390(1) (2025); Memorandum from the Exec. Comm. of the Bus. Law Section to Assembly Judiciary Comm. 2 (Feb. 27, 2025) https://www.leg.state.nv.us/App/NELIS/REL/83rd2025/ExhibitDocument/OpenExhibitDocument?exhibitId=72371&fileDownloadName=AB239_0303_buslawsec_sttbarofNV_billsummary.pdf [https://perma.cc/T3U2-278U] (explaining that the amendment to authorize a majority vote for public companies authorizing more shares "addresses a common issue for publicly-traded corporations relating to the insufficiency of authorized shares for capital raising needs").

73. Gaxos.ai Inc., Definitive Proxy Statement (Schedule 14A) (Nov. 19, 2024), https://www.sec.gov/Archives/edgar/data/1895618/000121390024099789/ea0217839-03.htm [https://perma.cc/9R22-69XZ].

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* (showing that the total number of authorized shares would not decrease were Gaxos.ai to shift its incorporation to Nevada).

78. *See* BLACKROCK, BLACKROCK INVESTMENT STEWARDSHIP PROXY VOTING GUIDELINES FOR U.S. SECURITIES 22 (2026), https://www.blackrock.com/corporate/literature/publication/blackrock-investment-stewardship-benchmark-guidelines-us.pdf [https://perma.cc/K58G-5CHE] (explaining that BlackRock evaluates reincorporation proposals case by case, including whether the proposal increases or decreases shareholder protections, and may support reincorporation despite diminished shareholder protections only if the overall benefits outweigh the diminished rights); VANGUARD, PROXY VOTING POLICY FOR U.S. PORTFOLIO COMPANIES 15–16 (2026), https://corporate.vanguard.com/content/dam/corp/about-our-funds/pdf/vpm/vpm-proxy-voting-policy-us.pdf [https://perma.cc/V2QK-YLWE] (stating that reincorporation proposals are evaluated case by case based on the relative costs and benefits to the company and shareholders, including changes in regulation, governance, shareholder rights, and potential benefits).

also frames the cost-tradeoff and capital-raising flexibility issue clearly for institutional investors considering votes. Of course, this assumes that the company will be able to persuade enough shareholders to cast votes to meet Delaware's majority of the outstanding standard.

V. Corporations Operating in Texas Already Pay Texas Franchise Taxes

Texas has attracted recent discussion and incorporation activity. Texas taxes corporations doing business within Texas without regard to where the entity incorporates.[79] The distinction discussed here, however, is not unique to Texas. Most states impose entity-level taxes based on business activity conducted within the state regardless of where the corporation is incorporated. Delaware's franchise tax is different because it is imposed on the corporation's legal domicile. In practice, this means that a Delaware corporation with operations, employees, or revenue-generating activity in Texas will owe a Texas franchise tax on taxable margin apportioned to Texas receipts.[80] The Texas tax calculation considers the corporation's margin, the portion to apportion to Texas activities, and statutory deductions and rate provisions.[81]

As a result, corporations generally cannot eliminate activity-based state taxes through reincorporation, but they can eliminate Delaware's domicile-based franchise tax by changing their state of incorporation. Texas provides a particularly useful illustration because many recent reincorporations involve companies with substantial Texas operations. Functionally, Texas taxes corporations that make money and Delaware taxes corporations merely for existing under their corporate charter.

Texas's franchise tax occupies an unusual constitutional position. Because the Texas Constitution prohibits state income taxes, Texas characterizes the levy as a tax on the privilege of doing business rather than a tax on corporate income.[82] Nevertheless, commentators have long observed that the modern margin-based franchise tax functions much like a corporate income tax.[83] The Texas Supreme Court, however, has rejected the argument that the franchise tax operates as an unconstitutional tax on net income.[84]

The structural incentives created by the two systems, therefore, differ sharply. Delaware taxes the decision to maintain a Delaware charter and effectively penalizes capital

79. Tex. Tax Code § 171.001 (2022).

80. *Id.* ("[a] franchise tax is imposed on each taxable entity that does business in this state or that is chartered or organized in this state").

81. *Id.*

82. Tex. Const. art. VIII, § 24.

83. *See* Cynthia M. Ohlenforst, *The New Texas Margin Tax: More Than a Marginal Change to Texas Taxation*, 60 Tax Law. 959, 959–62 (2007) (discussing how the 2006 restructuring of the franchise tax into a margin-based levy—computed as revenue less cost of goods sold or compensation—moved the tax base closer to net income); Jimmy Martens & Amanda Traphagan, *Margin of Error: Fixing the Texas Franchise Tax After Allcat*, 30 J. St Tax'n 37, 37–38 (2012) (contending that the margin tax's income-like structure fueled the constitutional challenges resolved in Allcat and proposing statutory fixes); Scott Drenkard, *The Texas Margin Tax: A Failed Experiment*, Tax Found. (Jan. 14, 2015), https://taxfoundation.org/texas-margin-tax-failed-experiment/ [https://perma.cc/YY64-RVLW] (treating the margin tax as functionally akin to a corporate income tax for purposes of state tax-climate rankings).

84. *In re* Allcat Claims Serv., L.P., 356 S.W.3d 455, 463–69 (Tex. 2011) (orig. proceeding) (holding that the Texas franchise tax does not constitute a tax on the net incomes of natural persons under Tex. Const. art. VIII, § 24).

structure, because liability increases with the number of authorized shares or the value of corporate capital, but ultimately stops growing once the statutory cap is reached. Texas's franchise tax, by contrast, taxes operating success, because the tax base expands as firms generate additional revenue and margin within the state. Like an income tax on individuals, the Texas franchise tax grows as firms become more economically successful within the state.

This distinction is essential when evaluating the long-term economic consequences of franchise taxes. It does not make sense to look at Texas franchise taxes as a perpetuity because Texas taxes will vary substantially from year to year, depending on a corporation's profitability and Texas operations. In contrast, Delaware's franchise tax structure will remain largely constant for many corporations. The relevant policy question is therefore not whether Delaware offers a cheaper franchise tax regime, but whether the governance and legal infrastructure associated with Delaware incorporation justify paying an additional domicile-based tax layered on top of an unavoidable activity-based tax.[85]

Recent reforms in Texas bring the question of whether Delaware's franchise tax is worth it into sharper focus. Texas has created and staffed a business court with judges with substantial expertise and moved to modernize its corporate law.[86]

Beyond that, corporations with substantial Texas operations may also incur additional costs by needing to obtain and use counsel in a jurisdiction distant from their operational hubs.[87] Delaware lawyers are not cheap and will bill by the hour to learn things about Texas-headquartered corporations that a Texas-headquartered firm's local lawyers already know.

VI. CONCLUSION

Ultimately, we believe that Delaware's franchise tax fees are more material for more companies than has been previously appreciated. With other jurisdictions offering alternative bodies of corporate law and specialist courts capable of resolving disputes, the rationale for many firms to remain in Delaware may weaken.

Disentangling the true relative strength of liability-management rationales for firms with substantial stockholders from franchise tax abatement rationales may be impossible. Notably, given Delaware's voting rules for reincorporation and the rational apathy of retail stockholders, some firms may linger longer in Delaware simply because their stockholders will not show up to vote. Controlled firms may be better positioned to marshal the votes necessary to move, even if some may view these moves with reflexive suspicion.

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85. *See* Carliss N. Chatman, *New Corporate Geography: Reframing the Incorporation Decision*, 46 REV. LITIG. (forthcoming) (arguing that incorporation decisions should account for the jurisdictions that generate a firm's operational, regulatory, litigation, employment, contractual, and compliance risks).

86. *See* *Business Court*, TEX. JUD. BRANCH, https://www.txcourts.gov/businesscourt/ [https://perma.cc/C8NN-AZGG].

87. *See* Chatman, *supra* note 83.