

Texas Reincorporation Update

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Today's Presenters



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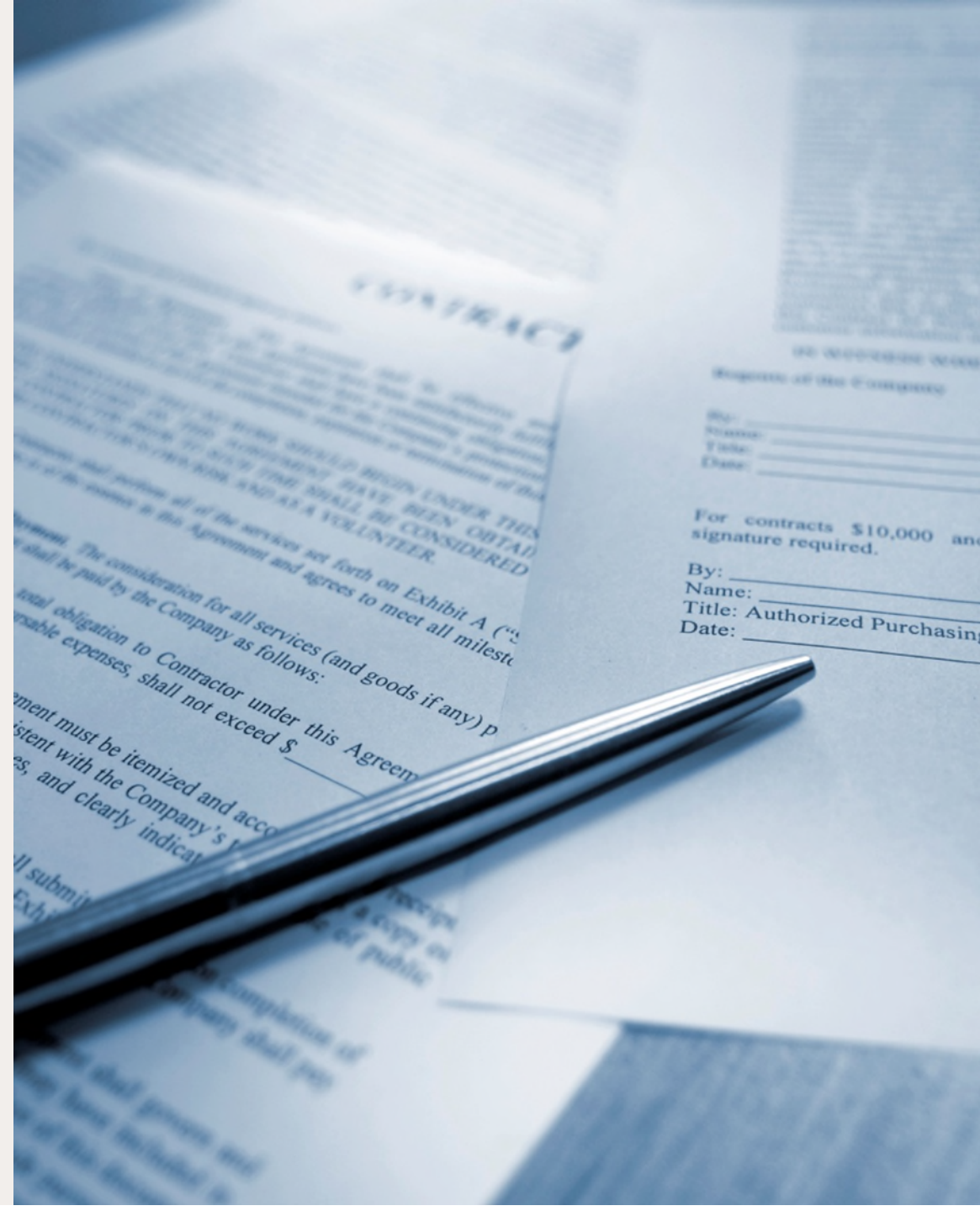
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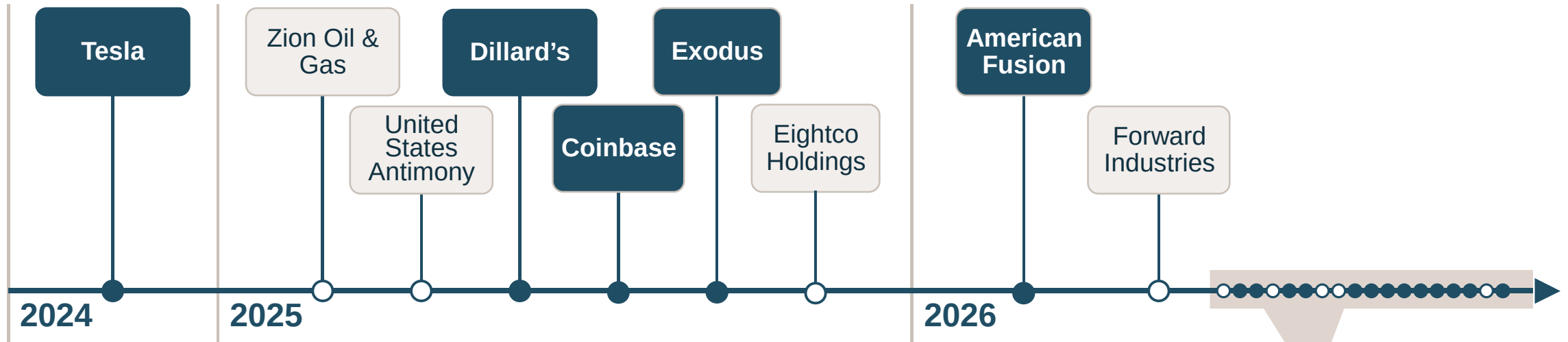
Audience Questions

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Overview and State of Play



Texas Reincorporations: 2024 – 2026



Note: Reincorporations are ordered by date of shareholder vote or consent. The timeline is for illustrative purposes and is not necessarily to scale.

1 reincorporation in 2024

6 reincorporations in 2025

20 reincorporations in 2026 (to date)

3 reincorporation proposals failed

Median Support: ~65%

● Controlled or founder-led

○ Not controlled or founder-led

*Texas Capital Bancshares, Weatherford International and Archer Aviation also proposed reincorporating to Texas in 2026, but those proposals did not pass.

Delaware v. Texas Highlights

Topic	Delaware	Texas
Pro-Business Jurisdiction	 Long seen as preferred forum due to its predictability and expertise; some recent decisions have called this into doubt.	 While the track record is short, Texas is demonstrating clear commitment to attracting companies through pro-business policies.
Business Judgment Rule	 Delaware courts use three different standards of review: (i) the Business Judgment Rule, (ii) Enhanced Scrutiny and (iii) Entire Fairness.	 Texas codified the Business Judgment Rule for public entities (automatically) and private entities that opt into this provision.
Sophisticated Business Courts	 Judiciary experienced in corporate disputes with robust case law; trials can be speedy and are to a judge.	 New Texas Business Court; trials can be speedy; jury trial waiver permitted for internal entity claims; but limited case law.
Derivative Proceedings – Process	 Demand on corporation not required if plaintiffs adequately plead futility; judge determines whether case proceeds through rulings on motions.	 Must demand on corporation; board may submit demand to disinterested directors to determine whether continuation of the proceeding is in the corporation's best interests; their decision is binding unless plaintiff proves interest of directors or unreasonableness of their inquiry.
Derivative Proceeding – Ownership Threshold	 No minimum share ownership percentage.	 Public corporations may adopt a minimum share ownership requirement (not to exceed 3%).
Ownership Threshold to Submit Shareholder Proposals	 None (but SEC proxy rule threshold applies).	 Qualifying corporations may adopt ownership thresholds of at least \$1M in MV or 3% of shares entitled to vote on the proposal; proponent must solicit at least 67% of the vote.
Special Meetings Called by Shareholders	 No statutory right to call a special meeting (but may be granted by the governing documents).	 Statutory right to call a special meeting for any purpose. Charter may set minimum percentage of shares (not less than 10% or greater than 50% of shares).

Common Reasons for Incorporating or Reincorporating in Texas

- Texas' business-friendly mindset
- Nexus to Texas
- Reduce exposure to “opportunistic,” “frivolous” or “wasteful” litigation
- Statutory clarity about, for example:
 - Standard of judicial review—only Business Judgment Rule
 - Standards to be a disinterested director
 - Derivative claim procedures that require demand and defer to decision of disinterested directors
- Texas Business Court
- Ability to provide equivalence in voting and economic rights
- Franchise tax cost savings in Texas
- Texas stock exchanges and potential additional listing benefits

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Lessons Learned from 2026 Proxy Season



Reincorporation Planning Recommendations

Engage advisors early

Begin engaging outside advisors (e.g., legal counsel, proxy solicitors, consultants) early, especially if the company may desire or need to form a special committee
If a controlled corporation, a Board special committee process is often recommended

Start on a clear day

Start reincorporation planning on a “clear day” when no litigation or specific transactions are contemplated (although this can be mitigated through “carving out” pending lawsuits)

Give the Board time

Provide the Board with time to weigh the costs and benefits of reincorporation and act in the best interests of the company and its shareholders and avoid negative implications that may be associated with a condensed timeline

Proactively engage investors

Engage with investors before filing the preliminary proxy statement to determine preferences and address concerns

Develop a company specific story

Investors seek to understand (i) why the Board thinks reincorporation is in the best interest of shareholders and (ii) how a Board reached each specific decision in their governing documents. Company-specific rationales resonate with investors more strongly than generic reasoning.

Carefully draft governing documents

Carefully consider which governance provisions should be included in the Texas governing documents, including addressing broader TBOC besides blockbuster opt-in provisions

Vote Results at a High Level

- During 2026 proxy season, 16 publicly traded companies sought to redomicile from a U.S. jurisdiction to Texas
 - 9 had a shareholder over 20%
 - Of the remaining 7:
 - 2 failed (one received 84% of votes cast but did not meet vote requirements)
 - 3 of these 7 sought to leave a state other than Delaware (Montana, Colorado, New Jersey)
- Average support does not tell the full story
 - Average support of all 16 proposals: 78%
 - Of the 7 without a large shareholder: 70%
 - Excluding Natural Gas Services from these 7: 65%

Investors Take Varying Approaches

- Investors take varying approaches to redomiciling – and every situation has unique factors at play
- During N-PX year 2026, while sample sizes are small, investor views began to take shape:

Unsupportive

Mixed / Case-by-case

Supportive

***Against all proposals
except one***

(i.e., ISS and GL)

***Case-by-case, last year
generally AGAINST***

*(i.e., Geode, BlackRock
Active Stewardship)*

Roughly 50/50

*(i.e., Vanguard Portfolio
Management)*

***Case-by-case, last year
generally FOR***

*(i.e., Vanguard Capital Management,
BlackRock Investment Stewardship,
State Street)*

Supportive

*(i.e., Goldman
Sachs)*

- To assess vote feasibility, companies should:
 1. Map investor vote behavior for their own unique shareholder base
 2. Engage with shareholders proactively
 3. Understand puts and takes of different legal decisions on possible vote outcomes

How Companies Can Appeal to Case-by-Case Investors

- Investors will always assess legal jurisdictions and associated risks/benefits for shareholders and the Company
 - These may be “set” in many regards, but should still be articulated clearly
- Beyond that, investors subjectively assess the tension between shareholder rights and economic benefits
 - Every individual investor weighs these factors, and assesses their respective sliding scales, differently

Open Questions That Can Determine Investor Support

Less likely to receive support

More likely to receive support



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Looking Ahead



Reincorporation Planning Process and Key Determinations

Board Process

Steps in considering a possible reincorporation

- Initial briefing of issues (start early)
- Cadence of additional meetings if board wishes to consider reincorporation
- Special committee role, if desired or needed
- Engage advisors
- Develop charter and bylaws, including decisions about elective provisions

Key Determinations

Decisions to work through alongside the board process

Special meeting of shareholders versus annual meeting

Engage shareholders early, monitor policy developments

Voting outlook and “levers” to pull

Communications strategy

The board must conclude that reincorporation is in the best interests of the company and its stockholders.

What to Monitor



Shareholder Proposals

Rule 14a-8 and interaction with state laws



Mandatory Arbitration

Space X was a first mover; more may follow



ISS and Glass Lewis

Policy updates are unlikely to change

Thank You for Joining!

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Learn more about our perspective on reincorporating and considerations for boards by visiting:
<https://fticommunications.com/dexit-so-you-want-to-leave-delaware-what-to-consider-beyond-the-legalese/>

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