

No. 26-10361

**In the United States Court of Appeals
for the Fifth Circuit**

VLADIMIR GUSINSKY, derivatively on behalf of Nominal Defendant
SOUTHWEST AIRLINES CO.,

Plaintiff-Appellant,

v.

CHRISTOPHER P. REYNOLDS; DAVID CUSH; DAVID J. GRISSIN; DAVID P.
HESS; DOUGLAS H. BROOKS; GREGG A. SARETSKY; LISA M. ATHERTON;
PATRICIA A. WATSON; PIERRE R. BREBER; RAKESH GANGWAL; ROBERT E.
JORDAN; ROBERT L. FORNARO; SARAH FEINBERG; EDUARDO F. CONRADO;
ELAIN MEDOZA; SOUTHWEST AIRLINES CO., Nominal Defendant,

Defendants-Appellees,

STATE OF TEXAS,

Intervenor-Appellee.

On Appeal from the United States District Court for the
Northern District of Texas, Case No. 3:25-cv-01816-K

**BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA
AND TEXAS ASSOCIATION OF BUSINESS AS *AMICI CURIAE*
IN SUPPORT OF DEFENDANTS-APPELLEES**

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CERTIFICATE OF INTERESTED PERSONS

No. 26-10361,
Gusinsky v. Reynolds, et al.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1, in addition to those listed in the parties' Certificates of Interested Persons, have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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INTEREST OF *AMICI CURIAE**

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the Nation's business community.

Texas Association of Business (TAB) is the Texas State Chamber, representing companies of every size and industry before the Texas and federal governments. TAB works vigorously to support business growth in Texas and to maximize employers' opportunities to grow jobs, increase wages, and give back to Texas communities. TAB's former President and CEO provided testimony before both chambers of the Texas legislature in support of the legislation at issue in this case. TAB regularly files

* No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, their members, and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

amicus curiae briefs in cases, like this one, that raise issues of concern to the Texas business community.

The Chamber and TAB have a substantial interest in the outcome of this case. Both organizations seek to promote a predictable, rational, and fair legal environment for their members and for the broader business community. And many of their members are publicly traded corporations that face derivative suits brought by shareholders with only a de minimis interest in the company. The Chamber and TAB therefore have a strong interest in defending legislation that balances shareholders' opportunity to raise and address potential governance issues, on the one hand, with business innovation and economic growth, on the other.

INTRODUCTION

Although derivative suits were once viewed as an important tool for aligning management incentives with shareholder interests, the primary beneficiaries of modern derivative suits aren't shareholders or corporations—they're plaintiffs' lawyers.

To address this misalignment—and balance “economic growth with accountability for shareholders and everyday Texans”—Texas enacted Senate Bill 29. Senate Research Center, Bill Analysis at 1, 89th Leg., R.S. (June 2, 2025), <https://t.ly/ie4nL>. SB 29 empowers publicly traded Texas corporations to prevent de minimis shareholders (who own less than 3 percent of a company's shares) from bringing derivative suits on the corporation's behalf. Tex. Bus. Orgs. Code § 21.552(a)(3).

The ability to impose reasonable ownership thresholds on derivative plaintiffs (who pursue the company's claims on its behalf) enables Texas companies to block rent-seeking plaintiffs' lawyers from bringing meritless strike suits that are nevertheless costly to defend. At the same time, by weeding out strike suits, SB 29 reinvigorates the power of the derivative suit as a meaningful tool for shareholders to enforce directors' and officers' fiduciary obligations.

SB 29 provides corporate directors and officers with “certainty that sound business judgments made in the best interest of shareholders” by shareholder-elected directors “will not be second-guessed by courts” or de minimis shareholders. Press Release, Office of the Texas Governor, *Governor Abbott Signs Pro-Growth Business Legislation into Law* (May 14, 2025), https://t.ly/W_BxX. By placing responsibility to pursue the company’s interests with those who have a meaningful stake in the company’s successes (and failures)—rather than with de minimis shareholders and their attorneys—SB 29 ensures a corporation is “run by its board of directors, not a disgruntled shareholder or the courts.” *In re Schmitz*, 285 S.W.3d 451, 459 (Tex. 2009).

This case presents a textbook example of the misalignment SB 29 targets. In the summer of 2024, Elliott Investment Management invested nearly \$2 billion to acquire an 11 percent stake in Southwest Airlines. In Elliott’s view, Southwest could increase both profits and shareholder value by adopting certain “‘industry-standard commercial initiatives’ like ‘checked bag fees.’” ROA.25 (emphasis omitted). In spring 2025, the company agreed, announcing that it would begin charging bag fees—a “meaningful change” that the company believed

would “create enduring and superior value for shareholders.” ROA.55 (emphasis omitted).

In response, Vladimir Gusinsky—a serial litigant who owns 100 Southwest shares (20 one-millionths of a percent of the company, worth roughly \$3,300)—sued. None of the owners of the other 99.99998 percent of shares sued. Gusinsky—and Gusinsky alone—alleges that Southwest’s directors breached their fiduciary duties by making the business decision to charge bag fees. Gusinsky seeks damages and attorneys’ fees.

In the past, Southwest would’ve been forced to invest significant resources to defend against Gusinsky’s claims—to the detriment of the company and its shareholders. But today, thanks to SB 29, Southwest is able to require shareholders to own at least 3 percent of its shares before pursuing litigation on its behalf. *See* Tex. Bus. Orgs. Code § 21.552(a)(3). Because Gusinsky doesn’t meet that ownership threshold, the district court correctly dismissed his complaint with prejudice. ROA.1630.

This Court should affirm. Enforcing Southwest’s SB 29—authorized bylaws benefits the company, its shareholders, and all Texans.

SUMMARY OF THE ARGUMENT

SB 29 authorizes publicly traded Texas companies to limit derivative actions to shareholders who own at least “three percent of the outstanding shares of the corporation.” Tex. Bus. Orgs. Code § 21.552(a)(3). That modest screen responds to an incentive-alignment problem that has been recognized by courts and confirmed by empirical scholarship.

I. Modern derivative litigation serves primarily to enrich the plaintiffs’ bar at the expense of the corporations and shareholders it was designed to protect. **(A)** The structure and design of modern derivative litigation—including the availability of attorneys’ fees and the ease of identifying a de minimis shareholder plaintiff—make it particularly prone to abuse. And **(B)** the deleterious impact of meritless derivative litigation not only imposes significant financial costs on companies and their shareholders—it also stifles corporate innovation, growth, and development.

II. SB 29 addresses these harms by empowering Texas corporations to block de minimis shareholders from pursuing the corporation’s own claims in court. Imposing a minimum ownership threshold helps ensure a derivative plaintiff’s incentives are more closely

aligned with the interests of the corporation she purports to represent. SB 29 is a sound legislative remedy that’s squarely within Texas’s traditional authority over corporate law and that places important corporate decisions in the hands of a company’s directors and officers—free from second-guessing by courts or the plaintiffs’ bar.

ARGUMENT

I. Derivative litigation has become a lawyer-driven enterprise that extracts value from companies and their shareholders, while stifling corporate growth and innovation.

Modern derivative litigation imposes significant costs on companies and, ultimately, their shareholders. *See* Roberta Romano, *The Shareholder Suit: Litigation Without Foundation?*, 7 J.L. Econ. & Org. 55, 57–58 (1991). And the rise of meritless strike suits brought by de minimis shareholders has all but eliminated the compensatory and accountability benefits traditionally associated with derivative litigation.

A. The structure and design of derivative suits make them particularly susceptible to abuse by an enterprising plaintiffs’ bar.

The very design of derivative litigation makes it ripe for abuse: “Shareholders with tiny investments can bring derivative actions on behalf of a corporation.” Daniel R. Fischel & Michael Bradley, *The Role*

of Liability Rules and the Derivative Suit in Corporate Law: A Theoretical and Empirical Analysis, 71 Cornell L. Rev. 261, 271 (1986).

The U.S. Supreme Court recognized this problem more than seventy-five years ago: derivative suits “sometimes were brought not to redress real wrongs, but to realize upon their nuisance value.” *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 548 (1949). These so-called “strike suits” were “more commonly brought by small and irresponsible” shareholders because they had “less to risk.” *Id.*

The entirely predictable result? The derivative-action device was abused by “people who might be interested in getting quick dollars” who made “charges without regard to their truth” to encourage “corporate managers to settle worthless claims in order to get rid of them.” *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 371 (1966).

1. It is a “fundamental principle of corporate law” that “shareholders with the largest economic stake in a venture have the greatest effect on corporate policy.” Fischel & Bradley, 71 Cornell L. Rev. at 271. This principle makes sense, because these shareholders “will gain the most from good performance and bear most of the costs of bad performance.” *Id.* But derivative litigation turns this principle on its

head—minority shareholders can sue on behalf of the entire company despite having “very little incentive to consider the effect of the action on other shareholders, the supposed beneficiaries, who ultimately bear the costs.” *Id.*

Derivative suits typically cost defendants significantly more than plaintiff-shareholders—and defense costs often exceed the nuisance-value settlements enterprising plaintiffs seek. John C. Coffee, Jr., *The Unfaithful Champion: The Plaintiff as Monitor in Shareholder Litigation*, 48 Law & Contemp. Probs. 5, 17–18 (Summer 1985). This structural asymmetry is exacerbated by the fact that the corporation often gets stuck paying everyone’s attorneys’ fees. “Successful” derivative plaintiffs can recover their fees from the corporation, as can the defendant directors (who are frequently indemnified by their company). So everyone has a reason to settle even frivolous claims—everyone, that is, except the corporation itself—the “absent third party” that “bears the expenses.” *Id.* at 23–25; Fischel & Bradley, 71 Cornell L. Rev. at 271–72.

2. Although the “defects of shareholder litigation have long been known,” derivative actions have become significantly more pervasive in

recent years. Sean J. Griffith, *Correcting Corporate Benefit: How to Fix Shareholder Litigation by Shifting the Doctrine on Fees*, 56 B.C. L. Rev. 1, 2 (2015) (“derivative suits attend every corporate crisis”); *see also* Jessica Erickson, *Corporate Governance in the Courtroom: An Empirical Analysis*, 51 Wm. & Mary L. Rev. 1749, 1760–62 (2010). This rise is due in large part to enterprising plaintiffs’ lawyers. De minimis shareholders themselves “have little incentive to bring a derivative suit”—any payout would correspond to their proportionate ownership interest. Fischel & Bradley, 71 Cornell L. Rev. at 271 n.26. The prospect of a significant attorneys’-fees award, by contrast, provides a strong incentive for the plaintiffs’ bar to “pursue [the suits] regardless.” *Id.* at 271–72.

And that is precisely what happens in practice: “Shareholder lawsuits are frequently instituted because self-interested attorneys urge the shareholders to file them,” despite having “only minimal evidence indicating there is a breach of fiduciary duty.” Chen Lin, Sibor Liu & Gustavo Manso, *Shareholder Litigation and Corporate Innovation* 3 (Feb. 22, 2019), <https://t.ly/zHJwf>. These attorneys “typically work on a contingent basis and are therefore motivated to pursue cases that will produce a settlement that generates a fee,” even if that settlement doesn’t

yield any monetary recovery for the company or its shareholders. Stephen J. Choi, Jessica Erickson & A.C. Pritchard, *Piling On? An Empirical Study of Parallel Derivative Suits*, 14 J. Empirical Legal Stud. 653, 654 (2017); *see also* Griffith, 56 B.C. L. Rev. at 2.

3. Faced with a meritless derivative suit, a company has two equally unappetizing options: settle or litigate. When companies settle, they almost always pay plaintiffs’ attorneys’ fees—even though the companies themselves frequently receive no monetary relief whatsoever. Erickson, 51 Wm. & Mary L. Rev. at 1799 (corporations recover no money more than 40 percent of the time); Romano, 7 J.L. Econ. & Org. at 61 (“awards are paid to attorneys far more frequently than to shareholders”—and fees are sometimes the only relief awarded).

And even when the settlement includes monetary relief to the corporation, it’s often spent entirely on indemnifying the directors’ legal fees. So even though “the corporation nominally received a financial benefit, the attorneys [are] the only ones who end[] up with money in their pockets.” Erickson, 51 Wm. & Mary L. Rev. at 1800; Griffith, 56 B.C. L. Rev. at 2 (“the corporate defendant always pays fees and expenses for both sides”) (emphasis omitted).

When companies litigate, they're often successful—winning dismissal “nearly 70 percent” of the time. Erickson, 51 Wm. & Mary L. Rev. at 1794. That extraordinarily high success rate underscores the frivolous nature of most derivative actions. *See* Romano, 7 J.L. Econ. & Org. at 60 (plaintiffs “have abysmal success in court” with “a success rate of 6 percent of adjudicated cases, but plaintiffs actually won no judgments for damages or equitable relief”); Erickson, 51 Wm. & Mary L. Rev. at 1789 (“None of the 141 public company suits in my study went to trial or ended with a judgment in favor of the plaintiff corporation.”).

And prevailing on a motion to dismiss does nothing to mitigate the significant costs incurred getting to that point—costs that are borne by the company and its shareholders. *See* Griffith, 56 B.C. L. Rev. at 2; Lin, Liu & Manso, *Shareholder Litigation and Corporate Innovation* at 4 (meritless, lawyer-driven derivative actions “tend to only benefit plaintiff[s] attorneys and impede normal business”).

4. Even more problematic are so-called follow-on derivative suits. A cottage industry has developed around monitoring securities class actions and using those allegations as the basis of a separate derivative suit. *See* Laarni T. Bulan & Matthew Davis, *Parallel*

Derivative Action Settlement Outcomes: 2023 Review and Analysis 1 (Cornerstone Rsch. 2023), <https://t.ly/4GYsa> (it’s “not uncommon for derivative plaintiffs to allege injury to the corporation as a result of” the misconduct alleged in the parallel securities suit).

In recent years, these follow-on derivative suits have become increasingly common—and increasingly lucrative. Between 2019 and 2023, nearly half of the securities class actions that settled had a “parallel derivative action.” Bulan & Davis, *Parallel Derivative Action* at 1. And the median attorneys’ fee award in those follow-on actions with monetary settlements: nearly \$3 million. *Id.* at 2.

But more lawsuits don’t equal better outcomes. Empirical research indicates that “parallel [derivative] suits typically result in poorer quality settlements than securities class actions, undermining the possibility that parallel suits offer meaningful additional relief to the victims of corporate misconduct.” Choi, Erickson & Pritchard, 14 J. Empirical Legal Stud. at 654–55.

Nor do these parallel suits serve the purpose of ensuring management accountability. Derivative suits “simply piggyback on what the government (or perhaps even the media) already has uncovered and

investigated.” Kenneth B. Davis, *The Forgotten Derivative Suit*, 61 Vand. L. Rev. 387, 417 (2008). “[V]irtually none” involves the plaintiff’s attorney uncovering a violation. *Id.* at 417 n.157.

What’s more, the recent upward trend in large derivative settlements only further incentivizes plaintiffs’ firms to challenge every big-dollar contract, compensation package, and strategic business decision that a company makes—regardless of the merits—in the hopes of receiving a large attorneys’-fees payout (and for little effort at that). *See Choi, Erickson & Pritchard*, 14 J. Empirical Legal Stud. at 655 (finding that the “vast majority” of derivative action settlements involved corporate governance reforms and no monetary recovery, and that such settlements aren’t “the product of extensive work by attorneys, but [are] instead being used to justify fees”).

Even worse, as the volume of meritless derivative suits increases, their ability to effectively deter corporate wrongdoing decreases because it becomes impossible to separate the signal from the noise. *See Griffith*, 56 B.C. L. Rev. at 26 (the “common perception that such claims lack merit . . . diminishes the reputational impact of being made to defend such a

suit”). The result is a system of derivative litigation that provides neither compensation nor accountability.

In practice, “the real party in interest” in derivative litigation isn’t the company or its shareholders—it’s “the attorney.” Fischel & Bradley, 71 Cornell L. Rev. at 271 n.26.

B. Meritless derivative suits stifle corporate growth and innovation without any benefit to shareholders.

The costs of dealing with meritless suits add up. Rather than deterring corporate misconduct, the specter of modern derivative litigation serves instead to chill directors from innovating and taking the risks that build successful businesses. *See generally* Lin, Liu & Manso, *Shareholder Litigation and Corporate Innovation*.

Board members know that any significant decision—from business strategy to executive compensation to mergers and acquisitions—exposes the company and its directors to attorney-driven derivative litigation brought by de minimis shareholders. *See* Lin, Liu & Manso, *Shareholder Litigation and Corporate Innovation* at 3–4 & n.6. And this threat of suit (coupled with ever-increasing costs of litigation) makes it more likely that corporate managers will “play it safe” and not take any business risks—regardless of the merit of the underlying litigation. *Id.* at 4.

Managers already “have a tendency to avoid risk because they cannot diversify the value of their human capital.” Fischel & Bradley, 71 Cornell L. Rev. at 265–66. Shareholders, meanwhile, generally want “managers to accept all positive net present value projects, even those that are risky,” since they can easily diversify themselves through capital markets. *Id.* at 266. Constant derivative litigation further exacerbates this misalignment of risk tolerance, to the detriment of shareholders.

The result is a system that disincentivizes good-faith directors from pursuing positive-value projects—to the detriment of the corporation and its shareholders—because they know a costly (albeit meritless) derivative suit will follow. At the same time, the threat of derivative litigation doesn’t deter misconduct by unscrupulous directors because they know that (1) the “vast majority” of suits settle for strike value, (2) their defense costs will be covered by the corporation, and (3) they’re unlikely to face any reputational consequences from being named as defendant given the widespread perception that such suits are meritless. *See* Griffith, 56 B.C. L. Rev. at 2, 26.

So modern derivative litigation stifles growth and innovation without providing any increase in accountability.

II. SB 29 empowers companies to restrict derivative suits to only those shareholders with real skin in the game.

With SB 29, the Texas legislature responded to the incentive-alignment problems created by modern derivative litigation, which negatively impacts business growth and innovation.

Before SB 29, any shareholder—even shareholders with as little as one share in a corporation—could bring a derivative suit on behalf of the company. Now, Texas corporations can limit who can sue in the corporation’s name to shareholders who have a meaningful stake (at least 3 percent) in the company. *See* Tex. Bus. Orgs. Code § 21.552(a)(3). That means only those with real skin in the game can sue on the company’s behalf.¹

That was exactly the Texas legislature’s design. By narrowing the pool of shareholders who can sue on the company’s behalf to those who have a substantial stake in a company’s success, SB 29 ensures that potential shareholder plaintiffs have the right incentives—like looking out for the company and its shareholders—when bringing these suits. As

¹ By way of comparison, many countries in continental Europe also require shareholders to meet minimum ownership thresholds—between 1 and 10 percent—to bring derivative actions. *See* Martin Gelter, *Why Do Shareholder Derivative Suits Remain Rare in Continental Europe?*, 37 Brook. J. Int’l L. 843, 859 tbl. 1 (2012).

the bill’s sponsor, Senator Hughes, explained, SB 29 permits corporations to stave off “frivolous claims”—“letting [business] leaders focus on growth and not litigation.” *Hearing on SB 29 Before the S. Comm. on State Affairs*, 89th Leg., R.S. at 3:18:44–50 (Mar. 10, 2025), <https://t.ly/HnLN3> (statement of Sen. Hughes).

SB 29 also reinvigorates the power of the derivative suit to serve its original purpose—promoting accountability. The meritless derivative suit has become like the boy who cried wolf, causing the tool’s deterrent effect to wither away with its reputation. *See* Griffith, 56 B.C. L. Rev. at 26. SB 29’s realignment of interests and reduction of meritless suits restores the tool’s credibility as a means of deterring misconduct.

Proponents rightly predicted that these benefits would “strengthen[] Texas’ position as a global center for capital formation” by balancing “economic growth with investor confidence” and making Texas “a national model for innovation-driven policy.” Nasdaq, *Nasdaq Applauds Signing of Senate Bill 29, Strengthening Texas’ Standing as a National Leader in Corporate Governance and Innovation* (May 14, 2025), <https://t.ly/nD2Yj>.

That prediction has already proven true: In just the past year, several major companies—including Dell, Coinbase, Dillard’s, and AGNT (formerly eXp World Holdings)—have reincorporated in Texas and availed themselves of SB 29’s ownership threshold in their governing documents.² Indeed, Coinbase’s then–Chief Legal Officer, Paul Grewal, cited SB 29 as one of the driving catalysts for the company’s move, observing that it “rightly empowers directors and officers to make the business decisions they need to innovate.” Paul Grewal, *Why Coinbase Is Leaving Delaware for Texas*, Wall St. J. (Nov. 12, 2025).

Corporations already incorporated in Texas have benefited, too. In addition to Southwest, Texas corporations like Tesla, CenterPoint Energy, Rush Enterprises, and Service Corporation International have amended their governing documents to include a 3 percent threshold—to realign incentives and reduce meritless derivative suits.³

² See, e.g., Dell Technologies, Inc., *Form 8-K Current Report 2* (June 25, 2026) (reporting Texas move and adoption of 3 percent threshold for shareholder derivative suits); Coinbase Global, Inc., *Form 8-K Current Report 1*, 17 (Dec. 15, 2025) (same); Dillard’s, Inc., *Form 8-K Current Report 2*, 15 (Aug. 19, 2025) (same); AGNT, Inc., *Form 8-K Current Report 2–3*, 34 (June 8, 2026) (same).

³ See Tesla, Inc., *Form 8-K Current Report 2* (May 15, 2025); CenterPoint Energy, Inc., *Form 8-K Current Report 2* (Sept. 25, 2025); Rush Enterprises, Inc., *Form 8-K Current Report 2* (Dec. 1, 2025); Service Corporation International, *Form 8-K Current Report 2* (Aug. 6, 2025).

To be clear, SB 29 neither shields corporate misfeasance nor closes the courthouse door. It empowers a company to address the principal-agent problem that pervades modern derivative litigation by requiring shareholders who sue on the company's behalf to have meaningful skin in the game. And SB 29 expressly permits shareholders to pool their holdings to meet the ownership threshold, which ensures that derivative suits that have meaningful support among the shareholder base aren't foreclosed. Tex. Bus. Orgs. Code §§ 21.551(2)(C), 21.552(a)(3) (defining "shareholder" to include two or more shareholders acting in concert with respect to a derivative suit). As a result, SB 29 doesn't eliminate potentially meritorious derivative actions; it helps companies align incentives by weeding out meritless, plaintiffs' bar-driven strike suits brought by de minimis shareholders.

Nor is SB 29 particularly novel. Since the Founding, corporate law has been the dominion of the States. *See CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89–90 (1987) ("No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations.") (citing *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 636 (1819)). And state legislatures have long

attempted to refine and adjust the contours of derivative litigation to ensure it benefits companies and their shareholders.

For example, more than seven decades ago, the U.S. Supreme Court upheld a New Jersey statute that required derivative plaintiffs who held less than 5 percent of a company's shares to post security that would cover the defense costs and attorneys' fees. *Cohen*, 337 U.S. at 543–45. The *Cohen* Court rejected the plaintiff's Contract Clause challenge, reasoning that the "legislature of a state has wide powers" to regulate "the stockholder's derivative action" and that the suit ultimately belongs to "the corporation." *Id.* at 549, 551. So too here. Although Gusinsky's name is on the caption, the claim belongs to Southwest—a Texas corporation that is entitled to the State's protective measures against meritless litigation that is certain to harm its shareholders.⁴

SB 29's 3 percent threshold is a modest yet important change that advances economic flourishing for companies and shareholders—allowing them to reap their hard-earned rewards and contribute to the

⁴ Nothing in *Berk v. Choy*, 607 U.S. 187 (2026), limits *Cohen*'s holding. *Contra* Gusinsky Br. 36–38. In *Cohen*, as here, the state law at issue addressed the issue of who can bring a derivative suit—and that's a matter that's unaddressed by any federal rule. *See* 337 U.S. at 543.

State and nationwide economies, rather than lining attorneys' pockets. SB 29 benefits all Texans and serves as a model for other states that seek to grow and innovate.

* * *

SB 29 acts as a check on meritless, lawyer-driven derivative suits—and one that's sorely needed. With practically no cost to bring suit, a shareholder with nearly no interest in a company has the power to subject the company (and its shareholders) to costly, frivolous litigation over any even arguably significant decision the company makes—acquisitions, changes in leadership, or even shifts in business strategy. The only winners are plaintiffs' attorneys, who recover exorbitant fees—while shareholders receive next to nothing, and the company ends up picking up everyone's tab. And the mere threat of shareholder derivative suits alone has a chilling effect that stifles business innovation but does little to discourage genuine misconduct.

This suit is precisely the type of case SB 29 was designed to end: a meritless, lawyer-driven suit nominally on behalf of the company brought by a single shareholder who owns less than 1/1,000th of a percent of the company. As the district court rightly held, dismissal was required under

the plain text of SB 29 and Southwest's bylaws. Affirming that judgment will benefit the company, the owners of the remaining 99.99998 percent of its shares, and Texans more broadly.

CONCLUSION

For these reasons, this Court should enforce SB 29 and Southwest's bylaws by affirming the district court's dismissal of Gusinsky's suit.

Dated: September 18, 2026

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CERTIFICATE OF SERVICE

I certify that, on September 18, 2026, a true and correct copy of this brief was served via CM/ECF on all counsel of record.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it was prepared in 14-point New Century Schoolbook, a proportionally spaced typeface, using Microsoft Word for Microsoft 365. This brief complies with the type-volume limitation of Rule 29(a)(5) because it contains 4,250 words, excluding the parts exempted by Rule 32(f).

I further certify that (1) any required privacy redactions have been made, (2) the electronic submission of this document is an exact copy of any corresponding paper document, and (3) the document has been scanned for viruses with the most recent version of a commercial virus-scanning program and is free of viruses. *See* 5th Cir. R. 25.2.1, 25.2.13.

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