

GIBSON DUNN

Appellate and Constitutional Law Update

March 20, 2026

## Federal Court Enforces Texas SB 29 To Bar Derivative Suits By De Minimis Shareholder

*Gusinsky v. Reynolds, et al.*, No. 3:25-cv-01816-K – Decided March 17, 2026

**The U.S. District Court for the Northern District of Texas dismissed a case against Southwest Airlines’ Directors, holding that Texas Senate Bill 29 validly bars shareholder derivative suits brought by investors who fail to meet a company’s ownership threshold.**

*“Because [Plaintiff] falls far below [SB 29’s ownership] threshold . . . Plaintiff’s claims . . . are barred as a matter of law.”*

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### Background:

Plaintiff Vladimir Gusinsky, who owns just 100 shares of Southwest Airlines stock (out of approx. 491 million), brought a derivative suit against Southwest’s board of directors following a strategic shift in its business model—the elimination of its long-standing “Bags Fly Free” policy. Gusinsky

alleged that the directors breached their fiduciary duties by adopting this change.

But Gusinsky faced a new hurdle: between the time he sent his demand letter and the time he filed suit, Southwest amended its bylaws to bar derivative actions by shareholders who own less than 3 percent of the company. The basis for amendment to Southwest's bylaws was the effectiveness of a new law—Texas Senate Bill 29, a sweeping overhaul to the Texas Business Organizations Code that codifies the business judgment rule and provides protections for directors and officers of Texas companies. Relevant here, SB 29 expressly authorizes certain Texas companies, like Southwest, to impose minimum stock ownership thresholds (up to 3 percent of shares outstanding) for a shareholder to pursue derivative litigation.

Southwest and its board moved to dismiss Gusinsky's complaint, citing Southwest's recently amended, SB 29-compliant bylaws. Gusinsky argued that the amendment to the bylaws was itself invalid and its adoption was a breach of the directors' fiduciary duties. He also contended that SB 29 violated the Texas constitution and was impermissibly retroactive.

#### **Issue Presented:**

Does Texas SB 29 permit Texas corporations to impose ownership thresholds for shareholders to institute a derivative proceeding on behalf of the corporation (aka derivative suits)?

#### **The Court's Holding:**

Yes. SB 29 authorizes corporations to impose ownership thresholds for shareholders to institute derivative suits by amending their bylaws or certificate of formation—even if they are amended after the shareholder sends a demand letter.

#### **What It Means:**

- Public companies incorporated in Texas now have a clear and judicially validated pathway to significantly limit exposure to shareholder derivative litigation by adopting ownership thresholds in their bylaws or certificate of formation.
- By dismissing the complaint with prejudice, the decision signals that courts will enforce those thresholds strictly and scrutinize plaintiffs' attempts to plead around them.
- After this decision, future constitutional challenges to SB 29—particularly retroactivity and “open courts” arguments—will face an even steeper uphill battle.
- The court's decision underscored that directors' fiduciary duties run to—and derivative claims belong to—the corporation, not individual shareholders. This enduring principle limits shareholders' ability to assert “vested” rights or individualized injury from bylaw amendments.
- The decision reinforces Texas' broader pro-business corporate law environment. Alongside the now-bustling Texas Business Court, the specialized Fifteenth Court of Appeals, and the legislature's codification of the business judgment rule, this decision continues the trend toward Texas as a preferred jurisdiction for incorporation or

corporate governance, particularly for companies seeking to reduce the risk of frivolous litigation associated with shareholder suits.

**In support of the Motion to Dismiss, Gibson Dunn filed an amicus brief on behalf of the United States Chamber of Commerce and Texas Association of Business arguing that SB 29 enables businesses to "protect themselves, and ultimately their shareholders, from the costs of meritless derivative litigation brought by plaintiffs with a near infinitesimal interest in the company."**

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