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Surrender in the Forum Selection Bylaw Battle

Earlier this month, the stockholder plaintiffs who unsuccessfully challenged the legality of forum selection bylaws in the Court of Chancery dropped their appeal to the Delaware Supreme Court. This capitulation leaves Chancellor Strine's well-reasoned June 2013 decision in the [Chevron case](#)—holding that directors have the power and authority to adopt bylaws limiting the courts in which stockholder internal-affairs litigation may be filed—as the last word on the subject. Affirmance by the Supreme Court was widely expected. That would have been a welcome answer to those who still harbor doubt on the issue. The plaintiffs' decision to dismiss their appeal only underscores the incontestability of the Chancellor's ruling. And that surrender should not diminish the significant advance that the forum selection bylaw represents as a potential solution to the [epidemic of duplicative, multi-jurisdictional stockholder litigation](#).

It is now plain that board-adopted forum selection bylaws are valid and enforceable under Delaware law. In his opinion, the Chancellor stressed that Delaware directors have broad statutory authority to adopt bylaws that they believe serve their corporations' interests, and he concluded that this power extends to regulating the forum for intracorporate litigation. As a matter of federal constitutional law, this rule of Delaware law is entitled to full faith and credit in courts everywhere in the union. Although the Chancellor's ruling recognizes that the case-by-case use of such bylaws remains subject to situational reasonableness review (much like any other contractual forum selection clause), that limited check does not impair the bylaw's utility in combatting duplicative, multi-forum stockholder litigation, especially in the context of wasteful suits challenging mergers and acquisitions.

Curbing such abusive litigation has important practical and doctrinal benefits and no recognizable deficits. Most fundamental from a law-development perspective, centering cases about Delaware corporate law in Delaware courts will allow those courts to advance and refine legal principles that govern the affairs of corporations and stockholders of Delaware companies. The same benefit accrues equally to other states whose corporations may likewise wish to protect themselves against multijurisdictional stockholder litigation if their governing statutes so allow. With the Chancellor's *Chevron* ruling undisturbed, we reiterate our recommendation that all corporations consider with care whether to adopt a forum selection bylaw.

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