

## **The Death of Fee-Shifting Bylaws**

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This paper examines the effects of Delaware's 2015 ban on fee-shifting provisions in corporate charters and bylaws, a significant legislative intervention in corporate law aimed at curbing managerial powers. The Delaware Supreme Court had approved these provisions just one year later as part of a series of measures aimed at curbing shareholder litigation. Because of their perceived substantial potential to reduce wasteful litigation, the Delaware legislature's ban led many to predict an exodus of corporations from Delaware and the continued spread of fee-shifting provisions in other states.

Contrary to these predictions, this study finds that the ban did not trigger a significant departure of corporations from Delaware. More importantly, it also documents a sudden decline in the adoption of fee-shifting provisions outside Delaware, where most states did not enact similar prohibitions. The paper argues that this decline is most likely due to a spillover effect: Adoptions declined not because Delaware's ban on fee-shifting provisions coincided with a shift in market sentiment towards these provisions, but because this ban stymied their adoption nationwide. The paper explores the mechanisms through which Delaware's corporate law influences governance practices elsewhere, including shareholder empowerment and law firms' reluctance to recommend provisions that have been outlawed in Delaware. It concludes that Delaware's legal leadership might be able to set informal norms that influence the behavior of important gatekeepers and other actors in the corporate governance ecosystem, effectively constraining the actions space of managers of corporations incorporated elsewhere.

By exploring these mechanisms, the paper contributes to a deeper understanding of the forces that shape corporate governance practices in the United States. It offers insights into the ways Delaware's rules affect corporate governance practices that subsequently reverberate throughout the U.S. corporate landscape. Besides exploring important and previously overlooked aspects about Delaware's role as a standard setter in today's corporate law world, it also adds to our understanding of the diffusion of corporate governance innovations and regulatory competition. Additionally, the paper demonstrates the potential of artificial intelligence tools, such as large language models, to revolutionize empirical legal research by automating the extraction of legally significant provisions from corporate documents, allowing researchers to investigate previously underexplored questions at scale.