

# California Supreme Court Saves Delaware Forum Selection Clauses in Corporate Certificates of Incorporation

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On July 21, 2025, the California Supreme Court issued a significant decision clarifying that a forum selection clause in a company's certificate of incorporation is not unenforceable simply because the selected forum (here, the Delaware Court of Chancery) does not provide the right to a jury trial.

In [EpicentRx, Inc. v. Superior Court](#), the California Supreme Court reversed the Court of Appeal, holding that the mere unavailability of a jury trial in the chosen forum does not, by itself, render forum selection clauses unenforceable under California public policy. The Supreme Court explained that while "courts may properly consider whether enforcement of a forum selection clause would violate public policy," "California's strong public policy protects the jury trial right in California courts, not elsewhere." Having so held, the Supreme Court remanded the matter for the court below to consider, in the first instance, "plaintiff's other arguments against enforcement of the forum selection clause, such as the manner of its adoption as part of the corporation's certificate of incorporation and bylaws."

## Background

A minority stockholder filed suit against a Delaware-incorporated biotechnology company, EpicentRx, its stockholder and a number of individuals, alleging breach of contract, fraudulent concealment, promissory fraud, breach of fiduciary duty and unfair business practices. The defendants moved to dismiss the action on forum non conveniens grounds, citing mandatory forum selection clauses in EpicentRx's certificate of incorporation and bylaws requiring that certain stockholder actions be brought in the Delaware Court of Chancery.

The trial court and Court of Appeal declined to enforce the forum selection clauses, reasoning that because some of the plaintiff's claims were legal (not equitable), enforcing the forum selection clauses would deny the plaintiff the right to a jury trial, which would be available in California but not the Delaware Court of Chancery. The trial court likened forum selection clauses to predispute jury trial waivers, which are invalid under California law. The Court of Appeal then upheld the trial court's ruling, finding that the defendants failed to meet their burden of showing that litigating in the Chancery Court would not diminish the plaintiff's substantive rights under California law.

## Supreme Court analysis

The California Supreme Court disagreed with the lower courts' approach, emphasizing several key principles.

**First**, the Supreme Court reaffirmed that "forum selection clauses serve vital commercial purposes" and are generally enforceable unless doing so would contravene a "strong or fundamental" California public policy. Indeed, as [the US Supreme Court has explained](#), "the enforcement of valid forum-selection clauses, bargained for by the parties, protects their legitimate expectations and furthers vital interests of the justice system." (Citation omitted.)

**Second**, at the same time, the Supreme Court noted that the California legislature has expressly prohibited the enforcement of forum selection clauses in specific contexts, including, for example, under California's franchise, consumer and labor laws. However, the plaintiff did not argue any of these statutes applied here.

**Third**, the Supreme Court disagreed with the plaintiff's argument that the forum selection clauses violate California's strong public policy in favor of jury trials, as enshrined in the state constitution. The court recognized and rejected the far-reaching implication of the plaintiff's theory, which would permit a litigant to circumvent an agreement to litigate in a different forum if it asserts the right to a jury trial and demonstrates impairment of that right. The court explained that the right to a jury trial applies to proceedings in California courts, not to litigation in other forums. Because of this, the unavailability of a jury trial in another forum does not, by itself, violate California public policy. Relatedly, the court expressly disapproved of prior decisions, including *Handoush v. Lease Finance Group, LLC*, 41 Cal. App. 5th 729 (2019), to the extent they equated forum selection clauses with predispute jury trial waivers, noting that "California does not have a strong public policy against forum selection clauses or agreements to litigate in a jurisdiction that does not recognize the same civil jury trial right." The court clarified that a forum selection clause "reflects **where** a dispute will be litigated," while

a predispute jury trial waiver “reflects **how** it will be litigated.”

**Finally**, the Supreme Court remanded the matter for further proceedings, leaving open the possibility that the plaintiff’s other arguments against enforcement – e.g., that the forum selection clauses were not freely adopted – could be considered by the lower courts.

## Key takeaways

- The California Supreme Court’s decision provides a greater degree of certainty that California courts will not find a forum selection clause unenforceable simply because the selected forum does not provide the right to a jury trial.
- California’s public policy favoring the right to a jury trial applies only to proceedings in California courts, and the deprivation of a jury trial right in a different selected forum does not, standing alone, violate California public policy.
- The Supreme Court made clear, however, that forum selection clauses may still be invalidated if they contravene a “strong or fundamental public policy of this state.”
- The Supreme Court also did not foreclose the possibility that California’s policy in favor of the right to a jury trial “might be relevant, in combination with other factors, to the enforceability of a forum selection clause in other contexts or under other theories.” Rather, the court held simply that a forum selection clause is not unenforceable “on public policy grounds based solely on the clause’s impact on plaintiff’s jury trial right.”
- Corporations and their counsel should continue to ensure that forum selection clauses are clearly drafted and properly incorporated in governing documents. While the manner of adoption and other factors may still be relevant to enforceability, the California Supreme Court’s decision provides important guidance on the scope of California’s public policy exception with respect to the right to a jury trial.

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