

# Why Do In-State Plaintiffs Invoke Diversity Jurisdiction?

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*The traditional rationale of federal diversity jurisdiction is to protect out-of-state parties from the risk of an appearance of state-court bias in favor of an in-state adversary. Yet a strikingly high percentage—more than 50 percent—of original domestic-diversity cases are filed by in-state plaintiffs. Why these in-state plaintiffs invoke diversity jurisdiction is a question that has largely been ignored in the literature. Drawing on docket data and an original dataset based on responses to a survey sent to more than twelve thousand attorneys who represented in-state plaintiffs in domestic-diversity cases, I find that these plaintiffs can be grouped into roughly three categories. The first category is composed of tort cases, filed by individual plaintiffs against corporate defendants, that are eligible for consolidation with an existing federal multi-district litigation. The second category is composed of in-state corporate plaintiffs represented by attorneys who tend to represent defendants in federal court and who invoke diversity jurisdiction primarily based on perceptions of advantages of federal procedure, efficiencies and conveniences of federal practice, and superior quality of federal court. The third category is composed of in-state plaintiffs represented by attorneys who tend to represent plaintiffs in state court and who invoke diversity jurisdiction to preempt the defendant's likely removal of the case. My findings offer grounds for reforming diversity jurisdiction in more tailored and nuanced ways than have previously been proposed.*

## INTRODUCTION

Congress has long given federal courts diversity jurisdiction to hear cases involving state-law claims when opposing parties are from different states and other requirements are met. The traditional, and current, rationale for federal diversity jurisdiction is to offer a neutral federal forum to avoid any appearance of a risk of bias that a state-court judge or jury might have in favor of an in-state party and against an out-of-state opponent (Burbank 2008; Dodson 2019a).

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The bias rationale has theoretical appeal. Federal judges ostensibly provide more neutral forums (or more appearance of neutrality) for such disputes because they have life tenure, unlike most state judges who are either elected or appointed to terms and thus are accountable to either state officials or the state electorate. In addition, federal jury pools can be drawn in ways that could make federal juries more diverse and less influenced by local prejudices than state juries (Jones 2007).

At the same time, diversity jurisdiction imposes significant costs on court systems and parties. Diversity jurisdiction diverts state-law claims away from state courts, which are expected to handle such claims with ease, facility, and authority, and into federal courts, for whom handling such claims is, according to empirical research, likely to be more difficult, taxing, and error prone (Flanders 1980). Federal-court adjudication cannot build authoritative precedent in the development of state law (Kramer 1990). Meanwhile, the federal diversity docket, which has long amounted to around 30 percent of the entire federal docket (Federal Courts Study Committee 1990; US Courts 2019), takes resources and attention away from federal claims (Friendly 1973; Federal Courts Study Committee 1990). And the law of diversity jurisdiction itself presents another layer of legal arguments and potential uncertainties to resolve, leading to more expense and delay for the parties (Rowe 1979).

Because of these costs, diversity jurisdiction has always been controversial. That controversy—from the founding of the Constitution to today—has focused centrally on whether the bias rationale is a sufficient justification for the costs that diversity jurisdiction imposes (Dodson 2019a). Congress has attempted to moderate the controversy by imposing an amount-in-controversy limit on diversity cases, which denies diversity jurisdiction to cases that fall below a certain valuation. In addition, Congress has restricted the ability of in-state defendants from removing, based on diversity jurisdiction, a case filed in state court. The restriction is grounded on the assumption that an in-state party need not invoke diversity jurisdiction to protect against state bias because any state bias is presumed to run in that in-state defendant's favor. But Congress has not—at least not for many years—restricted in-state plaintiffs (ISPs) from invoking diversity jurisdiction when suing out-of-state defendants. Thus, the law allows ISPs to invoke diversity jurisdiction and impose its costs without any obvious benefit of alleviating out-of-state bias.

One might think, given the out-of-state-bias rationale of diversity jurisdiction, that ISPs rarely would invoke diversity jurisdiction. After all, ISPs could invoke a state court to take advantage of the presumed state bias in their favor. History, however, tells a different story. For decades, thousands of ISPs a year, making up sizeable percentages of the diversity docket, have invoked diversity jurisdiction (American Law Institute 1969; National Center for State Courts 1989; Flango 1995). In 2019, for example, of all original or removed domestic-diversity cases filed by represented plaintiffs, 27 percent were filed in federal court by ISPs. Using a different denominator, of all original domestic-diversity cases filed by represented plaintiffs, more than 51 percent were filed by ISPs.<sup>1</sup> In other

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1 The figures in this paragraph come from the Magnitude Dataset that I compiled according to the methodology discussed in section 4. That dataset contains 20,818 original and 18,568 removed (totaling 39,386) domestic diversity-jurisdiction cases involving represented plaintiffs. Of those, 10,676 were filed originally in federal court by in-state plaintiffs (ISPs).

words, in 2019, represented ISPs invoked domestic-diversity jurisdiction more often than represented out-of-state plaintiffs did. These percentages are striking.

Because the phenomenon of ISPs invoking diversity jurisdiction is inconsistent with the bias rationale of diversity jurisdiction, diversity reformers have perennially called for eliminating the ability of ISPs to invoke diversity jurisdiction. In 1969, for example, the American Law Institute (1969, 123–24) published a comprehensive study of federal jurisdiction and recommendations for its reform, in which it stated, in particular:

The Institute . . . accepted the proposition . . . that the function of [diversity] jurisdiction is to assure a high level of justice to the traveler or visitor from another state; when a person's involvement with a state is such as to eliminate any real risk of prejudice against him as a stranger and to make it unreasonable to heed any objection he might make to the quality of its judicial system, he should not be permitted to choose a federal forum, but should be required to litigate in the courts of the state. In accordance with this principle, the most far-reaching proposal is to bar a plaintiff from bringing suit in the federal court in his home state simply because his opponent is a citizen of another state.

...

The right of an in-state plaintiff to institute a diversity action against an out-of-state defendant, although it dates back to the first Judiciary Act, is not responsive to any acceptable justification for diversity jurisdiction. The in-stater can hardly be heard to ask the federal government to spare him from litigation in the courts of his own state. Any prejudice which he may fear is not of the kind against which the diversity jurisdiction was intended to protect.

In 1976, the Judicial Conference of the United States (1977) endorsed the institute's proposal to eliminate ISP invocation of diversity jurisdiction. In 1990, the Federal Courts Study Committee (1990, 42) reiterated the recommendation because "[t]he only colorable argument supporting diversity jurisdiction—fear of state court bias against out-of-state litigants—has no force when in-state plaintiffs invoke it." Although Congress has not acted on these proposals, the idea has continued to be on the table ever since.

These calls for elimination of ISP-invoked diversity jurisdiction have come without significant study or understanding of ISP cases. Empirical and experimental studies of diversity jurisdiction and the motivations for invoking it have tended to focus, instead, on the meaningfulness of the bias rationale and on the motivations of out-of-state parties in invoking diversity jurisdiction (Summers 1961–62; Anonymous 1965; Bumiller 1980; Goldman and Marks 1980; Perlstein 1981; Flango 1991; Miller 1992; Federal Judicial Center 2021; Kopko and Devine 2023). Jerry Goldman and Kenneth Marks (1980), for example, intentionally excluded ISPs from their study of the motivations for invoking diversity jurisdiction. Neal Miller (1992) also excluded ISPs from original federal filings.

The failure to focus on ISPs has resulted in a significant gap in the literature on, and the understanding of, diversity jurisdiction. Who are these ISPs who are invoking diversity jurisdiction? Why do they invoke it? And do the answers have normative implications for diversity reform? These questions remain unstudied.

## HYPOTHESES

To answer these questions, I focused on the fact that state and federal courts differ, or are perceived to differ, in ways that are independent of notions of out-of-state bias and that those differences may motivate ISPs to select federal court over state court in diversity-eligible cases.<sup>2</sup> Based on these differences, I hypothesize that ISPs who invoke federal diversity jurisdiction can be roughly separated into three discrete categories.

### **Category 1: ISPs Filing Multi-District-Litigation (MDL)-Eligible Cases, Which Tend to Be Individual ISPs Pursuing Tort Claims against Corporate Defendants, Who Invoke Diversity Jurisdiction because of the Likelihood of Consolidation with the MDL**

Unlike federal courts, state courts are limited in their ability to transfer or join claims, parties, and cases involving interstate disputes (Dodson 2018). States have no interstate-transfer mechanism for consolidating like cases across states (Rowe and Sibley 1986). Federal courts, by contrast, have more flexibility to transfer cases across state lines or to consolidate cases from different states. One particularly important mechanism for consolidation of federal cases is MDL transfer (Burch and Williams 2017; Bradt and Rave 2018). MDL consolidation,<sup>3</sup> obtainable only in federal court, might be valuable for parties in terms of the economies of scale that MDL supplies. MDL consolidation may also be attractive for attorneys who hope for a seat on the plaintiffs' leadership team. Accordingly, ISPs with cases eligible for consolidation with a MDL already pending in federal court likely will be motivated to file in federal court originally because of the likelihood that the case will be consolidated with the MDL. Further, because MDL cases typically are mass torts, ISPs invoking federal diversity jurisdiction in MDL-eligible cases will tend to be individual plaintiffs suing corporate defendants for tort claims.

### **Category 2: Corporate ISPs Represented by Attorneys Who Primarily Defend Businesses in Federal Court Who Invoke Diversity Jurisdiction because of Perceptions of Better Federal-Court Procedure, Efficiency, and Quality**

In non-MDL cases, the literature has theorized and documented other motivations for parties to select federal court, such as to avoid biases based on rural or urban connections, political or ideological affiliations, corporate or individual status, wealth, and race (Goldman and Marks 1980; Miller 1992; Flango 1995; Dodson 2019a).

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<sup>2</sup> The literature tends to refer to parties, rather than their lawyers, even though attorney perceptions and preferences likely play a predominant role in forum choice. The data do not enable reliable separation of client-based motivations from attorney-based motivations, and, as I elaborate below, my survey targets lawyers, not clients. Accordingly, my references to ISPs and other parties necessarily reflects the combined strategy and motivations of the party and the lawyer.

<sup>3</sup> The Joint Panel on Multidistrict Litigation uses the term "centralization" to refer to the transfer, consolidation, and coordination of multi-district litigation (MDL) proceedings. Throughout this article, I use the more common aphorism "consolidation."

Bias-based motivations, however, are likely to be specific to particular cases and geographic regions. By contrast, three other differences between federal and state courts are more generalized and likely to be broadly linked: differences in procedure; perceived differences in efficiency, expense, and convenience; and perceived differences in the quality of federal and state courts.

### ***Procedural Differences***

Since 1938, Congress has permitted federal courts to adopt their own procedural laws. Although state-court procedure often mimics federal procedure (Dodson 2016), residual differences remain and could influence the decision to choose state or federal court (Clopton 2018). As one illustration, the Federal Rules of Evidence set different admissibility standards than state evidence rules.<sup>4</sup> As another, the Federal Rules of Civil Procedure require unanimous jury verdicts, while some states require only a supermajority.<sup>5</sup> Studies have shown that perceptions of procedural differences can motivate forum selection in diversity cases (Summers 1961–62; Anonymous 1965; Goldman and Marks 1980; Flango 1991; Miller 1992; Federal Judicial Center 2021).

### ***Efficiency, Expense, and Convenience***

Attorneys and parties who regularly appear before either state or federal court may find that familiarity with their usual forum provides them conveniences and efficiencies. Survey studies suggest that perceived differences in efficiency, expense, or convenience can motivate parties to select federal court in diversity cases (Summers 1961–62; Anonymous 1965; Bumiller 1980; Goldman and Marks 1980; Perlstein 1981; Flango 1991; Miller 1992; Federal Judicial Center 2021).

### ***Perceived Better Quality of Federal Court***

The prestige and job security of federal court may attract higher-quality candidates for the federal bench; congressional resources may give federal judges more support staff and technology support; and lighter docket loads may give federal judges more time to devote to each case (Shapiro 1977; Posner 1985). Each of these factors may create the impression that federal judges are of better adjudicative quality than state judges (Zambrano 2019). Survey studies have found that perceptions of quality can influence forum selection, sometimes quite strongly. Goldman and Marks (1980) found the quality of judges to be a motivation for 92 percent of the respondents invoking diversity jurisdiction. Victor Flango (1991) found strong motivations based on the perceived

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4 Compare, for example, *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) (adopting an admissibility standard, followed in many states, of whether scientific evidence is “generally accepted” by the scientific community), with, for example, *Daubert v. Merrell Dow Pharma., Inc.*, 509 U.S. 579 (1993) (making, for the federal courts, general acceptance by the scientific community just one of several factors).

5 Compare Federal Rules of Civil Procedure 48(b) (requiring unanimity), with, for example, California Constitution, Art. I § 16 (requiring 3/4).

quality of the judge. And a recent study by the Federal Judicial Center (2021) found that the most important motivation was “judicial personnel,” which typically favored federal court.

No study links these generic motivations to ISPs in diversity cases. To the contrary, the studies in the literature tend to rely on the conventional wisdom that ISPs should prefer state court and that these motivations are more important for the decision of out-of-state defendants to remove cases that ISPs filed initially in state court. No study has tested whether, or when, these motivations might drive ISPs to select federal court in the first instance. I hypothesize that there is a category of ISP for whom these motivations will incentivize invocation of federal court. This category is composed of corporate ISPs represented by attorneys who typically defend businesses in federal court. The reason is historical. From the late 1800s until 1938, corporations—which could access federal diversity jurisdiction more easily because their cross-border activities tended to generate disputes between diverse parties—routinely invoked diversity jurisdiction in a concerted effort to drive federal courts to develop business-friendly substantive law (Purcell 1992). By the 1930s, the lower federal courts, as opposed to the state courts, were seen as pro-corporate (Ball 1933; Purcell 2000). Although *Erie Railroad Co. v. Tompkins* put an end to differences in substantive law between federal and state courts, the perception that federal courts are friendlier to businesses has persisted in modern times (Miller 1992; Flango 1995).<sup>6</sup>

We prefer what we know and sometimes for good reason. Corporations and other businesses are repeat litigants, often as defendants, in federal court. Thus, their attorneys also repeatedly represent corporate defendants in federal court (Flango 1991; Federal Judicial Center 2021). Routine practice before federal court can help drive interpretations of procedural law that favor repeat litigants (Frank 1979; Sabino, Sabino, and Sabino 2017). Routine practice before federal court can breed familiarity with federal court that confers advantages of efficiency and convenience. And litigants with complex cases—also, often, corporations and other businesses—may perceive federal court as being better able to handle the intensity of the case. Thus, I hypothesize that corporate ISPs represented by attorneys who regularly defend businesses in federal court will invoke diversity jurisdiction for reasons of procedure, convenience, and judicial quality.

### Category 3: ISPs Who Invoke Federal Court to Preempt a Defendant’s Right of Removal

An ISP filing a diversity-eligible case might choose federal court to avoid the expense of removal or to eliminate the defendant’s opportunity for judge shopping. The ISP may suspect that the out-of-state defendant will, consistent with the bias rationale behind diversity jurisdiction (or any of the rationales above that might motivate the defendant to prefer federal court), remove a state case to federal court anyway, and so the ISP may file originally in federal court to avoid the delay that removal entails (Gohn and Oliver 1993) and any litigation costs in federal court regarding the propriety of

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<sup>6</sup> *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).

removal. Not all ISPs will be motivated by the prospect of avoiding these costs, but some may be. An ISP may also choose a federal court to stave off judge shopping by the defendant. Filing in state court gives the defendant the opportunity to know who the state judge assigned to the case is. If the defendant likes that judge, the defendant can choose not to remove the case and stay with that judge.<sup>7</sup> But if the defendant dislikes that judge, the defendant can remove the case to federal court, which will assign a new judge. Filing originally in federal court takes this judge-shopping choice away from the defendant. For these reasons, some ISPs may choose to file originally in federal court, not because they see any inherent advantage of federal court but, rather, to preempt the possibility of removal to federal court by the defendant.

## DATA AND METHODS

To understand the magnitude and case characteristics of ISP invocation of diversity jurisdiction, I relied on the Federal Judicial Center's Integrated Database, which contains docket data provided by the federal courts themselves on a broad range of relevant case variables that are useful for inferring motivations and understanding relevant correlations, including county, federal district, federal circuit, removed or original, nature of suit, residence of the parties, date of termination, and case disposition. The Integrated Database is not perfect; some courts code differently from others, some fields have known unreliabilities, coding practices and fields have changed over time, coding may oversimplify or misrepresent complexities in the case, and parties and court staff themselves make mistakes in their description of the cases (Eisenberg and Schlanger 2003; Hadfield 2004). Research suggests, however, that the particular data of interest to me—jurisdiction type, party type, origin, and the like, especially in cases involving represented plaintiffs and spanning just a single calendar year—are both sufficiently reliable in, and most easily obtainable from, the Integrated Database (Eisenberg and Schlanger 2003). Nevertheless, as I explain below, I took other measures to ensure coding reliability. For certain categories, I grouped nature-of-suit codes to minimize coding variability. For MDL identification, I included both a lower bound of MDL cases using solely the MDL transfer code and an upper bound using other case indices of MDL status. I also vetted my database methodology with staff members of the Federal Judicial Center familiar with the Integrated Database to minimize the effect of imperfect coding. Finally, for the survey, I asked respondents to confirm essential conditions of the case, including its origin and jurisdictional basis, making the survey data, in my view, highly reliable.

From the Integrated Database, I downloaded data for all diversity cases filed originally in, or removed to, federal court in 2019. I selected the year 2019 as the most recent filing year unaffected by the COVID-19 pandemic, which caused significant disruptions in court systems nationwide and likely involved unique forum-selection considerations (Kritzer 2022). I excluded cases involving a *pro se* plaintiff, who may not have fully understood the legal requirements or the technical and strategic

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7 Some states do give plaintiffs some right to substitute judges. See, for example, Illinois Compiled Statutes tit. 735 § 5/2-1001(a)(2) (“[e]ach party shall be entitled to one substitution of judge without cause as a matter of right”).

considerations of jurisdictional choice. The precise data-gathering parameters I used are recorded in Appendix A. To isolate cases involving domestic-diversity jurisdiction, I then excluded cases with foreign or nondiverse parties, based on the coding provided by the Integrated Database. The exclusions and filters resulted in 39,386 domestic-diversity cases filed in, or removed to, federal court in the year 2019 and involving a represented plaintiff. I titled this dataset the Magnitude Dataset.

To create a dataset involving only ISPs, I excluded from the Magnitude Dataset cases not involving ISPs, again based on the coding provided by the Integrated Database. That exclusion left me with 29,045 diversity cases filed in, or removed to, federal court in 2019 and involving a represented ISP. I titled this dataset the ISP Dataset. To ensure that the 2019 cases were representative and not themselves affected by circumstances unique to the year 2019, I compared the case demographics of the ISP Dataset against the case demographics of similarly culled cases from 2016–18. I selected 2016–18 as the baseline range to gather sufficient contemporaneous information for a meaningful comparison without expanding so far in the past that the baseline could be tainted by outdated or superseded differences between state and federal courts that would influence forum selection in ways unrepresentative of 2019. The statistical analysis, detailed in Appendix B, suggests that 2019 is representative along the case and party dimensions captured in the data.

The docket datasets are useful for revealing certain inferences about ISP motivations, but, to gather direct evidence of motivations, as I explain below, I created an original dataset of attorney motivations. Starting with the ISP Dataset of 29,045 cases, I removed MDL-eligible cases to bring the dataset to 8,103 original cases and 17,387 removed cases. I removed the MDL-eligible cases because the motivation to join an existing MDL can be confidently inferred from the docket data, and I wanted to isolate non-MDL cases to focus on other motivations. To make the removed dataset manageable for the survey, I used a random-number generator to randomly cull the removed cases down to 8,103 cases. The data thus included all original, non-MDL-eligible domestic-diversity cases filed in 2019 by a represented ISP and a randomized half of all non-MDL-eligible domestic-diversity cases filed in state court by a represented ISP and removed in 2019.

I then obtained the ISP attorneys' e-mail addresses from the case dockets for the 8,103 original cases and for the 8,103 removed cases. Using the Westlaw Dockets database, I selected the first listed attorney with an e-mail address from the plaintiff side. I then de-duplicated the list and kept only one randomized case filed by any given attorney so that each attorney would receive only one survey in order to avoid confusing survey recipients with multiple survey requests and to allow me to equate responses with cases when reporting results. The resulting dataset, titled the Survey Dataset, contained 6,569 original cases and 6,337 removed cases. I e-mailed each attorney using the e-mail format described in Appendix C and included a link to the Qualtrics online version of the survey, which I had beta tested six months prior using four hundred randomized recipients from analogous sets of cases from 2015. Appendix D details the final survey design. I sent two reminder e-mails to attorneys who had not yet responded to the survey. Survey responses were linked to all underlying docket data from the Survey Dataset except party names, docket number, and attorney information, which were delinked to preserve confidentiality and anonymity. In addition, I set the Qualtrics



surveys as anonymized to avoid recording respondent Internet protocol addresses and locational data.

For original cases, 487 e-mails bounced, failed, or were marked as spam; for removed cases, 398 e-mails bounced, failed, or were marked as spam. So, approximately six thousand e-mails were reliably sent in each category. My response rate was slightly above 10 percent, with 626 responses of original cases and 661 responses of removed cases. I then excluded survey responses that did not contain answers through the motivation question (Question 6), whose answers made clear that the case had been miscoded in some way (as Questions 1–3 were designed to do), or whose answers made clear that the attorney surveyed was not the attorney who chose the forum (as a few comments indicated).<sup>8</sup> These exclusions left me with 852 usable responses: 402 in original cases and 450 in removed cases. These response numbers are in line with other attorney-survey studies: Kristin Bumiller (1980) had 861 responses, Jerry Goldman and Kenneth Marks (1980) had 320 responses, and Neal Miller (1992) had 482 responses.

I then cleaned the survey data by reviewing the “other” text and reallocating certain answers to appropriate specified categories. For example, responses to Question 5 that selected “Other” and wrote in “LLC” were converted to “unincorporated entity.” I also treated decedents’ estates as natural persons. I titled the resulting dataset the Response Dataset. Finally, I tested the representativeness of the Response Dataset against the Survey Dataset to reveal any demographic-influenced selection effect in responsiveness. The statistical analysis, detailed in Appendix E, indicates that the responses are representative of the surveyed group in terms of case characteristics recorded in the docket data.

## FINDINGS AND RESULTS

This section reports on the results of the statistical analyses and four findings that support the hypotheses articulated above.

### **MDL Consolidation Is a Significant Motivation for Individual ISPs Suing Corporate Defendants for Tort Claims in MDL-Eligible Cases**

As stated above, in the ISP Dataset, the total number of domestic-diversity cases involving represented ISPs filed in, or removed to, federal court in 2019 was 29,045. Both the original cases and the removed cases contain cases that were eligible to be transferred for consolidation with an existing MDL. The Integrated Database already had coded 2,120 cases as transferred for MDL consolidation. Table 1A sets out the breakdown in numbers and the percentages of cases actually transferred for MDL consolidation. Table 1A shows a lower bound of MDL cases amounting to around 20 percent of diversity filed in federal court by a represented ISP in 2019. Because these

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<sup>8</sup> Interestingly, around a dozen or so removed respondents reported that they filed in state court because they were not sure that either complete diversity or the amount-in-controversy requirement would be met but had no other aversions to federal court. I excluded these, but they suggest a further area of research on forum choice when federal jurisdiction is unclear or unknown.

**TABLE 1A.**  
**MDL transfers in original and removed cases**

	Non-transferred		MDL transferred		Total Count
	Count	Percent (%)	Count	Percent (%)	
Original cases	8,909	80	1,767	20	10,676
Removed cases	18,016	98	353	2	18,369
Total number of cases	26,925		2,120		29,045

**TABLE 1B.**  
**MDL eligibility in original and removed cases**

	Non-MDL		MDL eligible		Total Count
	Count	Percent (%)	Count	Percent (%)	
Original cases	8,103	76	2,573	24	10,676
Removed cases	17,387	95	982	5	18,369
Total number of cases	25,490		3,555		29,045

figures include only those cases actually transferred for consolidation with a MDL, they undercount the number of MDL-eligible cases because some cases otherwise eligible for MDL transfer were dismissed or settled prior to any transfer, others likely were miscoded as ordinary venue transfer, and still others may have been filed directly in the MDL court. To obtain an upper bound, I separately coded as MDL eligible all cases actually MDL transferred (2,120) plus all other cases against MDL defendants (an additional 1,435 cases, the vast bulk of which were coded as dismissed, settled, or ordinary-venue transferred).<sup>9</sup>

This upper bound likely includes some non-MDL cases that happened to be filed against defendants subject to an unrelated MDL, so the true number of MDL-eligible cases is likely between the lower and upper bounds. Thus, together, [Tables 1A](#) and [1B](#) show that around 20–24 percent of diversity cases filed originally in federal court by a represented ISP in 2019 were eligible for MDL transfer. By contrast, only 2–5 percent of diversity cases removed to federal court in 2019 were eligible for MDL transfer. These summary statistics suggest a strong correlation between MDL eligibility and the invocation of federal court by ISPs.

To confirm this correlation, I ran regressions of other case variables, clustered standard errors by district, and controlled for circuit and district. For claim type, I included the seven most prominent claim types, and I consolidated like nature-of-suit

<sup>9</sup> Major MDL cases active in 2019 included 3M, Abbott Labs, Astrazeneca, Boehringer, C. R. Bard, Depuy, Equifax, Ethicon, FCA US, Ford Motor Company, Johnson & Johnson, Juul, Monsanto, Purdue, and Zimmer.

**TABLE 1C.**  
**Regressions of case variables for original versus removed cases**

Variables	Originally filed	
	Linear	Logit
Individual versus corporation	−0.101*** (0.0121)	0.529*** (0.0605)
Corporation versus individual	0.215*** (0.0318)	0.971*** (0.159)
Corporation versus corporation	0.0606*** (0.0225)	0.254** (0.0987)
Insurance	−0.115*** (0.0339)	−0.605*** (0.173)
Contract	0.0798** (0.0313)	0.335** (0.144)
Franchise	0.325*** (0.0398)	1.607*** (0.234)
Foreclosure	−0.175*** (0.0297)	−1.202*** (0.209)
Other fraud	0.316*** (0.0511)	1.502*** (0.266)
Tort	−0.0426 (0.0371)	−0.219 (0.184)
Employment	−0.119*** (0.0265)	−0.742*** (0.156)
<b>MDL eligibility</b>	<b>0.416***</b> <b>(0.0469)</b>	<b>1.946***</b> <b>(0.236)</b>
Constant	0.657*** (0.0294)	0.834*** (0.152)
Observations	28,997	28,997
Adjusted R-squared	0.201	
Circuit controls	Yes	Yes
District controls	Yes	Yes

Notes: SE clustered by district in parentheses. \*  $p < 0.05$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$ .

codes for tort (245, 310–68, and 380–85) and employment (442 and 790). [Table 1C](#) sets out the regressions, with the results for the MDL-eligibility variable in bold font. The regressions in [Table 1C](#) are likely reliable for their significance and direction and for their implications for correlations, but they should not be overinterpreted as supporting causality, and their coefficient magnitudes should be interpreted with caution because too many individual case factors and attorney preferences are uncaptured by the data. Still, while all variables show correlation with forum selection (and will be further explored below), the MDL-eligibility variable is strongly correlated with ISP choice to file diversity cases in federal court originally.

TABLE 1D.

Case and party characteristics of MDL-eligible original diversity cases

	Count	Share (%)
Individual versus corporation	2,227	87
Tort claims	2,308	90

Notes: N = 2,573.

TABLE 1E.

Party and claim characteristics of MDL-eligible original diversity cases

	Non-MDL		MDL		Difference in shares
	Count	Share	Count	Share	
<b>Individual versus corporation</b>	<b>3,809</b>	<b>0.47</b>	<b>2,227</b>	<b>0.866</b>	<b>0.365***</b>
Individual versus individual	2,397	0.296	261	0.101	-0.174***
Corporation versus individual	373	0.046	1	0	-0.040***
Corporation versus corporation	1,524	0.188	84	0.033	-0.151***
Observations	8,103		2,573		
Insurance	1,399	0.173	3	0.001	-0.165***
Contract	2,236	0.276	51	0.02	-0.244***
Franchise	156	0.019	0	0	-0.017***
Foreclosure	56	0.007	0	0	-0.006***
Other fraud	461	0.057	54	0.021	-0.040***
<b>Tort</b>	<b>2,792</b>	<b>0.345</b>	<b>2,308</b>	<b>0.897</b>	<b>0.542***</b>
Employment	356	0.044	6	0.002	-0.045***
Other statutes	646	0.08	151	0.059	-0.026***
Observations	8,103		2,573		

Notes: The Difference column is the coefficient of a simple regression of respondent status on the variable, controlling for circuit and district. \* p < 0.10; \*\* p < 0.05; \*\*\* p < 0.01.

What kinds of cases are these MDL-eligible diversity cases filed originally in federal court by represented ISPs? Table 1D shows summary data that suggest that the cases overwhelmingly are individual plaintiffs suing corporate defendants for tort claims. These simple percentages are statistically significant compared to the non-MDL-eligible diversity cases filed in federal court, as set forth in Table 1E. Given these features of MDL-eligible cases, there is good reason to go beyond the strong correlation of MDL eligibility with the choice of ISPs to file in federal court to infer that the prospect of MDL consolidation motivated the forum selection. MDL transfers—available in federal court but not in state court—are both readily foreseeable prior to the initiation of the lawsuit and, in fact, likely to occur (Dodson 2019b). And MDL consolidation offers benefits to individual plaintiffs unique to MDL cases. Further, although individual

**TABLE 2.**  
**Regressions of case variables for original versus removed non-MDL cases**

Variables	Originally filed	
	Linear	Logit
Individual versus corporation	-0.103*** (0.0123)	-0.542*** (0.0601)
Corporation versus individual	0.195*** (0.0279)	0.887*** (0.146)
Corporation versus corporation	0.0653*** (0.0172)	0.270*** (0.0746)
Insurance	-0.177*** (0.0274)	-0.891*** (0.132)
Contract	0.0267 (0.0266)	0.0786 (0.115)
Franchise	0.275*** (0.0393)	1.388*** (0.252)
Foreclosure	-0.239*** (0.0237)	-1.498*** (0.166)
Other fraud	0.258*** (0.0410)	1.161*** (0.202)
Tort	-0.134*** (0.0285)	-0.641*** (0.132)
Employment	-0.197*** (0.0265)	-1.088*** (0.185)
Constant	0.724*** (0.0241)	1.100*** (0.113)
Observations	25,455	25,455
Adjusted R-squared	0.156	
Circuit controls	Yes	Yes
District controls	Yes	Yes

Notes: SE clustered by district in parentheses. \*  $p < 0.05$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$ .

non-MDL tort plaintiffs would tend to prefer to sue corporate defendants in state court (as implied in Table 1C and as more directly supported in Table 2), individual MDL tort plaintiffs tend to sue corporate defendants in federal court. These results strongly suggest that expecting to consolidate with a MDL is why a significant percentage of ISPs choose to file diversity cases in federal court.<sup>10</sup>

<sup>10</sup> It is possible that defendants, not plaintiffs, want to join MDLs, and, thus, the high rates of plaintiff selection of federal court is less a reflection of plaintiff desire to join MDLs and more a reflection of plaintiff recognition of the inevitability of removal by defendants, followed by fulfillment of defendants' desire to consolidate with MDLs. But removal need not be the inevitable result of unfettered defense choice: plaintiffs who wish to avoid MDL consolidation can avoid diversity removal by filing in state court in the defendant's home state. Still, likely consolidation with MDLs remains the reason for ISPs' invocation of federal diversity jurisdiction regardless of whether plaintiffs desire that outcome.

## In Non-MDL Cases, The Choice of ISPs to Invoke Diversity Jurisdiction Is Correlated with Corporate Plaintiffs and Contract Claims, While the Choice of ISPs to File in State Court Is Correlated with Individual Plaintiffs and Tort or Employment Claims

To explore the motivations at work in non-MDL cases, I removed the MDL-eligible cases and re-ran the [Table 1C](#) regressions for party and claim variables. The results are set out in [Table 2](#), with variables positively correlated with original filings in bold. As with [Table 1C](#), the regressions in [Table 2](#) are likely reliable for their significance and direction and for their implications for correlations, but their coefficient magnitudes should be interpreted with caution. Still, these results show correlations between original cases and corporate ISPs bringing the kinds of business or commercial claims that business entities would tend to bring (in bold font) and correlations between removed cases and individual ISPs bringing insurance, foreclosure, non-MDL tort, and employment cases—the kinds of cases that individuals would tend to bring (in normal font). The results are consistent with the conventional wisdom that corporations prefer federal court, while non-MDL individuals prefer state court, and they lend support to the conclusion that this conventional wisdom holds true even for ISPs by overshadowing any perceived advantages conferred by state-court bias against out-of-state parties.

### ISPs Invoke Diversity Jurisdiction Primarily for the Following Reasons: (1) Efficiency, Expense, or Convenience; (2) Preferences for Federal Procedure; (3) Perceived Better Quality of Federal Judges; and (4) Preempt the Defendant's Opportunity to Remove

Docket data can only tell correlative results; motivations must be inferred. And motivations other than MDL transfer can be hard to infer from docket data. The Response Dataset, however, which contains the usable responses (402 responses in original cases and 450 responses in removed cases) to the motivations survey, provides direct information on motivations. [Table 3A](#) sets out the motivations selected by respondent ISPs who filed a diversity case originally in federal court, with the number of respondents citing each motivation (“Total number” column), the number of respondents citing that motivation as the strongest forum-selection motivation in the case (“Highest weight” column), the average weight of that motivation across all cases, with no selection = 0; almost no weight = 1; little weight = 2; moderate weight = 3; substantial weight = 4; and dispositive weight = 5 (“Mean weight” column), and the percentage of all respondents selecting that motivation as having moderate weight or stronger (“Percent moderate+” column).

As [Table 3A](#) shows, four motivations (in bold font) for ISPs invoking federal diversity jurisdiction are separated from the other motivations by frequency and strength: (1) to preempt the defendant's removal; (2) the perceived better quality of the federal bench; (3) preference for federal procedures; and (4) the expected faster speed, cheaper cost, and greater convenience of federal court. Other motivations, including the avoidance of state-court bias, were selected far less frequently and supply far less significance on generalizing why ISPs choose federal court. [Table 3B](#) sets out the results

**TABLE 3A.**  
**Motivations of ISPs invoking diversity jurisdiction**

Motivation	Total number	Highest weight	Mean weight	Percent moderate+ (%)
Defendant would remove	197	151	1.87	44
Quality	180	138	1.71	44
Preferred federal procedures	172	107	1.54	40
Faster, cheaper, more convenient	164	120	1.50	38
Federal juries	39	29	0.36	8
Bias:	22	8	0.05	5
Commercial views or business entity	7	6	0.06	1
Client's location	6	5	0.05	1
Political or moral views	5	4	0.04	1
Wealth	4	3	0.02	< 1
Opponent's connection to the state	4	4	0.04	< 1
Other bias	3	3	0.03	1
Race, sexual orientation, origin	2	2	0.02	< 1
Forum-selection clause	19	15	0.19	4
Transfer or consolidate	14	12	0.14	3
Out-of-state co-party preference	3	0	0.01	1
Total	402			

**TABLE 3B.**  
**Motivations of ISPs invoking state court**

Motivation	Total number	Highest weight	Mean weight	Percent moderate+ (%)
Prefer state procedures	293	224	2.46	62
Faster, cheaper, more convenient	235	183	1.93	48
State juries	194	153	1.67	42
Bias	86	38	0.74	18
Commercial views or business entity	36	31	0.30	7
Political or moral views	26	23	0.22	5
Other bias	25	24	0.24	6
Client's location	19	18	0.15	4
Race, sexual orientation, origin	13	10	0.11	3
Opponent's connection to the state	7	7	0.05	1
Wealth	6	5	0.05	1
Quality	49	33	0.45	6
Force removal	43	23	0.26	3
Forum-selection clause	12	10	0.10	2
Outside federal subject matter jurisdiction	9	8	0.08	1
Opportunities to consolidate	7	6	0.06	1
State court would prevent case transfer	6	4	0.04	1
Out-of-state co-party preference	1	0	0.00	< 1
Total	450			

for ISPs who filed cases in state court that were then removed to federal court based on diversity jurisdiction:

The predominant motivations (in bold font) for selecting state court were (1) preference for state procedures; (2) efficiencies and conveniences; and (3) preferences for state juries. Avoiding (or taking advantage of) court bias played a much more prominent role for those selecting state court (18 percent) than those selecting federal court (5 percent), while the perceived better quality of the court played a much less prominent role for those selecting state court (6 percent) than those selecting federal court (44 percent).

**ISPs Who Invoke Diversity Jurisdiction for Reasons of Procedure, Efficiency/Convenience, or Quality Are Correlated with Business Entities Represented by Attorneys Who Tend to Defend Businesses in Federal Court, While ISPs Who Invoke Diversity Jurisdiction to Preempt Removal Are Correlated with Individuals Represented by Attorneys Who Typically Represent Plaintiffs**

Respondent characteristics follow the predicted correlations for the predominant motivations for invoking federal court, as set forth in Table 4. All the coefficient directions are as expected, and most, though not all, of the coefficient magnitudes are statistically significant. These results tend to support the theory that litigants already comfortable in federal court (corporations, attorneys who represent defendants, and attorneys who primarily practice in federal court) tend to prefer what they know—the procedures, conveniences, and perceived quality of federal court. Meanwhile, different characteristics are associated (though with less statistical confidence) with the motivation to invoke federal diversity jurisdiction originally to preempt the defendant’s opportunity to remove.

**TABLE 4.**  
Partial correlation of ISPs characteristics with top motivations for invoking federal court

	ISP is a Business	Lawyer practices in		Lawyer represents	
		Federal court	State court	Defendants	Plaintiffs
Defendant would remove	-0.121*	-0.024	0.015	-0.109*	0.141**
Quality	0.242***	0.141*	-0.287***	0.140**	-0.274***
Preferred federal procedures	0.119*	0.298***	-0.343***	0.187***	-0.137**
Faster, cheaper, more convenient	0.116*	0.126*	-0.156**	0.090	-0.145**

Notes: Each row represents the partial correlation between a particular motivation and characteristics of the parties or lawyer, controlling for circuit and district but not controlling for other variables. Motivations are either 0 (no weight or almost no weight) or 1 (moderate, substantial, or dispositive weight). \*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$ .



## DISCUSSION

Represented ISPs invoke domestic-diversity jurisdiction with striking frequency. The 2019 federal docket data reveal that ISPs filed more than half of all original domestic-diversity cases with represented plaintiffs. The findings in this study support three conclusions that enrich our understanding about those diversity-happy ISPs. First, a sizeable percentage of them—around 20–24 percent in 2019—are MDL-eligible cases in which the motivation to file in federal court likely is based on the likelihood of consolidation with an existing federal MDL. These cases are dominated by individual plaintiffs suing corporate defendants for tort claims. Second, the remaining ISPs who invoke federal court do so for various reasons, but the predominant reasons are (1) to preempt the defendant's likely removal of the case and (2) preferences based on perceived differences between federal and state court in terms of quality, procedures, and efficiency and convenience. Preferences for federal juries, trying to avoid state-court biases, and other factors motivate forum selection far less strongly. Third, ISPs motivated to select federal court to preempt the defendant's option of removal are correlated modestly with individual plaintiffs represented by attorneys who primarily represent plaintiffs, while ISPs motivated to select federal court for quality, procedural, or efficiency and convenience reasons are correlated with business plaintiffs represented by attorneys who primarily represent defendants in federal court.

To be clear, these categories do not capture all ISP-invoked diversity jurisdiction. Significant numbers of cases represent minority motivations. As with any study of this sort, support for these conclusions has limits. Cases are complicated and inflected by individualized circumstances. The available data cannot account for all the variables that might influence forum shopping in a particular case. Further, some possible selection effects—the decision not to file a case at all or the decision not to remove a case, for example—cannot be detected in the data. Other selection effects endemic in the survey bounce-backs and response rate may not be discernible from the case-demographic comparisons detailed in Appendix E. Litigant gamesmanship also likely plays a role in nonrandomly influencing the federal dockets; plaintiffs who are strongly motivated to avoid federal court are likely to frame their cases in ways that prevent removal, such as by filing in a defendant's home state or by adding a nondiverse defendant.<sup>11</sup> Despite the protections of confidentiality in the survey, attorneys may have been loath to characterize their preferences as based on judicial bias as opposed to other motivation choices offered by the survey. In addition, certain motivation choices in the survey could blend together or obscure underlying meaning. For example, the motivations of procedural differences, quality, and efficiency could be based on objective comparisons with state courts or could be due to the attorney's own greater familiarity with federal court. This ambiguity obscures whether attorneys think federal courts are actually better (which might be important evidence to consider in structural reforms for allocating cases) or just have personal preferences (which might have nothing to say about the proper allocation of cases from a systemic perspective). The relatively low response rate to the survey raises the prospect of undetected yet significant selection effects in responsiveness and the low absolute number of responses reduces the

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11 I thank William Hubbard for making this point.

power of the statistical findings and inhibits more refined analyses based on geography and nature of suit. For all these reasons, the findings in this article should be interpreted with caution.

Nevertheless, the essential finding of the prevalence of the three ISP categories hypothesized has implications both for the existing literature and for the possibility of diversity reform. As for the existing literature, the findings add to the debate about the bias rationale of diversity jurisdiction by suggesting that state-court bias—even if it is perceived to exist—can be outweighed by more practical factors in the forum-selection calculus. For individual MDL-eligible plaintiffs, the interest in (or resignation to) consolidation with an existing MDL likely exerts a powerful counterweight to the benefits of state court. For corporate plaintiffs and their attorneys, the interest in operating under more familiar federal procedure, along with the potential efficiencies and perceived higher quality of federal court, seem to outweigh any perceived home-state advantage of state court in some cases. These findings complicate the story of diversity jurisdiction and its rationale as primarily about the risks of state-court bias, and they suggest that diversity jurisdiction may offer non-bias-related benefits for certain kinds of parties and certain kinds of cases. Traditional arguments against diversity jurisdiction have tended to discount these potential private benefits from the systematic evaluation of diversity jurisdiction (American Law Institute 1969). Perhaps it is time to reconsider their role in diversity jurisdiction today.

At the same time, the findings validate the conventional wisdom that, in general, individual parties prefer state court, while corporate parties prefer federal court (Zambrano 2019). The availability of federal MDLs may be a key exception to the general plaintiff preference, but the correlations between corporate ISPs and motivations based on procedure, quality, and efficiency are consistent with corporate parties' general preference for federal court. Likewise, individual-ISP choice to file in federal court to preempt the defendant's opportunity to remove the case is also consistent with individual parties' general preference for state court. The findings dovetail with a widespread and dominant historical narrative about the perceived differential experiences of individual and corporate parties in federal courts, and they help explain why the docket data show substantial numbers of ISP-filed diversity cases despite studies showing the federal courts to be more anti-plaintiff than the state courts (Clermont and Eisenberg 2000; Burbank and Farhang 2014).

Turning to normative implications, the findings support a more nuanced approach to diversity reform. The invocation of diversity jurisdiction by individual ISPs to facilitate MDL consolidation may have positive benefits for both the parties and for the judicial system and should be taken seriously. For one, MDL cases often have national scope and national implications, heightening the justification for consolidated adjudication in federal court. As a practical matter, MDL's enablement of consolidation across state lines—a feature unavailable in state court—has become a powerful vehicle for efficient case resolution; as of August 2022, more than 775,000 individual cases have been consolidated into 189 active MDL proceedings (US Joint Panel on Multidistrict Litigation 2022). The alternative to MDL consolidation is frightening; in 2019, the predicted cost to Uber to resolve just sixty thousand arbitrations individually (as mandated by its own arbitration agreement), instead of in the aggregate, was more than six hundred million dollars, much more than its expected liability (Rosenblatt 2019).

Of course, the choice is not between MDL for everyone and MDL for no one. The MDL issues for diversity ISPs are but a slice of the MDL universe. And because diversity jurisdiction gives both plaintiffs and (usually) defendants a say in invoking federal court, it is hard to know what the implications are for MDL efficacy. After all, even were ISP invocation of diversity jurisdiction restricted, MDL-minded plaintiffs would still be able to file in federal court, as out-of-state plaintiffs, in the defendant's home state or in any state in which the defendant has consented to personal jurisdiction. These two options are the result of forum-selection choices made solely by the defendant, presumably to the advantage of the defendant, so individual plaintiffs, understandably, may prefer the present option of bringing suit in their own home state for reasons of geographic convenience and ease of finding local counsel. And absent the ability to invoke diversity jurisdiction in their home state, individual ISPs would be forced into the choice of forgoing federal MDL consolidation in their own state or filing in the defendant's preferred state. But a plaintiff's choice to forgo federal MDL by filing in their own state's state court is subject to override by a MDL-minded defendant who removes the case to federal court. No doubt, some such cases will get stuck in state court, potentially undermining the utility of the MDL aggregative device. But more research should be conducted to better understand the complexities of such forum choices in the MDL context. The finding here—that MDL eligibility likely induces diversity-eligible ISPs to elect federal court—should help frame future studies and reform efforts.<sup>12</sup>

Meanwhile, the finding that other motivations drive forum selection demands different considerations. How strongly motivations based on private benefits like efficiency, procedural familiarity, and judicial quality should be weighed against the systemic costs of diversity jurisdiction is and should continue to be an ongoing conversation, but the correlation of these motivations with particular types of litigants and attorneys suggests that these private benefits are felt dis-uniformly across the familiar divides of individual/corporate status and plaintiff/defense bar. Although corporate-party preferences for federal court are consistent with the ancient concern that local prejudices might burden national commercial and economic interests, the overwhelming size and pervasiveness of the modern federal administrative state suggests that diversity jurisdiction is not as necessary today to protect those national interests. The experience with the 2005 Class Action Fairness Act suggests that diversity reform on grounds that cater to those kinds of parties should be approached with caution to avoid the ancillary effects of over-federalizing litigation to the detriment of both the state and federal courts.<sup>13</sup> Meanwhile, other motivations, such as the avoidance of rural or urban biases, are far less prevalent among ISPs and thus perhaps less deserving of focus in ISP-related reform proposals. The findings here provide a better understanding of stakeholder interests and identities that should inform the ongoing debates about diversity jurisdiction.

The motivation to select federal court to preempt removal has its own unique implications for diversity jurisdiction. Only diversity abolitionists would refuse diversity

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12 Designing reform measures around motivations can be tricky business, but one option could condition ISP-invoked diversity jurisdiction on MDL consolidation within a specified time period, perhaps sixty days; upon expiration of that time period without consolidation, the federal court would be deprived of subject-matter jurisdiction.

13 Class Action Fairness Act, February 18, 2005, 119 Stat. 4–14.

jurisdiction to out-of-state defendants seeking to remove a case; such removals facially align with the out-of-state bias rationale justifying diversity jurisdiction in the first place. If ISPs preempt removal by filing in federal court a case that was going to end up there anyway through removal, no one should have cause to complain. In fact, everyone should support the result. The defendant who was going to remove gets its preferred forum, the plaintiff saves the costs and delay associated with removal, the state court avoids ever having the case on its docket in the first place, and the federal court maintains consistent control over the case from start to finish without having to worry about adjudicating defects in the removal procedure. Perhaps diversity jurisdiction invoked by ISPs for this reason should be encouraged rather than discouraged.

Finally, the findings here suggest avenues for future research. Although the survey results show predominant motivations and correlations, they also reveal significant minority positions, which theoretically could be explained by individualized case circumstances and attorney preferences, but which will require larger datasets for validating theoretical explanations. Another avenue of research could investigate geographic influences on ISP forum selection. Other studies have found statistically significant differences among circuits on forum preference (Federal Judicial Center 2021), and, in theory, the magnitude in the differences between federal procedure and state procedure, between federal quality and state quality, and between federal efficiencies and state efficiencies should vary widely by state. In this study, some survey respondents added comments indicating that geography could be influential, but I received too few responses to test geographic influence. Geographic influences are ripe for further study. Finally, generating finer distinctions among motivations—especially those related to perceptions of quality, procedures, and convenience and efficiencies as well as whether those motivations reflect systemic assessments or personal preferences—could be useful for more refined reform proposals.

## CONCLUSION

In-state plaintiffs file domestic diversity cases in federal court with frequency. This article suggests that they do so for discrete reasons that correlate with party and case characteristics. In particular, ISPs who invoke diversity jurisdiction tend to fall into one of three categories: (1) individual ISPs filing MDL-eligible tort cases against corporate defendants; (2) corporate ISPs represented by attorneys who primarily defend businesses in federal court who invoke diversity jurisdiction because of perceptions of better federal-court procedure, efficiency, and quality; and (3) individual ISPs who invoke federal court to preempt a defendant's right of removal. The findings support a nuanced approach to efforts to reform diversity jurisdiction.

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## APPENDIX A

### Database Parameters

IDB Civil 1988–Present  
 Circuit – all  
 Districts – all  
 Nature of suit – all  
 Disposition – all<sup>14</sup>  
 Origin – 1 or 2 (original proceeding, removal)  
 Jurisdiction – 4 (diversity)

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14 I declined to exclude dispositions for lack of jurisdiction because those dispositions could include lack of personal jurisdiction, a disposition unrelated to subject-matter jurisdiction. I also declined to exclude remands to state court because those could include remands for procedural defects rather than for lack of diversity jurisdiction.

Pro Se – 0, 2 (filter out *pro se* plaintiffs)

Class action – all<sup>15</sup>

File date – between 01/01/2019 and 12/31/2019, inclusive

**APPENDIX B. Characteristics of Cases in 2016–2018 Versus 2019**

Original Cases

**PANEL 1A:**

**Type of plaintiff and defendant**

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
Individual vs. Corporation	14,979	0.528	6,036	0.565	0.038***
Individual vs. Individual	7,067	0.249	2,658	0.249	–0.000
Corporation vs. Individual	1,279	0.045	374	0.035	–0.010***
Corporation vs. Corporation	5,056	0.178	1,608	0.151	–0.028***
Observations	28,381		10,676		

**PANEL 1B:**

**Nature of the suit**

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
Insurance	3,846	0.136	1,402	0.131	–0.004
Contract	7,340	0.259	2,287	0.214	–0.044***
Franchise	441	0.016	156	0.015	–0.001
Foreclosure	285	0.010	56	0.005	–0.005***
Other fraud	1,485	0.052	515	0.048	–0.004
Tort	11,793	0.416	5,101	0.478	0.062***
Employment	1,050	0.037	362	0.034	–0.003
Other statutes	2,141	0.075	797	0.075	–0.001
Observations	28,381		10,676		

<sup>15</sup> I declined to filter the cases based on this field because researchers at the Federal Judicial Center reported that this field was unreliable.

**PANEL 1C:**  
Disposition of the case

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
Transferred	1,615	0.057	692	0.065	0.008***
Remanded to U.S. Agency	13	0.000	3	0.000	–0.000
Remanded to state court	551	0.019	161	0.015	–0.004***
Dismissal:					
Want of prosecution	267	0.009	96	0.009	–0.000
Lack of jurisdiction	409	0.014	99	0.009	–0.005***
Voluntarily	5,308	0.187	1,770	0.166	–0.021***
Settled	9,448	0.333	2,637	0.247	–0.086***
Other	2,870	0.101	850	0.080	–0.022***
Judgment on:					
Default	852	0.030	245	0.023	–0.007***
Consent	166	0.006	54	0.005	–0.001
Motion before trial	1,648	0.058	376	0.035	–0.023***
Jury verdict	181	0.006	9	0.001	–0.006***
Directed verdict	14	0.000	0	0.000	–0.000**
Court trial	44	0.002	5	0.000	–0.001***
Award of arbitrator	51	0.002	15	0.001	–0.000
Stayed pending bankruptcy	68	0.002	13	0.001	–0.001**
Statistical closing	787	0.028	198	0.019	–0.009***
Appeal denied	3	0.000	1	0.000	–0.000
Other	469	0.017	132	0.012	–0.004***
Observations	28,381		10,676		

**PANEL 1D:**  
District

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
00 - Maine	114	0.004	32	0.003	–0.001
01 - Massachusetts	554	0.020	148	0.014	–0.006***
02 - New Hampshire	62	0.002	39	0.004	0.001**
03 - Rhode Island	139	0.005	36	0.003	–0.002**
04 - Puerto Rico	141	0.005	52	0.005	–0.000
05 - Connecticut	294	0.010	87	0.008	–0.002**
06 - New York - Northern	177	0.006	102	0.010	0.003***
07 - New York - Eastern	860	0.030	401	0.038	0.007***
08 - New York - Southern	1,026	0.036	410	0.038	0.002
09 - New York - Western	233	0.008	175	0.016	0.008***
10 - Vermont	62	0.002	25	0.002	0.000



PANEL 1D: *Continued*

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
11 - Delaware	84	0.003	17	0.002	−0.001**
12 - New Jersey	1,069	0.038	344	0.032	−0.005**
13 - Pennsylvania - Eastern	1,244	0.044	435	0.041	−0.003
14 - Pennsylvania - Middle	411	0.014	144	0.013	−0.001
15 - Pennsylvania - Western	327	0.012	130	0.012	0.001
16 - Maryland	545	0.019	178	0.017	−0.003*
17 - North Carolina - Eastern	138	0.005	61	0.006	0.001
18 - North Carolina - Middle	107	0.004	35	0.003	−0.000
19 - North Carolina - Western	109	0.004	36	0.003	−0.000
20 - South Carolina	410	0.014	161	0.015	0.001
22 - Virginia - Eastern	408	0.014	118	0.011	−0.003**
23 - Virginia - Western	96	0.003	43	0.004	0.001
24 - West Virginia - Northern	115	0.004	31	0.003	−0.001*
25 - West Virginia - Southern	234	0.008	70	0.007	−0.002*
26 - Alabama - Northern	435	0.015	169	0.016	0.001
27 - Alabama - Middle	97	0.003	32	0.003	−0.000
28 - Alabama - Southern	73	0.003	20	0.002	−0.001
29 - Florida - Northern	122	0.004	68	0.006	0.002***
36 - Louisiana - Western	379	0.013	137	0.013	−0.001
37 - Mississippi - Northern	168	0.006	64	0.006	0.000
38 - Mississippi - Southern	391	0.014	139	0.013	−0.001
39 - Texas - Northern	599	0.021	158	0.015	−0.006***
3A - Florida - Middle	979	0.034	422	0.040	0.005**
3C - Florida - Southern	819	0.029	348	0.033	0.004*
3E - Georgia - Northern	449	0.016	201	0.019	0.003**
3G - Georgia - Middle	171	0.006	59	0.006	−0.000
3J - Georgia - Southern	151	0.005	67	0.006	0.001
3L - Louisiana - Eastern	728	0.026	172	0.016	−0.010***
3N - Louisiana - Middle	269	0.009	68	0.006	−0.003***
40 - Texas - Eastern	455	0.016	164	0.015	−0.001
41 - Texas - Southern	1,050	0.037	419	0.039	0.002
42 - Texas - Western	317	0.011	203	0.019	0.008***
43 - Kentucky - Eastern	146	0.005	79	0.007	0.002***
44 - Kentucky - Western	214	0.008	70	0.007	−0.001
45 - Michigan - Eastern	470	0.017	192	0.018	0.001
46 - Michigan - Western	108	0.004	36	0.003	−0.000
47 - Ohio - Northern	343	0.012	150	0.014	0.002
48 - Ohio - Southern	322	0.011	142	0.013	0.002
49 - Tennessee - Eastern	181	0.006	76	0.007	0.001
50 - Tennessee - Middle	228	0.008	75	0.007	−0.001
51 - Tennessee - Western	164	0.006	69	0.006	0.001
52 - Illinois - Northern	949	0.033	365	0.034	0.001
53 - Illinois - Central	97	0.003	21	0.002	−0.001**
54 - Illinois - Southern	118	0.004	44	0.004	−0.000
55 - Indiana - Northern	133	0.005	46	0.004	−0.000
56 - Indiana - Southern	187	0.007	58	0.005	−0.001

PANEL 1D: *Continued*

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
57 - Wisconsin - Eastern	190	0.007	42	0.004	-0.003***
58 - Wisconsin - Western	80	0.003	37	0.003	0.001
60 - Arkansas - Eastern	120	0.004	50	0.005	0.000
61 - Arkansas - Western	105	0.004	30	0.003	-0.001
62 - Iowa - Northern	72	0.003	23	0.002	-0.000
63 - Iowa - Southern	73	0.003	26	0.002	-0.000
64 - Minnesota	430	0.015	150	0.014	-0.001
65 - Missouri - Eastern	235	0.008	70	0.007	-0.002*
66 - Missouri - Western	308	0.011	104	0.010	-0.001
67 - Nebraska	87	0.003	34	0.003	0.000
68 - North Dakota	41	0.001	49	0.005	0.003***
69 - South Dakota	168	0.006	35	0.003	-0.003***
70 - Arizona	370	0.013	175	0.016	0.003**
71 - California - Northern	714	0.025	248	0.023	-0.002
72 - California - Eastern	384	0.014	139	0.013	-0.001
73 - California - Central	1,228	0.043	488	0.046	0.002
74 - California - Southern	346	0.012	128	0.012	-0.000
75 - Hawaii	55	0.002	24	0.002	0.000
76 - Idaho	77	0.003	24	0.002	-0.000
77 - Montana	127	0.004	61	0.006	0.001
78 - Nevada	256	0.009	101	0.009	0.000
79 - Oregon	271	0.010	84	0.008	-0.002
80 - Washington - Eastern	69	0.002	25	0.002	-0.000
81 - Washington - Western	390	0.014	150	0.014	0.000
82 - Colorado	548	0.019	177	0.017	-0.003*
83 - Kansas	298	0.010	136	0.013	0.002*
84 - New Mexico	102	0.004	55	0.005	0.002**
85 - Oklahoma - Northern	126	0.004	55	0.005	0.001
86 - Oklahoma - Eastern	50	0.002	35	0.003	0.002***
87 - Oklahoma - Western	245	0.009	74	0.007	-0.002*
88 - Utah	208	0.007	37	0.003	-0.004***
89 - Wyoming	88	0.003	38	0.004	0.000
90 - District of Columbia	81	0.003	45	0.004	0.001**
91 - Virgin Islands	57	0.002	24	0.002	0.000
93 - Guam	58	0.002	32	0.003	0.001*
Observations	28,328		10,648		

**PANEL 1E:****Circuit**

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
0 - District of Columbia	81	0.003	45	0.004	0.001**
1 - First Circuit	1,010	0.036	307	0.029	−0.007***
2 - Second Circuit	2,652	0.093	1,200	0.112	0.019***
3 - Third Circuit	3,192	0.112	1,094	0.102	−0.010***
4 - Fourth Circuit	2,162	0.076	733	0.069	−0.008**
5 - Fifth Circuit	4,356	0.153	1,524	0.143	−0.011***
6 - Sixth Circuit	2,176	0.077	889	0.083	0.007**
7 - Seventh Circuit	1,754	0.062	613	0.057	−0.004
8 - Eighth Circuit	1,639	0.058	571	0.053	−0.004
9 - Ninth Circuit	4,398	0.155	1,707	0.160	0.005
10 - Tenth Circuit	1,665	0.059	607	0.057	−0.002
11 - Eleventh Circuit	3,296	0.116	1,386	0.130	0.014***
Observations	28,381		10,676		

Removed Cases**PANEL 2A:****Type of plaintiff and defendant**

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
Individual vs. Corporation	33,540	0.700	12,887	0.702	0.002
Individual vs. Individual	9,996	0.209	3,821	0.208	−0.001
Corporation vs. Individual	535	0.011	134	0.007	−0.004***
Corporation vs. Corporation	3,868	0.081	1,527	0.083	0.002
Observations	47,939		18,369		

**PANEL 2B:**  
Nature of the suit

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
Insurance	11,076	0.231	4,802	0.261	0.030***
Contract	5,863	0.122	2,193	0.119	–0.003
Franchise	97	0.002	33	0.002	–0.000
Foreclosure	1,645	0.034	452	0.025	–0.010***
Other fraud	812	0.017	209	0.011	–0.006***
Tort	19,809	0.413	7,669	0.417	0.004
Employment	5,053	0.105	1,964	0.107	0.002
Other statutes	3,584	0.075	1,047	0.057	–0.018***
Observations	47,939		18,369		

**PANEL 2C:**  
Disposition of the case

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
Transferred	1,670	0.035	625	0.034	–0.001
Remanded to U.S. Agency	30	0.001	8	0.000	–0.000
Remanded to state court	5,812	0.121	2,135	0.116	–0.005*
Dismissal:					
Want of prosecution	240	0.005	83	0.005	–0.000
Lack of jurisdiction	166	0.003	44	0.002	–0.001**
Voluntarily	6,431	0.134	2,280	0.124	–0.010***
Settled	21,259	0.443	7,435	0.405	–0.039***
Other	4,761	0.099	1,744	0.095	–0.004*
Judgment on:					
Default	73	0.002	14	0.001	–0.001**
Consent	115	0.002	30	0.002	–0.001*
Motion before trial	2,748	0.057	767	0.042	–0.016***
Jury verdict	316	0.007	28	0.002	–0.005***
Directed verdict	18	0.000	0	0.000	–0.000***
Court trial	40	0.001	4	0.000	–0.001***
Award of arbitrator	44	0.001	15	0.001	–0.000
Stayed pending bankruptcy	64	0.001	20	0.001	–0.000
Statistical closing	1,090	0.023	369	0.020	–0.003**
Appeal denied	4	0.000	0	0.000	–0.000
Other	613	0.013	215	0.012	–0.001
Observations	47,939		18,369		

## PANEL 2D:

## District

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
00 - Maine	73	0.002	17	0.001	−0.001*
01 - Massachusetts	709	0.015	231	0.013	−0.002**
02 - New Hampshire	100	0.002	30	0.002	−0.000
03 - Rhode Island	168	0.004	52	0.003	−0.001
04 - Puerto Rico	21	0.000	8	0.000	−0.000
05 - Connecticut	490	0.010	127	0.007	−0.003***
06 - New York - Northern	132	0.003	50	0.003	−0.000
07 - New York - Eastern	1,025	0.021	356	0.019	−0.002
08 - New York - Southern	879	0.018	400	0.022	0.003***
09 - New York - Western	210	0.004	70	0.004	−0.001
10 - Vermont	26	0.001	13	0.001	0.000
11 - Delaware	15	0.000	12	0.001	0.000*
12 - New Jersey	1,636	0.034	589	0.032	−0.002
13 - Pennsylvania - Eastern	1,446	0.030	559	0.030	0.000
14 - Pennsylvania - Middle	220	0.005	65	0.004	−0.001*
15 - Pennsylvania - Western	338	0.007	124	0.007	−0.000
16 - Maryland	549	0.011	190	0.010	−0.001
17 - North Carolina - Eastern	138	0.003	55	0.003	0.000
18 - North Carolina - Middle	127	0.003	40	0.002	−0.000
19 - North Carolina - Western	176	0.004	67	0.004	−0.000
20 - South Carolina	980	0.020	359	0.020	−0.001
22 - Virginia - Eastern	334	0.007	169	0.009	0.002***
23 - Virginia - Western	148	0.003	67	0.004	0.001
24 - West Virginia - Northern	239	0.005	62	0.003	−0.002***
25 - West Virginia - Southern	553	0.012	99	0.005	−0.006***
26 - Alabama - Northern	357	0.007	112	0.006	−0.001*
27 - Alabama - Middle	176	0.004	60	0.003	−0.000
28 - Alabama - Southern	146	0.003	57	0.003	0.000
29 - Florida - Northern	174	0.004	145	0.008	0.004***
36 - Louisiana - Western	767	0.016	276	0.015	−0.001
37 - Mississippi - Northern	250	0.005	73	0.004	−0.001**
38 - Mississippi - Southern	622	0.013	224	0.012	−0.001
39 - Texas - Northern	1,718	0.036	599	0.033	−0.003**
3A - Florida - Middle	1,482	0.031	763	0.042	0.011***
3C - Florida - Southern	1,671	0.035	888	0.048	0.013***
3E - Georgia - Northern	1,118	0.023	420	0.023	−0.000
3G - Georgia - Middle	151	0.003	59	0.003	0.000
3J - Georgia - Southern	69	0.001	39	0.002	0.001*
3L - Louisiana - Eastern	1,081	0.023	430	0.023	0.001
3N - Louisiana - Middle	531	0.011	191	0.010	−0.001
40 - Texas - Eastern	556	0.012	225	0.012	0.001
41 - Texas - Southern	2,788	0.058	1,301	0.071	0.013***
42 - Texas - Western	1,808	0.038	577	0.031	−0.006***
43 - Kentucky - Eastern	351	0.007	132	0.007	−0.000

PANEL 2D: *Continued*

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
44 - Kentucky - Western	445	0.009	175	0.010	0.000
45 - Michigan - Eastern	757	0.016	238	0.013	-0.003***
46 - Michigan - Western	111	0.002	45	0.002	0.000
47 - Ohio - Northern	463	0.010	147	0.008	-0.002**
48 - Ohio - Southern	308	0.006	214	0.012	0.005***
49 - Tennessee - Eastern	299	0.006	99	0.005	-0.001
50 - Tennessee - Middle	228	0.005	89	0.005	0.000
51 - Tennessee - Western	262	0.005	119	0.006	0.001
52 - Illinois - Northern	926	0.019	399	0.022	0.002**
53 - Illinois - Central	92	0.002	36	0.002	0.000
54 - Illinois - Southern	231	0.005	72	0.004	-0.001
55 - Indiana - Northern	298	0.006	117	0.006	0.000
56 - Indiana - Southern	496	0.010	192	0.010	0.000
57 - Wisconsin - Eastern	125	0.003	45	0.002	-0.000
58 - Wisconsin - Western	56	0.001	33	0.002	0.001**
60 - Arkansas - Eastern	280	0.006	108	0.006	0.000
61 - Arkansas - Western	94	0.002	48	0.003	0.001
62 - Iowa - Northern	82	0.002	21	0.001	-0.001*
63 - Iowa - Southern	128	0.003	49	0.003	-0.000
64 - Minnesota	364	0.008	144	0.008	0.000
65 - Missouri - Eastern	711	0.015	261	0.014	-0.001
66 - Missouri - Western	536	0.011	216	0.012	0.001
67 - Nebraska	104	0.002	50	0.003	0.001
68 - North Dakota	50	0.001	15	0.001	-0.000
69 - South Dakota	22	0.000	5	0.000	-0.000
70 - Arizona	340	0.007	50	0.003	-0.004***
71 - California - Northern	1,250	0.026	446	0.024	-0.002
72 - California - Eastern	1,088	0.023	292	0.016	-0.007***
73 - California - Central	5,165	0.108	1,803	0.098	-0.010***
74 - California - Southern	736	0.015	248	0.014	-0.002*
75 - Hawaii	116	0.002	50	0.003	0.000
76 - Idaho	95	0.002	18	0.001	-0.001***
77 - Montana	185	0.004	59	0.003	-0.001
78 - Nevada	943	0.020	346	0.019	-0.001
79 - Oregon	332	0.007	112	0.006	-0.001
80 - Washington - Eastern	99	0.002	34	0.002	-0.000
81 - Washington - Western	712	0.015	253	0.014	-0.001
82 - Colorado	963	0.020	598	0.033	0.012***
83 - Kansas	195	0.004	81	0.004	0.000
84 - New Mexico	440	0.009	153	0.008	-0.001
85 - Oklahoma - Northern	237	0.005	108	0.006	0.001
86 - Oklahoma - Eastern	123	0.003	34	0.002	-0.001*
87 - Oklahoma - Western	480	0.010	206	0.011	0.001
88 - Utah	246	0.005	75	0.004	-0.001*
89 - Wyoming	16	0.000	16	0.001	0.001***
90 - District of Columbia	85	0.002	31	0.002	-0.000

PANEL 2D: *Continued*

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
91 - Virgin Islands	8	0.000	16	0.001	0.001***
93 - Guam	0	0.000	1	0.000	0.000
94 - Northern Mariana Islands	1	0.000	0	0.000	–0.000
Observations	47,871		18,349		

PANEL 2E:  
Circuit

	2016–2018		2019		Difference in shares
	Count	Share	Count	Share	
0 - District of Columbia	85	0.002	31	0.002	–0.000
1 - First Circuit	1,071	0.022	338	0.018	–0.004***
2 - Second Circuit	2,762	0.068	1,016	0.055	–0.002
3 - Third Circuit	3,663	0.076	1,365	0.074	–0.002
4 - Fourth Circuit	3,244	0.068	1,108	0.069	–0.007***
5 - Fifth Circuit	10,121	0.211	3,896	0.212	0.001
6 - Sixth Circuit	3,224	0.067	1,258	0.068	0.001
7 - Seventh Circuit	2,224	0.046	894	0.049	0.002
8 - Eighth Circuit	2,371	0.049	917	0.050	0.000
9 - Ninth Circuit	11,130	0.232	3,732	0.203	–0.029***
10 - Tenth Circuit	2,700	0.056	1,271	0.069	0.013***
11 - Eleventh Circuit	5,344	0.111	2,543	0.138	0.027***
Observations	47,939		18,369		

Note: The Difference column is the coefficient of a simple regression of respondent status on the variable. \* $p < 0.10$ , \*\* $p < 0.05$ , \*\*\* $p < 0.01$ . The small magnitudes of difference suggest that any statistical significance is driven at least partly by the large number of observations and is unlikely to signify practical concerns about the representativeness of the responses. However, two observations are worth noting. First, the statistically significant increase in original tort cases in 2019 could be a continuation of the gradual increase in MDL litigation. That explanation could also explain the statistically significant increase in original Individual v. Corporation cases and the statistically significant increase in transfers of original cases in 2019. Second, the nearly uniform decrease in dispositions of 2019 cases likely stems from the fact that 2019 cases were all filed after, and thus had less time to reach conclusion than, the 2016–2018 cases. Neither of these observations undermines the conclusion that the 2019 cases are broadly representative of prior years.

## APPENDIX C

## E-mail for Survey

E-mail subject line: Your Case <<*case caption*>>: Diversity Jurisdiction Study

The Center for Litigation and Courts is conducting research on why in-state plaintiffs and their attorneys file diversity cases in federal or state court. Court records show that

you represented an in-state plaintiff or petitioner in <<case caption>>. Completing a short survey will greatly assist the Center's research on diversity jurisdiction.

The survey should take no more than 5 minutes. As compensation for completing the survey, you may enter a lottery for a \$250 Amazon gift card.

Complete the survey here: <<survey link>>

**About the Center.** The Center for Litigation and Courts at UC Hastings College of the Law is a nonprofit, nonpartisan, academic research center whose mission includes expanding the knowledge of civil litigation and the courts and disseminating that knowledge to the bench, bar, legal academy, and public. You can learn more about the Center [here](#).

**Confidentiality.** The survey is anonymous. Reported information will not be linked to the person who completed the survey or the case name or docket number involved. Findings will be reported in the aggregate so that no individual party or case will be identifiable. Any information that might permit identification of the named case, the attorneys, or the parties will be treated as confidential. This study is IRB compliant.

**Questions.** If you have questions about the survey, please contact Scott Dodson, Director of the Center for Litigation and Courts, at [clc@uchastings.edu](mailto:clc@uchastings.edu) or (415) 565-4696.

**Follow this link to the Survey:**

<<survey link>>

Or copy and paste the URL below into your internet browser:

<<survey URL>>

Follow the link to opt out of future emails:

<<opt-out link>>

## APPENDIX D

### Survey Questions

#### *Original Cases*

1. In this case, did you represent a plaintiff or petitioner who was a citizen of the state in which the case was filed? [*If no, end survey*]
2. Was this case filed originally in federal court based solely on diversity jurisdiction? [*If no, end survey*]
3. Was the case dismissed for lack of diversity jurisdiction? [*If yes, end survey*]



4. How satisfied were you with the ultimate disposition of the case?
  - Extremely satisfied
  - Somewhat satisfied
  - Neither satisfied nor dissatisfied
  - Somewhat dissatisfied
  - Extremely dissatisfied
5. In this case, my primary in-state client was (check all that apply):
  - A natural person
  - A corporation
  - An unincorporated entity
  - A governmental entity
  - Other
6. Which of the following motivated you or your client to file this case in federal court? (Check all that apply): [*response options are randomized*]
  - An out-of-state coparty preferred federal court
  - Belief that a forum-selection clause required me to file the case in federal court
  - Belief that federal court would be faster, cheaper, or more convenient than state court
  - Belief that federal court would be of better quality than state court
  - Belief that the defendant would remove the case to federal court anyway
  - Belief that federal court offered more opportunities to transfer the case to a different or to consolidate my case with a pending federal case
  - Belief that state court might be biased against, or that federal court might be biased in favor, of me or my client [if checked, see below]
  - Preferred federal-court procedure
  - Preferred federal-court juries
  - Other reason (please explain)
7. [*If the bias response is selected*] Belief that state court might be biased against, or that federal court might be biased in favor of, me or my client based on (check all that apply): [*response options are randomized*]
  - race, sex, sexual orientation, national origin, or religion
  - where my client resided or was located
  - political or moral views
  - commercial views or status as a business entity
  - wealth
  - my opponent's connection to the state
  - other (please explain)
8. [*Repeated for each motivation selected*] You selected as a motivating factor <*motivation*>. What weight did that motivating factor have on your decision to file the case in federal court?
  - Almost no weight
  - Little weight
  - Moderate weight
  - Substantial weight
  - Dispositive weight
9. Which of the following best describes your law practice setting? (Check one)
  - Private firm of 1-10 attorneys
  - Private firm of 11-25 attorneys
  - Private firm of more than 25 attorneys
  - Legal staff or in-house counsel of a for-profit entity
  - Legal staff or in-house counsel of a non-profit entity

- Government
  - Other (please explain)
10. How many years have you practiced law? \_\_\_\_\_ years
11. Do you represent plaintiffs, defendants, or both? (Check one)
- Primarily plaintiffs
  - Both plaintiffs and defendants about equally
  - Primarily defendants
12. In your civil practice, do you litigate in state or federal court?
- Primarily state court
  - State and federal court about equally
  - Primarily federal court
13. My race:
- American Indian or Alaskan Native
  - Asian
  - Black or African American
  - Native Hawaiian or Pacific Islander
  - Hispanic, Latinx, or Spanish origin;
  - White
  - Other, unknown, or prefer not to answer
14. My gender:
- Male
  - Female
  - Non-binary/third gender
  - Prefer not to say

### **Removed Cases**

[Same as above except the following questions]

2. Was the basis for removal solely diversity jurisdiction? [If no, end survey]
3. Was the case remanded for lack of diversity jurisdiction? [If yes, end survey]
6. Which of the following motivated you or your client to file this case in state court? (Check all that apply): [response options are randomized]
  - An out-of-state coparty preferred state court
  - Not able to file this case in federal court because of federal-court jurisdictional limits
  - Belief that a forum-selection clause required me to file the case in state court
  - Belief that state court would be faster, cheaper, or more convenient than federal court
  - Belief that state court would be of better quality than federal court
  - Force the defendant to remove the case to federal court
  - Belief that state court would prevent transfer of the case to a different state or consolidation of my case with an existing federal case
  - Belief that state court offered more opportunities to consolidate my case with a pending case
  - Belief that federal court might be biased against, or that state court might be biased in favor of, me or my client [if checked, see below]
  - Preferred state-court procedure
  - Preferred state-court juries
  - Other reason (please explain)

- 6a. [If the bias response is selected] Belief that federal court might be biased against, or that state court might be biased in favor of, me or my client based on (check all that apply): [response options are randomized]
- race, sex, sexual orientation, national origin, or religion
  - where my client resided or was located
  - political or moral views
  - commercial views or status as a business entity
  - wealth
  - my opponent’s connection to the state
  - other (please explain)
- 6b. [Repeated for each motivation selected] You selected as a motivating factor <motivation>. What weight did that motivating factor have on your decision to file the case in state court?
- Almost no weight
  - Little weight
  - Moderate weight
  - Substantial weight
  - Dispositive weight

**APPENDIX E Characteristics of Cases in Surveyed Population Versus Respondent Population**

Original Cases

**PANEL 1A:**  
Type of plaintiff and defendant

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
Individual vs. Corporation	2,772	0.449	198	0.493	0.044*
Individual vs. Individual	1,871	0.303	128	0.318	0.016
Corporation vs. Individual	292	0.047	13	0.032	-0.015
Corporation vs. Corporation	1,245	0.201	63	0.157	-0.045**
Observations	6,180		402		

**PANEL 1B:**  
Timing of the case

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
Case concluded in 2019	1,927	0.312	88	0.219	-0.093***
Case concluded in 2020	2,516	0.407	165	0.410	0.003
Case concluded in 2021	631	0.102	50	0.124	0.022
Case is ongoing	1,106	0.179	99	0.246	0.067***
Observations	6,180		402		

**PANEL 1C:**  
**Nature of the suit**

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
Insurance	999	0.162	69	0.172	0.010
Contract	1,861	0.301	115	0.286	-0.015
Franchise	81	0.013	3	0.007	-0.006
Foreclosure	39	0.006	2	0.005	-0.001
Other fraud	296	0.048	14	0.035	-0.013
Tort	2,082	0.337	157	0.391	0.054**
Employment	295	0.048	17	0.042	-0.005
Other statutes	527	0.085	25	0.062	-0.023
Observations	6,180		402		

**PANEL 1D:**  
**Disposition of the case**

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
Transferred	254	0.041	10	0.025	-0.016
Remanded to U.S. Agency	2	0.000	0	0.000	-0.000
Remanded to state court	129	0.021	0	0.000	-0.021***
Dismissal:					
Want of prosecution	61	0.010	4	0.010	0.000
Lack of jurisdiction	86	0.014	2	0.005	-0.009
Voluntarily	1,242	0.201	74	0.184	-0.017
Settled	1,929	0.312	141	0.351	0.039
Other	602	0.097	28	0.070	-0.028*
Judgment on:					
Default	190	0.031	8	0.020	-0.011
Consent	41	0.007	2	0.005	-0.002
Motion before trial	285	0.046	23	0.057	0.011
Jury verdict	8	0.001	0	0.000	-0.001
Court trial	4	0.001	0	0.000	-0.001
Award of arbitrator	6	0.001	0	0.000	-0.001
Stayed pending bankruptcy	11	0.002	1	0.002	0.001
Statistical closing	115	0.019	8	0.020	0.001
Appeal denied	1	0.000	0	0.000	-0.000
Other	108	0.017	2	0.005	-0.013*
Observations	6,180		402		

## PANEL 1E:

## District

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
00 - Maine	13	0.002	1	0.002	0.000
01 - Massachusetts	100	0.016	10	0.025	0.009
02 - New Hampshire	21	0.003	4	0.010	0.007**
03 - Rhode Island	22	0.004	3	0.007	0.004
04 - Puerto Rico	39	0.006	6	0.015	0.009**
05 - Connecticut	52	0.008	8	0.020	0.011**
06 - New York - Northern	49	0.008	4	0.010	0.002
07 - New York - Eastern	194	0.031	10	0.025	-0.007
08 - New York - Southern	274	0.044	16	0.040	-0.005
09 - New York - Western	22	0.004	2	0.005	0.001
10 - Vermont	15	0.002	5	0.012	0.010***
11 - Delaware	14	0.002	0	0.000	-0.002
12 - New Jersey	230	0.037	12	0.030	-0.007
13 - Pennsylvania - Eastern	256	0.041	18	0.045	0.003
14 - Pennsylvania - Middle	97	0.016	8	0.020	0.004
15 - Pennsylvania - Western	84	0.014	15	0.037	0.024***
16 - Maryland	117	0.019	6	0.015	-0.004
17 - North Carolina - Eastern	27	0.004	1	0.002	-0.002
18 - North Carolina - Middle	20	0.003	2	0.005	0.002
19 - North Carolina - Western	25	0.004	0	0.000	-0.004
20 - South Carolina	106	0.017	4	0.010	-0.007
22 - Virginia - Eastern	90	0.015	6	0.015	0.000
23 - Virginia - Western	33	0.005	1	0.002	-0.003
24 - West Virginia - Northern	19	0.003	2	0.005	0.002
25 - West Virginia - Southern	34	0.006	6	0.015	0.009**
26 - Alabama - Northern	98	0.016	6	0.015	-0.001
27 - Alabama - Middle	18	0.003	2	0.005	0.002
28 - Alabama - Southern	15	0.002	1	0.002	0.000
29 - Florida - Northern	30	0.005	1	0.002	-0.002
36 - Louisiana - Western	80	0.013	3	0.007	-0.005
37 - Mississippi - Northern	34	0.006	4	0.010	0.004
38 - Mississippi - Southern	89	0.014	6	0.015	0.001
39 - Texas - Northern	113	0.018	4	0.010	-0.008
3A - Florida - Middle	168	0.027	4	0.010	-0.017**
3C - Florida - Southern	222	0.036	7	0.017	-0.019**
3E - Georgia - Northern	118	0.019	9	0.022	0.003
3G - Georgia - Middle	23	0.004	1	0.002	-0.001
3J - Georgia - Southern	42	0.007	1	0.002	-0.004
3L - Louisiana - Eastern	81	0.013	6	0.015	0.002
3N - Louisiana - Middle	51	0.008	2	0.005	-0.003
40 - Texas - Eastern	99	0.016	7	0.017	0.001
41 - Texas - Southern	292	0.047	13	0.032	-0.015
42 - Texas - Western	85	0.014	5	0.012	-0.001
43 - Kentucky - Eastern	56	0.009	2	0.005	-0.004

PANEL 1E: *Continued*

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
44 - Kentucky - Western	36	0.006	4	0.010	0.004
45 - Michigan - Eastern	130	0.021	0	0.000	-0.021***
46 - Michigan - Western	22	0.004	2	0.005	0.001
47 - Ohio - Northern	95	0.015	5	0.012	-0.003
48 - Ohio - Southern	94	0.015	6	0.015	-0.000
49 - Tennessee - Eastern	46	0.007	6	0.015	0.007
50 - Tennessee - Middle	53	0.009	3	0.007	-0.001
51 - Tennessee - Western	39	0.006	3	0.007	0.001
52 - Illinois - Northern	240	0.039	19	0.047	0.008
53 - Illinois - Central	11	0.002	2	0.005	0.003
54 - Illinois - Southern	32	0.005	2	0.005	-0.000
55 - Indiana - Northern	31	0.005	1	0.002	-0.003
56 - Indiana - Southern	37	0.006	3	0.007	0.001
57 - Wisconsin - Eastern	27	0.004	2	0.005	0.001
58 - Wisconsin - Western	28	0.005	2	0.005	0.000
60 - Arkansas - Eastern	22	0.004	3	0.007	0.004
61 - Arkansas - Western	17	0.003	1	0.002	-0.000
62 - Iowa - Northern	10	0.002	0	0.000	-0.002
63 - Iowa - Southern	14	0.002	0	0.000	-0.002
64 - Minnesota	80	0.013	10	0.025	0.012**
65 - Missouri - Eastern	47	0.008	3	0.007	-0.000
66 - Missouri - Western	64	0.010	1	0.002	-0.008
67 - Nebraska	27	0.004	0	0.000	-0.004
68 - North Dakota	14	0.002	1	0.002	0.000
69 - South Dakota	23	0.004	1	0.002	-0.001
70 - Arizona	18	0.003	4	0.010	0.007**
71 - California - Northern	135	0.022	16	0.040	0.018**
72 - California - Eastern	88	0.014	5	0.012	-0.002
73 - California - Central	261	0.042	14	0.035	-0.007
74 - California - Southern	66	0.011	8	0.020	0.009*
75 - Hawaii	9	0.001	1	0.002	0.001
76 - Idaho	15	0.002	0	0.000	-0.002
77 - Montana	50	0.008	2	0.005	-0.003
78 - Nevada	72	0.012	2	0.005	-0.007
79 - Oregon	62	0.010	6	0.015	0.005
80 - Washington - Eastern	14	0.002	0	0.000	-0.002
81 - Washington - Western	72	0.012	4	0.010	-0.002
82 - Colorado	111	0.018	7	0.017	-0.001
83 - Kansas	66	0.011	5	0.012	0.002
84 - New Mexico	5	0.001	0	0.000	-0.001
85 - Oklahoma - Northern	27	0.004	2	0.005	0.001
86 - Oklahoma - Eastern	24	0.004	1	0.002	-0.001
87 - Oklahoma - Western	50	0.008	1	0.002	-0.006
88 - Utah	31	0.005	1	0.002	-0.003
89 - Wyoming	27	0.004	2	0.005	0.001
90 - District of Columbia	33	0.005	3	0.007	0.002

PANEL 1E: *Continued*

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
91 - Virgin Islands	17	0.003	2	0.005	0.002
93 - Guam	7	0.001	0	0.000	-0.001
Observations	6,166		400		

PANEL 1F:  
Circuit

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
0 - District of Columbia	33	0.005	3	0.007	0.002
1 - First Circuit	195	0.032	24	0.060	0.028***
2 - Second Circuit	606	0.098	45	0.112	0.014
3 - Third Circuit	698	0.113	55	0.137	0.024
4 - Fourth Circuit	471	0.076	28	0.070	-0.007
5 - Fifth Circuit	924	0.150	50	0.124	-0.025
6 - Sixth Circuit	571	0.092	31	0.077	-0.015
7 - Seventh Circuit	406	0.066	31	0.077	0.011
8 - Eighth Circuit	318	0.051	20	0.050	-0.002
9 - Ninth Circuit	883	0.143	64	0.159	0.016
10 - Tenth Circuit	341	0.055	19	0.047	-0.008
11 - Eleventh Circuit	734	0.119	32	0.080	-0.039**
Observations	6,180		402		

Removed CasesPANEL 2A:  
Type of plaintiff and defendant

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
Individual vs. Corporation	4,017	0.682	302	0.671	-0.011
Individual vs. Individual	1,279	0.217	109	0.242	0.025
Corporation vs. Individual	46	0.008	1	0.002	-0.006
Corporation vs. Corporation	550	0.093	38	0.084	-0.009
Observations	5,892		450		

**PANEL 2B:****Timing of the case**

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
Case concluded in 2019	1,987	0.337	108	0.240	-0.097***
Case concluded in 2020	2,589	0.439	211	0.469	0.029
Case concluded in 2021	599	0.102	54	0.120	0.018
Case is ongoing	717	0.122	77	0.171	0.049***
Observations	5,892		450		

**PANEL 2C:****Nature of the suit**

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
Insurance	1,469	0.249	114	0.253	0.004
Contract	775	0.132	55	0.122	-0.009
Franchise	14	0.002	4	0.009	0.007**
Foreclosure	112	0.019	8	0.018	-0.001
Other fraud	58	0.010	5	0.011	0.001
Tort	2,581	0.438	200	0.444	0.006
Employment	610	0.104	47	0.104	0.001
Other statutes	273	0.046	17	0.038	-0.009
Observations	5,892		450		



**PANEL 2D:**  
**Disposition of the case**

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
Transferred	181	0.031	5	0.011	-0.020**
Remanded to U.S. Agency	4	0.001	0	0.000	-0.001
Remanded to state court	708	0.120	24	0.053	-0.067***
Dismissal:					
Want of prosecution	27	0.005	2	0.004	-0.000
Lack of jurisdiction	12	0.002	2	0.004	0.002
Voluntarily	756	0.128	57	0.127	-0.002
Settled	2,407	0.409	208	0.462	0.054**
Other	572	0.097	39	0.087	-0.010
Judgment on:					
Default	6	0.001	1	0.002	0.001
Consent	9	0.002	0	0.000	-0.002
Motion before trial	288	0.049	20	0.044	-0.004
Jury verdict	6	0.001	2	0.004	0.003**
Court trial	1	0.000	0	0.000	-0.000
Award of arbitrator	5	0.001	0	0.000	-0.001
Stayed pending bankruptcy	4	0.001	0	0.000	-0.001
Statistical closing	117	0.020	9	0.020	0.000
Other	72	0.012	4	0.009	-0.003
Observations	5,892		450		

## PANEL 2E:

## District

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
00 - Maine	7	0.001	0	0.000	-0.001
01 - Massachusetts	82	0.014	7	0.016	0.002
02 - New Hampshire	9	0.002	0	0.000	-0.002
03 - Rhode Island	22	0.004	1	0.002	-0.002
04 - Puerto Rico	4	0.001	0	0.000	-0.001
05 - Connecticut	55	0.009	1	0.002	-0.007
06 - New York - Northern	13	0.002	3	0.007	0.004*
07 - New York - Eastern	130	0.022	7	0.016	-0.007
08 - New York - Southern	155	0.026	14	0.031	0.005
09 - New York - Western	26	0.004	2	0.004	0.000
10 - Vermont	5	0.001	0	0.000	-0.001
11 - Delaware	2	0.000	1	0.002	0.002*
12 - New Jersey	206	0.035	27	0.060	0.025***
13 - Pennsylvania - Eastern	176	0.030	15	0.033	0.003
14 - Pennsylvania - Middle	26	0.004	1	0.002	-0.002
15 - Pennsylvania - Western	38	0.006	5	0.011	0.005
16 - Maryland	71	0.012	12	0.027	0.015***
17 - North Carolina - Eastern	25	0.004	2	0.004	0.000
18 - North Carolina - Middle	17	0.003	3	0.007	0.004
19 - North Carolina - Western	23	0.004	5	0.011	0.007**
20 - South Carolina	132	0.022	5	0.011	-0.011
22 - Virginia - Eastern	59	0.010	4	0.009	-0.001
23 - Virginia - Western	24	0.004	1	0.002	-0.002
24 - West Virginia - Northern	28	0.005	2	0.004	-0.000
25 - West Virginia - Southern	39	0.007	2	0.004	-0.002
26 - Alabama - Northern	39	0.007	3	0.007	0.000
27 - Alabama - Middle	21	0.004	0	0.000	-0.004
28 - Alabama - Southern	20	0.003	1	0.002	-0.001
29 - Florida - Northern	42	0.007	1	0.002	-0.005
36 - Louisiana - Western	99	0.017	8	0.018	0.001
37 - Mississippi - Northern	29	0.005	3	0.007	0.002
38 - Mississippi - Southern	80	0.014	6	0.013	-0.000
39 - Texas - Northern	181	0.031	9	0.020	-0.011
3A - Florida - Middle	296	0.050	10	0.022	-0.028***
3C - Florida - Southern	273	0.046	15	0.033	-0.013
3E - Georgia - Northern	150	0.025	15	0.033	0.008
3G - Georgia - Middle	19	0.003	0	0.000	-0.003
3J - Georgia - Southern	15	0.003	0	0.000	-0.003
3L - Louisiana - Eastern	128	0.022	6	0.013	-0.008
3N - Louisiana - Middle	69	0.012	4	0.009	-0.003
40 - Texas - Eastern	74	0.013	11	0.024	0.012**
41 - Texas - Southern	307	0.052	12	0.027	-0.025**
42 - Texas - Western	182	0.031	14	0.031	0.000
43 - Kentucky - Eastern	48	0.008	4	0.009	0.001

PANEL 2E: *Continued*

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
44 - Kentucky - Western	62	0.011	9	0.020	0.009*
45 - Michigan - Eastern	83	0.014	5	0.011	-0.003
46 - Michigan - Western	15	0.003	2	0.004	0.002
47 - Ohio - Northern	49	0.008	3	0.007	-0.002
48 - Ohio - Southern	49	0.008	9	0.020	0.012**
49 - Tennessee - Eastern	39	0.007	3	0.007	0.000
50 - Tennessee - Middle	30	0.005	2	0.004	-0.001
51 - Tennessee - Western	39	0.007	2	0.004	-0.002
52 - Illinois - Northern	117	0.020	12	0.027	0.007
53 - Illinois - Central	15	0.003	2	0.004	0.002
54 - Illinois - Southern	26	0.004	3	0.007	0.002
55 - Indiana - Northern	42	0.007	2	0.004	-0.003
56 - Indiana - Southern	64	0.011	5	0.011	0.000
57 - Wisconsin - Eastern	17	0.003	2	0.004	0.002
58 - Wisconsin - Western	13	0.002	1	0.002	0.000
60 - Arkansas - Eastern	42	0.007	3	0.007	-0.000
61 - Arkansas - Western	22	0.004	4	0.009	0.005*
62 - Iowa - Northern	10	0.002	0	0.000	-0.002
63 - Iowa - Southern	19	0.003	1	0.002	-0.001
64 - Minnesota	57	0.010	7	0.016	0.006
65 - Missouri - Eastern	80	0.014	13	0.029	0.015***
66 - Missouri - Western	86	0.015	5	0.011	-0.003
67 - Nebraska	15	0.003	0	0.000	-0.003
68 - North Dakota	7	0.001	0	0.000	-0.001
69 - South Dakota	4	0.001	0	0.000	-0.001
70 - Arizona	13	0.002	2	0.004	0.002
71 - California - Northern	123	0.021	12	0.027	0.006
72 - California - Eastern	84	0.014	6	0.013	-0.001
73 - California - Central	518	0.088	29	0.064	-0.023*
74 - California - Southern	65	0.011	3	0.007	-0.004
75 - Hawaii	13	0.002	0	0.000	-0.002
76 - Idaho	8	0.001	1	0.002	0.001
77 - Montana	24	0.004	1	0.002	-0.002
78 - Nevada	102	0.017	5	0.011	-0.006
79 - Oregon	40	0.007	4	0.009	0.002
80 - Washington - Eastern	12	0.002	2	0.004	0.002
81 - Washington - Western	88	0.015	9	0.020	0.005
82 - Colorado	160	0.027	18	0.040	0.013
83 - Kansas	30	0.005	5	0.011	0.006*
85 - Oklahoma - Northern	34	0.006	2	0.004	-0.001
86 - Oklahoma - Eastern	11	0.002	1	0.002	0.000
87 - Oklahoma - Western	70	0.012	4	0.009	-0.003
88 - Utah	27	0.005	5	0.011	0.007*
89 - Wyoming	5	0.001	1	0.002	0.001
90 - District of Columbia	11	0.002	2	0.004	0.003
91 - Virgin Islands	3	0.001	0	0.000	-0.001
Observations	5,889		449		

**PANEL 2F:**  
**Circuit**

	Surveyed		Respondents		Difference in shares
	Count	Share	Count	Share	
0 - District of Columbia	11	0.002	2	0.004	0.003
1 - First Circuit	124	0.021	8	0.018	-0.003
2 - Second Circuit	384	0.065	27	0.060	-0.005
3 - Third Circuit	451	0.077	49	0.109	0.032**
4 - Fourth Circuit	418	0.071	36	0.080	0.009
5 - Fifth Circuit	1,149	0.195	73	0.162	-0.033*
6 - Sixth Circuit	414	0.070	39	0.087	0.016
7 - Seventh Circuit	294	0.050	27	0.060	0.010
8 - Eighth Circuit	342	0.058	33	0.073	0.015
9 - Ninth Circuit	1,093	0.186	75	0.167	-0.019
10 - Tenth Circuit	337	0.057	36	0.080	0.023**
11 - Eleventh Circuit	875	0.149	45	0.100	-0.049***
Observations	5,892		450		

Note: The Surveyed columns exclude Respondents. The Difference column is the coefficient of a simple regression of respondent status on the variable. \* $p < 0.10$ , \*\* $p < 0.05$ , \*\*\* $p < 0.01$ . The magnitudes of difference suggest that any statistical significance is driven at least partly by the large number of observations and is unlikely to signify practical concerns about the representativeness of the responses. One observation is worth noting. The differences in the timing of the disposition, as reflected in Panels 1B and 2B, suggest an underrepresentation of responses in quickly resolved cases and an overrepresentation of responses in ongoing cases. One possible reason for those differences is that attorneys in ongoing cases may have that case in their minds already and thus be more likely to respond to a survey about it, as contrasted with a case that concluded many months ago. It is possible that the time to dispose a case in federal court both is reliably predictable at the time of filing and is a factor in forum selection. The uncertainty of that possibility, coupled with the low absolute magnitude of the difference, minimizes concerns that the difference is practically significant.