

## CASENOTE

### DEFINING A CORPORATION'S "PRINCIPAL PLACE OF BUSINESS": THE UNITED STATES SUPREME COURT'S DECISION IN *HERTZ CORP. V. FRIEND*

*"In regularly seeking federal jurisdiction, then, corporations seemed to follow the time-tested advice of a late nineteenth-century handbook entitled The Conduct of Lawsuits. 'The forum of your choice,' it advised litigators, was an advantage 'to be looked for with wide-open eyes and clutched with unslipping hold when found.'"*<sup>1</sup>

#### I. INTRODUCTION

Corporate litigants covet federal courts.<sup>2</sup> Regardless of whether or not they actually fare better, it is well settled that corporations perceive federal forums as friendlier than state courts.<sup>3</sup> Accordingly, corporations use tactical devices to gain access to federal courts and vehemently fight remands to state courts.<sup>4</sup> This Note discusses one particular corporation that followed the above quoted advice on choosing a forum, ultimately litigating the matter all the way to the United States Supreme Court and bringing about a significant change in the law along the way.<sup>5</sup>

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1. Edward A. Purcell, Jr., *Origins of a Social Litigation System*, in LITIGATION AND INEQUALITY: FEDERAL DIVERSITY JURISDICTION IN INDUSTRIAL AMERICA 1870-1958 (1992), reprinted in CIVIL PROCEDURE ANTHOLOGY, 99, 102 (David I. Levine et al. eds., 1998).

2. *Id.*

3. *Id.*; see also discussion *infra* Part III.C.

4. Edward A. Purcell, Jr., *The Battle for Forum Control, 1: The Jurisdictional Amount and the Limits of Corporate Liability*, in LITIGATION AND INEQUALITY: FEDERAL DIVERSITY JURISDICTION IN INDUSTRIAL AMERICA 1870-1958 (1992), reprinted in CIVIL PROCEDURE ANTHOLOGY 107-14 (David I. Levine et al. eds., 1998) (describing the dynamics of corporate litigation and the procedural rules that both plaintiffs and defendants use to gain access to their choice forums). Trying to litigate one's claim in a forum thought to be more likely of providing a favorable outcome is known as "forum shopping," and it has been called a "national pastime." See Judge J. Skelly Wright, *The Federal Courts and the Nature and Quality of State Law*, 13 WAYNE L. REV. 317, 333 (1967).

5. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010).

On February 23, 2010, the Supreme Court decided *Hertz Corp. v. Friend* and adopted a single rule for determining a corporation's "principal place of business" for purposes of federal diversity jurisdiction.<sup>6</sup> *Hertz* resolved a significant split among the federal circuits.<sup>7</sup> Under the current diversity jurisdiction statute, a corporation is treated as a citizen of its state of incorporation as well as the state where it has its principal place of business.<sup>8</sup> Determining citizenship is important because disputes between citizens of different states can be heard in federal court.<sup>9</sup> Thus, corporate access to the federal court system hinges on the interpretation given to the statutory term principal place of business.<sup>10</sup>

Prior to the *Hertz* decision, the federal circuits were highly fractured in their interpretations of the term.<sup>11</sup> The various interpretations can essentially be grouped into two types of approaches: "activities" style approaches and "nerve center" approaches.<sup>12</sup> Courts that used an activities style approach looked to the state with the bulk of "day-to-day" corporate

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6. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186 (2010).

7. *Id.* at 1185 ("We seek here to resolve different interpretations that the Circuits have given this phrase.").

8. 28 U.S.C. § 1332(c)(1) (2006).

9. *See* 28 U.S.C. § 1332(a) (2006). Also note that federal diversity jurisdiction is subject to an amount in controversy requirement which is currently set at over \$75,000. *Id.*; *see also* discussion *infra* Part III.A.

10. 28 U.S.C. § 1332(c)(1) (2006). Federal courts also have the power to hear cases "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1332 (2006). This is known as federal question jurisdiction. *Id.*

11. *See* *Rodriguez v. SK & F Co.*, 833 F.2d 8, 9 (1st Cir. 1987) (noting that the First Circuit, depending on the structure of the corporation, used one of three tests to make the determination: a nerve center test, a locus of operations test, or a center of corporate activity test); *Toms v. Country Quality Meats, Inc.* 610 F.2d 313, 315 (5th Cir. 1980) (noting that the Fifth Circuit uses a hybrid "total activities test" requiring an examination of the totality of corporate activity); *R.G. Barry Corp. v. Mushroom Makers, Inc.* 612 F.2d 651, 656 (2nd Cir. 2006), *cited in Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1191 (2010) (looking to the state where the corporation has the "most extensive contact with the public" and where the corporation is "least likely to suffer from local prejudice," as opposed to the state where the corporation's "overall policies may be set"); *Kelly v. United States Steel Corp.*, 284 F.2d 850, 854 (3d Cir. 1960) (emphasizing that in the Third Circuit, a corporation's "principal place of business" is not where "final decisions are made on corporate policy" but rather is found where the corporation conducts its business "activities"); *Tosco Corp. v. Cmtys. for a Better Env't*, 236 F.3d 495, 500 (9th Cir. 2001) (*per curiam*), *abrogated by Hertz Corp.*, 130 S. Ct. 1181 (noting that in the Ninth Circuit, principal place of business refers to the state with a "substantial predominance" of business activity and that corporation's headquarters is only considered if no state contains a "substantial predominance" of activity); *Kanzelberger v. Kanzelberger*, 782 F.2d 774, 777 (7th Cir. 1986) (noting that in the Seventh Circuit "principal place of business" refers exclusively to the corporate "nerve center," usually the headquarters).

12. *See* James W. Moore & Donald T. Weckstein, *Corporations and Diversity of Citizenship Jurisdiction: A Supreme Court Fiction Revisited*, 77 HARV. L. REV. 1426, 1440 (1964) (describing the dichotomy); *see also Tosco*, 236 F.3d at 500 ("Federal Courts generally use one of two tests to determine a corporation's principal place of business.").

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contact with the public.<sup>13</sup> The primary factors weighed in an activities style test included the location of employees, sales, transactions, revenues, physical plant, and other tangible assets.<sup>14</sup> On the other hand, courts that used a pure nerve center approach simply looked to the location of a corporation's headquarters.<sup>15</sup> A third approach—the “total activities” test—emerged later as a blend of the two.<sup>16</sup> Courts using a total activities test determined corporate citizenship on a less rigid basis by looking to both the activities and the headquarters of a corporation.<sup>17</sup> These different approaches fostered uncertainty within the jurisdictional landscape and spurred extra litigation on unclear jurisdictional issues.<sup>18</sup>

In *Hertz*, the United States Supreme Court sided with the corporate defendant and adopted a simple nerve center definition for the troublesome term.<sup>19</sup> Principal place of business now refers to the center of corporate “direction, control, and coordination,” and will usually be a corporation's headquarters.<sup>20</sup> Corporate litigants have reason to celebrate this ruling, as they can now be certain of exactly where they can access federal courts.<sup>21</sup> Large corporations will likely incorporate this change into their strategies to minimize liability through access to “friendlier” federal courts.<sup>22</sup>

Section II of this Note reviews the quotidian dispute and procedural events leading to the *Hertz* decision. Section III recounts the history of diversity jurisdiction and the history of corporate citizenship determinations. Section IV details the Court's decision and its rationale. Finally, Section V is a critical analysis of the decision and its future impact on corporate diversity suits.

## II. FACTS AND HOLDING

In 2007, Melinda Friend and John Nhieu sued their employer, the

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13. For an in-depth analysis of this approach, see 1 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* ¶ .77[3. —3] (2d ed. 1985).

14. *Id.*

15. See *id.* ¶ .77[3. —2] for a complete review of the nerve center approach; see also discussion *infra* Part III.D.

16. See *White v. Halstead Industries, Inc.*, 750 F. Supp 395, 398 (E.D. Ark. 1990) (describing the appeal of a case-by-case approach).

17. *Id.*

18. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010).

19. *Id.*

20. *Id.* (concluding that “[p]rincipal place of business” is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities.”).

21. *Id.* at 1193 (emphasizing the value of predictability to corporations making planning decisions).

22. See discussion *infra* Part V.E.

Hertz Rental Car Corporation, in California state court, requesting relief on behalf of a class of California plaintiffs.<sup>23</sup> The plaintiffs claimed damages for alleged violations of California's wage and hour laws.<sup>24</sup> Hertz removed the suit to the Northern District of California,<sup>25</sup> claiming diversity of citizenship between itself and all of the plaintiffs, thus bringing the suit within federal jurisdiction.<sup>26</sup> Hertz—incorporated in Delaware—claimed its principal place of business as Park Ridge, New Jersey, where it maintains its corporate headquarters.<sup>27</sup> To this the plaintiffs asserted that Hertz was actually a citizen of California and there was no basis for federal diversity jurisdiction over the matter.<sup>28</sup>

In support of its diversity claims, Hertz submitted a declaration detailing its business activities.<sup>29</sup> The declaration showed Hertz's "core executive and administrative functions" being carried out at its corporate headquarters in Park Ridge, New Jersey.<sup>30</sup> However, the declaration also

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23. See *Friend v. Hertz Corp.*, No. C-07-5222 MMC, 2008 WL 7071465, at \*1 (N.D. Cal. Jan. 15, 2008), *aff'd*, 297 Fed. App'x 690 (9th Cir. 2008), *vacated and remanded*, 130 S. Ct. 1181, (2010).

24. *Id.* The plaintiffs alleged that Hertz withheld "overtime wages," "meal and rest breaks," and "vacation pay." *Id.* Specifically, they sued under California Labor Code §§ 201-203, 226.7, 227.3, 510, 512, and 1194 and also under the California Unfair Competition Law. See Second Amended Complaint for Violations of the Cal. Labor Code, the Cal. Indus. Welfare Comm'n Wage Orders, and the Cal. Bus. And Professions Code 17200, *et seq.*, *Friend v. Hertz Corp.*, No. 307CV05222, 2010 WL 2850554, (N.D. Cal. June 18, 2010).

25. *Hertz Corp.*, 2008 WL 7071465, at \*1. Generally, defendants can remove suits filed in state court to the local federal court if the suit could have originally been heard in federal court. See 28 U.S.C. § 1441(a) (2006). In other words, if a suit filed in state court also falls within the jurisdiction of the federal courts, then the defendant can remove the suit to the federal court for the district embracing the state court where the suit was originally filed. See *id.*

26. See *Hertz Corp.*, 2008 WL 7071465, at \*1. Hertz claimed federal jurisdiction under 28 U.S.C. § 1332(d)(2), which provides for federal power over "any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and is a class action in which—(a) any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A) (2006). Determining citizenship is the same under this rule as it is under the more well-known non class action rule, which provides for federal power over "civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest or costs, and is between—(1) citizens of different States." 28 U.S.C. § 1332(a)(1) (2006).

27. *Hertz Corp.*, 2008 WL 7071465, at \*1.

28. *Id.*

29. *Id.* at \*2. On a side note, there is a presumption against removal and thus the "defendant always has the burden of establishing that removal is proper." *Gaus v. Miles Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citing *Nishimoto v. Federman-Bachrach & Assocs.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988)); see also *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1935) (holding that the party who seeks to establish jurisdiction has the burden of showing its existence).

30. See *Friend v. Hertz Corp.*, No. C-07-5222 MMC, 2008 WL 7071465, at \*2 (N.D. Cal. Jan. 15, 2008), *aff'd*, 297 Fed. App'x 690 (9th Cir. 2008), *vacated and remanded*, 130 S. Ct. 1181,

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showed Hertz to have more employees, more tangible property, more rental locations, and more transactions in California than in any other state.<sup>31</sup>

At the time, the Ninth Circuit defined a corporation's principal place of business as the state having the most business activity, or the state with a substantial predominance of activity.<sup>32</sup> Applying Ninth Circuit precedent, the district court found Hertz to be a citizen of California and remanded the case to California state court.<sup>33</sup> Hertz appealed the remand of the district court, and the Ninth Circuit summarily affirmed.<sup>34</sup>

Hertz then petitioned the United States Supreme Court for certiorari.<sup>35</sup> The Supreme Court vacated the Ninth Circuit's judgment and unified the divided federal circuits under a single definition for principal place of business.<sup>36</sup> In siding with Hertz, the Supreme Court settled on the test used only by the Seventh Circuit: a pure nerve center test.<sup>37</sup> The Court held that a corporation's principal place of business is found at the center of corporate "direct[ion], control, and coordinat[ion]" and will usually be the corporate headquarters.<sup>38</sup>

### III. BACKGROUND

#### A. DIVERSITY JURISDICTION

Federal courts are of limited jurisdiction, meaning that they can hear only certain types of cases.<sup>39</sup> The Constitution permits, but does not specifically mandate, federal judicial power over controversies "between

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31. *Friend v. Hertz Corp.*, No. C-07-5222 MMC, 2008 WL 7071465, at \*2 (N.D. Cal. Jan. 15, 2008), *aff'd*, 297 Fed. App'x 690 (9th Cir. 2008), *vacated and remanded*, 130 S. Ct. 1181, (2010).

32. *Tosco Corp. v. Cmtys. for a Better Env't*, 236 F.3d. 495, 500-02 (9th Cir. 2001) (per curiam), *abrogated by Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010).

33. *See Hertz Corp.*, 2008 WL 7071465, at \*3 ("In sum, the Court finds defendant has failed to meet its burden to show its principal place of business is other than California. Accordingly, defendant has failed to establish that the Court has subject matter jurisdiction over the instant action.").

34. *See Friend v. Hertz Corp.*, 297 Fed. App'x. 690 (9th Cir. 2008), *vacated and remanded*, 130 S. Ct. 1181 (2010).

35. *See* Petition for Writ of Certiorari, *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1195 (2010) (No. 08-1107), 2009 WL 559328.

36. *Hertz Corp.*, 130 S. Ct. 1181.

37. *Id.* at 1192.

38. *Id.*; *see also* discussion *infra* Part IV.

39. *See* U.S. CONST. art. III, § 2; *see also* *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 173-80 (1803)) ("Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto.").

citizens of different states.”<sup>40</sup> Each natural person has one state of citizenship, and when plaintiffs and defendants are from different states there is “diversity of citizenship” between them.<sup>41</sup> These suits between citizens of different states are said to come within the “diversity jurisdiction” of the federal courts.<sup>42</sup>

The origins of diversity jurisdiction are obscure; however, the generally accepted notion is that diversity jurisdiction exists to provide out-of-state litigants with an unbiased forum.<sup>43</sup> The Framers of the Constitution apparently feared that state courts would favor local parties, and desired to provide outsiders with a forum free of local prejudice.<sup>44</sup> This collective skepticism concerning the impartiality of state courts flows from the fact that, at the time the Constitution was written, the states viewed themselves as autonomous sovereigns.<sup>45</sup>

Diversity jurisdiction was also created with commercial interests in mind.<sup>46</sup> The Framers were fearful that out-of-state merchants and creditors would be subject to biased state laws hindering interstate commerce.<sup>47</sup> Regulation of interstate commerce is the domain of the federal government.<sup>48</sup> Thus, federal courts sitting in diversity “were expected to be particularly sympathetic to business interests.”<sup>49</sup>

Congress passed the first statute authorizing diversity jurisdiction in 1789.<sup>50</sup> It said nothing about how to treat corporations.<sup>51</sup> This failure to

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40. U.S. CONST. art. III, § 2; see Dudley O. McGovney, *A Supreme Court Fiction: II*, 56 HARV. L. REV. 1090, 1099 (1943) (noting that the Constitution does not create diversity jurisdiction but “merely permits” Congress to do so).

41. See generally *Mas v. Perry*, 489 F.2d 1396, 1398 (5th Cir. 1974).

42. See *id.* at 1398-99.

43. See *J.A. Olson Co. v. City of Winona*, 818 F.2d 401, 404 (5th Cir. 1987) (citing *Jerguson v. Blue Dot Invests., Co.*, 659 F.2d 31, 33 (5th Cir. 1981) (noting that the purpose of diversity jurisdiction is to provide out-of-state litigants with a forum “free from prejudice in favor of a local litigant”). But see John P. Frank, *Historical Bases of the Federal Judicial System*, 13 LAW & CONTEMP. PROBS. 3, 23 (1948) (noting that “grave doubts” have been cast on this bias theory for diversity jurisdiction); see also Debra R. Cohen, *Limited Liability Company Citizenship: Reconsidering an Illogical and Inconsistent Choice*, 90 MARQ. L. REV. 269, 270 n.3 (2006).

44. WAYNE MCCORMACK, FEDERAL COURTS 153 (1984).

45. *Id.* (describing the mistrust that prevailed among the states).

46. Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 483, 495-98 (1928).

47. *Id.*

48. U.S. CONST. art. I, § VIII, cl. 3.

49. MCCORMACK, *supra* note 44, at 153.

50. Judiciary Act of 1789, § 11, 1 Stat. 73, 78-79, cited in *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1188 (2010).

51. See Judiciary Act of 1789, § 11, 1 Stat. 73, 78-79.

address the citizenship of corporations is not surprising considering that only thirty private corporations were chartered in the United States prior to 1790.<sup>52</sup>

### B. THE INITIAL APPROACHES TO CORPORATE CITIZENSHIP

When the issue of corporate citizenship reached the Supreme Court in 1809, the Justices were uncomfortable with giving something “invisible, intangible, and artificial,” the designation of “citizen.”<sup>53</sup> They nevertheless found that corporations were entitled to the benefits of diversity jurisdiction.<sup>54</sup> Thus, under the initial approach, the focus was on the “real persons” who composed a corporation.<sup>55</sup> This meant that if all of a corporation’s shareholders were of diverse citizenship from all of the parties on the opposing side, then diversity was found.<sup>56</sup>

This approach failed to anticipate an increase in the number of corporate shareholders.<sup>57</sup> Eventually, very few suits involving corporations could be heard under diversity.<sup>58</sup> A “troublesome stockholder” from the same state as the opponent “almost always appeared,” destroying diversity and keeping corporate suits in state court.<sup>59</sup>

In 1844, dissatisfaction with this focus on the citizenship of shareholders prompted the Supreme Court to adopt a new rule.<sup>60</sup> In

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52. See Charles Warren, *Corporations and Diversity of Citizenship*, 19 VA. L. REV. 661, 662 (1933).

53. *Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 86 (1809), *overruled in part by Louisville, Cincinnati & Charleston R.R. Co. v. Letson*, 43 U.S. (2 How.) 497 (1844), *superseded by* 28 U.S.C. § 1332(c) (1958).

54. *Deveaux*, 9 U.S. (5 Cranch) at 91-92. The *Deveaux* Court stated that corporations cannot be citizens, but on the “question of jurisdiction, [the courts may] look to the character of the individuals who compose the corporation.” *Id.*; see Warren, *supra* note 52, at 665-67.

55. *Deveaux*, 9 U.S. (5 Cranch) at 91-92.

56. *Id.* Also note that most diversity suits require complete diversity between opposing sides, meaning that if any plaintiff shares the same citizenship as any defendant, diversity is destroyed. See *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806); see also Warren, *supra* note 52, at 666. Hertz removed under one of the exceptions to this rule, 28 U.S.C. § 1441(a), which requires only minimal diversity in class actions. See 28 U.S.C. § 1441(a) (2006); *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1183 (2010).

57. See Warren, *supra* note 52, at 667.

58. *Id.*

59. *Meyer v. Del. R. Constr. Co.*, 100 U.S. 457, 480 (1879) (Breyer, J., dissenting in part and concurring in part). Interestingly, at this time, corporations actually *preferred* to litigate in state court because they believed they had the “home field advantage.” Cohen, *supra* note 43, at 284 n.95. The well-known corporate preference for *federal* court would develop later on with industrial expansion. See David W. Jackson, Note, *Federal Court Diversity Jurisdiction and the Corporation*, 8 TULSA L.J. 120, 122-23 (1972).

60. See *Louisville, Cincinnati & Charleston R.R. Co. v. Letson*, 43 U.S. (2 How.) 497 (1844),

*Louisville, Cincinnati and Charleston Railroad Co. v. Letson*, the Supreme Court decided that corporations were to be regarded as “artificial persons” and treated as citizens of their state of incorporation.<sup>61</sup> The justification for this approach was later supplied by the Court in *Marshall v. Baltimore and Ohio Railroad Co.*<sup>62</sup> In *Marshall*, the Court explained that a corporation could be regarded as a citizen of its state of incorporation because a corporation’s shareholders could be legally presumed to be citizens of that state.<sup>63</sup>

This legal fiction allowed corporations back into diversity suits, but it also allowed for abuse of diversity jurisdiction.<sup>64</sup> Corporations would incorporate in far-off states where they had little or no business, often by simply filing paperwork.<sup>65</sup> As a result, these corporations gained access to federal courts in states where they maintained significant activities and operations.<sup>66</sup> This nearly unrestrained access conflicted with the rationale for diversity jurisdiction because these corporations were unlikely to suffer from local prejudice in places where they were familiar.<sup>67</sup> Additionally, at this time, federal courts were perceived as being overburdened.<sup>68</sup> Many blamed this docket overload on the flawed state of incorporation rule leaving the courthouse door wide open to covetous corporations.<sup>69</sup>

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cited in *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1188 (2010).

61. *Louisville, Cincinnati & Charleston R.R. Co. v. Letson*, 43 U.S. (2 How.) 497, 558-59 (1844) (explaining that a corporation created under the laws of a particular state should be treated as a citizen of that state).

62. *Marshall v. Baltimore & Ohio R.R. Co.*, 57 U.S. (16 How.) 314 (1853), cited in *Hertz Corp.*, 130 S. Ct. at 1188.

63. *Id.* at 327-28.

64. See Moore & Weckstein, *supra* note 12, at 1429.

65. *Id.* at 1432.

66. *Id.* at 1432; see S. REP. NO. 85-1830, at 3 (1958), cited in *Hertz Corp.*, 130 S. Ct. at 1189. The Senate report summarizes the abuse under this approach:

This fiction of stamping a corporation a citizen of the State of its incorporation has given rise to the evil whereby a local institution, engaged in a local business and in many cases locally owned, is enabled to bring its litigation into the Federal courts simply because it has obtained a corporate charter from another state.

S. REP. NO. 85-1830, at 3 (1958).

67. See *J.A. Olson Co. v. City of Winona*, 818 F.2d 401, 404 (5th Cir. 1987) (citing *Jerguson v. Blue Dot Invests., Co.*, 659 F.2d 31, 33 (5th Cir. 1981)).

68. See Moore & Weckstein, *supra* note 12, at 1432; see also H.R. REP. NO. 1706, at 2-3 (1958) cited in *Hertz Corp.*, 130 S. Ct. at 1188 (explaining the need to “ease the workload of our Federal courts by reducing the number of cases involving corporations which come into Federal district courts on the fictional premises that a diversity of citizenship exists”). The hearings describe the need to “ease the current workload of our Federal courts and reduce the tremendous backlog of cases presently pending on court calendars.” *Id.*

69. See Moore & Weckstein, *supra* note 12, at 1431.

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### C. CORPORATE ATTRACTION TO FEDERAL COURT

To fully appreciate the importance of the *Hertz* decision, it is necessary to understand the corporate preference for federal court. As a practical matter, the preference makes sense because corporations often retain counsel from larger cities where federal courts are located.<sup>70</sup> Removing a state court suit to federal court also provides a tactical advantage to corporations. Removal delays adjudication and costs the opponent money, so corporate defendants will often remove cases to wear down their opponents and encourage settlement.<sup>71</sup>

Beyond this, federal courts have always been perceived as higher quality forums than state courts.<sup>72</sup> Originally, federal courts had small dockets and judges who were “reputed to be more highly qualified than state judges.”<sup>73</sup> At least one author has suggested that federal judges, because of their “social and professional backgrounds,” were more responsive to the broad policy arguments advanced by corporate defendants than were state court judges who tended to be “less concerned with the interests of national corporations and less protective toward interstate commerce.”<sup>74</sup> This thinking is buttressed by the fact that federal judges are appointed for life, while state court judges are generally elected.<sup>75</sup> Thus, goes the argument, state judges are more apt to succumb to the passions of their electorate, while federal judges are free to hear the real merits of a case, unworried by how their judgments might affect their popularity.<sup>76</sup>

Differences in jury composition and procedural rules also play into corporate preference for federal court.<sup>77</sup> Federal juries are drawn from larger geographical areas than are state court juries, which are usually drawn from a single county.<sup>78</sup> Thus, federal juries represent a wider cross section of society, and are less likely to have sympathies for a local plaintiff.<sup>79</sup> Furthermore, federal courts require that juries reach a unanimous verdict, while many state courts allow nonunanimous verdicts.<sup>80</sup>

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70. See Purcell, *supra* note 1, at 102.

71. See Purcell, *supra* note 4, at 107.

72. See Purcell, *supra* note 1, at 102.

73. *Id.*

74. *Id.* at 104-05.

75. See U.S. CONST. art. III.; see also Purcell, *supra* note 1, at 104.

76. See Purcell, *supra* note 1, at 104-05.

77. *Id.*

78. *Id.*

79. *Id.*

80. Shari Seidman Diamond et al., *Revisiting the Unanimity Requirement: The Behavior of the Non-unanimous Civil Jury*, 100 NW. U. L. REV. 201, 203 (2006) (noting that in civil cases federal juries must be unanimous, but that only eighteen states require a unanimous jury verdict).

Regardless of whether these factors translate into greater success for corporations in federal court, this preference is undeniable, and jurisdictional rules are therefore tailored to stem the onrush of corporate defendants.<sup>81</sup>

#### D. TIME FOR A CHANGE

In 1951, the Judicial Conference of the United States formed a committee to investigate alternatives to the flawed “state of incorporation” approach.<sup>82</sup> The committee aimed to shrink federal court dockets and end the “evil” of local corporations having access to local federal courts under diversity jurisdiction.<sup>83</sup> At first, the committee proposed that a corporation be deemed a citizen of both its state of incorporation and the state from which it derives half of its gross income.<sup>84</sup>

After being criticized by the judiciary as complicated and impractical, the first proposal was rejected.<sup>85</sup> The committee responded by proposing that a corporation be deemed a citizen of its state of incorporation as well as the “state where it has its principal place of business.”<sup>86</sup> The term “principal place of business” was said to have “ample precedent” in federal bankruptcy court decisions, to which courts could look for guidance.<sup>87</sup> In 1958, Congress modified the federal diversity statute making a corporation a citizen of its state of incorporation as well as the “[s]tate where it has its principal place of business.”<sup>88</sup>

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81. Purcell, *supra* note 1, at 106; *see supra* text accompanying note 66.

82. *See Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1189 (2010); *see also* Reports of the Proceedings of the Regular Annual Meeting and Special Meeting (Sept. 24-26 & Mar. 19-20, 1951) in H.R. DOC. NO. 365, 82nd Cong., 2d Sess., pp. 26-27 (1952), *cited in Hertz Corp.*, 130 S. Ct. at 1189.

83. Moore & Weckstein, *supra* note 12, at 1432 (discussing the purpose of the proposed changes) (quoting S. REP. NO. 1830, 85th Cong., 2d Sess. 4 (1958)).

84. *See Hertz Corp.*, 130 S. Ct. at 1189; *see also* JUDICIAL CONFERENCE OF THE U.S., REPORT OF THE COMMITTEE ON JURISDICTION AND VENUE, 14-15 (March 12, 1951), *cited in Hertz Corp.*, 130 S. Ct. at 1189. The test originally proposed would have corporations show that “less than fifty per cent of its gross income was derived from business transacted in the state where the Federal court is held.” *Hertz Corp.*, 130 S. Ct. at 1189; *see also* JUDICIAL CONFERENCE OF THE U.S., REPORT OF THE COMMITTEE ON JURISDICTION AND VENUE, 14-15 (March 12, 1951), *quoted in Hertz Corp.*, 130 S. Ct. at 1189.

85. *See Hertz Corp.*, 130 S. Ct. at 1189.

86. *See id.*; *see also* JUDICIAL CONFERENCE OF THE U.S., REPORT OF THE COMMITTEE ON JURISDICTION AND VENUE, 4 (Sept. 24, 1951), *cited in Hertz Corp.*, 130 S. Ct. at 1189.

87. *See* S. REP. NO. 85-1830, at 4 (1958); *see also* Moore & Weckstein, *supra* note 12, at 1439.

88. 28 U.S.C. § 1332(c) (1958). Congress also raised the jurisdictional minimum from over \$3,000 to over \$10,000. 28 U.S.C. §§ 1331(a), 1332(a) (1958).

**E. “PRINCIPAL PLACE OF BUSINESS”**

The precedent provided by the bankruptcy decisions, though ample, was conflicting and provided no singular definition for the term.<sup>89</sup> Courts followed suit, coming to divergent conclusions on how to define a corporation’s principal place of business.<sup>90</sup> Corporations with their headquarters and the bulk of their business operations in one state have a clear principal place of business.<sup>91</sup> However, identifying a corporation’s principal place of business is not always so straightforward.<sup>92</sup> Many modern corporations have management and business activities spread across several states.<sup>93</sup> The solutions developed by the various circuits can essentially be divided into nerve center approaches, and activities or place of operations approaches.<sup>94</sup>

Courts using a nerve center approach looked to the place where a corporation’s executive officers would meet and make high-level decisions.<sup>95</sup> The corporation was deemed a citizen of the state where this center of direction, control, and coordination was found.<sup>96</sup>

The other approach to corporate citizenship—the activities test—placed less emphasis on a corporation’s headquarters, and focused more on the location of a corporation’s “day-to-day business activities and operations.”<sup>97</sup> Courts using an activities approach aimed to find the state where the corporation had the most contact with the public, i.e., where its presence was felt most.<sup>98</sup> Factors included the location of real property,

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89. See Moore & Weckstein, *supra* note 12, at 1439.

90. *Id.* (noting that courts have followed the bankruptcy decisions “conflict and all”).

91. See MOORE ET AL., *supra* note 13, ¶ .77[2.—5] (“The principal place of business of many corporations is not difficult to determine. . . . There are many corporations, however, which do . . . business in two, three, or several states . . .”).

92. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1191 (2010) (describing the great variability of corporations).

93. See *id.*

94. See *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990) (citing 1 JAMES WM. MOORE, MOORE’S FEDERAL PRACTICE ¶ 0.77 [3] (2d ed. 1989)) (“Federal courts generally use one of two tests for locating a corporation’s principal place of business”); see also Moore & Weckstein, *supra* note 12, at 1440 (explaining that the division is essentially between “whether controlling significance should be given to the corporation’s ‘nerve center,’ or its place of operations”).

95. See *Kanzelberger v. Kanzelberger*, 782 F.2d 774, 777 (7th Cir. 1986).

96. *Id.*

97. *Homestead Log Co. v. Square D Co.*, 555 F. Supp. 1056, 1057 (D. Idaho 1983) (listing the factors used in an activities style test); see also Moore & Weckstein, *supra* note 12, at 1444 (explaining that an activities style test aims to find the state where the “corporation most impinges”). This approach had several different names and manifestations, but this Note will use the term “activities approach” for the sake of simplicity. See *supra* text accompanying note 11.

98. See *Mahoney v. Nw. Bell Tel. Co.*, 258 F. Supp. 500, 502 (D. Neb. 1966).

equipment, employees, revenues, transactions, and production activities.<sup>99</sup>

The activities approach was largely a reaction to judicial fear that a nerve center test would create merely another legal fiction capable of abuse.<sup>100</sup> Courts worried that under a pure nerve center test, local corporations would position their headquarters away from their activities and operations so as to gain access to local federal courts.<sup>101</sup> This would defeat the purpose of the 1958 amendment and clash with the purpose of diversity jurisdiction.<sup>102</sup> However, under an activities test, local corporations cannot hide behind an out-of-state headquarters; citizenship will lie with the state having the most activities and operations.<sup>103</sup> Corporations often have the most liability and face the most lawsuits in the state with the bulk of its activities and operations.<sup>104</sup> Thus, placing citizenship with the “activities” state has the added benefit of trimming federal diversity dockets, one of the aims of the 1958 amendment.<sup>105</sup>

Before the *Hertz* opinion, the Seventh Circuit was the only circuit using a pure nerve center citizenship test.<sup>106</sup> On the other end of the spectrum was the Ninth Circuit, which would place citizenship with the state having a substantial predominance of business activity.<sup>107</sup> The Ninth Circuit would only take into consideration a corporation’s headquarters if no state contained a substantial predominance of activity.<sup>108</sup>

Most circuits stood somewhere in between the Seventh and the Ninth, taking into account many factors and generally dealing with corporate citizenship on a case-by-case basis.<sup>109</sup> Often, the determination was made

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99. *Mahoney v. Nw. Bell Tel. Co.*, 258 F. Supp. 500, 502 (D. Neb. 1966).

100. *See Gilardi v. Atchison, Topeka & Santa Fe Ry. Co.*, 189 F. Supp. 82, 88 (N.D. Ill. 1960).

101. *See MOORE ET AL.*, *supra* note 13, ¶ .77[3. — 3] (reviewing the origins of the activities approach).

102. *Id.* (explaining how an activities approach was thought to better accord with the purpose of the 1958 amendment).

103. *Id.*

104. *Moore & Weckstein*, *supra* note 12, at 1444-45.

105. *Id.*

106. *Metro. Life Ins. Co. v. Estate of Cammon*, 929 F.2d 1220, 1223 (7th Cir. 1991) (citing *Kanzelberger v. Kanzelberger*, 782 F.2d 774 (7th Cir. 1986); *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090 (9th Cir. 1990)) (noting that although the other circuits may do otherwise, the Seventh Circuit follows a pure nerve center test); *see also Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1191-92 (2010).

107. *Davis v. HSBC Bank Nev.*, 557 F.3d 1026, 1029-30 (9th Cir. 2009) (quoting *Tosco Corp. v. Cmtys. for a Better Env’t*, 236 F.3d 495, 500 (9th Cir. 2001) (per curiam), *abrogated by Hertz Corp.*, 130 S. Ct. 1181).

108. *Id.*

109. *See Mahoney v. Nw. Bell Tel. Co.*, 258 F. Supp. 500, 502 (D. Neb. 1966) (“[A]ll of the cases which have come to the attention of this Court agree that the determination must be based on

by considering the nature of the corporation and judging where the corporation had the greatest impact.<sup>110</sup> Many circuits designed multi-step tests requiring analysis of the “totality of corporate activity.”<sup>111</sup> Corporations had to submit reports detailing their operations state-by-state.<sup>112</sup> In their efforts to reconcile the principal place of business language with the purpose of diversity jurisdiction, courts employed a wide variety of imprecise language in increasingly complex tests.<sup>113</sup> While good intentions were behind the designs of these tests, both the courts and the parties faced significant work and a great deal of venue uncertainty before even reaching the merits of a case.<sup>114</sup> The exorbitant amount of wasteful litigation was the driving factor in the Supreme Court’s decision to adopt a bright-line nerve center test.<sup>115</sup>

The differing approaches also led to inconsistent jurisdictional outcomes.<sup>116</sup> For example, depending on where a plaintiff filed suit, a corporation could be found to have more than one principal place of business.<sup>117</sup> If a corporation with headquarters in Chicago and a plurality of its business activities in California were sued in the Seventh Circuit, then its principal place of business would be Chicago and it would be deemed a citizen of Illinois. If the same corporation were sued in the Ninth Circuit, its principal place of business would be California, and it would be deemed

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the facts of each individual case.”); *Athena Auto. Inc. v. DiGregorio*, 166 F.3d 288, 291 (4th Cir. 1999) (“determinations of a corporation’s principal place of business must be made on a case by case basis”); *Gilardi v. Atchison, Topeka & Santa Fe Ry. Co.*, 189 F. Supp. 82, 85 (N.D. Ill. 1960) (citing *In re Tygarts River Coal Co.*, 203 F. 178, 180 (N.D. W. Va. 1913); *In re Tenn. Constr. Co.*, 207 F. 203 (S.D.N.Y. 1913); *Scot Typewriter Co. v. Underwood Corp.*, 170 F. Supp. 863, 864 (S.D.N.Y. 1959)) (“[T]he issue is a question of fact to be determined in each particular case largely upon the character of the corporation. . . . No single factor is determinative of the question.”).

110. Moore & Weckstein, *supra* note 12, at 1444-45.

111. See *Gilardi*, 189 F. Supp. at 86 (citing *Dryden v. Ranger Ref. & Pipe Line Co.*, 280 F. 257, 259-60 (5th Cir. 1922); *In re Tygarts River Coal Co.*, 203 F. at 180; *In re Hudson River Nav. Corp.*, 59 F.2d 971, 974 (2d Cir. 1932); 8 C.J.S. *Bankruptcy* § 24 n.75 (1955)).

112. *Id.*; see also *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186 (2010).

113. See *Hertz Corp.*, 130 S. Ct. at 1192 (citing *Pease v. Peck*, 59 U.S. (18 How.) 595, 599 (1855)).

This complexity may reflect an unmediated judicial effort to apply the statutory phrase ‘principal place of business’ in light of the general purpose of diversity jurisdiction, *i.e.*, an effort to find the State where a corporation is least likely to suffer out-of-state prejudice when it is sued in a local court . . . .

*Id.*

114. See *id.* (declaring that an activities style test “is at war with administrative simplicity”).

115. See discussion *infra* Part IV.B.

116. See *Hertz*, 130 S. Ct. at 1193 (discussing the need for a predictable jurisdictional test).

117. Brief for Amicus Curiae Cal. Retailers Ass’n in Support of Petitioner, *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) (No. 08-1107), 2009 WL 953603, at 4-5 (explaining in detail how this jurisdictional inconsistency arises).

a California citizen. These findings plainly contradict the language of the statute giving corporations a single principal place of business.<sup>118</sup> Under an activities test, a corporation's principal place of business might also fluctuate from year to year.<sup>119</sup> Depending on economic conditions, a corporation's majority of sales, revenues, and transactions may occur within one state in a given year and in another the next year.<sup>120</sup>

Another notable side effect of the Ninth Circuit's test was that nearly every large national corporation would be deemed a citizen of California because California has the largest population of any state.<sup>121</sup> Large national corporations will often have the plurality of their employees, revenues, and transactions in California simply by virtue of its large population.<sup>122</sup> Thus, an iconic Seattle corporation like Starbucks would not be a citizen of Washington, but of California.<sup>123</sup>

Two decisions from the Central District of California illustrate the unpredictable nature of corporate citizenship determinations prior to the *Hertz* ruling. In both cases, *Hertz* removed to federal court under diversity.<sup>124</sup> Both courts found *Hertz*'s principal place of business *not* to be in California.<sup>125</sup> These courts reviewed virtually the same figures presented

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118. See 28 U.S.C. § 1332(c)(1) (2006); see also *Metro. Life Ins. Co. v. Estate of Cammon*, 929 F.2d 1220, 1223 (7th Cir. 1991). All of the federal circuits agreed that a corporation can only have one principal place of business. *Metro. Life Ins. Co.*, 929 U.S. at 1223. The inconsistency produced by the different tests is unacceptable. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010).

119. Brief for Amicus Curiae Cal. Retailers Ass'n in Support of Petitioner, *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) (No. 08-1107), 2009 WL 953603, at 9-10.

120. *Id.*

121. *Id.* at 6-7; see also *Tosco Corp. v. Cmty. for a Better Env't*, 236 F.3d 495, 500-02 (9th Cir. 2001) (per curiam), *abrogated by Hertz Corp.*, 130 S. Ct. 1181.

122. Brief for Amicus Curiae Cal. Retailers Ass'n in Support of Petitioner, *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) (No. 08-1107), 2009 WL 953603. For the most up to date numbers of California's population see the Bureau of Econ. Analysis, U.S. Dep't of Commerce, *Regional Economic Accounts*, <http://www.bea.gov/regional/gsp/> (last updated June 2, 2009).

123. See *STARBUCKS, COMPANY PROFILE* (2010), available at <http://assets.starbucks.com/assets/company-profile-feb10.pdf>.

124. See Order to Show Cause in Writing on or Before January 2, 2007 as to Why This Action Should not Be Remanded For Lack of Jurisdiction, *Lopez v. Hertz Local Edition, Inc.*, No. CV-06-7364 SJO (JTLx) (C.D. Cal. Dec. 15, 2006); *Charlot v. Hertz Corp.*, No. CV 07-1496-JFW (FFMx) (C.D. Cal. Mar. 26, 2007); see also Brief for Amicus Curiae Cal. Retailers Ass'n in Support of Petitioner, *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) (No. 08-1107), 2009 WL 953603, at 8-9.

125. See Order to Show Cause in Writing on or Before January 2, 2007 as to Why This Action Should not Be Remanded For Lack of Jurisdiction, *Lopez v. Hertz Local Edition, Inc.*, No. CV-06-7364 SJO (JTLx) (C.D. Cal. Dec. 15, 2006); *Charlot v. Hertz Corp.*, No. CV 07-1496-JFW (FFMx) (C.D. Cal. Mar. 26, 2007); see also Brief for Amicus Curiae Cal. Retailers Ass'n in Support of Petitioner, *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) (No. 08-1107), 2009 WL

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to the Northern District of California in *Friend v. Hertz*.<sup>126</sup> The Ninth Circuit's interpretation of principal place of business had become so convoluted that federal judges in the same state were reaching conflicting conclusions from the same facts.<sup>127</sup> Thus, the Supreme Court's intervention in this jurisdictional mess was long overdue.

#### IV. THE SUPREME COURT'S DECISION

In siding with Hertz and adopting a nerve center test, the Court relied on three sets of considerations.<sup>128</sup> First, the Court held that the wording of the statute suggests that a corporation's principal place of business is a location *within* a state, not an entire state.<sup>129</sup> Next, the Court stressed the importance of simplicity and uniformity in jurisdictional statutes and made clear its distaste for litigating disputes over where to litigate.<sup>130</sup> Last, the Court found that the legislative history of the statute supports a simple nerve center approach.<sup>131</sup>

##### A. THE LANGUAGE OF THE STATUTE

28 U.S.C. § 1332(c)(1) provides: "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."<sup>132</sup> The Court analyzed each word using the Oxford English Dictionary.<sup>133</sup> First, the Court found that "place" signifies a singular location.<sup>134</sup> Next, the Court examined "principal," finding it analogous with "main, prominent," or "leading."<sup>135</sup> The Court noted that this singular, "leading" location signifies a place

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953603, at 8-9.

126. See Order to Show Cause in Writing on or Before January 2, 2007 as to Why This Action Should not Be Remanded For Lack of Jurisdiction, *Lopez v. Hertz Local Edition, Inc.*, No. CV-06-7364 SJO (JTLx) (C.D. Cal. Dec. 15, 2006); *Charlot v. Hertz Corp.*, No. CV 07-1496-JFW (FFMx) (C.D. Cal. Mar. 26, 2007); see also Brief for Amicus Curiae Cal. Retailers Ass'n in Support of Petitioner, *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) (No. 08-1107), 2009 WL 953603, at 8-9.

127. For another glaring inconsistency see *Davis v. HSBC Bank Nev.*, 557 F.3d 1026 (9th Cir. 2009). In *Davis*, the Ninth Circuit found a corporate defendant not to be a citizen of California, even though the corporation had its greatest number of sales, employees, and stores in California. *Id.*

128. *Hertz Corp.*, 130 S. Ct. at 1192-95.

129. *Id.* at 1193.

130. *Id.*

131. *Id.* at 1194.

132. 28 U.S.C. § 1332(c)(1) (2006).

133. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010).

134. *Id.* at 1192.

135. *Id.* (citing OXFORD ENGLISH DICTIONARY 495 (2d ed. 1989)).

*within* a state and not a state itself.<sup>136</sup>

### B. ADMINISTRATIVE SIMPLICITY

With *Hertz*, the Supreme Court set out to minimize wasteful litigation and eliminate inconsistencies in the jurisdictional landscape.<sup>137</sup> The Court lamented how litigating jurisdictional issues eats up both party and judicial resources, which could be more appropriately used to determine the actual merits of a case.<sup>138</sup> The Court held that jurisdictional statutes should be simple, easy to apply, and applied uniformly.<sup>139</sup> Stressing the need for change, the Court noted how the term principal place of business has proven ripe for conflicting interpretations and has spurred “gamesmanship” and “greater litigation.”<sup>140</sup>

Emphasizing the new test’s ease of application, the Court made it clear that “[j]udicial resources too are at stake.”<sup>141</sup> Courts have an obligation to make sure they have the power to hear a case, so simple jurisdictional rules make life easier for judges.<sup>142</sup> As the Court noted, unequivocal, bright-line jurisdictional approaches consume fewer resources than rules involving extensive research and weighing of various factors.<sup>143</sup> They also allow for predictability; the Court highlighted the importance of predictability to businesses, as well as to plaintiffs when choosing where to file suit.<sup>144</sup>

### C. THE LEGISLATIVE HISTORY

The Court held that the legislative history of the statute further supports using a simple test for determining a corporation’s principal place of business.<sup>145</sup> Prior to accepting the “principal place of business” language, an approach placing citizenship in the state with at least fifty percent gross revenue was rejected by the Judicial Conference as complicated and impractical.<sup>146</sup> The Supreme Court emphasized that the

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136. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1193 (2010).

137. *Id.*

138. *Id.* (citing *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 464 n.13 (1980)).

139. *Id.* at 1192-94.

140. *Id.* at 1193.

141. *Id.*

142. *Hertz Corp.*, 130 S. Ct. at 1193 (citing *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006)).

143. *Id.* at 1193-94.

144. *Id.* at 1193.

145. *Id.* at 1194; see discussion of this history *supra* Part III.C.

146. See JUDICIAL CONFERENCE OF THE U.S., REPORT OF THE COMMITTEE ON JURISDICTION AND VENUE 2 (Sept. 24, 1951).

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conference instead opted for a test involving no numerical calculation.<sup>147</sup> The Court reasoned that the test for determining a corporation's principal place of business should be less complicated, and involve less calculation than the test originally proposed and rejected.<sup>148</sup> Activities style approaches require courts to perform mathematical calculations and comparisons.<sup>149</sup> Thus, the Court concluded that an activities test could not be the approach intended by lawmakers.<sup>150</sup>

The Court also took into consideration concerns that corporations would be able to set up "shell" headquarters to manipulate diversity jurisdiction and gain access to federal courts in states where they do a lot of business.<sup>151</sup> The Court reiterated that the burden of persuasion remains on the party asserting diversity jurisdiction, so competent proof of alleged jurisdictional facts must be shown.<sup>152</sup> Dispelling these concerns over manipulation, the Court assured that if a corporation's alleged "headquarters" is found to be a mere "mail drop box, a bare office with a computer, or the location of an annual executive retreat," then courts will instead find the true location of corporate "direction, control, and coordination."<sup>153</sup>

## V. ANALYSIS

### A. CRITICISMS OF A PURE NERVE CENTER APPROACH

Using the tenets of statutory interpretation, the *Hertz* Court reached the correct decision.<sup>154</sup> However, courts have been hesitant to use a pure nerve center approach ever since the "principal place of business" language was adopted in 1958.<sup>155</sup> Courts worried that using a pure nerve center approach would create a "substitute fiction" capable of being abused.<sup>156</sup> The underlying concern is that a pure nerve center approach is in disaccord with the primary purpose of diversity jurisdiction: to provide an unbiased forum to out-of-state parties who might suffer prejudice in state court.<sup>157</sup>

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147. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1194 (2010).

148. *Id.*

149. *See* *Tosco Corp. v. Cmtys. for a Better Env't*, 236 F.3d 495, 500-02 (9th Cir. 2001) (per curiam), *abrogated by Hertz Corp.*, 130 S. Ct. 1181.

150. *See Hertz Corp.*, 130 S. Ct. at 1194.

151. *Id.* at 1195.

152. *Id.* at 1194-95 (citing to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)).

153. *Id.* at 1195.

154. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192-93 (2010).

155. *See* discussion *supra*, Part III.D.

156. *See* *Gilardi v. Atchison, Topeka & Santa Fe Ry. Co.*, 189 F. Supp. 82, 88 (N.D. Ill. 1960).

157. *See* *J.A. Olson Co. v. City of Winona*, 818 F.2d 401, 404 (5th Cir. 1987) (citing *Jerguson*

However, this Note contends that, within the confines of the current diversity statute, any interpretation of “principal place of business” would suffer from instances of disaccord with the purpose of diversity jurisdiction, and the Court made the correct decision by choosing the interpretation least burdensome in its application.

### B. WORRIES ABOUT ABUSE

Before the 1958 amendment, corporations were regarded as citizens of their state of incorporation only.<sup>158</sup> This approach led to manipulation of diversity jurisdiction as corporations could simply incorporate in states in which they had little or no business activity and thus gain access to federal courts in other states.<sup>159</sup> Similarly, under a pure nerve center approach, a corporation wishing to access federal courts in a certain state can now do so—regardless of the amount of business done in that state—by locating its headquarters elsewhere.

Soon after the adoption of the “principal place of business” language in 1958, courts realized this potential for manipulation. Many courts instead decided to examine the entire scope of corporate activity to make sure that truly local disputes were kept out of federal courts sitting in diversity.<sup>160</sup> This “activities” approach was thought to produce a more realistic picture of corporate citizenship unaffected by strategy.<sup>161</sup> Theoretically, this approach accords with the purpose of diversity jurisdiction.<sup>162</sup> However, as the Supreme Court made clear in *Hertz*, approaches examining the entirety of corporate activity have proven untenable for reasons of judicial economy and uniformity.<sup>163</sup>

Though jurisdictional manipulation is certainly possible under the pure nerve center approach adopted in *Hertz*, it is unlikely that manipulation will approach pre-1958 levels because of the differences between an incorporation filing and a bona-fide headquarters. A headquarters is fundamental to the identity of a corporation, while incorporation papers are not. When you think of Coca-Cola, you think of Atlanta, Georgia; you don’t think of Delaware, the state in which Coke is

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v. Blue Dot Invests., Co., 659 F.2d 31, 33 (5th Cir. 1981).

158. See discussion *supra* Part III.B.

159. See discussion *supra* Part III.B.

160. See, e.g., *Inland Rubber Corp. v. Triple A Tire Serv., Inc.*, 220 F. Supp. 490, 495 (S.D.N.Y. 1963); *White v. Halstead Industries, Inc.*, 750 F. Supp. 395, 398 (E.D. Ark. 1990); *Mahoney v. Nw. Bell Tel. Co.*, 258 F. Supp. 500, 502 (D. Neb. 1966).

161. *Inland Rubber Corp. v. Triple A Tire Serv., Inc.*, 220 F. Supp. 490, 495 (S.D.N.Y. 1963).

162. *Id.* (concluding that the legislature “must have envisioned a test based chiefly on operations” in view of the purpose of diversity jurisdiction).

163. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010).

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incorporated.<sup>164</sup> A bona-fide headquarters can be likened to the “brain” of a corporation or its “home base.” Logically, it makes a great deal of sense to associate a corporation with the location of such a place. Furthermore, setting up a headquarters is far more involved than filing incorporation papers; thus, there is less potential for abuse under the new approach than under the old state of incorporation rule. Another concern is that corporations might name any place they please as their headquarters.<sup>165</sup> As was mentioned earlier, the Court assured that courts and parties remain free to question the party asserting citizenship if they feel they are being presented with a puppet or shell headquarters.<sup>166</sup> Only a location of direction, control, and coordination will be accepted as a true nerve center, so courts will have wide discretion to prevent abuse.<sup>167</sup>

**C. WORRIES ABOUT FEDERAL COURT DOCKETS**

Also clashing with the aims of the 1958 amendment is the likelihood that the new rule will result in more diversity suits at a time when federal court dockets are more burdened than ever.<sup>168</sup> One of the aims of the 1958 amendment was to trim federal court dockets.<sup>169</sup> Access to federal courts under *Hertz* now depends on the location of a corporation’s nerve center. At first glance, it appears that this would have a neutral effect on federal court dockets. However, in large states previously using activities style tests, there was likely to be greater corporate access to federal courts.<sup>170</sup>

The situation of the Hertz Corporation is an example of how heavier dockets will come about. Hertz, like many other nationwide corporations, has the plurality of its business activities in California simply because California has more people than any other state. Under the old Ninth Circuit approach, such corporations could not remove to federal court because they were deemed citizens of California. Now, so long as their headquarters are situated outside of California, these corporations can avail themselves of removal to federal court.

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164. See The Coca-Cola Company, Restated Certificate of Incorporation of the Coca-Cola Company (Originally Incorporated on Sept. 5, 1919), available at <http://www.thecocacolacompany.com/investors/certification.html>.

165. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192-93 (2010).

166. See discussion *supra* Part IV.C.

167. See discussion *supra* Part IV.C.

168. Jessica Dye, *Judges Press Senate for More Federal Posts*, LAW360, Sept. 30, 2009, <http://www.law360.com/articles/123940>.

169. See discussion *supra* Part III.D.

170. See Brief Amicus Curiae of the Legal Aid Society-Employment Law Center in Support of Respondents, *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) (No. 08-1107), 2009 WL 3236332, at \*17-18.

Further, the number of corporate diversity suits will likely rise as corporations learn to integrate *Hertz* into their business strategies. Corporations often have the most liability and see the most suits in the states harboring their day-to-day activities and operations.<sup>171</sup> The *Hertz* ruling incentivizes corporations to locate their headquarters in states away from the bulk of their operations, as a way to minimize liability through access to friendlier federal courts. As a result, federal courts in larger states seeing a lot of suits against corporations could see a spike in corporate diversity suits.

#### D. WORRIES ABOUT DISACCORD WITH THE PURPOSE OF DIVERSITY JURISDICTION

A pure nerve center approach has ultimately been criticized as being in disaccord with the primary purpose of diversity jurisdiction, namely to provide an unbiased forum to out of state parties who might suffer local prejudice in state courts.<sup>172</sup> It is questionable whether *Hertz*, with its significant presence in California, would really suffer prejudice in California state court. Perhaps the district court was correct in concluding that *Hertz* “is not the type of litigant that diversity jurisdiction was designed to protect.”<sup>173</sup> Such an inquiry goes to the heart of the debate on the continued need for diversity jurisdiction and is nearly impossible to answer.<sup>174</sup> This Note contends that deviations from the purpose of diversity jurisdiction will be found under any interpretation of principal place of business, and that the Supreme Court, operating within the confines of the current diversity statute, made the correct decision in choosing the approach least burdensome in application.

Diversity jurisdiction attempts to prevent something as nebulous as bias.<sup>175</sup> To know if a party is likely to experience bias in a particular forum requires an in depth understanding of that forum’s subjective perception of

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171. Moore & Weckstein, *supra* note 12, at 1445.

172. See discussion *supra* Part III.A.

173. See *Friend v. Hertz Corp.*, No. C-07-5222 MMC, 2008 WL 7071465, at \*2 (N.D. Cal. Jan. 15, 2008), *aff’d*, 297 Fed. App’x 690 (9th Cir. 2008), *vacated and remanded*, 130 S. Ct. 1181, (2010) (quoting *Tosco Corp. v. Cmtys. for a Better Env’t*, 236 F.3d 495, 502 (9th Cir. 2001) (per curiam), *abrogated by Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010)).

174. For the arguments for and against diversity jurisdiction see Adrienne J. Marsh, *Diversity Jurisdiction: Scapegoat of Overcrowded Federal Courts*, 48 BROOK. L. REV. 197, 227-30 (1982) (in support of diversity jurisdiction) and Larry Kramer, *Diversity Jurisdiction*, 1990 BYU L. REV. 97 (1990) (critical of diversity jurisdiction).

175. See *Hertz Corp.*, 130 S. Ct. at 1192 (“After all, the relevant purposive concern—prejudice against an out-of-state party—will often depend upon factors that courts cannot easily measure, for example, a corporation’s image, its history, and its advertising . . .”).

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the party.<sup>176</sup> Such an understanding cannot be practically obtained, so determining the likelihood that a party will suffer prejudice is inexact.<sup>177</sup> Thus, there will always be parties litigating in federal court under the diversity statute who would arguably suffer no prejudice in state court, and there will also always be parties denied access to federal court who would indeed suffer from prejudice in state court. This vague and antiquated purpose of preventing bias has produced much debate on the continued need for diversity jurisdiction, but diversity jurisdiction has proven resilient.<sup>178</sup>

Further, any interpretation of principal place of business will produce some anomalous results because the statute defining corporate citizenship limits a corporation to two possible citizenships, while many corporations have a profound presence in more than just two states.<sup>179</sup> Thus, it has been proposed that a corporation should be deemed a citizen of any state where it conducts business.<sup>180</sup> This argument makes sense because if a corporation has operations within a state it is technically not an out of state party. Under such a scheme it cannot be argued that corporations have unfair access to federal courts in states where they are familiar because access would be limited to states devoid of their presence.<sup>181</sup> Under a statute limiting a corporation to two citizenships, though, it can be argued that large corporations have unfair access to federal courts in states where they do a lot of business and are unlikely to suffer from bias. Thus, these criticisms can be targeted against any interpretation of the statute.

After considering the criticisms outlined above, the Court held that any such shortcomings to a pure nerve center test are outweighed by the benefits flowing from a uniform jurisdictional scheme and a rule that is simple to apply.<sup>182</sup> The Court's commitment to economy over a thorough analysis of corporate activity is telling of how the Court values diversity jurisdiction. Courts have an obligation to ensure they have the power to

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176. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010).

177. See EDWARD A. PURCELL, JR., *LITIGATION AND INEQUALITY: FEDERAL DIVERSITY JURISDICTION IN INDUSTRIAL AMERICA 1870-1958*, 8 (1992) (“[T]he identification of ‘local prejudice’ is a complex and problematic matter . . .”).

178. See Kramer, *supra* note 174, at 97.

179. See 28 U.S.C. § 1332(c)(1) (2006).

180. See Moore & Weckstein, *supra* note 12, at 1430 n.27.

181. See Moore & Weckstein, *supra* note 12, at 1430. This approach to corporate citizenship would essentially eliminate corporate diversity suits because the likelihood of a corporation being sued in a state devoid of its presence is small. *Id.* Additionally, there would likely be no personal jurisdiction over such a defendant under a “minimum contacts” analysis. See *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 319 (1945).

182. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1194 (2010).

hear a case.<sup>183</sup> *Hertz* makes it easier for courts to satisfy this obligation by installing a bright-line rule that is not overly preoccupied with satisfying the purpose of diversity jurisdiction.

### E. IS *HERTZ* A PRO-BUSINESS DECISION?

Not surprisingly, the *Hertz* ruling is of particular interest to the business world. While on its face appearing to simply correct a widespread misinterpretation of the law, *Hertz* also has a distinct pro-business flavor. It will undoubtedly simplify things for national corporations by providing certainty as to where they can access federal courts. The decision can be regarded as one typical of the Roberts Court in regards to business and as an illustration of its author's reputation for pragmatism.<sup>184</sup>

Corporations have good reason to celebrate the *Hertz* ruling.<sup>185</sup> Under the new rule, corporations can be absolutely certain of their citizenship(s) in all eleven circuits and can plan accordingly.<sup>186</sup> The Court highlighted how the predictability allowed by the new rule would be "valuable to corporations making business and investment decisions."<sup>187</sup> Corporations with the resources to do so should incorporate *Hertz* into their strategies to minimize liability through access to federal court. Corporations should determine in which states they typically suffer the greatest legal liability and locate their headquarters outside of those states so as to gain access to "business friendly" federal courts.

The decision appears even more pro-business when viewed in the context of other recent Supreme Court decisions. At least one law professor has suggested that an "ideological sea change" has taken place on the Supreme Court, with the Roberts Court moving away from an economic populist philosophy "vilifying big business."<sup>188</sup> The professor contends that

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183. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006), cited in *Hertz Corp.*, 130 S. Ct. at 1193.

184. See Jeffery Rosen, *Supreme Court Inc.*, N.Y. TIMES MAGAZINE, Mar. 16, 2008, <http://www.nytimes.com/2008/03/16/magazine/16supreme-t.html>. For the position that the Roberts Court is pro-business, see Elizabeth B. Wydra, *Citizens United is Just the Tip of the Supreme Court's Pro-Corporate Iceberg*, THE HUFFINGTON POST, July 17, 2010, [http://www.huffingtonpost.com/elizabeth-b-wydra/citizens-united-is-just-t\\_b\\_558452.html](http://www.huffingtonpost.com/elizabeth-b-wydra/citizens-united-is-just-t_b_558452.html).

185. See Debra Weiss, *Supreme Court Adopts Headquarters Test, Hampering Forum-Shopping Plaintiffs*, ABA JOURNAL, Feb. 23, 2010, [http://www.abajournal.com/news/article/supreme\\_court\\_adopts\\_headquarters\\_test\\_hampering\\_forum-shopping\\_plaintiffs/](http://www.abajournal.com/news/article/supreme_court_adopts_headquarters_test_hampering_forum-shopping_plaintiffs/); see also Maria Rodriguez, *What Hertz v. Friend Means to Employers*, L.A. DAILY JOURNAL, March 8, 2010, available at <http://www.winston.com/siteFiles/Publications/LDJ0308007.pdf> ("[M]ore removals should survive.").

186. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1194 (2010).

187. See *id.*

188. See Rosen, *supra* note 184. Rosen posits that the Chamber of Commerce became a

this change favoring business interests was brought about over time through a concerted effort by the Chamber of Commerce.<sup>189</sup> In tune with this argument, and the theory of this Note, is the fact that in the instant case the Chamber of Commerce submitted an amicus brief in support of Hertz.<sup>190</sup> Considering that the Roberts Court has recently curtailed punitive damage awards,<sup>191</sup> expanded the scope of arbitration agreements,<sup>192</sup> and declared limits on corporate campaign spending unconstitutional,<sup>193</sup> any suggestion that the Supreme Court is “pro-business” is not unreasonable. *Hertz* can be viewed as part of the line of cases favoring corporate interests and as another example of the “cost benefit analysis” often employed by the Justices.<sup>194</sup>

Taking this theory even further is the fact that the author of *Hertz*, Justice Breyer, is known for his pragmatic opinions.<sup>195</sup> During the hearings on Breyer’s nomination to the Supreme Court, there were worries voiced about his “extraordinarily one sided” business opinions.<sup>196</sup> One senator, commenting on the Chamber of Commerce being the first to endorse Breyer’s nomination, estimated that “large corporations are very pleased with this nomination.”<sup>197</sup> Judging from *Hertz*, it appears that the senator’s prediction was correct.

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powerful lobbying force in order to combat Supreme Court “justices who viewed big business with skepticism.” *Id.* Jeffery Rosen is a professor of law at The George Washington University.

189. See Rosen, *supra* note 184.

190. See Brief for Amici Curiae Chamber of Commerce of the United States of America in Support of Petitioner, *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) (No. 08-1107), 2009 WL 2509218. The Chamber of Commerce supported the use of a predictable center test over a “litigation inducing” activities test. *Id.* at \*5.

191. See generally *Exxon Shipping Co. v. Baker*, 128 S.Ct. 2605 (2008) (finding a \$2.5 billion punitive damage award against Exxon excessive); see also *Phillip Morris U.S.A v. Williams*, 549 U.S. 346, 349 (2007) (holding that a punitive damage award based in part on the jury’s desire to punish the defendant for harming non-parties amounted to a taking of property without due process).

192. See generally *Rent-a-Center, West, Inc. v. Jackson*, 130 S. Ct. 2772, 2778-81 (2010) (holding that a provision in an employment agreement delegating the exclusive authority to resolve disputes over the enforceability of the agreement to an arbitrator is valid under the Federal Arbitration Act).

193. See generally *Citizens United v. F.E.C.*, 130 S. Ct. 877, 886 (2010) (concluding that the First Amendment prevents the government from suppressing political speech on the basis of the speaker’s corporate identity and that the First Amendment prevents the government from barring independent corporate expenditures for electioneering communications).

194. Rosen, *supra* note 184.

195. *Id.*; see also Cass R. Sunstein, *Justice Breyer’s Democratic Pragmatism*, 115 YALE L.J. 1719 (2006).

196. Rosen, *supra* note 184 (quoting the testimony of Ralph Nader).

197. Rosen, *supra* note 184 (quoting Senator Howard Metzenbaum of Ohio).

## VI. CONCLUSION

The *Hertz* Court's decision is appropriate in that it accords the proper weight to diversity jurisdiction when considering the limited resources of the judicial system. Before *Hertz*, courts attempted to reconcile principal place of business determinations with the purpose of diversity jurisdiction.<sup>198</sup> To be sure, the goal of keeping truly local disputes out of federal courts sitting in diversity is a worthy one. Federal court judges have dutifully tried to uphold their obligation to be certain of jurisdiction over every case.<sup>199</sup> However, anomalous outcomes under diversity jurisdiction are inevitable. This is exacerbated in corporate litigation because corporations take many forms and can be spread over many states. When such is the case, trying to achieve perfect accord with the purpose of diversity jurisdiction is simply not worth the confusion and trouble; courts and parties still have to litigate the actual merits. *Hertz* makes things easier for everyone.

The unanimity of the Justices makes *Hertz* appear uncontroversial. However, the opinion is eye-opening for its fervent commitment to judicial economy. Quite interesting is that the Court adopted the minority approach to corporate citizenship, changing the law in ten federal circuits.<sup>200</sup> From afar, defining the term "principal place of business" may not seem to be a momentous occasion. However, when the implications of this new definition are fully understood, it is clear that *Hertz* will go down as a noteworthy resolution to a longstanding circuit split in federal civil procedure.

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198. See discussion *supra* Part III.D.

199. See discussion *supra* Part III.D.

200. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010).