

Model Citizenship: The Supreme Court Redefines Principal Place of Business

*“The most important omission on the part of the drafters of the [Judiciary Act of 1789] . . . an omission which had most grave results and which necessitated decisions tantamount to judicial legislation by the Supreme Court—was the neglect to make any provision regarding jurisdiction as to corporations.”*¹

I. INTRODUCTION

In the 2010 Supreme Court decision of *Hertz Corp. v. Friend*,² the Court definitively interpreted the language of 28 U.S.C. § 1332, establishing binding precedent for determining corporate citizenship for the purposes of federal diversity jurisdiction.³ While § 1332 clearly specified that a corporation is a citizen of its state of incorporation, the second aspect of the corporate citizenship test, its “principal place of business,” remained ambiguous, thereby precipitating the need for judicial clarification. The Court had not previously considered the statute, leaving the circuits to formulate their own interpretations. Prior to *Hertz*, there were no fewer than four variations in application of the language in § 1332 to determine a corporation’s citizenship.⁴ Specifically, the Seventh Circuit created the “nerve center test,” deeming a corporation’s principal place of business to be where most of the corporation’s decisions are made.⁵ The Ninth Circuit developed a “place of operations test” that identified the state where most of a corporation’s business activities occurred as its principal place of business.⁶ The Third Circuit applied a “center

1. Charles Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 HARV. L. REV. 49, 89 (1923).

2. 130 S. Ct. 1181 (2010).

3. *See id.* at 1186, 1192 (setting forth nerve center test as new standard to determine corporation’s principal place of business); *see also infra* Part II.E (detailing facts and holding in *Hertz*).

4. *See* Petition for Writ of Certiorari, *Hertz*, 130 S. Ct. 1181 (No. 08-1107), 2009 WL 559328, at *3.

5. *See* *Kanzelberger v. Kanzelberger*, 782 F.2d 774, 777 (7th Cir. 1986) (declaring applicable circuit test for principal place of business as nerve center). One court applying the test noted that the “nerve center is [the] place where officers work[,] where corporate records [are] kept, [and] where orders [are] received and filled.” *See Metro. Life Ins. Co. v. Cammon*, No. 88 C 5549, 1990 WL 44687, at *8 (N.D. Ill. Apr. 6, 1990) (citing *Kanzelberger*, 782 F.2d at 777) (applying determinative components of nerve center test).

6. *See* *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1094 (9th Cir. 1990) (describing reasoning and elements of place of operations test). The court noted that the nerve center test should only apply when no single state contains a “substantial predominance” of the corporation’s business activities. *See id.* The determining factors in a place of operations analysis include: the location of the corporation’s real estate,

of corporate activities test,” holding the state where the majority of a business’s activities took place as the location of corporate citizenship.⁷ Further complicating the matter, the Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits each applied a “totality of the circumstances test” that evaluated all aspects of the corporation to determine a corporation’s principal place of business.⁸ This inconsistency as to the mechanics of deciding corporate citizenship was the result of the Supreme Court’s failure to definitively interpret the language of § 1332—the critical statute for determining a corporation’s principal place of business—in spite of several high profile circuit cases.⁹ By hearing *Hertz*, the Court finally accepted the invitation to conclusively declare the proper interpretation of § 1332. In *Hertz*, relying on a careful reading of the language of § 1332, the Court adopted the nerve center test, reasoning that it best accords with the legislative intent of the statute.¹⁰

This Note will explore the evolution of diversity jurisdiction as it relates to corporations and the state of the law after *Hertz*. Part II.A discusses the constitutional origins of diversity jurisdiction, and Part II.B details the progression of the case law thereafter. Part II.C outlines various statutory modifications to diversity jurisdiction, while Part II.D presents the four-way circuit split prior to *Hertz*. Finally, Part II.E summarizes the *Hertz* opinion itself. With this historical background in place, Part III analyzes the decision in *Hertz* in light of the legislative history of diversity jurisdiction, its constitutional conception, and the administrative concerns of today’s federal court system.

II. HISTORY

A. Constitutional Origins

At the time of the Constitutional Convention, each of the states had their

equipment, inventory, and operations offices; the dispersion of employees; the distribution of gross income to various facets of the business; and the site of production, sales, and shipping for the organization. See *Homestead Log Co. v. Square D Co.*, 555 F. Supp. 1056, 1057-58 (D. Idaho 1983) (outlining considerations to determine place of operations).

7. See *Kelly v. U.S. Steel Corp.*, 284 F.2d 850, 854 (3d Cir. 1960) (reasoning business’s activities, not location of directors’ meeting, indicative of principal place of business).

8. See *infra* notes 82-87 and accompanying text (detailing totality of circumstances test, which embodies features from both nerve center and activities tests).

9. See generally *Davis v. HSBC Bank Nev., N.A.*, 557 F.3d 1026 (9th Cir. 2009) (applying place of operations test to reject class action plaintiffs contention of local controversy); *Tosco Corp. v. Cmty. for a Better Env’t*, 236 F.3d 495 (9th Cir. 2001) (dismissing plaintiff corporation’s diversity action for lack of jurisdiction).

10. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186, 1192 (2010) (setting forth nerve center test as new uniform standard for determining principal place of business); see also *infra* Part II.E (discussing substance and implications of *Hertz* holding).

own long-tenured and fully functioning court systems.¹¹ In considering the need for a federal judiciary, the framers sought not to supplant these state courts, but rather to augment them with a system equipped to handle certain unique situations likely to arise within the newly formed union.¹² To this end, the framers of the Constitution provided that Congress may ordain and establish federal courts as it deemed necessary.¹³ Furthermore, this constitutional grant of power outlined the various subject matters appropriate for such courts.¹⁴ Conspicuous among the available subject matter authorizations was the provision that Congress could designate the federal courts to hear controversies between citizens of different states.¹⁵

Passed by the nation's first Congress, the Judiciary Act of 1789 (Judiciary Act) established the federal judiciary and gave jurisdiction to the new federal courts concurrent with the state courts in:

all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and . . . the suit is between a citizen of the State where the suit is brought, and a citizen of another State.¹⁶

Today, Congress's statutory grant giving effect to this authority is found in § 1332 of the United States Code.¹⁷

11. See Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 483, 487-97 (1928) (discussing conflict between emergence of federal tribunal and existing state courts).

12. See *id.* (providing framers' views of role of federal judiciary).

13. See U.S. CONST. art. III, § 1. "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." *Id.* Each of the four proposals considered at the Constitutional Convention for what would eventually become the United States Constitution, contained provisions for a federal judiciary; only one of these proposals, however—the famous Virginia Plan—made reference to cases in which "citizens of other States" may be interested. See James William Moore & Donald T. Weckstein, *Diversity Jurisdiction: Past, Present, and Future*, 43 TEX. L. REV. 1, 2-3 (1964) (noting various schemes for structuring new federal judiciary discussed at Constitutional Convention).

14. See U.S. CONST. art. III, § 2, cl. 1 (outlining subject matter jurisdiction for federal courts). "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution . . . to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States . . ." *Id.*

15. See *id.* (granting permission for judiciary to handle conflicts arising from individuals of separate states). The notion of diversity jurisdiction, and indeed many aspects of the anticipated federal judiciary, were first proposed in the Virginia Plan. See Friendly, *supra* note 11, at 484-92; Moore & Weckstein, *supra* note 13, at 2-4.

16. See Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73, 78-79 (1789) (establishing parameters of federal judiciary's authority).

17. 28 U.S.C. § 1332 (2006); see also *Turner v. Bank of N. Am.*, 4 U.S. 8, 9 (1799) (describing federal jurisdiction as special and exception to state courts' general jurisdiction).

Justice Crase explained:

The notion has frequently been entertained, that the federal courts derive their judicial power

It is widely accepted that the purpose of diversity jurisdiction and its immediate congressional implementation was to address the fear that state courts would be prejudiced against out-of-state litigants when those individuals were opposed by an in-stater.¹⁸ Nonetheless, there remain competing views as to the motivation behind its inclusion in the Judiciary Act.¹⁹ Indeed, even prior to passing the Judiciary Act, many favored some manner of diversity jurisdiction to alleviate concerns that the individual states' legislatures might become too active, a notion not strictly concerned with litigation against out-of-staters.²⁰ Regardless, it is clear that one early effect of diversity jurisdiction, intended or otherwise, was to foster the development of interstate commerce within a burgeoning union of localized and self-interested state governments through the stability of a federal tribunal.²¹

Interestingly, although it has remained a major point of contention in procedural law since its inception, diversity jurisdiction has the somewhat curious distinction of being rather lethargically defended by those who proffered it.²² Notably, at the Virginia Convention, James Madison commented: "I will not say [diversity jurisdiction] is a matter of much

immediately from the constitution; but the political truth is that the disposal of the judicial power (except in a few specified instances) belongs to congress. If congress has given the power to this court, we possess it, not otherwise: and if congress has not given the power to us, or to any other court, it still remains at the legislative disposal.

Id. at 9 n.(a).

18. See 13E CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3601 (3d ed. 2010) (explaining history and principal reason behind diversity jurisdiction). The typical view is that the framers established diversity jurisdiction to provide a forum to resolve conflicts between citizens of different states that would be free from local prejudice or influence. See Moore & Weckstein, *supra* note 13, at 15 (setting forth history of constitutional provision of diversity jurisdiction). Many members of Congress believed that the courts of a state may favor their own citizens, and that bias against out-of-staters could therefore become embedded in the judgment of a state court, and yet not be sufficiently apparent to be made the basis of a federal claim. See *Burford v. Sun Oil Co.*, 319 U.S. 315, 336 (1943) (Frankfurter, J., dissenting) (providing reasons Congress granted diversity jurisdiction). As Professor Warren noted, "[t]he chief and only real reason for this diverse citizenship jurisdiction was to afford a tribunal in which a foreigner or citizen of another State might have the law administered free from the local prejudices." Warren, *supra* note 1, at 83 (discussing support for establishing diversity jurisdiction). Professor Warren further commented, in no uncertain terms, that "[t]here is not a trace of any other purpose . . . to be found in any of the arguments made in 1787-1789 as to this [diversity] jurisdiction." *Id.*

19. See Warren, *supra* note 1, at 82 (detailing divergent arguments in favor of implementing diversity jurisdiction).

20. See WRIGHT ET AL., *supra* note 18, § 3601 (discussing various concerns giving rise to notion of diversity jurisdiction). Shortly after independence, the state legislatures became increasingly active and many Americans feared that such legislation served the special interests of some groups at the expense of others. See Donald Elfenbein, *The Myth of Conservatism as a Constitutional Philosophy*, 71 IOWA L. REV. 401, 472-73 (1986) (discussing specific concerns Congress addressed by instituting diversity jurisdiction).

21. See Moore & Weckstein, *supra* note 13, at 16-17 (suggesting creation of federal judiciary served commercial interests by and between states).

22. See Warren, *supra* note 1, at 81 (noting apathy on behalf of drafters in contesting attacks upon diversity jurisdiction).

importance.”²³ Similarly, John Marshall remarked: “Were I to contend that this was necessary in all cases and that the government without it would be defective, I should not use my own judgment.”²⁴ Even so, the concept survived repeated attacks by the Anti-Federalists and was included in the final version of the Judiciary Act, which remains in effect today.²⁵

B. Evolution of Diversity Jurisdiction Through Case Law

The Supreme Court initially rejected the idea that a corporation was a citizen eligible to invoke diversity jurisdiction.²⁶ Chief Justice John Marshall declared in no uncertain terms that an “invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen; and, consequently, cannot sue or be sued in the courts of the United States.”²⁷ This attitude was apparently consistent with the intent of the drafters of the Judiciary Act, who do not seem to have considered the citizenship of corporations.²⁸ Likewise, the Constitution itself is silent on the issue of corporate citizenship.²⁹ Nevertheless, in 1844, the Court turned abruptly in *Louisville, Cincinnati, & Charleston Railroad Co. v. Letson*³⁰ when it held that a corporation was an entity apart from its shareholders and was indeed a citizen that could invoke or be subject to diversity jurisdiction in the federal courts.³¹ Considering the complete lack of precedent and a legislative history devoid of any reference to corporate diversity, this turn marked the beginning of a series of decisions

23. See *id.* (quoting Madison’s meager defense against detractors of diversity jurisdiction).

24. See *id.* at 82 (indicating Marshall’s thoughts regarding creating diversity jurisdiction).

25. See *id.* at 79 (proffering final version of Judiciary Act narrowed jurisdiction of federal courts from original rendition).

26. See *Bank of U.S. v. Deveaux*, 9 U.S. 61, 86 (1809) (rejecting view of corporation as natural person). The Court maintained, however, that shareholders of a corporation could sue or be sued in the corporate name, and jurisdiction would be determined by the citizenship of the natural persons who composed the corporation, that is, each shareholder individually. See *id.* at 89-92 (inferring citizenship of corporation’s shareholders involved in suit indicative of corporation’s own citizenship).

27. See *id.* at 86-87 (opining regarding nature of corporate entity).

28. See generally Warren, *supra* note 1 (noting absence of consideration for citizenship status of corporations in and of themselves).

29. See U.S. CONST. (lacking method for determining citizenship of corporation); see also James W. Moore & Donald T. Weckstein, *Corporations and Diversity of Citizenship Jurisdiction: A Supreme Court Fiction Revisited*, 77 HARV. L. REV. 1426, 1427-30 (1964) (discussing absence of guidance from Constitution regarding diversity jurisdiction resulted in Court’s examination of issue).

30. 43 U.S. 497 (1844).

31. See *id.* at 558 (stating corporations possess citizenship of state of incorporation). The Court noted that the members of the corporation were not individual defendants in the suit; rather they were merely parties interested in the outcome. See *id.* at 554. Consequently, the corporation could be sued in federal court as a separate entity, consistent with the rule in *Strawbridge v. Curtiss*, 7 U.S. 267 (1806), notwithstanding the fact that some shareholders were not personally diverse from the plaintiff. See *Louisville, Cincinnati, & Charleston R.R. Co.*, 43 U.S. at 554 (noting corporate entity as having citizenship distinct from its shareholders). See generally *Strawbridge*, 7 U.S. 267 (demanding complete diversity of all parties in litigation to establish diversity jurisdiction).

considered by many to embody unwarranted judicial activism.³² In stark contrast to its previous position, the Court, in an opinion delivered by Justice James Wayne, declared that because a corporation is a distinct entity permitted to conduct business in a given state, it should be considered a person, “although an artificial person, [and] an inhabitant of the same state . . . capable of being treated as a citizen of that state, as much as a natural person.”³³

Nine years later, the Court decided *Marshall v. Baltimore & Ohio Railroad Co.*,³⁴ setting forth a holding that refined previous decisions and would endure for more than 100 years.³⁵ In *Marshall*, the Court held that persons acting on behalf of a corporation or within the scope of a corporation’s business may be considered a resident of the corporation’s state of incorporation, and that such persons are subject to suit in that state as well.³⁶ The Court reasoned that by its nature as a pure legal entity, a corporation exists only by force of law; therefore, a corporation must necessarily “dwell in the place of its creation”—that is, the state of its incorporation.³⁷ This effectively determined a corporation’s citizenship not by explicitly deeming the corporation a citizen in and of itself, but rather by relying upon the fictional presumption that all shareholders, as parties to the corporation, were citizens of the state of incorporation.³⁸ The consequence of this decision, in effect, made corporations citizens only of the state where they were incorporated.³⁹ With the rise of the chancery in Delaware and the expansion of interstate commerce, it became increasingly common for corporations to conduct substantial business in states other than where they were incorporated.⁴⁰ It is essentially this evolution in business that has brought about much of the difficulty surrounding diversity jurisdiction.⁴¹

32. See Warren, *supra* note 1, at 89-90 (criticizing Court’s decision to repeatedly address concept of corporate citizenship). One commentator considered many of the decisions as “tantamount to judicial legislation by the Supreme Court.” See *id.*

33. See *Louisville, Cincinnati, & Charleston R.R. Co.*, 43 U.S. at 558 (declaring nature of corporate entity akin to natural person when considering state citizenship).

34. 57 U.S. 314 (1853).

35. See *id.* at 328 (holding shareholders of corporation citizens of state of incorporation in certain situations).

36. See *id.* (ruling persons acting under corporate name citizens of state of incorporation).

37. See *id.* (quoting *Bank of Augusta v. Earle*, 38 U.S. 519 (1839)). The Court noted that because a corporation must be able to sue and be sued, it must “exist” somewhere for jurisdictional purposes. See *id.* (declaring corporation resident of its state of incorporation).

38. See *Marshall*, 57 U.S. at 327-28; Moore & Weckstein, *supra* note 29, at 1428 (discussing holding in *Marshall*). Interestingly, the Court avoided declaring that a corporation was a citizen, instead adopting the *Deveaux* approach of looking to the natural persons who composed the corporation to serve as catalysts for determining citizenship. See Moore & Weckstein, *supra* note 29, at 1428.

39. See David A. Greher, Note, *The Application of 28 U.S.C. § 1332(c)(1) to Alien Corporations: A Dual Citizenship Analysis*, 36 VA. J. INT’L L. 233, 239-40 (1995) (offering outcome of early diversity case law).

40. See generally William T. Quillen & Michael Hanrahan, *A Short History of the Delaware Court of Chancery—1792-1992*, in *COURT OF CHANCERY OF THE STATE OF DELAWARE—1792-1992* (1993), available at <http://courts.delaware.gov/Chancery/history.stm> (providing history of Delaware Chancery Court).

41. See *id.* (discussing expansion of interstate commerce).

In cases where jurisdiction is based on diversity of citizenship, federal courts are thrust into a position where they must decide matters involving state law—a complex problem that continues to evolve today.⁴² The Supreme Court’s 1842 decision in *Swift v. Tyson*⁴³ held that federal courts hearing cases based on diversity jurisdiction were not bound by the states’ common law.⁴⁴ The rule in *Swift* only required that the federal courts apply state statutory law, thereby permitting the development of a new, general federal common law.⁴⁵ This decision is widely considered to have encouraged forum shopping by plaintiffs as well as defendants, who possess the option to remove to federal court on grounds of diversity.⁴⁶ In 1938, the Supreme Court, in *Erie Railroad Co. v. Tompkins*,⁴⁷ overturned *Swift* and changed the way the federal courts handle cases based on diversity by requiring the application of state law regardless of how the federal court came to hear the case.⁴⁸

C. Statutory Modifications Relating to Diversity Jurisdiction

Diversity jurisdiction was first codified in the Judicial Code of 1948 and has subsequently been amended six times.⁴⁹ Prior to 1958, and in accordance with

42. This is necessarily so; if jurisdiction is based on diversity jurisdiction, the case by definition lacks a federal question.

43. 41 U.S. 1 (1842), *overruled by* *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938).

44. *See id.* at 18-19 (denying authority of state common law as binding in federal tribunals).

45. *See id.* (holding application of state authority by federal judiciary limited to “positive statutes of the state”). In disregarding state common law, the Court noted: “[I]t will hardly be contended . . . that the decisions of courts constitute laws. They are, at most, only evidence of what the laws are, and are not, of themselves, laws.” *See id.* at 18.

46. *See* James M. Wolfson, *Uniform Law and the Federal Courts Under the Erie Doctrine*, 23 TEMP. L.Q. 404, 405 (1949-1950) (recognizing forum shopping by parties in federal and state courts following *Swift* decision).

47. 304 U.S. 64 (1938).

48. *See id.* at 77-80 (overturning *Swift* and setting forth new mechanism to select applicable law in diversity matters). In overruling *Swift*, the Court held:

Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law.

Id. at 78; *see also* *Guar. Trust Co. of N.Y. v. York*, 326 U.S. 99, 112 (1945) (clarifying purpose of diversity jurisdiction to provide non-citizens another tribunal, not different law). In *Guaranty Trust Co.*, Justice Frankfurter commented:

In essence, the intent of [the *Erie*] decision was to insure that, in all cases where a federal court is exercising jurisdiction solely because of the diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court.

Guar. Trust Co., 326 U.S. at 110.

49. *See* WRIGHT ET AL., *supra* note 18, § 3601 (reciting origins and legislative history of diversity

Marshall v. Baltimore & Ohio Railroad Co., the Supreme Court simply held that corporations were citizens of the state where they were incorporated.⁵⁰ Still, with the increasing use of the corporate model and the expansion of interstate commerce, this rule posed a problem because a corporation could incorporate in a state where it conducted zero business or corporate activity.⁵¹ This had the curious effect of making the corporation a citizen of a state where it had no physical presence, while at the same time defining the corporation as diverse from residents of a state where it conducted substantial business.⁵² In amending § 1332, Congress considered the fact that, in some extreme cases, the posture of corporate diversity law facilitated the fabrication of federal jurisdiction by the dissolution and reincorporation of a corporate entity.⁵³

In 1958, Congress attempted to eliminate these incongruities by amending § 1332 to include subsection (c), which more specifically defined the terms of a corporation's citizenship for diversity purposes.⁵⁴ Following the 1958 amendment, § 1332 read: "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," plainly intending that corporations might have dual citizenship.⁵⁵ Congress implemented the amendment to restrict the availability of the federal courts in cases between what were effectively two local parties, thereby eliminating many perceived abuses of diversity jurisdiction, while concurrently easing the federal courts' workload.⁵⁶ The

jurisdiction).

50. See *Marshall v. Balt. & Ohio R.R. Co.*, 57 U.S. 314, 328 (1853) (presenting holding of case designating corporate citizenship as corporation's location of incorporation); see also *supra* Part II.B (detailing evolution of diversity jurisdiction through case law).

51. See *infra* note 52 and accompanying text (discussing reincorporation of corporate entity for jurisdictional advantages).

52. See *Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co.*, 276 U.S. 518, 523-24 (1928). In *Black & White Taxicab*, the respondent dissolved its Kentucky corporation and reorganized its business in Tennessee to create valid diversity jurisdiction, notwithstanding the fact that its entire operation was located in Kentucky. See *id.* (explaining facts regarding reincorporation in examining corporation's citizenship). This case is also an example of the application of the rule in *Swift* prior to its reversal and illustrates the difficulty for federal courts in hearing state matters. See *id.* at 530 (stating federal courts not bound by state common law as judges may apply independent judgment).

53. See S. REP. NO. 85-1830, at 20 (1958), reprinted in 1958 U.S.C.C.A.N. 3099, 3119 (raising issues of federal corporate diversity jurisdiction arising in *Black & White Taxicab* case); see also *Black & White Taxicab & Transfer Co.*, 276 U.S. at 523-24 (explaining respondent's efforts to reincorporate to have case decided in federal court).

54. See 28 U.S.C. § 1332(c) (2006); see also Moore & Weckstein, *supra* note 13, at 11-12 (discussing purpose and resulting effect of 1958 amendment).

55. See 28 U.S.C. § 1332(c)(1).

56. See S. REP. NO. 85-1830, at 3, 1958 U.S.C.C.A.N. at 3101-02 (listing issues amendment sought to resolve); H.R. REP. NO. 85-1706, at 2-3 (1958); see also Note, *A Corporation's Principal Place of Business for Purposes of Diversity Jurisdiction*, 44 MINN. L. REV. 308, 310-14 (1959) (detailing reasons Congress adopted 1958 amendment). "This fiction of stamping a corporation a citizen of the state of its incorporation has given rise to the evil whereby a local institution . . . 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 4, 1958 U.S.C.C.A.N. at 3101-02 (minimizing emphasis on state of incorporation as sole means to determine corporate citizenship).

amendment also served to finally establish and codify the doctrine and set forth that a corporation is to be considered a natural person for the purposes of citizenship.⁵⁷

As implemented by the statute, the determination of corporate citizenship based upon the entity's principal place of business is analogous to a well-established tenet of procedural law: determination of citizenship of a natural person via the domicile test.⁵⁸ Furthermore, the notion of designating a corporate entity as a citizen of the state where it conducts the most significant amount of its business seems consistent with the prejudicial concerns that initially gave rise to diversity jurisdiction.⁵⁹ That is, if a corporation is sufficiently localized to have its principal place of business in a given state, then in the event of in-state litigation, one would expect fears of prejudice to be assuaged by the corporation's pervasive presence within the community.⁶⁰ By deeming a corporation a citizen of both the state where it is incorporated and the state where it has its principal place of business, it became unlikely that a corporation would be diverse from the citizens of the state where it has its highest profile.⁶¹ Corporations, therefore, have the potential to have dual citizenship; if a corporation is incorporated in one state and has its principal place of business in another, it will be a citizen of both states.⁶² Naturally then, the implementation of the amendment demanded that the courts interpret "principal place of business" to determine the state, other than its state of incorporation, of which a corporation was a citizen.⁶³

Many courts had already had the opportunity to examine and define the phrase "principal place of business" in interpreting the Bankruptcy Act, which contains that same language.⁶⁴ Congress primarily relied upon the phrase's

57. See 28 U.S.C. § 1332(c)(1); Moore & Weckstein, *supra* note 13, at 12 (noting amendment gave legislative recognition to judicial doctrine).

58. See Moore & Weckstein, *supra* note 13, at 31-32 (correlating principal place of business with domicile of natural person).

59. See *supra* notes 18-20 and accompanying text (acknowledging purpose of diversity jurisdiction as means to prevent bias against out-of-state litigants).

60. See Moore & Weckstein, *supra* note 13, at 31 (proffering corporation's presence in location often triggers designation of principal place of business as same).

61. See *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1094 (1990) (reasoning local contact alleviates prejudice and justifies consideration of corporation as citizen of subject state). Even though a corporation may conduct substantial business in several different states, courts would regard it as a citizen of the one state where its principal place of business is located. See S. REP. NO. 85-1830, at 4 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3099, 3102.

62. See 28 U.S.C. § 1332 (c)(1) (2006); see also Moore & Weckstein, *supra* note 13, at 12 (outlining details of 1958 amendment and possibility of dual citizenship for corporations). If a corporation has its principal place of business outside its state of incorporation, the corporation will be a citizen of two states. See Lindsey D. Saunders, Note, *Determining a Corporation's Principal Place of Business: A Uniform Approach to Diversity Jurisdiction*, 90 MINN. L. REV. 1475, 1477-78 (2006) (discussing practical effect of 1958 amendment, including attempt to reserve access to federal courts).

63. See *infra* Part II.D (discussing role of courts in interpreting "principal place of business" to determine corporate citizenship).

64. See 11 U.S.C. § 11(a)(1) (1957) (repealed 1978) (using "principal place of business" language in

usage in bankruptcy law in its application to the 1958 amendment.⁶⁵ Nevertheless, there appears to be nearly as many interpretations of “principal place of business” as there are bankruptcy decisions.⁶⁶ Even before the amendment to § 1332, bankruptcy cases were conflicted as to whether the principal place of business of a corporation was located at the executive offices or among the various outposts of the corporation’s general business activities.⁶⁷ Thus, along with this borrowed language came its functional ambiguities; the phrase “principal place of business” would continue to plague interpretations of § 1332 for decades to come.⁶⁸

The 1958 version of § 1332 has itself been subject to various amendments since its inception, the most recent being the Class Action Fairness Act of 2005 (CAFA).⁶⁹ Contrary to previous amendments that have categorically restricted access to federal courts via diversity jurisdiction, CAFA expands federal diversity jurisdiction by removing traditional jurisdictional obstacles.⁷⁰ CAFA limits a plaintiff’s ability to litigate class action suits in state courts by setting aside traditional principles of statutory diversity jurisdiction in favor of original federal jurisdiction, thereby allowing removal of class actions based upon state law that previously could only be filed in state courts.⁷¹

D. The Circuits in Disarray as to Application of Diversity Jurisdiction

*Kelly v. United States Steel Corp.*⁷² was one of the first cases in which a circuit court attempted to interpret the meaning of “principal place of business”

context of bankruptcy law); *Sabo v. Standard Oil Co. of Ind.*, 295 F.2d 893, 894 (7th Cir. 1961) (noting procedural familiarity with principal place of business as aspect of bankruptcy law).

65. See S. REP. NO. 85-1830, at 4, 1958 U.S.C.C.A.N. at 3102. The Senate report stated that the notion of basing a test of jurisdiction upon a corporation’s principal place of business was well-founded in the decisions of the courts, as well as in federal statutes including the Bankruptcy Act. See 11 U.S.C. § 11(a)(1); S. REP. NO. 85-1830, at 4, 1958 U.S.C.C.A.N. at 3102. In addition to determining venue under the Bankruptcy Act, principal place of business is also considered as a condition of venue in many statutes. See Securities Exchange Act of 1934, ch. 404, § 25, 48 Stat. 881, 901 (1934) (current version at 15 U.S.C. § 78y(a)(1) (2006)).

66. See 1 COLLIER, BANKRUPTCY ¶ 2.19, at 202-03 (14th ed. 1939) (noting existence of varying interpretations of “principal place of business” among bankruptcy decisions); Note, *supra* note 56, at 316-18.

67. See 1 COLLIER, BANKRUPTCY, *supra* note 66, ¶ 2.19, at 202-03 (detailing various interpretations of “principal place of business” in bankruptcy cases); Moore & Weckstein, *supra* note 29, at 1438-45 (outlining discrepancies in interpretation of “principal place of business”); see also Note, *supra* note 56, at 316-18 (illustrating application of principal place of business after 1958 amendment).

68. See *infra* Part II.D (outlining various interpretations of “principal place of business” language).

69. See generally WRIGHT ET AL., *supra* note 18, § 3601 (outlining amendments to § 1332).

70. See Coby Warren Logan, Note, *Federal Class Action Reform Legislation: The “Unfair” Approach to Addressing the Issues of Modern Mass Tort Litigation*, 40 TORT TRIAL & INS. PRAC. L.J. 1145, 1146-47 (2005) (explaining substance and effects of amendments to § 1332, specifically CAFA); Saunders, *supra* note 62, at 1486 (noting CAFA lessened adversary corporate defendants face regarding access to federal courts).

71. See Scott Nelson, *A Section-by-Section Analysis of the Class Action Fairness Act of 2005*, PUBLIC CITIZEN LITIGATION GROUP, 2-3, <http://www.citizen.org/documents/TheClass%20ActionFairnessAct.pdf> (last visited Nov. 22, 2010).

72. 284 F.2d 850 (3d Cir. 1960).

in § 1332.⁷³ In *Kelly*, the corporation's board of directors both formulated their policy decisions and held meetings in New York, but a separate committee located in Pennsylvania made determinations regarding the operation of the steel business.⁷⁴ The Third Circuit created the "center of corporate activities test," choosing to define "principal place of business" based upon the location of the business decisions and not the place of corporate policymaking.⁷⁵ The Third Circuit has been the only circuit to exclusively use the center of corporate activities test when determining a corporation's principal place of business.⁷⁶

In *Wisconsin Knife Works v. National Metal Crafters*,⁷⁷ the Seventh Circuit adopted the "nerve center test" because it found that "although the state in which a corporation has its headquarters is not always the state of the corporation's principal place of business . . . usually it is."⁷⁸ In 2008, when deciding *Illinois Bell Telephone Co. v. Global NAPs Illinois, Inc.*,⁷⁹ the Seventh Circuit reiterated its adherence to the nerve center test.⁸⁰ The Seventh Circuit reasoned that basing citizenship on the corporation's nerve center is as near a bright—line rule as possible, and that it is beneficial to have citizenship be easily determinable.⁸¹

While the Seventh Circuit adhered solely to the nerve center test, and the Third Circuit chose to apply the corporate activities test, the "total activity test" combines the two.⁸² After *Wisconsin Knife Works* and *Kelly*, the next major decision regarding defining principal place of business came in *J. A. Olson Co. v. City of Winona*,⁸³ wherein the Fifth Circuit analyzed both the nerve center test and the place of activity test adopted by other circuit courts to further develop the total activity test.⁸⁴ In this test, depending upon the nature of the corporation, either the place of activities test or the nerve center test could be

73. See *id.* at 851 (indicating first instance of court investigating and assigning meaning to "principal place of business").

74. See *id.* at 853-54 (reciting facts of corporation in question in *Kelly*).

75. See *id.* at 854. The court noted that the concept of "principal place of business" is merely an artificial distinction. See *id.* at 853 (emphasizing location of functional business decisions critical in determining corporation's principal place of business).

76. See *Grand Union Supermarkets of V.I., Inc. v. H.E. Lockhart Mgmt., Inc.*, 316 F.3d 408, 410-11 (3d Cir. 2003) (rejecting other circuits' approaches to determine principal place of business).

77. 781 F.2d 1280 (7th Cir. 1986).

78. See *id.* at 1282; see also *Scot Typewriter Co. v. Underwood Corp.*, 170 F. Supp. 862, 865 (S.D.N.Y. 1959) (originating nerve center test).

79. 551 F.3d 587 (7th Cir. 2008).

80. See *id.* at 590 (applying nerve center test exclusively).

81. See *Wis. Knife Works*, 781 F.2d at 1282 (opting for simpler nerve center test to ensure jurisdiction remains easily determinable).

82. See *J.A. Olson Co. v. City of Winona*, 818 F.2d 401, 404 (5th Cir. 1987) (detailing aspects of total activity test).

83. *Id.*

84. See *id.* at 411-13 (discussing various tests for jurisdiction). The Fifth Circuit originally adopted the total activity test from *Anniston Soil Pipe Co. v. Central Foundry Co.*, 216 F. Supp. 473 (N.D. Ala. 1963), where the court emphasized the pervasiveness of the corporation's production facilities over its executive offices. See *id.* at 474-75 (considering all aspects of corporation in determining principal place of business).

applied in determining citizenship; if the corporation's operations are "far-flung," then the nerve center test should be applied; when the corporation has a corporate headquarters in one state and its operations in another, then the place of activity test should be utilized; and finally, when the daily activity of a corporation is "passive" and the decision-making is conducted at the entity's headquarters, then the nerve center test should be exercised.⁸⁵ Prior to *Hertz*, the majority of the circuits applied the total activity test, with the First, Second, Fourth, Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits each weighing the factors discussed in *Olson* as part of their scheme for ordaining a corporation's citizenship.⁸⁶

Further complicating the matter, different circuits had varying names for the same countervailing interests considered in the total activity test, including the "center of corporate activities" in *Kelly*, the "place of activities" from *Olson*, and the Fourth Circuit's "home office" analysis.⁸⁷ In addition, the Southern District of New York recognized the effect of the corporation's impact on the public as part of its total activity test.⁸⁸ In *R.G. Barry Corp. v. Mushroom Makers, Inc.*,⁸⁹ the defendant corporation had its policymaking, administrative, and manufacturing operations in Mississippi, but the court concluded that because Mushroom Makers had its most extensive contact with the public in New York, New York was the jurisdiction where it was least likely to suffer from "local prejudice," and therefore deemed Mushroom a citizen of New York

85. See *J.A. Olson Co.*, 818 F.2d at 404 (declaring total activity test to include nerve center and place of activity tests).

86. See generally *Badian v. Elliott*, 165 F. App'x 886 (2d Cir. 2006) (holding for principal place of business, courts focus on contacts with the public); *Shell Rocky Mountain Prod., LLC v. Ultra Res., Inc.*, 415 F.3d 1158 (10th Cir. 2005) (applying total activity test to determine principal place of business); *Capitol Indem. Corp. v. Russellville Steel Co.*, 367 F.3d 831 (8th Cir. 2004) (upholding total activity test); *Gafford v. Gen. Elec. Co.*, 997 F.2d 150 (6th Cir. 1993) (relying on total activity test to determine principal place of business); *Harris v. Black Clawson Co.*, 961 F.2d 547 (5th Cir. 1992) (identifying total activity test as controlling test for Fifth Circuit); *Topp v. CompAir Inc.*, 814 F.2d 830 (1st Cir. 1987) (declaring total activity test as determinative for principal place of business); *Vill. Fair Shopping Ctr. Co. v. Sam Broadhead Trust*, 588 F.2d 431 (5th Cir. 1979) (establishing total activity test as method to decide principal place of business); *Caperton v. Beatrice Pocahontas Coal Co.*, 585 F.2d 683 (4th Cir. 1978) (outlining and applying aspects of total activity test); *Riggs v. Island Creek Coal Co.*, 542 F.2d 339 (6th Cir. 1976) (explaining Sixth Circuit's application of total activity test); *United Nuclear Corp. v. Moki Oil & Rare Metals Co.*, 364 F.2d 568 (10th Cir. 1966) (discussing use of total activity test to establish principal place of business); *Egan v. Am. Airlines, Inc.*, 324 F.2d 565 (2d Cir. 1963) (relying on total activity test to ascertain principal place of business).

87. See generally *J.A. Olson Co.*, 818 F.2d 401 (considering place of activities in context of total activity test); *Caperton*, 585 F.2d 683 (investigating corporation's home office under total activity test); *Kelly v. U.S. Steel Corp.*, 284 F.2d 850 (3d Cir. 1960) (employing center of corporate activities as aspect of total activity test).

88. See *R.G. Barry Corp. v. Mushroom Makers, Inc.*, 612 F.2d 651, 656-57 (2d Cir. 1979) (holding corporation New York citizen despite considerable activity in other states); see also *Frisone v. Pepsico, Inc.*, 369 F. Supp. 2d 464, 470 (S.D.N.Y. 2005) (noting Second Circuit's recognition of public impact from *R.G. Barry Corp.* in determining citizenship).

89. 612 F.2d 651 (2d Cir. 1979).

for diversity purposes.⁹⁰

The Ninth Circuit did not use the place of activities test or the nerve center test or a combination of the two to ascertain corporate citizenship, but instead formulated and applied its own test: the “place of operations test.”⁹¹ In 1987, in *Co-Efficient Energy Systems v. CSL Industries, Inc.*,⁹² the Ninth Circuit cited a Southern District of New York case, *Inland Rubber Corp. v. Triple A Tire Service, Inc.*⁹³ and adopted the notion that a corporation’s place of operations is where a “substantial predominance” of the corporate activities take place.⁹⁴ The Ninth Circuit acknowledged the validity of the nerve center test, but only in instances where no single state contained a substantial majority of the corporation’s day-to-day activities.⁹⁵ The Ninth Circuit has heard many of the recent cases interpreting the meaning of § 1332, including cases in 2001, 2002, 2003, 2008, and most recently, the *Hertz* matter in 2009.⁹⁶

The difficulties presented by the four-way circuit split are elucidated by example: imagine that HypoCorp is a corporation that makes snow globes featuring the Statue of Liberty. HypoCorp is incorporated in Massachusetts with its corporate headquarters in Illinois. It owns a factory in Pennsylvania where its daily decision-making occurs, and it has wholesale locations in Colorado, Iowa, Texas, and California, with the California locations outnumbering the rest. Furthermore, HypoCorp’s goods are sold almost exclusively to souvenir shops in New York City in the Southern District of New York. Depending upon the location where a suit is brought against

90. See *id.* at 656 (proclaiming corporation citizen of New York based upon extensive corporate contact with same).

91. See *infra* note 96 (listing Ninth Circuit cases applying place of operations test).

92. 812 F.2d 556 (9th Cir 1987).

93. 220 F. Supp. 490 (S.D.N.Y. 1963).

94. See *Co-Efficient Energy Sys.*, 812 F.2d at 558 (rejecting diversity jurisdiction if corporation runs business only in one state); see also *Inland Rubber Corp.*, 220 F. Supp. at 494-96 (declaring corporations conducting business in several states likely remain diverse from some of those states). The Ninth Circuit cited *Inland Rubber Corp.* even though the Third Circuit currently uses the total activity test. See *Co-Efficient Energy Sys.*, 812 F.2d at 558-59 (acknowledging place of operations test promulgated in *Inland Rubber Corp.*). Interestingly, the Southern District of New York is also the same jurisdiction that, prior to *Hertz*, began crafting the public impact test. See *Frisone v. Pepsico, Inc.*, 369 F. Supp. 2d 464, 471-72 (S.D.N.Y. 2005) (noting “public impact” test considers degree of corporation’s contact with general population).

95. See *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1094 (9th Cir. 1990) (outlining proper application of nerve center test). The court maintained that the nerve center test should only be utilized when no single state contains a majority of the corporation’s business activity. See *id.*

96. See generally *Davis v. HSBC Bank Nev., N.A.*, 557 F.3d 1026 (9th Cir. 2009) (discussing principal place of business of national retail chain); *Friend v. Hertz Corp.*, 297 F. App’x 690 (9th Cir. 2008), *vacated and remanded*, 130 S. Ct. 1181 (2010); *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718 (9th Cir. 2008) (debating principal place of business of car rental corporation); *Redding v. Hitachi Am., Ltd.*, 69 F. App’x 887 (9th Cir. 2003) (considering principal place of business of recently relocated corporation); *United Computer Sys., Inc. v. AT&T Corp.*, 298 F.3d 756 (9th Cir. 2002) (applying two-part inquiry to determine principal place of business); *Rosenblatt v. Ernst & Young Int’l, Ltd.*, 28 F. App’x 731 (9th Cir. 2002) (determining principal place of business of international corporation); *Tosco Corp. v. Cmty. for a Better Env’t*, 236 F.3d 495 (9th Cir. 2001) (considering principal place of business of corporate plaintiff).

HypoCorp, it could be a citizen of at least five different states.⁹⁷ For instance, HypoCorp would always be a citizen of Massachusetts, its state of incorporation.⁹⁸ If sued in the Seventh Circuit, which uses the nerve center test, HypoCorp's principal place of business would be Illinois, the location of its corporate headquarters.⁹⁹ If HypoCorp is sued in the Third Circuit, which uses the location of business decisions test, its principal place of business would be Pennsylvania, the location of the factory where the day-to-day decisions are made.¹⁰⁰ In a total activity circuit, a court would likely find that the nerve center test would apply because HypoCorp's operations are so far-flung; however, because HypoCorp maintains wholesalers in Colorado, Texas, California, and Iowa, the same court might also identify a place of operations in any one of those states.¹⁰¹ If HypoCorp was sued in the Ninth Circuit, which utilizes the predominance of activity test, HypoCorp's principal place of business would likely be in California because its California wholesalers outnumber those in all other states.¹⁰² Finally, if HypoCorp faced suit in the Southern District of New York, it could potentially be deemed a citizen of New York because that is the district where HypoCorp engages in its most extensive contact with the public.¹⁰³

The potential for multistate corporations to be deemed citizens of more than two states for the purposes of diversity is clearly in conflict with the congressional intent of § 1332, which states that corporations are citizens of two states—the corporation's state of incorporation and the state of its principal place of business.¹⁰⁴ Furthermore, the myriad of complicated balancing tests with numerous different features and names set the stage for the Supreme Court, in *Hertz Corp. v. Friend*, to establish a uniform test to determine a corporation's principal place of business under § 1332.¹⁰⁵

97. See *infra* notes 98-103 and accompanying text (applying various circuits' tests for determining corporate citizenship to hypothetical example).

98. See 28 U.S.C. § 1332(c)(1) (2006). "[A] corporation shall be deemed to be a citizen of any State by which it has been incorporated . . ." *Id.*

99. See *Wis. Knife Works v. Nat'l Metal Crafters*, 781 F.2d 1280, 1282 (7th Cir. 1986) (noting location of corporate headquarters generally fulfills nerve center test for diversity purposes).

100. See *Kelly v. U.S. Steel Corp.*, 284 F.2d 850, 854 (3d Cir. 1960) (maintaining center of corporate activity determines principal place of business).

101. See *J.A. Olson Co. v. City of Winona*, 818 F.2d 401, 404 (5th Cir. 1987) (applying total activity test due to corporation's far flung operations).

102. See *Davis v. HSBC Bank Nev., N.A.*, 557 F.3d 1026, 1026 (9th Cir. 2009) (declaring predominance of activity test appropriate in scenarios involving corporate business in multiple states).

103. See *Frisone v. Pepsico, Inc.*, 369 F. Supp. 2d 464, 470 (S.D.N.Y. 2005) (applying public impact test to determine corporate citizenship); see also *R.G. Barry Corp. v. Mushroom Makers, Inc.*, 612 F.2d 651, 656 (2d Cir. 1979) (finding extensive public contact sufficient to alleviate fears of judicial prejudice).

104. See 28 U.S.C. § 1332(c)(1) (2006) (asserting corporation both citizen of state of incorporation and state containing principal place of business).

105. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010) (holding nerve center only applicable test to determine corporate citizenship).

E. Hertz Corp. v. Friend

In *Hertz*, two California citizens brought suit in state court alleging violation of California employment law.¹⁰⁶ Hertz subsequently removed the case to federal court on the grounds that the parties were diverse, contending that its principal place of business was in Delaware or New Jersey, not California.¹⁰⁷ The Northern District of California, in applying the Ninth Circuit's place of operations test, ruled against Hertz in holding that Hertz's principal place of business was in California, and remanded the case to the state court.¹⁰⁸ The Court of Appeals for the Ninth Circuit affirmed the decision, and the Supreme Court subsequently granted Hertz's petition for writ of certiorari.¹⁰⁹

Justice Breyer, writing for a unanimous Court, vacated the remand order and held that a corporation's principal place of business "is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities."¹¹⁰ The Court opined that the plain language of § 1332 called for a test that focuses on a single location within a state, rather than the aggregation of the corporation's statewide business, and the nerve center test most closely fit this criteria.¹¹¹ In simplifying the test to determine corporate citizenship, the Court also articulated that administrative ease is a major virtue in terms of both financial and judicial resources, as is establishing predictability concerning jurisdiction for all parties in litigation.¹¹²

III. ANALYSIS

The Court's decision in *Hertz* seems to err on the side of administrative

106. See *id.* at 1186 (reciting facts of case).

107. See Brief for Petitioner at 6, *Hertz*, 130 S. Ct. 1181 (No. 08-1107). Hertz also noted that it conducted business operations in forty-four states, and earned less than twenty percent of its revenue in California. See Seamus C. Duffy & Michael P. Daly, *Corporate Citizenship Simplified: The Hertz Corp. v. Friend*, DRINKER BIDDLE (Feb. 25, 2010), <http://www.drinkerbiddle.com/publications/Detail.aspx?pub=2062&servicesearch=0> (noting national distribution of Hertz's revenue).

108. See *Hertz*, 130 S. Ct. at 1186 (considering aspects of Hertz's business and management). The Court noted that Hertz conducted a "significantly larger" amount of business in California than in any other state. See *id.*

109. See *Friend v. Hertz Corp.*, 297 F. App'x 690, 691 (9th Cir. 2008) (affirming district court's decision regarding corporate citizenship), *vacated and remanded*, 130 S. Ct. 1181 (2010).

110. See *Hertz*, 130 S. Ct. at 1192 (declaring definitive definition of nerve center).

111. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010) (setting forth nerve center test as standard for determining principal place of business). The Court noted that the corporation's nerve center will normally be the location of its headquarters, provided that the headquarters are the actual center of direction, control, and coordination, and not merely an office where board meetings are held. See *id.*

112. See *id.* at 1193-94 (discussing administrative concerns surrounding subject matter jurisdiction in diversity cases). Complex jurisdictional tests tax resources not only by increasing actual litigation time, but also by resulting in appeals and reversals. See *id.* (detailing various litigation costs); see also Marcia Coyle, *Location of Headquarters Defines Jurisdiction for Corporations: High Court*, LEGAL INTELLIGENCER, Feb. 24, 2010, available at 2010 WLNR 3870926 (noting Court relied upon simplicity and practicality in choosing nerve center test).

simplicity—but at what cost?¹¹³ This decision may frustrate the original purpose of diversity jurisdiction, and also has the potential to disadvantage plaintiffs in corporate diversity suits.¹¹⁴ Moreover, there are several factors that foreshadow that the *Hertz* decision will actually increase the costs of litigation, which is contrary to one of the primary motivating factors for its outcome.¹¹⁵ Nevertheless, such a bright-line rule, as set forth in *Hertz*, eliminates any incongruities among the circuits.¹¹⁶ Corporations and citizens alike can now approach litigation with a clear expectation of the jurisdictional aspects of any dispute.¹¹⁷ No longer will a corporation's state citizenship for purposes of diversity jurisdiction vary by virtue of the federal district in which the suit is brought.¹¹⁸ Likewise, private citizens, as potential parties to a suit, will now be able to more accurately gauge the likelihood of the suit's removal to federal court and tailor their strategies accordingly, which demonstrates that there is indeed much benefit to be derived from administrative ease.¹¹⁹

The Court's careful deconstruction of the language of § 1332 is simple and direct.¹²⁰ This has even prompted discussion as to why no lower court has ever employed such a deliberate analysis.¹²¹ In writing for the unanimous Court,

113. See Coyle, *supra* note 112 (asserting Court weighed values of practicality and simplicity more heavily than legislative history).

114. See *supra* notes 18-20 and accompanying text (discussing constitutional concerns surrounding aspects of diversity jurisdiction); see also *infra* notes 157-161 and accompanying text (revealing surprising results in favor of defendants in removed cases).

115. See *infra* note 156 and accompanying text (considering consumption of financial resources relative to diversity litigation); see also *infra* notes 154-155 and accompanying text (discussing judicial resources and application of *Erie* Doctrine).

116. See *Hertz*, 130 S. Ct. at 1192-93 (setting forth uniform rule for determining corporate citizenship for diversity purposes). Resolving the circuit split will undoubtedly leave little question as to the citizenship of a corporation for diversity purposes. See *id.* (providing clarity in determining corporation's principal place of business). Corporations also remain citizens of their state of incorporation. See 28 U.S.C. § 1332(c)(1) (2006).

117. See Dori Kornfeld Goldman, *Decision Should Streamline Removal Litigation*, TEX. LAW., Apr. 19, 2010, available at 2010 WLNR 8062485 (noting *Hertz* decision should simplify litigation in diversity disputes over forum conflicts).

118. See *supra* notes 98-103 and accompanying text (illustrating differing results in citizenship determination relative to parameters of applied citizenship test).

119. See Saunders, *supra* note 62, at 1486-88 (discussing forum shopping aspects and effect of administrative efficiency precipitated by uniform federal rules).

120. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192-93 (2010) (considering language of § 1332 to determine principal place of business).

121. See *id.* (interpreting statutory language in plain and meticulous manner). The Court declined to consider an aggregation of a corporation's statewide business for purposes of determining citizenship, opining that the plain wording of the statute was evidence of Congress's intent to focus on a single location. See *id.* Nevertheless, courts have held that under the place of operations test, a corporation's principal place of business is the state containing a "substantial predominance" of its operations. See *Davis v. HSBC Bank Nev. N.A.*, 557 F.3d 1026, 1028-29 (9th Cir. 2009) (applying place of operations test to determine principal place of business). Furthermore, in *Inland Rubber Corp.*, the court asserted that the legislative history of § 1332 suggests that emphasis should be placed upon the "locus of the operations" of the corporation, and read principal place of business to mean the state that contains a substantial predominance of corporate operations—a holding directly at odds with the plain meaning interpretation of § 1332 the *Hertz* Court used. See *Inland Rubber Corp. v. Triple A Tire Serv., Inc.*, 220 F. Supp. 490, 496 (S.D.N.Y. 1963) (developing place of

Justice Breyer correctly asserts that the word “place” in the phrase “principal place of business” is in the singular.¹²² Furthermore, the Court declared that the word “principal” points to the one specific location that is the center of a corporation’s business activities and not a collection of localities within a state.¹²³ Taken as a whole, it seems clear that the plain language of the statute requires consideration of the single most prominent place of business activity, and that the corporation is a citizen only of the state that hosts this locality.¹²⁴ Moreover, when viewed in this light, it becomes evident that any approach that considers the aggregate of multiple locations or “places” within a state to determine a corporation’s principal place of business reaches beyond the statute’s scope as intended by Congress.¹²⁵

While the nerve center test set out in *Hertz* is simple to apply and provides consistent results, it seems a stretch to contend that the general public typically considers the nerve center to be a corporation’s main place of business.¹²⁶ It is difficult to imagine that a substantial portion of the consumer population would consider Wal-Mart as principally doing business in Arkansas—the location of its corporate offices—as opposed to its neighborhood retail location.¹²⁷ Indeed, many large corporations actively invest in assimilating their brand within individual communities.¹²⁸ These corporations go to great lengths to be

operations test to determine principal place of business).

122. See *Hertz*, 130 S. Ct. at 1192-93 (deconstructing language of § 1332).

123. See *id.* at 1192 (noting § 1332’s use of “principal” requires identification of single, “main, prominent,” or “leading” place of business).

124. See *id.* at 1186 (declaring nerve center most prominent place of business activity). The Court determined that because the word “place” follows the words “State where,” that the “place” is a location *within* a state, and therefore not the state itself. See *id.* at 1192-93.

125. See *id.* at 1193 (holding aggregation of statewide business inconsistent with congressional intent).

126. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1193 (2010) (contending public commonly associates corporation’s main presence with corporate offices). Curiously, the Court also commented that the location of a corporation’s office may “bear no more than a distant relation to the likelihood of prejudice.” See *id.*

127. See Lisa Scherzer, *Wal-Mart Hits a Wall*, SMARTMONEY, Sept. 28, 2006, <http://www.smartmoney.com/investing/economy/wal-mart-hits-a-wall-20149/#ixzz0jI0Zcu5N> (discussing immersion of large corporations in American communities and consequences of same).

Sixty-two percent of Americans live within five miles of a Wal-Mart—less than a 10-minute car ride. . . . 94% of Americans live within 15 miles of a Wal-Mart. So virtually anyone except the residents of Manhattan who want to shop at a Wal-Mart—if you build one in Times Square, 70% of Americans would be five miles from one—can shop at Wal-Mart.

Id. (illustrating cultural pervasiveness of some large corporations). While some corporations are considered “local” simply due to the ubiquitous nature of their real estate holdings, many others entrench themselves even further by actively engaging with the public via charitable community work. See *infra* note 129 (articulating examples of community programs of some large corporations).

128. See Ann Zimmerman & Rachel Dodes, *Grim Results Drive Retail Strategies*, WALL ST. J., Feb. 25, 2009, <http://online.wsj.com/article/SB123552149054864707.html> (detailing implementation of localization strategy). Reacting to less than ideal fiscal results, many major corporations have taken steps to assimilate themselves into local communities in hopes of increasing profits. See *id.*; see also Constance L. Hays, *Economy & Business; Retailers Seek to Lure Customers With Service*, N.Y. TIMES, Dec. 1, 2003,

perceived as “citizens” of the communities where they operate, and they should not enjoy liberal access to the federal courts for fear of bias when disputes arise.¹²⁹ Moreover, this line of reasoning behind the implementation of the nerve center test seems defective when considered in light of the framers’ intent in creating diversity jurisdiction.¹³⁰ Where the general public assumes a corporation’s main place of business is located is not by itself any indication of bias and thus should be a nonfactor; what ultimately matters is preventing bias within the courts.¹³¹ The Supreme Court seems to have ignored the possibility that § 1332 has evolved to the point where its application is no longer consistent with the spirit of the diversity jurisdiction provision in the Constitution.¹³² This decision seems wholly concerned with the administrative quagmire that has resulted from the Court’s failure to resolve the issue and remains indifferent to the equitable considerations surrounding diverse or potentially diverse parties.¹³³

<http://www.nytimes.com/2003/12/01/technology/economy-business-retailers-seeking-to-lure-customers-with-service.html?pagewanted=1> (showing localization and personalization efforts of corporations traditional strategies, not merely reactions to recession).

129. See *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1094 (9th Cir. 1990) (identifying in-state activities leading to possible state citizenship). Specifically, the court noted that employment of personnel, purchasing of materials, and sales of goods and services can increase local familiarity with the corporation and reduce problems with native prejudice against outsiders. See *id.*; see also *Community Giving*, TARGET CORP., <http://pressroom.target.com/pr/news/community-giving.aspx> (last visited Nov. 25, 2010) (exemplifying corporate outreach programs impacting general public). Since 1946, Target has given five percent of its income to “support and enrich” the communities where it conducts business. *Community Giving*, *supra*. Furthermore, corporations often openly assert themselves as integral members of the communities they serve. See *id.*; see also *Philanthropy*, AT&T, <http://www.att.com/gen/corporate-citizenship?pid=7737> (last visited Nov. 25, 2010). AT&T openly supports community projects in an attempt to create opportunities and address the needs of the neighborhoods where its employees and customers live and work. See *Philanthropy*, *supra*; see also *Walmart Store and Sam’s Club Giving Programs*, WALMART CORPORATE, <http://walmartstores.com/communitygiving/238.aspx?p=8979> (last visited Nov. 25, 2010). The Walmart Foundation supports charitable organizations that it considers important to its customers and associates in their own neighborhoods. See *Walmart Store and Sam’s Club Giving Programs*, *supra*. Wal-Mart’s founder, Sam Walton, introduced the philosophy “operate globally, give back locally.” *Id.*

130. See *supra* notes 18-20 and accompanying text (explaining preventing bias against out-of-staters main reasoning behind diversity jurisdiction). Given the pervasiveness of many large corporations and their efforts to localize, the nerve center test may unjustifiably allow corporate defendants access to federal courts when there is no legitimate fear of bias on the state level. See *supra* note 129 (detailing corporations’ efforts to “localize” and establish themselves as community members); see also *supra* note 127 (illustrating extreme cases of corporations ingraining themselves in multiple communities).

131. See *supra* note 18 and accompanying text (detailing motivation behind constitutional diversity provision).

132. Compare *Burford v. Sun Oil Co.*, 319 U.S. 315, 336 (1943) (Frankfurter, J., dissenting) (asserting prevention of bias against out-of-staters sole reason behind diversity jurisdiction), with *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1193 (2010) (emphasizing administrative concerns as paramount in deciding to adopt nerve center test). The *Hertz* Court favored the need for simple judicial administration of a jurisdictional statute, and seems to have given little consideration to the prevention of actual bias or abuse of diversity jurisdiction. See *Hertz*, 130 S. Ct. at 1186 (emphasizing importance of administrative ease while forgoing mention of protection against bias).

133. See *supra* notes 112-113 and accompanying text (arguing procedural and administrative concerns substantial motivating factors for Court’s decision); see also S. REP. NO. 85-1830, at 3-4 (1958), *reprinted in*

The *Hertz* decision may well be at odds with the legislative intent behind the 1958 amendment to § 1332, the very language that the Court so heavily relied upon in the opinion.¹³⁴ The Senate report accompanying the amendment commented:

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.¹³⁵

Changing “has obtained a corporate charter from another state” to read “has established its corporate offices in another state,” pursuant to the new rule in *Hertz*, would render the exact same “evil” whereby an essentially local institution can bypass the state court and access the federal system.¹³⁶

Because defending a case in a state court outside the litigant’s home state potentially exposed the out-of-state party to prejudice or bias, the Constitution allowed controversies between diverse citizens to be decided in the federal courts.¹³⁷ Many corporations, however, consider the federal courts more sympathetic to their interests and consequently will remove their matters to federal court if given the opportunity.¹³⁸ Nevertheless, when a corporation has a pervasive presence in a state, such as Wal-Mart does in Massachusetts, little need for protection against bias exists because potential Massachusetts jurors are familiar with Wal-Mart as an employer, retailer, and fixture of their daily lives.¹³⁹ The Court acknowledged that such discrepancies will arise, but maintained that they must be accepted in favor of establishing a clearer rule.¹⁴⁰

1958 U.S.C.C.A.N 3099, 3101-02 (declaring corporation citizen of state of incorporation and state of principal place of business).

134. See *Hertz*, 130 S. Ct. at 1192-93 (interpreting statutory language of § 1332); see also 28 U.S.C. § 1332 (2006); S. REP. NO. 85-1830, at 3-4, 1958 U.S.C.C.A.N at 3101-02 (discussing legislative intent of amendment).

135. See S. REP. NO. 85-1830, at 3-4, 1958 U.S.C.C.A.N at 3101-02 (declaring citizenship determined by state of incorporation ineffective in combating unfair bias).

136. See *id.* (illustrating flaw in defining citizenship by state of incorporation); see also *Hertz*, 130 S. Ct. at 1193-94 (asserting nerve center corporate headquarters for citizenship purposes); *supra* note 52 and accompanying text (describing corporation’s manipulation of jurisdiction by reincorporating in another state, thereby creating diversity).

137. See *supra* notes 18-20 (setting forth motivation for constitutional provision of diversity jurisdiction).

138. See Adam N. Steinman, *What is the Erie Doctrine? (And What Does it Mean for the Contemporary Politics of Judicial Federalism?)*, 84 NOTRE DAME L. REV. 245, 245 (2008) (explaining why corporate defendants prefer litigating in federal court); see also Goldman, *supra* note 117, (noting corporate defendants enjoy unanimous verdict requirement, stricter pleading requirements, single judge oversight in federal courts).

139. See *supra* note 127 (illustrating certain corporations’ close association and interaction with daily life of large percentages of population).

140. See *Hertz Corp v. Friend*, 130 S. Ct. 1181, 1195 (2010) (acknowledging shortcomings of nerve center test); see also Robert E. Bartkus, *Corporate Citizenship: Supreme Court Designates A Single Test*, LEGAL

This seems entirely inconsistent with the constitutional provision for diversity jurisdiction, which makes no statement in regard to administrative ease; rather, it focuses on maintaining fair and unbiased litigation.¹⁴¹ Keeping this original reasoning for diversity jurisdiction in mind, the nerve center test is possibly the method that yields citizenship results most in conflict with the constitutional purpose, because it seems unlikely that a corporation would experience bias in every jurisdiction besides that of its principal place of business—its nerve center—due to the nationwide stature of many large corporations.¹⁴²

Therefore, what essentially results from application of the *Hertz* decision is an increase in cases removed to the federal courts that have nothing to do with a bias toward out-of-staters, which was the original motivation for the constitutional provision for diversity jurisdiction.¹⁴³ This increase in caseload for federal courts thereby serves to escalate the occurrence of federal courts applying the *Erie* Doctrine to decide matters of state law; what is saved on the front-end in terms of efficiency, administrative ease, and judicial resources, will likely be lost to a greater degree on the back-end due to inconsistent federal interpretation of state law.¹⁴⁴

Corporate litigants generally prefer litigating in federal courts, which are perceived as favorable to corporate defendants because of their pro-defendant approaches to certain procedural issues.¹⁴⁵ As such, the ruling in *Hertz* will ostensibly increase the number of diversity cases that come before the federal courts because corporations are likely to maintain their principal place of business—that is, their corporate headquarters—in a different state from the bulk of their employees and consumers, who are the most probable parties to a suit against the corporation.¹⁴⁶ It is likely that a large corporation will have a significantly pervasive presence within individual communities as to be

INTELLIGENCER, Apr. 9, 2010, available at 2010 WLNR 7374222 (summarizing nerve center test as neither automatic nor perfect).

141. See U.S. CONST. art. III, § 2; see also Friendly, *supra* note 11, at 484-90 (discussing motivation behind diversity jurisdiction).

142. See *Hertz*, 130 S. Ct. at 1195 (applying nerve center test). The nerve center test focuses on the corporate headquarters in determining a corporation's citizenship. See *id.* It seems unlikely that the public identifies large corporations more closely with their corporate offices as opposed to their publicly accessible portals; accordingly, for purposes of bias prevention, the locality of a corporation's nerve center should not be a primary concern. See *supra* notes 127-129 and accompanying text (detailing corporate entrenchment as community members and employers).

143. See *supra* note 18 and accompanying text (detailing historical reasoning for origination of diversity jurisdiction).

144. See *infra* notes 154-158 (illustrating removed cases present difficulties and increase costs in litigation).

145. See Steinman, *supra* note 138, at 245 (discussing corporate preference for litigating in federal courts); Goldman, *supra* note 117 (acknowledging corporate defendants' partiality to federal courts and their advantages).

146. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192-93 (2010) (setting forth nerve center test to determine principal place of business). By definition, corporations whose business practices are geographically dispersed will be diverse from the majority of their customers and employees.

considered “local” themselves, notwithstanding the remote locality of the corporation’s executive offices.¹⁴⁷ It is entirely feasible that a corporation could locate or relocate its corporate headquarters in the state it deems least disposed to give rise to a dispute, thereby facilitating removal of most suits against the corporation.¹⁴⁸ In *Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co.*,¹⁴⁹ Brown & Yellow reincorporated in one state and wholly operated in another state with the explicit intent to create diversity in an ongoing dispute and to take advantage of the pre-*Erie* general federal common law, which was different from state law.¹⁵⁰ Post *Hertz*, it is feasible, or even likely, that corporate litigants who favor the federal courts could resume this practice, intent on taking advantage of diversity jurisdiction simply by strategically locating their corporate headquarters.¹⁵¹

What is possibly even more disconcerting regarding the impact of *Hertz* is the fact that while corporations enjoy the benefits of their increased removability, plaintiffs suing corporate entities will be simultaneously disadvantaged as a result of being forced into federal court.¹⁵² When diversity is invoked, the federal court necessarily lacks original jurisdiction.¹⁵³ Accordingly, in hearing cases based on diversity jurisdiction, the federal courts must utilize the *Erie* Doctrine to determine and apply the appropriate state law and, on occasion, this requires that federal judges prospectively resolve matters of state law.¹⁵⁴ The process of applying the *Erie* Doctrine can be confusing for

147. See *supra* note 127 and accompanying text (detailing varying degrees of corporate pervasiveness across the nation); see also *supra* notes 128-129 and accompanying text (noting efforts of corporations to localize their corporate images within communities).

148. See *Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co.*, 276 U.S. 518, 523-24 (1928) (exemplifying manipulation of diversity jurisdiction benefitting corporations); see also Duffy & Daly, *supra* note 107, at 1 (urging corporate clients to consider location of headquarters in light of *Hertz* and its implications).

149. 276 U.S. 518 (1928).

150. See *id.* at 523-24 (outlining reasons for reincorporation relating to obtaining possibly more favorable judicial outcome).

151. See Duffy & Daly, *supra* note 107, at 1 (discussing prospective strategy in advising corporate clients as to location of nerve center).

152. See *infra* notes 157-161 and accompanying text (detailing win rate statistics for plaintiffs in removed cases).

153. See U.S. CONST. art. III, § 2; see also Friendly, *supra* note 11, at 484-90 (detailing origins of diversity jurisdiction).

154. See *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78-79 (1938) (elucidating choice of law in diversity cases). The federal courts must apply state law in the same manner as the state courts. See *id.* Nevertheless, on occasion, cases based on diversity present a question of first impression, requiring federal judges to prospectively interpret and essentially create state law. See *id.* at 71. Such decisions coming from the federal courts are not binding on the state courts, and therefore the issue can be relitigated in other cases, resulting in an unnecessary waste of judicial resources. See *id.*; see also *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1193 (2010) (noting judicial resources at issue with result of *Hertz* decision). The *Hertz* Court commented on the weight borne by the judicial system due to the necessary obligation of the courts to determine whether subject matter jurisdiction exists in all cases, even when no party challenges it. See *Hertz*, 130 S. Ct. at 1193.

litigants, juries, and often the courts themselves.¹⁵⁵ The increased procedural time and heightened complexity of the issues will dramatically amplify the costs of litigation for a plaintiff.¹⁵⁶

In addition to making litigation more expensive for a plaintiff, removal to federal court decreases a plaintiff's chances of prevailing in a suit as opposed to litigation in state court.¹⁵⁷ A study that investigated the win percentages of federal cases shows that the overall win rate for plaintiffs in federal civil cases is 57.97%, while in matters that have been removed, the win rate for plaintiffs is only 36.77%.¹⁵⁸ Even more dramatically, the win rate for plaintiffs in original diversity cases is 71%, but only 34% in removed cases.¹⁵⁹ Though the precise reasons for this drop in success rates are unclear, it is likely due to the federal courts being more amenable to defendants who remove their cases, and such results may also be augmented by the removal itself; by defeating the plaintiffs' forum advantage, defendants may shift the biases, inconveniences, and procedural law in their own favor.¹⁶⁰ It would seem that a defendant's ability to choose the forum greatly augments his or her chances of success.¹⁶¹

Administrative ease is certainly a virtue and strict adherence to the nerve center test undoubtedly will make it easier for courts and prospective parties to determine jurisdiction.¹⁶² At the same time, the *Hertz* rule may result in a heavier burden on the already overwhelmed federal dockets by permitting a greater number of matters to be classified as diversity cases.¹⁶³ Repeated application of the *Erie* Doctrine and its associated guesswork and misgivings will further encumber the legal system.¹⁶⁴ *Hertz* will allow corporate

155. See John B. Corr, *Thoughts on the Vitality of Erie*, 41 AM. U. L. REV. 1087, 1098-99 (1992) (detailing uncertainty of federal courts in applying ambiguous state law pursuant to dictates of *Erie*).

156. See EMERY G. LEE III & THOMAS E. WILLGING, FED. JUDICIAL CTR., LITIGATION COSTS IN CIVIL CASES: MULTIVARIATE ANALYSIS, REPORT TO THE JUDICIAL CONFERENCE ADVISORY COMMITTEE ON CIVIL RULES 5-6 (2010), [http://www.fjc.gov/public/pdf.nsf/lookup/costciv1.pdf/\\$file/costciv1.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/costciv1.pdf/$file/costciv1.pdf) (analyzing litigation costs relative to various factors). For every 1% increase in the duration of a case, it becomes .32% more expensive to litigate. See *id.* (providing various statistics relative to litigation costs).

157. See Kevin M. Clermont & Theodore Eisenberg, *Do Case Outcomes Really Reveal Anything About the Legal System? Win Rates and Removal Jurisdiction*, 83 CORNELL L. REV. 581, 584, 593 (1998) (highlighting decline in plaintiff's win rate correlates with removal of plaintiff's case).

158. See *id.* at 593 (offering detailed analysis of decline in plaintiff's win rate in removed matters).

159. See *id.* at 593-94 (comparing win rates of cases of original jurisdiction and of diversity jurisdiction in federal courts). The effect upon plaintiff's win rate after removal is not limited to cases involving diversity jurisdiction. See *id.* at 593, 595. For example, federal question cases show a similar drop in plaintiff's win rate from 52% to 25%. See *id.* (displaying win-rate reduction for plaintiffs in all types removed cases).

160. See *id.* at 581 (proffering reasons for decline in plaintiff's win rate in removed cases).

161. See Clermont & Eisenberg, *supra* note 157, at 593 (arguing forum provides important tactical advantages to parties).

162. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1193 (2010) (maintaining simple jurisdictional rules offer predictability of results and confidence of authority to hear cases).

163. See Steinman, *supra* note 138, at 245 (noting corporate defendants' preference to litigate in federal court). CAFA has already expanded access to the federal courts via diversity jurisdiction. See *id.*

164. See Corr, *supra* note 155, at 1098 (discussing difficulties in operation of *Erie* Doctrine). Application of the *Erie* Doctrine is both a time-consuming and uncertain endeavor, resulting in increased litigation time and

defendants to easily sidestep the constitutional spirit of diversity merely by setting up a corporate headquarters in a specific state, at plaintiffs' financial and procedural expense.¹⁶⁵

IV. CONCLUSION

The *Hertz* decision has certainly made administrative tasks simpler. Potential parties to litigation will be able to more easily ascertain jurisdictional issues from the outset. Determination of a corporation's principal place of business is now standardized across the nation. There is little argument that the Supreme Court correctly interpreted the plain meaning of § 1332. Nevertheless, there remains some question as to whether this strict application of the nerve center test truly reflects the legislative intent behind the 1958 amendment and the framers' motivation for including the diversity provision in the Constitution. The *Hertz* opinion could have done more to protect the constitutional integrity of diversity jurisdiction, which was intended only to protect out-of-state litigants from local bias, a problem that does not plague most large multistate corporations. In addition, the rule in *Hertz* confers a financial and procedural benefit on corporate defendants, while at the same time severely disadvantaging individual or small class action parties seeking relief. The true intent of diversity jurisdiction was to level the playing field, not to widen the gap between parties.

There is little doubt that the social and economic climate of the United States in the twenty-first century differs vastly from that of the time of the Constitution's ratification. So too the manner in which business is conducted has shifted; the arrival of the information age and the increased mobility of the public at large has changed commerce to the extent that it will never be the same. Regrettably, corporations remove cases simply so that they can litigate under favorable procedural rules, rather than to avoid being subjected to bias as an out-of-state defendant—the underlying rationale behind diversity jurisdiction. In this sense, a corporation is no different than any other citizen and should not receive preferential treatment in the judicial system simply due to the nature of the corporate model.

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the potential for appeals. *See id.*

165. *See supra* note 52 and accompanying text (illustrating manipulation of citizenship for diversity purposes). There have been no provisions or amendments to § 1332 to prevent manipulation of corporate citizenship via the location of a corporation's nerve center. *See Duffy & Daly, supra* note 107, at 1. "Because corporations continue to have exposure to state court litigation in their states of incorporation and principal place of business, corporations can and should consider locating their headquarters in states with better and fairer courts, and states with smaller populations, in order to contain and manage that exposure." *See id.* at 3 (discussing corporate organization strategy in light of *Hertz*).