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BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE, U.S. HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE

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Chairman Franks, Ranking Member Cohen, and members of the Subcommittee on the Constitution and Civil Justice, thank you for the opportunity to testify about my study examining the impacts on federal court caseloads of an expansion in diversity jurisdiction.

My name is Joanna Shepherd. I am a Professor of Law at Emory University. I hold a Ph.D. in Economics and was formerly an Economics Professor. My research focuses on empirical analyses of legal institutions, the civil justice system, and the judiciary. I have published broadly in law reviews, legal journals and peer-reviewed economics journals, and am the author of two books. My research has been cited by numerous courts, including the U.S. Supreme Court. I have previously testified before the House Judiciary Committee, and before the National Academy of Sciences and several state legislative committees.

I. EXECUTIVE SUMMARY

Diversity jurisdiction is one form of federal subject-matter jurisdiction, under which federal courts may hear lawsuits based on state law so long as the parties satisfy certain prerequisites. To invoke diversity jurisdiction under the traditional diversity statute, the lawsuit must involve "a controversy between citizens of different states or between a citizen of a state and an alien," and the amount in controversy must exceed $ 75,000.[1] Either a plaintiff or defendant can invoke diversity jurisdiction.

The traditional diversity statute has long been interpreted by the courts to require "complete diversity"; that is, there cannot exist a common citizenship between any plaintiff and any defendant.[2] However, Article III of the U.S. Constitution only requires a “minimal diversity” standard for federal diversity jurisdiction: at least one plaintiff and one defendant must be diverse in citizenship.[3] In recent decades,

[1] 28 U.S.C. § 1332(a).
[2] Strawbridge v. Curtiss, 7 U.S. 267, 267 (1806).
[3] The Constitution merely requires minimal diversity, where at least one plaintiff has a citizenship status different than at least one defendant. *See* Grupo Dataflux v. Atlas Global Group, L.P., 541 U.S. 567, 577 n.6 (2004); State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 531 (1967) ("Article III poses no obstacle to the legislative extension of federal jurisdiction, founded on diversity, so long as any two adverse parties are not co-citizens.").

Congress has enacted several pieces of legislation that replace the complete diversity requirement with minimal diversity in certain situations, expanding federal diversity jurisdiction to include more cases.[4] The purpose of these reforms was to streamline the adjudication of multiple suits in a single forum[5] and reduce plaintiff attorneys' ability to choose sympathetic state forums in which to litigate nationwide class actions.[6]

In a recent report, I explore the consequences of replacing the complete diversity standard with a minimal diversity standard in all civil cases. As the primary criticism of expanding federal diversity jurisdiction is the impact on federal court caseloads, I empirically estimate the impact on caseloads of moving to a minimal diversity standard. I analyzed almost 3,600 complaints filed in state courts to determine the percentage of complaints that do not currently satisfy complete diversity but would satisfy a minimal diversity standard. Then I use existing data on federal district court caseloads, data on diversity cases in federal courts, data on removal statistics to federal district courts, and data on state civil case filings to quantify the impact on federal court caseloads. My empirical analysis predicts that moving to a minimal diversity standard would increase federal district court caseloads by approximately 7.7 percent, a relatively small burden on the federal courts. Moreover, this burden could be further reduced by increasing the amount-in-controversy requirement in diversity cases, filling existing judicial vacancies, or expanding the number of federal district court judgeships.

II. THE JUSTIFICATION FOR FEDERAL DIVERSITY JURISDICTION

The traditional justification for diversity jurisdiction is that it protects out-of-state residents from potentially biased state courts.[7] In order to promote interstate

[4] The first, in 1990, gave the federal courts supplemental jurisdiction over claims that formed "part of the same case or controversy" even when the joinder of additional parties eliminated complete diversity. 28 U.S.C. § 1367(a) (2012). In 2002, the Multiparty, Multiforum Trial Jurisdiction Act eliminated the complete diversity requirement for litigation arising from a single accident where at least 75 persons die. 28 U.S.C. §1369. In 2005, Congress enacted the Class Action Fairness Act that grants federal jurisdiction over class actions when only a minimal diversity standard is satisfied, there are over 100 plaintiffs, and more than $ 5 million is in controversy. Codified at 28 U.S.C. §§ 1332(d), 1453, and 1711–1715.

[5] H.R. REP. No. 107-685, at 199 (2002) (Conf. Rep.).

[6] *See* Emery G. Lee III & Thomas E. Willging, *The Impact of the Class Action Fairness Act on the Federal Courts: An Empirical Analysis of Filings and Removals*, 156 U. PA. L. REV. 1723, 1725 (2008).

[7] *See* ERWIN CHEMERINSKY, FEDERAL JURISDICTION, § 5.3.2, at 274 (2d ed. 1994); *see also* Guaranty Trust Co. v. York, 326 U.S. 99, 111 (1945) ("Diversity jurisdiction is founded on assurance to non-resident litigants of courts free from susceptibility to potential local bias."); Burgess v. Seligman, 107 U.S. 20, 34 (1883) (stating that diversity jurisdiction was established "to institute independent tribunals, which . . . would be unaffected by local prejudices").

commerce, the Framers sought to ensure that commercial cases would be heard in an impartial forum to protect foreign litigants from local bias.[8]

Supporters of diversity jurisdiction assert that bias against out-of-state litigants and corporations persists today.[9] Indeed, surveys of attorneys indicate that bias based on residency status[10] or corporate status[11] continue to be the primary rationales for seeking a federal forum over a state forum in diversity cases. Moreover, although it is difficult to empirically test whether state judges are more biased than federal judges because of multiple sample selection problems, empirical evidence indicates that, compared to federal judges, many state judges tend to favor in-state plaintiffs over out-of-state defendants.[12]

The intensifying politicization of state courts and state judicial elections likely account for some of the present judicial bias in state courts. Approximately 90 percent of state court judges must be reelected by voters,[13] and in the last several decades, these elections have become more competitive and contentious, with aggressive campaigning and signficant spending.[14] A substantial body of empirical research shows that state judicial elections influence judges to decide cases in ways

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[8] Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 483, 496-97 (1928) ("we may say that the desire to protect creditors against legislation favorable to debtors was a principal reason for the grant of diversity jurisdiction . . .").

[9] See Patrick J. Borchers, The Origins of Diversity Jurisdiction, the Rise of Legal Positivism, and a Brave New World for Erie and Klaxon, 72 Tex. L. Rev. 79, 79 (1993) ("The consensus is that diversity has existed and exists to provide a neutral forum for out-of-staters against perceived local bias by state courts.")

[10] Jerry Goldman & Kenneth S. Marks, *Diversity Jurisdiction and Local Bias: A Preliminary Empirical Inquiry*, 9 J. LEGAL STUD. 93, 97-99 (1980) (noting that of 74 attorneys representing out-of-state clients in federal cases, 40 percent reported that fear of local bias was a reason for their choice of federal court over state court); Victor E. Flango, *Litigant Choice Between State and Federal Courts*, 46 S. C. L. REV. 961, 966 (1995) (noting that 60 percent of all respondents consider the resident status of their clients as a relevant factor in choice of forum).

[11] Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 AM. U. L. REV. 369, 409 (1992) (noting that of cases removed from state court to federal court, 18 percent of plaintiff attorneys and 45 percent of defense attorneys reported bias against corporations); Victor E. Flango, *Litigant Choice Between State and Federal Courts,* 46 S. C. L. REV. 961, 967 (1995) (noting that 41 percent of surveyed attorneys removing cases to federal court considered the corporate status of their client as an important consideration in forum choice).

[12] Eric Helland & Alex Tabarrok, *The Effect of Electoral Institutions on Tort Awards*, 4 AM. L.. & ECON. REV. 341 (2002).

[13] Roy A. Schotland, *New Challenges to States' Judicial Selection*, 95 GEO. L.J. 1077, app. 2 at 1105 (2007).

[14] JAMES SAMPLE, ADAM SKAGGS, JONATHAN BLITZER & LINDA CASEY, THE BRENNAN CENTER FOR JUSTICE, THE NEW POLITICS OF JUDICIAL ELECTIONS 2000-2009: DECADE OF CHANGE (Charles Hall ed., 2010); ALICIA BANNON, ERIC VELASCO, LINDA CASEY & LIANNA REGAN, THE BRENNAN CENTER FOR JUSTICE, THE NEW POLITICS OF JUDICIAL ELECTIONS 2011-2012: HOW NEW WAVES OF SPECIAL INTEREST SPENDING RAISED THE STAKES FOR FAIR COURTS (Laurie Kinney & Peter Hardin eds., 2013).

that will get them re-elected, by conforming to voter preferences,[15] altering voting patterns,[16] and favoring campaign contributors in their decisions.[17] Retention concerns would similarly influence state judges to favor in-state litigants, who are voters, over out-of-state litigants.

Indeed, countless examples exist of overt bias in state courts, with state judges favoring local litigants and plaintiffs' attorneys over out-of-state corporate defendants. For example, state courts in Madison County, Illinois have been accused of favoring plaintiffs' lawyers over out-of-state corporations in asbestos litigation.[18] The circuit court in Madison County even acknowledged that they apply "kind of a loose" and "liberal" policy that favors plaintiffs.[19] In other state courts, bias has been the direct result of bribery and corruption, evidenced by the convictions of both attorneys and judges.[20]

Despite the general sentiment among attorneys and empirical evidence that bias persists, some commentators claim that the traditional justification for diversity jurisdiction is no longer relevant in the present day, rendering diversity jurisdiction unnecessary.[21] More recently, the increased caseload in the federal courts has prompted calls for limiting or abolishing diversity jurisdiction.[22] This study will address the relationship between diversity jurisdiction and federal court caseloads by estimating the impact on federal caseloads of replacing complete diversity with the minimal diversity standard required under Article III of the Constitution.

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[15] *See, e.g.*, Joanna M. Shepherd, *The Influence of Retention Politics on Judges' Voting*, 38 J. LEGAL STUD. 169 (2009).

[16] *See e.g.*, Melinda Gann Hall, *Electoral Politics and Strategic Voting in State Supreme Courts*, 54 J. POL. 427 (1992); Gregory A. Huber & Sanford C. Gordon, *Accountability and Coercion: Is Justice Blind when It Runs for Offic*e?, 48 AM. J. POL. SCI. 247 (2004).

[17] *See e.g.*, Joanna M. Shepherd, *Money, Politics, and Impartial Justice*, 58 DUKE L.J. 623, 670-72 & tbls. 7- 8 (2009); Michael Kang & Joanna M. Shepherd, *The Partisan Price of Justice: An Empirical Analysis of Campaign Contributions and Judicial Decisions*, 86 N.Y.U. L. REV. 69 (2011); Michael Kang & Joanna M. Shepherd, *The Partisan Foundations of Judicial Campaign Finance*, 86 S. CAL. L. REV. 1239 (2013).

[18] *See e.g.*, Jim Copland, *The Tort Tax*, WALL ST. J., June 11, 2003, at A16; Noam Neusner, The Judges of Madison County, U.S. NEWS & WORLD REP., Dec. 17, 2001, at 39.

[19] Victor E. Schwartz, Mark A. Behrens & Kimberly D. Sander, *Asbestos Litigation in Madison County, Illinois: The Challenge Ahead*, 16 Wash. U. J.L. & Pol'y 235, 245 (2004) (quoting Transcript of Record at 16, 22, Union Carbide Corp. v. Hon. Nicholas G. Byron (Ill. May 6, 2004) (No. 03-L-1294)).

[20] *See e.g.*, The Associated Press, *Mississippi: Judge Enters Plea*, N.Y. TIMES, July 31, 2009, at A16; United States v. Scruggs, 714 F.3d 258 (5th Cir. 2013), *cert. denied*, 134 S. Ct. 336 (2013).

[21] Robert W. Kastenmeier & Michael J. Remington, *Court Reform and Access to Justice: A Legislative Perspective*, 16 HARV. J. ON LEGIS. 301, 314 (1979) (claiming that diversity jurisdiction is "an idea whose time has passed"); Thomas D. Rowe, Jr., *Abolishing Diversity Jurisdiction: The Silver Lining*, 66 A.B.A. J. 177, 180 (1980) (arguing that diversity jurisdiction should be abolished);

[22] *See* FEDERAL COURTS STUDY COMMITTEE, REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 14 (Apr. 2, 1990) ("Diversity cases are a large part of the trial load of the district courts, and their elimination would therefore markedly lighten the burden on those courts.").

III. EMPIRICAL STUDY OF IMPACTS OF A MINIMAL DIVERSITY STANDARD

A. DESCRIPTION OF CODING PROJECT

To determine the impact of moving from a complete diversity standard to a minimal diversity standard, this study compiled data from several different sources. First, a team of independent researchers from Emory University School of Law collected and coded data from almost 3,600 complaints filed in state courts.[23] The researchers used the Westlaw database of State Trial Court Pleadings that contains complaints filed in 12 states: California, Delaware, Florida, Georgia, Illinois, Maryland, Massachusetts, New York, Oregon, Pennsylvania, Texas, and Washington. The complaints were randomly selected from the 2013 complaints in the database, and the coding went through a two-step quality control process to confirm reliability.[24]

The researchers coded each complaint for citation, state, date of filing, type of plaintiff and defendant (individual versus corporation), domicile of each plaintiff and each defendant, whether the sum of the claims was alleged to be in excess of $75,000,[25] whether the case was a class action, and whether the case was a shareholder suit. The domicile was coded as the address in the case of individuals,[26] and as either the principal place of business or place of incorporation for

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[23] This data coding was supported in part by the National Association of Manufacturers. However, the views expressed in this report are those of the author and do not necessarily reflect the position of NAM.

[24] Ultimately, over 10 percent of the cases were coded by at least 2 researchers to confirm reliability.

[25] The rules concerning the amount in controversy are complex. If a single plaintiff has multiple, unrelated claims against a single defendant, and each individual claim is less than $75,000, the multiple claims may be aggregated to meet the amount in controversy. When there are multiple defendants, claims generally may not be aggregated to meet the amount in controversy unless the defendants would be held jointly liable against the plaintiff. However, where there is more than one plaintiff against one defendant, and none of the individual claims are greater than $75,000, the plaintiffs' claims may only be aggregated if the claims share a common and undivided interest.[25] In the few cases where it was impossible to tell whether a court would aggregate the claims to exceed $75,000, the coders erred on the conservative side and assumed the cases were removable. The coders also erred on the conservative side and assumed the amount in controversy requirement was satisfied when the claim involved damages over multiple days that could have aggregated to exceed $75,000. If these conservative assumptions prove inaccurate, the impact on federal caseloads would be slightly smaller than that reported here.

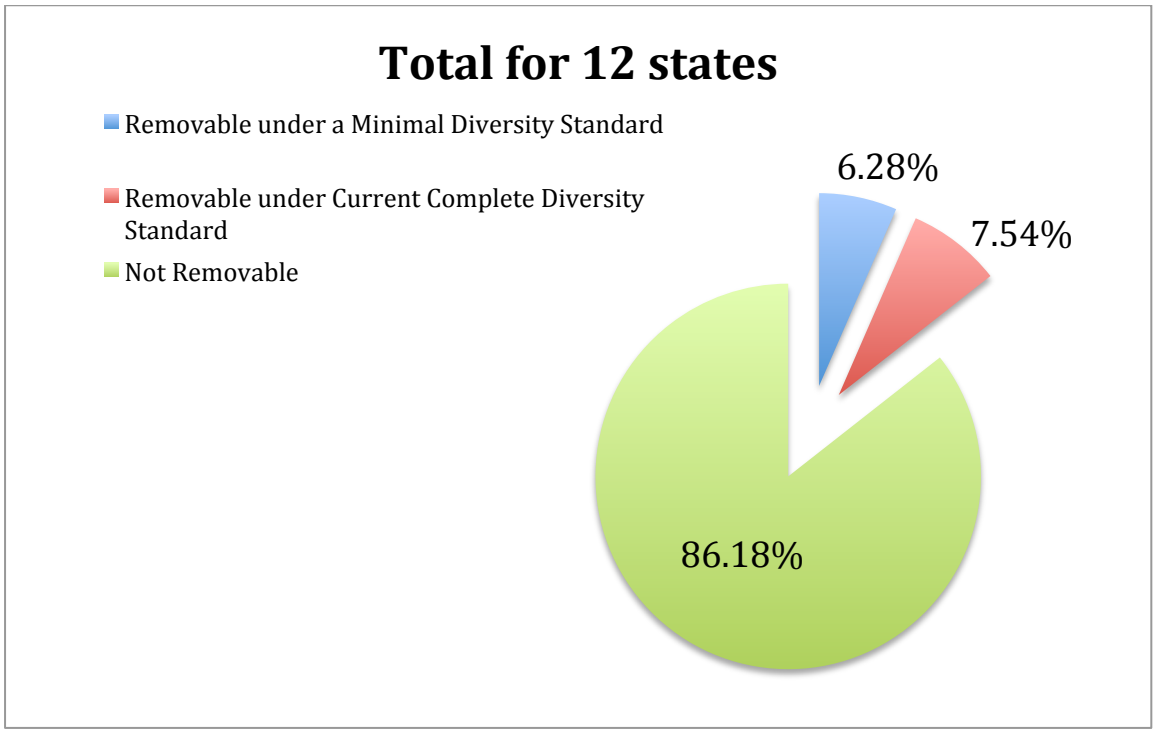
[26] The rules for determining state citizenship are complex. In general, an individual is a citizen of the state of domicile, and a corporation is a citizen of any state in which it is incorporated or has its principal place of business. 28 U.S.C. § 1332(c)(1). There were some cases where the plaintiff and/or defendant's domicile was not directly stated but we presumed a particular domicile: in medical injury cases where the injury occurred at a local hospital and in car accident cases given the long arm statutes that generally give the state courts' jurisdiction over motor vehicle accidents occurring in the state. If domicile could not be presumed, the cases were dropped from the analysis.

corporations.[27] Additional data were compiled to estimate the impact of a minimal diversity standard on federal courts: data on federal court caseloads, data on diversity cases in federal courts, data on removal statistics to federal courts, and data on state civil case filings.

B. Cases Removable under Complete and Minimal Diversity

The aggregate results for all states are reported in Figure 1 below. The results show that in the sample of 3,600 complaints, 7.54% of the cases were removable under the current complete diversity standard. That is, in 7.54% of the complaints filed in state court, no plaintiff shared a domicile with any defendant and the sum of the alleged claims exceeded $75,000. In an additional 6.28% of the complaints, at least one plaintiff and one defendant had different domiciles and the sum of the alleged claims exceeded $75,000; these additional cases would be removable under a minimal diversity standard.

Figure 1: Cases Removable Under a Complete Diversity Standard and a Minimal Diversity Standard



[27] In the few cases where principal place of business and place of incorporation gave conflicting results—that is, one satisfied a minimal diversity standard and one did not—the coders made the conservative assumption that the case could be removed under a minimal diversity standard. If, ultimately, the cases would not be removable, the impact on federal caseloads would be smaller than that estimated here.

As expected, variation in the removability of cases exists across individual states and is approximately normally distributed. Although random sample selection could be partly responsible for the state differences, the variation is likely caused by differences in state laws, industries, and litigation environments. For example, states with no-fault rules for auto accidents have fewer motor vehicle cases; states with significant medical malpractice tort reforms have fewer medical malpractice claims; and states with indulgent consumer protection statutes have more consumer litigation. Moreover, different kinds of claims are made against different industries. For example, insurers face claims that are very different from service businesses. Large manufacturers and drug companies face claims that are markedly different from retail and wholesale distributors. These different kinds of claims in turn impact the volume of filings from state to state. Finally, some states have become hotbeds for certain kinds of claims because of the courts' litigation-friendly reputations. For example, asbestos litigation tends to be concentrated in certain states not only because of the industries located in the state, but also because of the litigation-friendly environment for asbestos victims. These differences in laws, industries, and litigation environments give rise to differences in the claims filed in the states, and different kinds of claims vary in how likely they are to satisfy the diversity standard.

C. ESTIMATED CASES THAT ACTUALLY *ARE* REMOVED UNDER COMPLETE DIVERSITY

The majority of cases that satisfy the current complete diversity standard are not filed in federal court or removed to federal court by the litigants. There are numerous reasons why diverse litigants may prefer to remain in state courts including:

- Many state courts have established positions in an area of law, and a defendant would prefer the certainty of state court over the uncertainty of federal court.
- A defendant may know *the* state appellate court's position on relevant issues, whereas an appeal to the federal circuit is unpredictable given the random panel assignment of circuit court cases.
- Some state courts and judges have special expertise that make them more knowledgeable about certain areas of law than the federal courts.
- Defendants might predict a better outcome before a jury in state court that is typically larger than federal juries and does not require a unanimous decision.
- Jury behavior is generally more predictable in state court; the jury in state court is usually drawn from a relatively-homogeneous pool over a small geographic area, while in federal court the jury pool is selected from a more diverse population over a larger geographic area.
- In some cases, the rules of procedure may benefit the defendant; federal discovery rules are often thought to be more pro-plaintiff than the discovery rules in several state courts.

- Federal cases tend to move more quickly than cases in state court, and for various reasons, defendants may prefer a delay.
- The "forum defendant rule" may keep many defendants in state court even when diversity jurisdiction exists.
- In commercial cases, defendants may expect to fare better in front of a specialized state "business court" than they would in front of a federal court.
- Defense counsel may have closer contacts and stronger relationships to both state court judges and local attorneys.
- In cases involving individuals or small businesses, the convenience and lower cost of state court may deter removal to federal court.
- And finally, a defendant such as a large local employer might assume that potential local bias in state court, either judicial or political, may work in its favor.

To estimate how many cases would actually be removed, I first estimate the total number of removable cases under the current complete diversity standard. Figure 2 shows these data and estimations. According to state-level court data, 8,882,030 civil cases were filed in the 12 states in our sample in the most recent year of available data (1st column in Figure 2). Our coding of complaints indicated that 7.54 percent of the cases initially filed in the courts of these 12 states were removable under the current complete diversity standard (2nd column in Figure 2). Thus, 669,705 cases are predicted to be removable each year under the current diversity standard (3rd column in Figure 2).

Figure 2: Cases that are Removable to Federal Court under a Complete Diversity Standard

2012 State Incoming Civil Cases[28]	Percent of Cases that are Removable under Current Complete Diversity Standard according to Coding Project	Predicted Number of Cases are Removable under Current Complete Diversity Standard
8,882,030	**7.54%**	**669,705**

However, data show that the vast majority of these cases will remain in state court. Figure 3 reports data and estimates of the number of cases that are *actually* filed in state court and subsequently removed to federal court. According to Federal Court data**,** 135,214 private civil cases were filed in the district courts of the 12 sample states in 2014 (1st column of Figure 3). Of these, approximately 55,465 were cases where the basis of jurisdiction was diversity of citizenship (2nd column of Figure 3). And of these diversity cases, an estimated 16,639 were originally filed in state court and subsequently removed to federal court (3rd column of Figure 3).

[28] For all states other than Delaware, Massachusetts, and Oregon, data on incoming state civil cases in 2012 is from the National Center for State Courts, available at: http://www.courtstatistics.org/. Data on Delaware incoming cases is available at: http://courts.delaware.gov/AOC/AnnualReports/FY12/JPAR2012.pdf (Justice of the Peace Courts), http://courts.delaware.gov/AOC/AnnualReports/FY12/CCPAR2012.pdf (Court of Common Pleas), and http://courts.delaware.gov/AOC/AnnualReports/FY12/Superior2012rev.pdf (Superior Courts). Data on Massachusetts incoming cases is available at: http://www.mass.gov/courts/docs/courts-and-judges/courts/boston-muncipal-court/2012caseloadstats.pdf (Boston municipal court), http://www.mass.gov/courts/docs/courts-and-judges/courts/district-court/civilstats2012.pdf (Massachusetts District Courts), and http://www.mass.gov/courts/docs/courts-and-judges/courts/superior-court/2012statscivilload.pdf (Massachusetts Superior Courts). Data on Oregon incoming cases is available at: http://courts.oregon.gov/OJD/docs/osca/2011_stats_table_1.pdf.

Figure 3: Estimated Number of Cases that are Removed to Federal Court under a Complete Diversity Standard

TOTAL PRIVATE CIVIL CASES FILED IN FEDERAL COURT IN 2014[29]	ESTIMATED FEDERAL CASES WHERE THE BASIS OF JURISDICTION IS DIVERSITY OF THE LITIGANTS, 2014[30]	ESTIMATED FEDERAL DIVERSITY CASES THAT WERE ORIGINALLY FILED IN STATE COURT AND REMOVED TO FEDERAL COURT, 2014[31]
135,214	**55,465**	**16,639**

Thus, according to data on federal court caseloads, basis of jurisdiction, and removal statistics, only 2.48% (16,639 of 669,705) of cases that satisfy the complete diversity standard are actually removed to federal court.

D. ESTIMATED CASES THAT WOULD BE REMOVED UNDER MINIMAL DIVERSITY

To estimate the impact on the federal courts of moving from a complete diversity standard to minimal diversity standard, I next estimate how many cases filed in state court would meet the minimal diversity standard and be removed to federal court by the litigants.[32] Figure 4 reports these data and estimates. According to the coding project, an additional 6.28% of cases would be removable under a minimal diversity standard (1st column of Figure 4). Thus, of the 8,882,030 civil cases in our 12 state sample (2nd column of Figure 4), 557,791 would be removable (3rd column of Figure 4).

[29] U.S. Courts, Table C-1. U.S. District Courts—Civil Cases Commenced, Terminated, and Pending (2014) available at: http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2014/tables/C01Mar14.pdf.

[30] There were 105,471 diversity cases filed in federal court last year. This was 41.02% of the 257,093 private cases. U.S. Courts, Table C-2, U.S. District Courts—Civil Cases Commenced, by Basis of Jurisdiction (2014), available at: http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2014/tables/C02Mar14.pdf. The estimated cases in column 2 are calculated by taking 41.02% of the cases in column 1.

[31] Data indicates that approximately 30% of diversity cases in federal court were removed from state court. Theodore Eisenberg & Trevor W. Morrison, *Overlooked in the Tort Reform Debate: The Growth of Erroneous Removal*, 2 J. of Empirical Legal Studies 551, 564 (2005); Victor E. Flango, *Litigant Choice Between State and Federal Courts*, 46 S. C. L. REV. 961, 971 (1995). The estimated cases in column 3 are calculated by taking 30% of the cases in column 2.

[32] This estimation assumes that cases in state court would be removed to a federal district court in the same state.

Figure 4: Cases that would be Removable to Federal Court under a Minimal Diversity Standard

PERCENTAGE OF ADDITIONAL CASES THAT WOULD BE REMOVABLE UNDER A MINIMAL DIVERSITY STANDARD	2012 STATE INCOMING CIVIL CASES[33]	ESTIMATED NUMBER OF ADDITIONAL CASES THAT WOULD BE REMOVABLE UNDER A MINIMAL DIVERSITY STANDARD
6.28%	**8,882,030**	**557,791**

However, not all of the cases removable under a minimal diversity standard would actually be removed to federal court. The statistics on *actual* removal under the complete diversity standard from Figure 3 show that approximately 2.48 percent of removable cases are actually removed to federal court. Applying these statistics on removal from Figure 3 to the number of removable cases under minimal diversity reveals that, of the 557,791 removable cases, only 13,859 cases would actually be removed to federal court (3rd column in Figure 5). Figure 5 reports these estimates for the 12 sample states.

[33] Source: For all states other than Delaware, Massachusetts, and Oregon, data on incoming state civil cases in 2012 is from the National Center for State Courts, available at: http://www.courtstatistics.org/. Data on Delaware incoming cases is available at: http://courts.delaware.gov/AOC/AnnualReports/FY12/JPAR2012.pdf (Justice of the Peace Courts), http://courts.delaware.gov/AOC/AnnualReports/FY12/CCPAR2012.pdf (Court of Common Pleas), and http://courts.delaware.gov/AOC/AnnualReports/FY12/Superior2012rev.pdf (Superior Courts). Data on Massachusetts incoming cases is available at: http://www.mass.gov/courts/docs/courts-and-judges/courts/boston-muncipal-court/2012caseloadstats.pdf (Boston municipal court), http://www.mass.gov/courts/docs/courts-and-judges/courts/district-court/civilstats2012.pdf (Massachusetts District Courts), and http://www.mass.gov/courts/docs/courts-and-judges/courts/superior-court/2012statscivilload.pdf (Massachusetts Superior Courts). Data on Oregon incoming cases is available at: http://courts.oregon.gov/OJD/docs/osca/2011_stats_table_1.pdf.

Figure 5: Estimated Cases that would be Removed to Federal Court under a Minimal Diversity Standard

Estimated Number of Additional Cases that would be Removable under a Minimal Diversity Standard	Estimated Percentage of Diversity Cases that are Removed to Federal Court	Estimated Number of Additional Cases that would actually be Removed
557,791	**2.48%**	**13,859**

E. Impacts on Federal Court Caseloads

The estimated 13,859 additional cases in the 12-state sample translate into only a minimal impact on federal caseloads. Figure 6 reports data on incoming caseloads in federal district courts. Compared to the 179,867 incoming cases in the 12-state sample, an additional 13,859 cases represents only a 7.7 percent increase in federal caseloads. In 2014, 370,013 cases were heard in all federal district courts.[34] A 7.7 percent increase in this aggregate caseload represents an additional 28,491 cases.

Figure 6: Impact of Minimal Diversity Standard on Federal Court Caseloads

	Total Incoming Cases in Federal District Court, 2014[35]	Estimated Number of Additional Cases that would actually be Removed	Estimated Percentage Increase in Federal District Court Caseload
12-State Sample	179,867	13,859	7.7%
All Federal District Courts	**370,013**	**28,491**	**7.7%**

[34] U.S. Courts, *Federal Judicial Caseload Statistics 2014*, http://www.uscourts.gov/Statistics/FederalJudicialCaseloadStatistics/caseload-statistics-2014.aspx.

[35] U.S. Courts, Table C-1. U.S. District Courts—Civil Cases Commenced, Terminated, and Pending (2014), available at: http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2014/tables/C01Mar14.pdf; U.S. Courts, Table D. Cases, U.S. District Courts—Criminal Cases Commenced, Terminated, and Pending (2014), available at: http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2014/tables/D00CMar14.pdf.

A 7.7 percent increase in federal district court caseloads places a relatively small burden on federal courts. Distributing the case increase over the 667 existing federal district court judgeships results in an additional 43 cases per year for each judgeship.[36] Moreover, the burden could be minimized by filling existing judicial vacancies or increasing the number of existing district court judgeships (judgeship increases are fairly common—there were 241 federal district court judgeships in 1960 compared to 667 today[37]). Finally, increasing the amount in controversy requirement from $75,000 to some higher amount would mean that even fewer cases would be removable under a minimal diversity standard, further reducing the modest burden on federal courts.

[36] U.S. Courts, *Judges and Judgeships 2014*, http://www.uscourts.gov/JudgesAndJudgeships/FederalJudgeships.aspx.

[37] U.S. Courts, *U.S. District Courts Additional Authorized Judgeships since 1960 (2014)*, http://www.uscourts.gov/JudgesAndJudgeships/Viewer.aspx?doc=/uscourts/JudgesJudgeships/docs/district-judgeships.pdf.