ARTICLES

Of Bias and Exclusion: An Empirical Study of Diversity Jurisdiction, its Amount-In-Controversy Requirement, and Black Alienation from U.S. Civil Courts

SCOTT DEVITO*

"Maybe ever'body in the whole damn world is scared of each other."[1]

ABSTRACT

Empirical studies find that Black Americans distrust the U.S. justice system because they believe that it will not treat them fairly. The well-developed empirical literature on race and the criminal justice system demonstrates that this belief is well founded. At the same time, the empirical literature on race in the civil justice system is less well developed owing to a lack of data associating racial and other demographic information with court filings. To fill part of that gap, I combine federal filings data with U.S. Census and National Center for Health Statistics data to produce a dataset representing 254,643 actual filings with associated data on race, poverty-rate, and population density. I then use this data to engage in a statistical analysis of race and diversity jurisdiction through the lens of increases in the amount-in-controversy requirement.

I find that a large percentage of Black claimants are simply missing from the federal courts. This result is consistent with studies finding a barrier to Black claimant use of the courts arising out of systemic racism which creates and maintains Black Americans' distrust of the U.S. justice system. The analysis also finds that increasing the amount-in-controversy requirement further decreases filing rates and, thereby, creates a second barrier for Black claimants to access the federal courts. This additional barrier can only serve to reinforce and deepen Black alienation as those Black claimants willing to trust the federal courts are told that federal court is not for people like them.

In addition, the analysis to identify hidden or unknown covariates produces evidence of belief that the state courts are biased in other ways including geographic bias, rural court bias, and bias against the poor.

 1. JOHN STEINBECK, OF MICE AND MEN (1937).

TABLE OF CONTENTS

I. INTRODUCTION

As this article was being written, people across the world were protesting the deaths of George Floyd, Breonna Taylor, Philando Castille, Eric Garner, Michael Brown, Tamir Rice, and many other victims[2] of racist police brutality,[3] and institutional racism[4] in the U.S. criminal justice system. That Black people are treated far worse than White people in the United States criminal justice system is empirically well-established. Black people are more likely to be subjects of pretextual stops,[5] searches,[6] tickets,[7] and police

---

2. *See, e.g.*, Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May be the Largest Movement in U.S. History*, N.Y. TIMES, July 3, 2020, at A15 (discussing Black Lives Matter protests in the United States); NPR, *A Decade of Watching Black People Die*, CODE SWITCH (May 31, 2020), https://www.npr.org/2020/05/29/865261916/a-decade-of-watching-black-people-die (discussing the current Black Lives Matter protest in the context of Eric Garner's July 2014 death and listing some of the Black people killed by the police since Eric Garner's death) [https://perma.cc/VH8N-TLQZ].

3. Police brutality is often targeted against a person's race. *See, e.g.*, Alexa P. Freeman, *Unscheduled Departures: The Circumvention of Just Sentencing for Police Brutality*, 47 HASTINGS L.J. 677, 694-98 (1996) (discussing that racist beliefs underlay many acts of police violence against persons of color). At the same time, it is important to note that police brutality can, and is, targeted against other aspects of a person's identity including "sexual orientation, race, gender or gender identity, age or economic status." AMNESTY INTERNATIONAL, USA: STONEWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S. 164 (Sept. 21, 2005), https://www.amnesty.org/download/Documents/84000/amr511222005en.pdf [https://perma.cc/ZDW3-DQJN].

4. "Institutional racism occurs where an institution adopts a policy, practice, or procedure that, although it appears neutral, has a disproportionately negative impact on members of a racial or ethnic minority group." Vernellia R. Randall, *The Misuses of the LSAT: Discriminating Against Blacks and Other Minorities in Law School Admissions*, 80 ST. JOHN'S L. REV. 107, 107 (2006). Institutional racism is particularly pernicious as "[i]t is discrimination permeated in our society from healthcare, education, law enforcement and virtually every institution or organization in America." Rasheena Latham, *Who Really Murdered Trayvon? A Critical Analysis of the Relationship Between Institutional Racism in the Criminal Justice System and Trayvon Martin's Death*, 9 S.J. POL'Y & JUST. 80, 82-83 (2014).

5. *See* Emma Pierson, Camelia Simoiu & Jan Overgoor et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736, 737 (2020) (finding that "black drivers were, on average, stopped more often than white drivers. In particular, among state patrol stops, the annual per-capita stop rate for black drivers was 0.10 compared to 0.07 for white drivers; and among municipal police stops, the annual per-capita stop rate for black drivers was 0.20 compared to 0.14 for white drivers").

6. *See id.* at 739 (concluding that, in the jurisdictions studied, "stopped black and Hispanic drivers were searched about twice as often as stopped white drivers"); *see also* INST. ON METRO. OPPORTUNITY, THE MINNESOTA STATEWIDE RACIAL PROFILING STUDY 18 (2003), https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1113&context=imo_studies ("For all jurisdictions combined, officers searched American Indians, Blacks, and Latinos more often than expected" and searched "Asians and Whites less often than expected.") [https://perma.cc/BYY8-F5BV].

7. *See, e.g.*, STANFORD OPEN POLICING PROJECT, *Findings: The Results of our Nationwide Analysis of Traffic Stops and Searches*, https://openpolicing.stanford.edu/findings/ (last visited Jan. 21, 2021) ("In nearly every jurisdiction we find stopped black and Hispanic drivers are searched more often than white drivers.")

force.[8] Following these encounters with law enforcement, Black people are more likely to be charged for low-level offenses,[9] denied bail,[10] required to pay more when bail is granted,[11] given a longer sentence if convicted,[12] wrongly convicted,[13] incarcerated,[14] sentenced to death,[15] and denied parole.[16] In addition, Black people are less likely to "receive a reduction in their principal initial charge" as part of the

[https://perma.cc/RK66-BAHC]; Bureau of Justice Statistics, U.S. Dept. Justice, *Characteristics of Drivers Stopped by Police, 2002* (June 2006), https://www.bjs.gov/content/pub/ascii/cdsp02.txt ("Subsequent to being stopped for speeding, blacks (78%) and Hispanics (85%) were more likely than whites (70%) to receive a ticket.") [https://perma.cc/9MBX-3KDF].

8.   *See, e.g.*, Roland G. Fryer, *An Empirical Analysis of Racial Differences in Police Use of Force*, 127 J. Pol. Econ. 1210, 1258 (2019) (finding racial differences in police use of non-lethal force).

9.   *See, e.g.*, Megan Stevenson & Sandra Mayson, *The Scale of Misdemeanor Justice*, 98 B.U. L. Rev. 731, 763 & Table 1 (2018) (finding that the arrest rates for most misdemeanor arrests demonstrate high racial disparity); American Civil Liberties Union of New Jersey, Selective Policing: Racially Disparate Enforcement of Low-Level Offenses in New Jersey 4, 12 (Dec. 2015), https://www.aclu-nj.org/files/7214/5070/6701/2015_12_21_aclunj_select_enf.pdf (finding in Jersey City, Elizabeth, New Brunswick, and Millville that Black people were between 3.2 to 5.7 times more likely to be arrested than White people for disorderly conduct, defiant trespass, loitering, and marijuana possession) [https://perma.cc/R55U-SPE3].

10.   *See, e.g.*, Frank McIntyre & Shima Baradaran, *Race, Prediction, and Pretrial Detention*, 10 J. Emp. Legal Stud. 741, 742 (2013) (finding that "41.6 percent of black defendants are detained pretrial and only 34.4 percent of white defendants" are detained pretrial).

11.   *See, e.g.*, David Arnold, Will Dobbie & Crystal S. Yang, *Racial Bias in Bail Decisions*, 133 Q.J. Econ. 1885, 1906 (finding that "black defendants are 3.6 percentage points more likely to be assigned monetary bail than white defendants [and] receive bail amounts that are $7,821 greater than white defendants").

12.   *See, e.g.*, Ryan D. King & Michael T. Light, *Have Racial and Ethnic Disparities in Sentencing Declined?*, 48 Crime & Just. 365, 371 (2019) (reviewing multiple studies on racial disparity in sentencing and finding that "blacks tend to receive harsher sentences than whites"); United States Sent'g Commission, *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*, 30 Fed. Sent. R. 212, 213 (2018) ("Black male offenders received sentences on average 19.1 percent longer than similarly situated White male offenders during the Post-Report period (fiscal years 2012-2016), as they had for the prior four periods studied.").

13.   *See, e.g.*, National Registry of Exonerations, *Race and Wrongful Convictions in the United States* ii-iii, https://www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf (finding that "innocent black people are about seven times more likely to be convicted of murder than innocent white people," "a black prisoner serving time for sexual assault is three-and-a-half times more likely to be innocent than a white sexual assault convict," and "innocent black people are about 12 times more likely to be convicted of drug crimes than innocent white people") [https://perma.cc/D3M3-F6AU].

14.   *See, e.g.*, Ashley Nellis, The Color of Justice: Racial and Ethnic Disparity in State Prisons, Sent'g Project 3 (2016), https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/ ("African Americans are incarcerated in state prisons at a rate that is 5.1 times the imprisonment of whites. In five states (Iowa, Minnesota, New Jersey, Vermont, and Wisconsin), the disparity is more than 10 to 1.").

15.   *See, e.g.*, Bradley A. MacLean & H.E. Miller, Jr., *Tennessee's Death Penalty Lottery*, 13 Tenn. J.L. & Pol'y 85, 165 (2018) (finding that while "African Americans represent [just] 17% of Tennessee's population[, they] represent 44% of Tennessee's current death row population").

16.   *See, e.g.*, Michael Winerip, Michael Schwirtz & Robert Gebeloff, *For Blacks Facing Parole in New York State, Signs of a Broken System*, N.Y. Times (Dec. 4, 2016), https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html (describing the results of a New York Times analysis of New York parole decisions in which "fewer than one in six black or Hispanic men [were] released at his first hearing, compared with one in for white men" and "white inmates serving two to four years for a single count of third-degree burglary have been released after an average of 803 days, while black inmates served an average of 883 days for the same crime") [https://perma.cc/XD56-P47K].

plea-bargaining process.[17] Clearance rates for serious crimes against Black victims are also significantly lower than for crimes with White victims.[18]

While there is a clear moral imperative to continue the empirical study of the criminal justice system to both expose and correct injustices, there is also a moral imperative to expand empirical study of the important but understudied U.S. civil justice system.[19] The civil justice system is the primary forum through which the government provides for private parties (1) to peacefully resolve disputes, (2) to be compensated for injuries caused by others, and (3) to deter misconduct that causes injury.[20] Given this important role, if there is racial bias in the civil justice system, it must be identified so that it can be addressed.

The primary difficulty with conducting empirical research on the civil justice system is the limited availability of data.[21] Exacerbating this problem is that data in the civil justice system does not include information identifying the race of the key

---

17. *See, e.g.*, Carlos Berdejó, *Criminalizing Race: Racial Disparities in Plea-Bargaining*, 56 B.C. L. Rev. 1187, 1240-41 (2018) (summarizing the results of empirical analysis of plea-bargaining data). Importantly, Professor Berdejó further notes that "[t]hese disparities in plea-bargaining appear to be driven by cases in which defendants have no prior convictions and cases which involve less serious offenses. [Thus t]hese patterns suggest that in 'low information' cases, a defendant's race may be used as a proxy for their likelihood to recidivate and latent criminality." *Id.*

18. *See, e.g.*, Jeffrey Fagan & Amanda Geller, *Police, Race, and the Production of Capital Homicides*, 23 Berkeley J. Crim. L. 261, 300 (2019) ("Compared to White victims, a murder of a black victim is 23.2% less likely to be cleared . . . [and f]or murders of Other Race victims, mostly Hispanics, the odds of clearance by arrest are 16.9% lower . . . than . . . for White victim cases.").

19. *See, e.g.*, Tonya L. Brito, David J Pate, Jr. & Jia-Hui Stefanie Wong, *'I Do for My Kids': Negotiating Race and Racial Inequality in Family Court*, 83 Fordham L. Rev. 3027, 3028 (2015) (noting that "race and racial inequality are understudied areas of inquiry in the access to justice literature"); Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 Iowa L. Rev. 1263, 1270 (2016) ("Despite a great deal of interest among socio-legal scholars in studying race and class disparities in the *criminal* justice system, there has been relative little work examining similar disparities in the *civil* justice system.") (emphasis in original and citation omitted). The importance of the civil justice system has been recognized since before the founding of the United States. For example, James Madison placed civil rights on a par with religious rights. The Federalist No. 51 270-71 (James Madison) (The Gideon Ed., 2001) ("In a free government, the security for civil rights must be the same as for religious rights."). Madison also understood that the goal of government and civil society is justice. *Id.* at 271 ("Justice is the end of government. It is the end of civil society.").

20. *See, e.g.*, Steven B. Hantler, Mark A. Behrens & Leah Lorber, *Is the 'Crisis' in the Civil Justice System Real or Imagined?*, 38 Loy. L.A. L. Rev. 1121, 1123 (2005) (identifying the purposes of the civil justice system as "to compensate people for injuries caused by others, and to deter future misconduct of the type that caused those injuries"); Paul D. Carrington, *Virtual Civil Litigation: A Visit to John Bunyan's Celestial City*, 98 Colum. L. Rev. 1516, 1522 n. 23 (1998) (quoting Roger H. Transgrud, *Mass Trials in Mass Tort Cases: A Dissent*, 1989 U. Ill. L. Rev. 69, 74 (1989) ("The first purpose of our civil justice system is and should be to offer corrective justice in disputes arising between private parties.")); Roy D. Simon Jr., Simon's New York Rules of Professional Conduct Annotated § 3.4:50 (May 2019) ("The second theory underlying Rule 3.4(e) is that the purpose of the *civil* justice system is to enable private parties to resolve their disputes peaceably by presenting the facts to a neutral tribunal and negotiating in good faith with each other.") (emphasis in original); Dianne Jay Weaver, *Boosting Our Public Image*, 34 J. Amer. Trial L. Assoc. 74, 75 (Aug. 1998) (describing the purpose of the civil justice system as "enabl[ing] people injured by malpractice or defective products to be compensated for their injuries, and to hold wrongdoers accountable for their actions").

21. *See* Rebecca L. Sandefur, *Paying Down the Civil Justice Data Deficit: Levering Existing National Data Collection*, 68 S.C. L. Rev. 295, 296-300 (2016) (explaining that civil justice data, necessary for empirical studies, is extremely limited).

players—the litigants, attorneys, and judges.[22] In response, I have developed a method of linking demographic data from the U.S. Census Bureau and the National Center for Health Statistics with federal filings data aggregated at the county-level making it possible to study group-level effects of changes to substantive law and procedural rules.[23] Using this methodology, I was able to produce a dataset with 27,233 records corresponding to 254,643 cases brought in federal courts based on diversity jurisdiction ("diversity cases"), with relevant demographic data included in each record.[24]

I analyze this dataset (the "Analysis") using a series of before-after models with state-level and year-level dummy variables and targeted analysis of specific suspected covariates.[25] The Analysis first establishes that raising the amount-in-controversy requirement decreases the federal filing rate in general.[26] As a result, Congress creates a systemic barrier to filing in the federal courts by pricing potential litigants out of court. Next, the Analysis shows that Black claimants are under-represented in cases filed in the federal courts under diversity jurisdiction and that White claimants are over-represented.[27] This under-representation is consistent with empirical studies showing that Black Americans are alienated from the justice system due to systematic racism that engenders distrust in the system.[28] Thus, Black claimants struggle with a double-barrier: Black alienation from the U.S. civil justice system and continually having to meet a constantly rising amount-in-controversy requirement. Given the already-existing alienation of Black claimants from the civil justice system, preventing Black claimants who are willing to seek relief through the federal courts from using the federal system based on their inability to meet the amount-in-controversy requirement further alienates Black Americans from the U.S. justice system.

When engaged in statistical analysis of pre-existing panel data[29] it is possible to find a correlation[30] between two variables where that correlation is actually caused by

---

22. *See, e.g.*, Naomi Burstyner, Tania Sourdin & Chinthaka Liyanage et al., *Using Technology to Discover More About the Justice System*, 44 RUTGERS COMP. & TECH. L.J. 1, 7-8 (2018) (discussing the lack of data on demographics of court users).

23. *See infra* Part IV.A (describing how the dataset was created).

24. *See id.*

25. *See infra* Part IV.B (explaining the model).

26. *See infra* Part A (discussing the results of the analysis of the correlation between filing rates and the amount-in-controversy requirement).

27. *See infra* Part V.B (explaining the results as to the correlation between the percentage of Blacks in a county and the filing rate).

28. *See infra* Part VI. (discussing black alienation from the U.S. justice system).

29. Panel data is a form of pooled data "in which the same cross-sectional unit . . . is surveyed over time." DAMODAR N. GUJARATI & DAWN C. PORTER, ESSENTIALS OF ECONOMETRICS 5 (2011). For example, if we are interested in tracking the rate of filing in southern states we might identify Florida, Alabama, and Georgia as states to follow. These states are the cross-sectional units—they remain the same throughout the survey period. We would then look at filing rates for those states over a period of time (e.g., ten years) and at specific intervals (e.g., every six months). *See id.* at 5 (providing an example of panel data based on surveys of housing). Looking at the federal court filing rate in Alabama, Florida, and Georgia states every month for ten years, we create panel data that has three individuals (the states) and 120 months of data.

30. When we say that two variables ae correlated, we mean that as the magnitude of one variable changes, so does the magnitude of the other variable. The variables are positively correlated if, when the magnitude of one variable increases, so does the other. They are negatively correlated if, when the magnitude of one variable

an unknown or unstudied third variable. Such unknown or unexamined causal factors in a population are called "covariates".[31] Unknown covariates create a problem for statistical analysis and inference because the model of the phenomena is incomplete, since it misses some of the true factors, and misleading, since the magnitude of the correlation found may be numerically incorrect. The Analysis first addresses this problem by using dummy variables[32] that stand-in for unknowable state-level and year-level covariates. In addition, the Analysis addresses this problem by affirmatively identifying covariates, like poverty-rate, geographic bias, and population density, and including them in the model.[33] Each of these covariates are correlated with the filing rate. For example, federal court filings increase as poverty-rates rise,[34] when the percentage of out-of-state plaintiffs in the county increases,[35] and when the county is rural.[36] By including both the dummy variables and the listed covariates, we achieve a more accurate and complete model of filing rates.

In order to understand these results, this Article begins, in Part II, with an overview of the history of diversity jurisdiction and the amount-in-controversy requirement. Part III expands on this history by reviewing the results of empirical studies of diversity jurisdiction and the amount-in-controversy requirement. The methodology for building the dataset and for the statistical analysis are explained in Part IV, while Part V provides the results of that analysis. Part VI concludes by arguing that the results of the Analysis support prior studies demonstrating that Black Americans are alienated from the U.S. civil justice system. Moreover, because raising the amount-in-controversy requirement further decreases filing rates among Black Americans, raising the requirement reinforces, entrenches, and expands Black alienation from the U.S. justice system by making it harder for those Black claimants willing to trust the system to file in the federal courts.

II. DIVERSITY JURISDICTION AND THE AMOUNT-IN-CONTROVERSY REQUIREMENT: A GREAT VENUE BUT THERE IS A COVER-CHARGE

The history of diversity jurisdiction is one in which the legislature has sought to strike a balance between providing access to the federal courts for geographically diverse parties while expressly limiting that access by adding a financial threshold. The purpose of federal diversity jurisdiction has long been understood as providing a

---

increases, the other decreases. DAVID L. FAIGMAN ET AL., 1 MOD. SCI. EVID. § 4.25 (2020-2021) (explaining correlation).

31. A covariate, also called a control variable, is an independent variable (other than the independent variable being studied) that has an effect on the characteristics of the study population being studied. *See id.* at 185-87 (discussing the effect of covariates not included in the regression equation).

32. *See infra* Part IV.D.

33. *See, e.g., infra* Part V.A (discussing the results of regression on Equation 2 using eight different independent variables); *infra* Part V.B.ii (discussing the results of analysis of the effect of potential covariates on the negative correlation between percentage of Black people in a county and filing rates).

34. *See infra* Part V.B.ii.b.

35. *See infra* Part V.B.ii.c. For purposes of this article, "geographic bias" is understood as bias against out-of-state litigants by in-state juries and jurists.

36. *See infra* Part V.B.ii.d (discussing the results of the analysis of the population density variables).

forum in which out-of-state claimants may litigate free from geographic bias.[37] When the first Congress created diversity jurisdiction it also set an amount-in-controversy requirement in response to concerns over federalism.[38] By the late 19th century, this federalism basis for limiting diversity jurisdiction was replaced by a more pragmatic and economic concern—the cost of presiding over a greatly increased number of cases brought before the federal courts as the Nation's population growth outstripped the court's resources.[39]

A. Diversity Jurisdiction: A Safe Venue for Out-Of-State Interests

Specialized procedural rules and courts for disputes between people from different jurisdictions have existed from the dawn of recorded history. For example, in the Babylonian Talmud, Rabbi Nahman found that the law of the husband's residence applied to a dispute over the ketubah—a marriage contract—[40] between a woman from Meḥoza and her husband from Neharde'a.[41] Similarly, when there was a conflict between Ancient Egyptians and Greeks who had established colonies in Egypt, if the contract was in Greek form, then it would be tried before the Greek courts (the *chrematists*). If the contract was in Egyptian form, it was tried before Egyptian courts (the *laocrites*).[42] In addition, tribunals for disputes between citizens and non-citizens were used by both the ancient Greeks and Romans.[43]

We see a similar approach in England during the High Middle Ages when Jewish people move to England and undertook key economic roles in English society.[44] To

---

37. United States v. Deveaux, 9 U.S. 61, 87-88 (1809) (Marshall, C.J.) (holding the purpose of diversity jurisdiction is to address fear of bias in the state court against out-of-state litigants).

38. *See, e.g.*, Thomas E. Baker, *The History and Tradition of the Amount in Controversy Requirement: A Proposal to "Up the Ante" in Diversity Jurisdiction*, 102 Fed. Rules Dec. 299, 303 (1984) (quoting 2 J. Elliot, Debates 550-51 (1941)) (discussing the origins of the amount-in-controversy requirement); Joseph Ellison Earnest, *The Jurisdictional Amount in Controversy in Suits to Enforce Federal Rights*, Tex. L. Rev. 545, 547 (1976) (discussing the Judiciary Act of 1789).

39. *See, e.g.*, Earnest, *supra* note 38, at 549 (discussing the stated purpose of increasing the amount in controversy requirement after 1875).

40. Under Jewish law, a ketubah is a marriage contract given by a husband to his wife that lists his (and, upon his death, his estate's) financial obligations to her. *See* William F. Patry, 7 Patry on Copyright § 25.4 (March 2020) (discussing the origin of choice of law in the Talmud).

41. *See* The William Davidson Talmud, *Ketubot* 54a, available at https://www.sefaria.org/Ketubot. 54a?lang=bi (providing guidance on what law to use in enforcing a marriage contract between a wife from one jurisdiction and her husband's estate where the husband was from another jurisdiction) [https://perma.cc/7GRD-Y6R6]. The Babylonian Talmud was compiled around the sixth century C.E. *See, e.g.*, Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573, 583 n.13 (1989) (explaining that the Babylonia Talmud "is a collection of rabbinic commentary on Jewish law that was compiled before the sixth century").

42. *See* Hessel E. Yntema, *The Historic Bases of Private International Law*, 2 Am. J. Comp. L. 297, 300-01 (1953) (discussing the history of conflicts law).

43. *See, e.g.*, 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, 83 (1993) (discussing how Ancient Greeks and Romans created special tribunals for legal conflicts involving aliens).

44. Prior to the Norman Conquest of England in 1066, there is little evidence of Jewish people residing in England and even less evidence of a settled community. At the same time, there were robust Jewish communities in continental Europe including lands in France that were part of William the Conqueror's possessions. Following the Norman Conquest in 1066 A.D., Jews began to move to England and play a role in the trades

protect Jewish people from bias by all-Christian juries, Jewish people were given a right to a jury *de medietate linguae*–a jury that was one-half Jewish.[45] This also ensured that the King could continue to exploit Jewish people economically. When the Jewish population was expelled from England in 1290, foreign merchants replaced them as financial agents of the King.[46] This change did not produce specialized merchant law, merchant courts, or adjudicative procedures.[47] Instead, foreign merchants were extended the right to trial by jury *de medietate linguae*— a jury with half of the jurors being from the same country as the foreign merchant— until 1870 when Parliament eliminated the right.[48]

The framers of the U.S. Constitution were well aware of the Greek and Roman legal traditions[49] as well as the practices of the English courts.[50] Thus, it is not surprising that the First Congress established the lower federal courts and granted those courts diversity jurisdiction in cases "against an alien, or by a citizen of the state in which the suit is brought against a citizen of another state."[51] Yet, congressional records do not establish why Congress created diversity jurisdiction. In the absence of a record from the Founders, contemporary jurists and scholars have proposed two primary theories for the purpose of diversity jurisdiction.[52] One theory is that it is meant to counter prejudice and bias against out-of-state residents in state

---

and as financial agents for the King. *See, e.g.*, Deborah A. Ramirez, *The Mixed Jury and the Ancient Custom of Trial by Jury de Medietate Linguae: A History and a Proposal for Change*, 74 B.U. L. REV. 777, 783 (1994) (discussing the arrival of Jews in medieval England); CECIL ROTH, A HISTORY OF THE JEWS IN ENGLAND 3-4 (3rd Ed. 1964) (discussing the arrival of Jews in England after the Norman Conquest); ALBERT M. HYAMSON, A HISTORY OF THE JEWS IN ENGLAND 1-7 (1908) (discussing the role of Jewish people in England after the Norman Conquest).

45. *See* Ramirez, *supra* note 44, at 783-84 (discussing the history of Jewish people in England from the period of the Norman conquest to the expulsion of all Jewish persons from England in 1290).

46. *See id.* at 784 (discussing the expulsion of Jewish people from England).

47. *See id.* at 785 (discussing the treatment of alien merchants by English courts).

48. *See id.* at 784-87 (providing an overview of the treatment of foreign merchants by the English courts and the elimination of the trial by jury *de mediate linguae*).

49. *See, e.g.*, Notes of James Madison (June 6, 1787), *in* 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 135 (Max Farrand ed., 1911) [hereinafter FARRAND] (discussing Greek and Roman class conflict); Notes of James Madison (July 7, 1787), *in* FARRAND 553 (noting Governor Morris' point that the unity of ancient Greece was hampered by the retention of local sovereignty); Melancton Smith, Speech to the N.Y. Convention (June 20, 1788), *in* 1 DEBATES, RESOLUTIONS, AND OTHER PROCEEDINGS, IN CONVENTION, ON THE ADOPTION OF THE FEDERAL CONSTITUTION 195, 232-33 (Jonathan Elliot compiler, 1827) (noting that, in both ancient Sparta and Rome, the people were used to a government by a small group of nobles and that Americans were not).

50. *See, e.g.*, Mary Sarah Bilder, 116 YALE L.J 502, 535 (discussing how the English corporate law influenced and developed into the American practice of judicial review); Eugene Gressman & Eric K. Gressman, *Necessary and Proper Roots of Exceptions to Federal Jurisdiction*, 51 GEO. WASH. L. REV. 495, 525 (1983) ("In drafting article III, the framers were no doubt influenced by the traditional practices of local courts in England"); Michael H. Schill, *Intergovernmental Takings and Just Compensation: A Question of Federalism*, 137 U. PA. L. REV. 829, 833 n. 12 (1989) ("In addition to natural law, the Framers were likely influenced by English parliamentary and colonial practice").

51. The Judiciary Act of 1789, 1 Stat. 73 § 12 (1789).

52. *See, e.g.*, Debra Lyn Bassett, *The Hidden Bias in Diversity Jurisdiction*, 81 WASH. U. L.Q. 119, 123-24 (2003) (noting that there are "two major theories [that] occupy the consensus positions as to the historical purpose of diversity jurisdiction" one "to protect out-of-state litigants from bias by state courts . . . [t]he [other] . . . is that state legislatures, rather than state courts, were biased against commercial interests"); Stone Grissom, *Diversity Jurisdiction: An Open Dialogue in Dual Sovereignty*, 24 HAMLINE L. REV. 372, 374 (2001)

court.[53] The other is that it arises out of a "perceived hostility by the state courts and legislatures toward commercial interests."[54]

Perhaps most importantly, the understanding that diversity jurisdiction is premised on the need to protect out-of-state interests from in-state bias has been judicial canon from its start in *Bank of the United States v. Deveaux*[55] in 1809 through 2019 in *Home Depot U.S.A., Inc. v. Jackson*[56] and all of the cases between.[57] In *Deveaux*, the Court noted that "[t]he constitution has conferred on the courts of the United States jurisdiction in two classes of cases. . . . [Second w]here the state tribunals could not be supposed to be impartial."[58] Over two-hundred years later, the Court repeated this viewpoint explaining that "diversity jurisdiction provides 'a neutral forum' for parties from different States."[59] But, as Justice Friendly has noted,[60] the Founders also understood diversity jurisdiction to be valuable

---

("There are two conventional and somewhat competing theories concerning the initial justifications for diversity jurisdiction").

53. Bank of the United States v. Deveaux, 9 U.S. 61, 86-89 (1809) (noting that the purpose of diversity jurisdiction is to alleviate concerns of the perception of prejudice against out-of-state litigants in state courts); Smith v. Metro. Prop. & Liab. Ins. Co., 629 F.2d 757, 761 n. 7 (2d Cir. 1980) ("Diversity jurisdiction exists to protect out-of-state litigants from state court bias."); Bowman v. PHH Mortg. Corp., 423 F. Supp. 3d 1286, 1291 (N.D. Al. 2019) ("The purpose of diversity jurisdiction is to protect out-of-state litigants from potential bias in state courts against nonresidents by providing those litigants with a neutral forum in federal court."); Bassett, *supra* note 52, at 119-20 ("The traditional, most common explanation of diversity jurisdiction's purpose is the protection of out-of-state litigants from local bias by state courts.").

54. *See, e.g.*, Borchers, *supra* note 43, at 81 ("[T]he drafting and ratification history supports the conclusion that diversity was intended at least in part as a protection against aberrational state law, particularly those regarding commercial transactions."); Grissom, *supra* note 52, at 375 (describing Justice Friendly's argument for the origin of diversity jurisdiction); Justice Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 Harv. L. Rev., 483, 497-98 (1928) (noting that while "there was little cause to fear state tribunals would be hostile to litigants from other states," the "commercial interest of the country were reluctant to expose themselves to the hazards of litigation before [state] courts").

55. 9 U.S. at 87-88 (holding the purpose of diversity jurisdiction is to address fear of bias in the state court against out-of-state litigants).

56. __ U.S. __, 139 S.Ct. 1743, 1746 (2019) (noting that "diversity jurisdiction provides a 'neutral forum' for parties from different States").

57. A chronological list, from earliest to most recent, of such cases includes: United States v. Deveaux, 9 U.S. 61, 87-88 (1809) (Marshall, C.J.) (holding that diversity jurisdiction's primary intent is to avoid in-state bias against out-of-state litigants); Pease v. Peck, 55 U.S. 595, 599 (1855) (Grier, J.) (same); Burgess v. Seligman, 107 U.S. 20, 34 (1883) (Bradley, J.) (same); Barrow S.S. Co. v. Kane, 170 U.S. 100, 111 (1898) (Gray, J.) (same); Erie Railway Co. v. Tompkins, 304 U.S. 64, 74 (1938) (Brandeis, J.) (same); Guaranty Trust Co. of New York v. York, 362 U.S. 99, 111 (1945) (Frankfurter, J.) (same); National Mutual Insurance Co of District of Columbia v. Tidewater Transfer Co., 337 U.S. 582, 622 (1949) (Rutledge, J., concurring) (noting that diversity jurisdiction was "designed to nullify" local prejudice); McGautha v. California, 402 U.S. 183, 261 n.11 (1971) (Brennan, J., dissenting) (discussing diversity jurisdiction in the context of the Thibodaux and Mashuda opinions); Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 547 n. 6 (1995) (Souter, J.) (recognizing "concern with local bias" in the creation of diversity jurisdiction); Hertz Corp. v. Friend, 559 U.S. 77, 85 (2010) (Breyer J.) (holding that the basic rationale of diversity jurisdiction to protect litigants "from local prejudice against out-of-state parties"); Home Depot U.S.A., Inc. v. Jackson, _ U.S. _, 139 S.Ct. 1743, 1746 (2019) (Thomas, J.)

58. 9 U.S. at 67.

59. *Home Depot*, 139 S.Ct. at 1746.

60. *See* Friendly, *supra* note 54, at 498 (explaining that "the commercial interests of the country were reluctant to expose themselves to the hazards of litigation" before local courts).

because federal courts would provide the impartiality necessary to encourage and support inter-state commerce.[61]

B. The Amount-in-Controversy Requirement: The Cover Charge

The initial purpose of an amount-in-controversy requirement for diversity jurisdiction appears to have been to prevent federal jurisdiction from supplanting all state jurisdiction.[62] While the Founders did not include an express amount-in-controversy requirement for diversity jurisdiction in the Constitution,[63] they gave Congress the power to create one under Article III, Section 2.[64]

The initial stage of the diversity jurisdiction amount-in-controversy requirement lasted for nearly one hundred years during which the amount of the requirement remained at or around $500. The amount was initially set at $500 by the first Congress.[65] A little over a decade later, the amount was lowered to $400 in the Judiciary Act of 1801.[66] It then returned to $500 the following year with the repeal of the Judiciary Act of 1801.[67]

The second period, during which the amount rose every few decades, began in 1887 when the amount was raised to $2,000.[68] During this period, Congress began to justify the increases by the effect of a growing population on the court docket. For example, in arguing for the 1887 increase, Representative Culberson noted that the population of the United States had grown from 4 million in 1789 to 54 million in

---

61. *See, e.g.*, 2 J. ELLIOT, A CENTURY OF LAWMAKING FOR A NEW NATION: U.S. CONGRESSIONAL DOCUMENTS AND DEBATES, 1774-1875 491 (noting that "if we mean to restore either public or private credit, that foreigners, as well as ourselves, [must] have a just and impartial tribunal to which they may resort").

62. *See* Baker, *supra* note 38, at 303 (noting that during the Constitutional Convention, "[t]hose who opposed a strong federal court system had sought to include a constitutional amount in controversy requirement to prevent an extension of the federal jurisdiction, which may, and in all probability will, swallow up the state jurisdictions") (citation omitted). For example, in the debates for ratification of the Constitution, the Massachusetts delegation proposed "the addition of a $1,500 amount-in-controversy requirement for diversity jurisdiction to "more effectually guard against an undue administration of the federal government." JONATHAN ELLIOT, 1 THE DEBATES IN THE SEVERAL STATE CONVENTIONS OF THE ADOPTION OF THE FEDERAL CONSTITUTION 367 (1827).

63. *See* U.S. CONST. art. III, § 1 & 2.

64. *See* U.S. CONST. art. III, § 1 (vesting the judicial power in "one supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish").

65. Act of September 24, 1789, Ch. 20, § 12, 1 Stat. 73, 79 (granting the circuit courts original jurisdiction over "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").

66. Act of February 13, 1801, Ch. 4, § 11, 2 Stat. 89, 92 (limiting diversity jurisdiction to disputes in which the amount-in-controversy is at least $400).

67. Act of March 8, 1802, Ch. 8, § 1, 2 Stat. 132, 132 (repealing the Judiciary Act of 1801).

68. Act of March 3, 1887, Ch. 373, § 1, 24 Stat. 552, 552 (requiring that "the matter in dispute exceed[], exclusive of interest and costs, the sum or value of two thousand dollars . . . in which there shall be a controversy between citizens of different States"). The Act also contains an express recognition that state courts might have bias in favor of in-state litigants where it grants removal jurisdiction "into the circuit court of the United States, for the proper district, at any time before the trial thereof, when it shall be made to appear to said circuit court that from prejudice or local influence he will not be able to obtain justice in such State court." *Id.* at § 2.

1887 and that "[t]he amount of business in the country in the courts then and now sustain no comparison whatever."[69] The increase to $3,000 in 1911[70] was similarly justified by arguments that the court's caseload had increased as a result of territorial and population growth.[71]

In 1958, Congress raised the amount-in-controversy requirement to $10,000.[72] The Senate Report recommending this change justified it by reference to increased usage of the courts:

> In the years following World War II the judicial business of the United States District Courts increased tremendously. Total Civil cases filed are up 75 percent and the private civil business has more than doubled in the districts having exclusively federal jurisdiction.
>
> Most of the increase has occurred in the diversity of citizenship cases, which have increased from 7,286 in 1941 to 20,524 in 1956.[73]

The amount-in-controversy requirement was next increased to $50,000 in 1988.[74] In making this change, the House of Representatives Report noted that "as inflation, the workload of the Federal courts, and the unwillingness of Congress to solve caseload problems by creating new judgeships coalesce[,] pressures are created to review ways to reduce Federal jurisdiction."[75] The report recommended increasing the requirement from $10,000 to $50,00 and predicted a net decrease in diversity cases of up to 40%.[76]

Most recently, Congress raised the amount-in-controversy to $75,000,[77] and, once again, justified the change on the need to limit the court's caseload: "The committee recognizes the importance of balancing the need to assist the Federal judiciary in reducing its increasing caseload with the needs of those making use of our Federal courts."[78] Thus, from its inception at the Constitutional Convention, the amount-in-controversy requirement has been seen as a brake on federal court diversity that either supported federalism by protecting the jurisdiction of the state courts or worked to decrease the caseload in the federal courts.

---

69. 18 Cong. Rec. 610, 613-14 (Jan. 13, 1887) (Remarks of Rep. Culberson).

70. Act of March 3, 1911, Ch. 231, § 24, 36 Stat. 1087, 1091 (granting the district court original jurisdiction where "the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and . . . is between citizens of different states").

71. Representative Reuben O. Moon of Pennsylvania, Revision and Codification of the Laws Relating to the Judiciary, Speech in the House of Representatives (Dec. 7, 1910), at 20, available at https://www.loc.gov/item/42034268/ (explaining how the Act of March 3, 1911 is needed because "[t]he great expansion of the Federal territory, the opening of new sections of the country, and the stupendous increase in our population has greatly increased the business of the Federal judiciary") [https://perma.cc/4WKC-ECT9].

72. Act of July 25, 1958, Pub. L. No. 85-554, 72 Stat. 415 (1958).

73. H.R. REP. NO. 85-1706, at 2 (1958).

74. Judicial Improvements and Access to Justice Act of 1988, Pub. L. 100-702, 102 Stat. 4642, § 201 (1988) (increasing the amount-in-controversy requirement to $50,000 in diversity cases by modifying "[s]ubsections (a) and (b) of section 1332 . . . by striking out '$10,000' and inserting in lieu thereof '$50,000').)

75. H.R. REP. NO. 100-889, at 45 (1988).

76. *Id.* at 45.

77. Federal Courts Improvement Act of 1996, Pub. L. 104-317, 110 Stat. 3850, § 205 (1996) (modifying 28 U.S.C. 1332(a) & (b) "by striking out '$50,000' and inserting in lieu thereof '$75,000'").

78. S. REP. NO. 104-366, at 29 (1996).

III. A (Very) Limited Empirical Record

A mature legal science benefits from the insight provided by well-designed empirical studies of legal phenomena.[79] Unfortunately, in the context of diversity jurisdiction, the empirical record is limited. Only one empirical study was found on the effect of raising the diversity jurisdiction amount-in-controversy requirement on filings and it did not examine the effect of the increase on litigants from communities of color.[80] There are studies of diversity jurisdiction in the form of surveys of attorneys seeking to ascertain what factors are relevant in choosing federal or state court.[81] Of these surveys, only one discusses race as a factor but notes that its results on race as a factor are unreliable.[82]

A. *Empirical Study on the Effect of Raising the Amount-In-Controversy Requirement on Federal Case Filings*

The 1988 Federal Judicial Center report empirically analyzed the effect of increasing the amount-in-controversy requirement on federal court caseload.[83] The report estimated that raising the requirement to $50,000 would result in 10,171 cases eliminated from the federal courts.[84] Raising the amount to $100,000 would, it estimated, bar 43.9% of contract cases and 4.3% of tort cases from federal court.[85] This analysis differs from the one found herein, in that the Federal Judicial Center report was prospective[86] while the Analysis herein focuses on what actually occurred with each increase. Moreover, the 1988 study did not examine the impact of these changes on litigants from communities of color.[87]

All other searches for relevant empirical studies of the amount-in-controversy requirement led to (1) articles noting that that there are no studies of the amount-in-controversy requirement[88] or (2) empirical studies of the amount in controversy *qua* the amount of damages sought or received, not as a minimum requirement for

---

79. Kathryn Zeiler, *The Future of Empirical Legal Scholarship: Where Might We Go From Here?*, 66 J. Legal Educ. 78, 80 (2016) (noting that empirical studies "contribute[] both to the development of a mature legal science, which aids in our endeavor to accurately describe and explain what we observe, and to informed policymaking") (internal quotation marks omitted).

80. *See infra* Part III.A.

81. *See infra* Part III.B.

82. *See id.*

83. *See* Anthony Partridge, The Budgetary Impact of Possible Changes in Diversity Jurisdiction 13-17 (Federal Judicial Center, 1988).

84. *Id.* at 15.

85. *Id.* 15-16.

86. *See id.* at 15-16 (discussing the estimated effect of increasing the amount-in-controversy requirement on caseload).

87. *See, generally, id.*

88. For example, Lee and Willging found "no empirical study documents the amount-in-controversy in class action litigation." 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, 1734-35 (discussing a study of the impact of the Class Action Fairness Act of 2005, which created a new form of federal diversity jurisdiction with its own amount-in-controversy requirement for class action lawsuits).

jurisdiction.[89] This result is unfortunate. Without clear, empirical understanding of the amount-in-controversy requirement's effect on filing rates, removal rates, and claimants from various demographics, Congress cannot make informed judgments as to whether it should increase, decrease, or eliminate the amount-in-controversy requirement.

B. Diversity Jurisdiction and Geographic Bias

The avenue of empirical research most closely related to the subject of this Article is primarily focused on studies of surveys of attorneys to understand the factors relevant to a decision to file in federal or state court.[90] As discussed below, the surveys support the view that attorneys believe in the existence of geographic bias and consider it in choosing whether to file in federal or state court—although they are not in agreement as to its relative importance and source. Only one study reports results relating to the issue of race as a factor in deciding between federal and state court but notes that its results were not reliable.

For Example, in 1962, Marvin Summers surveyed 111 attorneys in the Eastern and Western Districts of Wisconsin,[91] finding that geographic bias was relevant to decisions about where to file but it was not a leading factor (it was 10th out of 14 factors).[92] On the other hand, a survey of 1,100 practicing attorneys in Virginia found geographic bias to be the second and third most-cited reasons for filing in federal court.[93]

---

89. *See, e.g.*, Charles Yablon & Nick Landsman-Roos, *Discovery About Discovery: Sampling Practice and the Resolution of Discovery Disputes in an Age of Ever-Increasing Information*, 34 Cardozo L. Rev. 719, 752 (2012) (discussing an empirical study of the relationship between judicial practice sampling of difficult-to-obtain e-documents and amount-in-controversy cases); Curtis E. von Kann, *A Report Card on the Quality of Commercial Arbitration: Assessing and Improving Delivery of the Benefits Customers Seek*, 7 DePaul Bus. & Com. L.J. 499, 511-12 (2009) (noting that there is empirical evidence that only in a minority of arbitration cases do the awards come "near the middle of the amount-in-controversy"); Judith A. McKenna & Elizabeth C. Wiggins, *Empirical Research on Civil Discovery*, 39 B.C. L. Rev. 785, 793 (1998) (discussing a study of discovery costs that noted as the amount-in-controversy increased, so did the discovery activity).

90. The focus of this Article is the interaction of race and diversity jurisdiction examined through the lens of changes to the amount-in-controversy requirement. As such, the focus of the review of the empirical literature is of studies that intersect that focus. At the same time, it should be noted that there are other branches of empirical study of diversity jurisdiction including one branch that looks at the effect of eliminating diversity jurisdiction in whole or in part. For example, in 1965, the American Law Institute published a study on diversity jurisdiction. Richard H. Field, Reporter, American Law Institute, Study of the Division of Jurisdiction Between State and Federal Courts 1-2 (1965) (introducing the focus of the study). The ALI study included proposals for changing diversity jurisdiction including proposing that in-state plaintiffs and foreign corporations with local divisions (for at least two years prior) be barred from federal court. *Id.* at 2-3. Using data from the Administrative Office of the United States Courts, the ALI study estimated that these changes would move (at maximum) 56.6% cases from the federal courts to the state courts. *Id.* at 170-71. *See also* Victor Eugene Flango, *How Would the Abolition of Federal Diversity Jurisdiction Affect State Courts?*, 74 Judicature 35, 36 (1990) (explaining that the paper would focus on answering the question: "How would the cases removed from the federal courts be distributed among the states if diversity jurisdiction were abolished?").

91. *See* Marvin R. Summers, *Analysis of Factors That Influence Choice of Forum in Diversity Cases*, 47 Iowa L. Rev. 933, 937-38 (1962) (discussing empirical study methodology).

92. *See id.* at 937-938 tbl. (identifying "local bias against nonresident client" as the 10th out of 14 most important factors in deciding where to file).

93. Note, *The Choice between State and Federal Court in Diversity Cases in Virginia*, 51 Va. L. Rev. 178, 179 tbl. 1 (1965) (finding the second most cited reason for preferring federal court was prejudice against an

Later surveys continued to find geographic bias to be a factor in the federal or state court decision but were not able to clarify its importance relative to other factors. For example, Goldman and Marks surveyed "405 attorneys . . . from the metropolitan Chicago area."[94] Attorneys were separated into two groups: (1) a federal group "who filed diversity cases in the Federal District Court for the Northern District of Illinois in calendar year 1976" and (2) a state group who represented clients "in the Law Division of the Circuit Court of Cook County . . . in 1976").[95] While "local bias" was cited as a reason, in the federal group, for choosing federal court forty percent of the time, the relative importance of the factor was not captured due to the survey design.[96] The state group identified "local bias" as a reason to file in federal court fifty-three percent of the time.[97] But because only 19 out 205 attorneys in the state group responded to the survey,[98] we cannot be sure that this result is an accurate representation of the importance of geographic bias or instead the result of sample bias.

As later surveys expanded from a narrow regional approach to a larger geographic region, the scope and meaning of geographic bias became clearer. For example, Kristin Bumiller surveyed "a random sample of attorneys . . . from diversity cases in four federal courts" and "a sample of attorneys in corresponding state courts."[99] Interestingly, while Bumiller concluded that her study supported the conclusion that there was bias in the state courts driving certain litigants into federal court,[100] she also concluded that "[t]he bias influencing attorneys' decisions, unlike the original justification for diversity jurisdiction, is apparently neither regional bias nor particular hostility due to 'state' residence, but fear of favoritism to local interests."[101]

Miller cast his net even wider surveying "a sample [of attorneys] randomly selected from all removal cases filed in federal district courts during FY 1987."[102] He found geographic bias[103] but also that the prevalence of geographic bias against out-of-state defendants was dependent on the region.[104] Lower-levels were reported in "the Northeast, the industrialized Midwest, and the Far West" and high-levels "in most Southern States and the less industrialized Midwest."[105] In addition, geographic bias

---

out-of-state plaintiff and the third most cited reason for preferring federal court was local prejudice against out-of-state defendant).

94. Jerry Goldman & Kenneth S. Marks, *Diversity Jurisdiction and Local Bias: A Preliminary Empirical Inquiry*, 9 J. LEGAL STUD. 93, 95 (1980).

95. *Id.* at 96.

96. *Id.* at 97-98.

97. *Id.* at 100.

98. *See id.* at 101 (noting that only 19 responses were received); *id.* at 96 (describing the survey population as 205 attorneys).

99. Kristin Bumiller, *Choice of Forum in Diversity Cases: Analysis of a Survey and Implications for Reform*, 15 LAW & SOC'Y REV. 749, 753 (1980).

100. *Id.* at 760.

101. *Id.* at 761.

102. Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 AM. U. L. REV. 369, 393 (1992) (describing the design of the study).

103. *Id.* at 409 (discussing results of study and Exhibit 3).

104. *Id.* at 410 (footnotes omitted).

105. *Id.* (footnotes omitted).

was not against out-of-state interests but against anyone outside of the local area.[106]

Miller's study was also the only empirical study found that included survey questions about race. His survey asked respondents "[w]ere any of the foregoing biases anticipated to operate <u>against your opponent</u>? Please check <u>all</u> applicable" where sex, race, and socio-economic status were possible answers.[107] Unfortunately, answers to this question were not reliable due to "low response rates and seeming respondent confusion."[108]

IV. STUDY METHODOLOGY

The dataset used in the Analysis was developed by combining federal filing data with demographic data from the U.S. Census Bureau and data on population density from the National Center for Health Statistics. A before-after model with dummy variables was used in all statistical analyses.

A. The Data

The initial dataset consists of two SAS formatted files supplied by the federal judicial center ("FJC").[109] These files were converted to a format usable by Stata[110] and merged into a single dataset comprising 9,478,289 records with one record per case.

1. Limiting the Dataset to the Relevant Subset of Cases

Once the dataset was in a Stata format, records outside the scope of the Analysis were eliminated. The data was restricted to records from the three years before and after the 1989 and 1997 increases to the diversity jurisdiction amount-in-controversy requirement[111] as well as to the years of increase.[112] The data was further restricted to just those records designated as original federal court filings arising under diversity jurisdiction.[113] Records for which demographic and population density data would

---

106. *Id.* at 411 (discussing state court bias against nonlocal residents).

107. *See id.* at 451 (Question 19 in the Appendix).

108. *Id.* at 408 (summarizing results of survey).

109. SAS is a proprietary statistical analysis system. *See* SAS, *About SAS*, https://www.sas.com/en_us/company-information/profile.html (last visited Jan. 21, 2021) [https://perma.cc/3LHX-D2YX]. While the data used in this analysis was provided directly to the author by the Federal Judicial Center as two SAS files, the same data is currently available online. *See* FED. JUD. CTR., *Integrated Database (IDB)*, https://www.fjc.gov/research/idb (last visited Jan. 21, 2021) [https://perma.cc/F2JK-TJEL].

110. Stata is a proprietary data analysis system. *See* STATA, *Why Stata*, https://www.stata.com/why-use-stata/ (last visited Jan. 21, 2021) [https://perma.cc/V7PU-M3Q2]. The file was converted to a format compatible with Stata using the program Stat/Transfer. Stat/Transfer is a program that allows users to convert data stored in one data format (e.g., SAS) to another (e.g., Stata). *See* STAT/TRANSFER, *About*, https://stattransfer.com/overview/ (last visited Jan. 21, 2021) [https://perma.cc/SNZ9-CVVA].

111. *See* Judicial Improvements and Access to Justice Act of 1988, Pub. L. 100-702, 102 Stat. 4642, § 201(b) (setting the effective date for increase to amount-in-controversy requirement from $10,000 to $50,000 as 180th day after date of enactment of this Title); *see also* Federal Courts Improvement Act of 1996, Pub. L. 104-317, 110 Stat. 3850, § 205(b) (setting the effective date for increase to the amount-in-controversy from $50,000 to $75,000 ninety days after enactment of the Act).

112. The data was limited to cases filed from 1986 through 1992 and 1994 through 2000.

113. The layout and meaning of the data are described in two Codebooks with one covering data from 1970 to 1987 and the other covering data from 1988 forward. FED. JUD. CTR., INTEGRATED DATA BASE CIVIL CODEBOOK (Aug. 26, 1988) [hereinafter CODEBOOK 1970-87], https://www.fjc.gov/sites/default/files/idb/codebooks/Civil%20Codebook%201970-1987.pdf (providing the codebook for the period 1970 to

not be available were also eliminated. This included (1) cases where one of the litigants was an artificial person, (2) cases designated as class action, (3) cases where a litigant was either a foreign nation or a citizen of a foreign nation, and (4) cases that had county-code designations that did not match those in the U.S. Census data.

2. Incorporating the Amount of the Amount-In-Controversy Requirement

Additional fields necessary for the Analysis were added to each record starting with the amount-in-controversy requirement. From 1986 to May 1989, the face-value of the requirement was $10,000.[114] Effective June 1989, the amount-in-controversy requirement was increased to $50,000 and then, effective February 1998, it was further increased to $75,000.[115] As seen in Table 1, the value of a dollar declined significantly during the study period due to inflation.[116]

TABLE 1.

Year	Annual Inflation Rate[117]	Value in constant dollars[118]
1983	3.9%	$1.00
1984	4.9%	$0.95
1985	4.4%	$0.91
1986	4.1%	$0.87
1987	4.1%	$0.84
1988	4.4%	$0.80
1989	4.5%	$0.76

1987) [https://perma.cc/NT8E-ZDHX]; FED. JUD. CTR., INTEGRATED DATA BASE CIVIL CODEBOOK (Aug. 26, 1988) [hereinafter CODEBOOK 1988-2020], available at https://www.fjc.gov/sites/default/files/idb/codebooks/Civil%20Codebook%201988%20Forward.pdf (providing the codebook for the period 1988 forward) [https://perma.cc/T2VK-TMMY]. To limit the cases to those which were just original proceedings, we must limit to just those cases whose "ORIGIN" field is set to 1. *See, e.g.*, CODEBOOK 1988-2020 at 2-3 (explaining the meaning of the "ORIGIN" field).

114. *See* Act of July 25, 1958, Pub. L. No. 85-554, 72 Stat. 415 (1958).

115. *See* Judicial Improvements and Access to Justice Act § 201(b) (setting the effective date for increase to amount-in-controversy requirement from $10,000 to $50,000 as 180th day after date of enactment of this Title); Federal Courts Improvement § 205(b) (setting the effective date for increase to the amount-in-controversy from $50,000 to $75,000 ninety days after enactment of the Act).

116. The inflation rate was calculated using data from the Bureau of Labor Statistics. *See* U.S. DEP'T LABOR, BUREAU LABOR STAT., Consumer Price Index (CPI) Databases, https://www.bls.gov/cpi/data.htm (click on "Top Picks" button for the database "All Urban Consumers (Current Series)", click on check-box for "U.S. city average, All items less food and energy – CUUR0000SA0L1E," click on "Retrieve data" button, scroll down to "1983" on "From:" drop-down menu, scroll down to "2000" on "To:" drop-down menu, click on "GO" button) (providing chart of consumer price index by month and year showing the cost of food and items, in constant dollars, rising during the study period).

TABLE 1. CONTINUED

Year	Annual Inflation Rate[117]	Value in constant dollars[118]
1990	5.0%	$0.72
1991	4.9%	$0.69
1992	3.7%	$0.66
1993	3.3%	$0.64
1994	2.9%	$0.62
1995	3.0%	$0.61
1996	2.7%	$0.59
1997	2.4%	$0.57
1998	2.3%	$0.56
1999	2.1%	$0.55
2000	2.4%	$0.54

Thus, one dollar in 2000 is only worth in 62.1% of a dollar in 1986.[119] This would create a problem if we were to use the face-value of the amount-in-controversy because the true economic impact of the same face-value is different depending on the year of filing. To resolve this problem, I use a constant-value amount-in-controversy requirement throughout the statistical analysis.[120] The term "amount-in-controversy requirement" should be read *infra* as expressing the constant-value amount-in-controversy requirement even if not expressly stated as such. As Figure 1 demonstrates, the face-value and the constant-dollar-value of the amount-in-controversy requirement significantly diverge from each other over time.

---

117. The annual inflation rate was calculated by averaging the monthly inflation rates in that year. The monthly inflation rate was calculated by dividing the consumer price index in a month and year by the consumer price index the previous year in the same month, and then subtracting 1. *See* U.S. CENSUS BUREAU, *Current versus Constant (or Real) Dollars* (last updated Jan. 21, 2021), https://www.census.gov/topics/income-poverty/income/guidance/current-vs-constant-dollars.html (explaining how to calculate the inflation rate using the consumer price index) [https://perma.cc/4U23-7XQ6].

118. "Value in constant dollars" means the value of a dollar adjusted for purchasing power (e.g., adjusted using the Consumer Price Index). *See id.* (defining "current," "constant," and "real" dollars).

119. Using 1983 as a base year, the value of dollar in 1986 was $0.87 and in 2000 $0.54. *See, infra,* Table 1. Thus, the value of dollar in 2000 was worth 62.1% of a dollar in 1986 (0.54 ÷ 0.87 = .621).

120. *See Current versus Constant (or Real) Dollars, supra* note 116 (explaining that, to properly assess income over time, the income should be adjusted using the consumer price index).
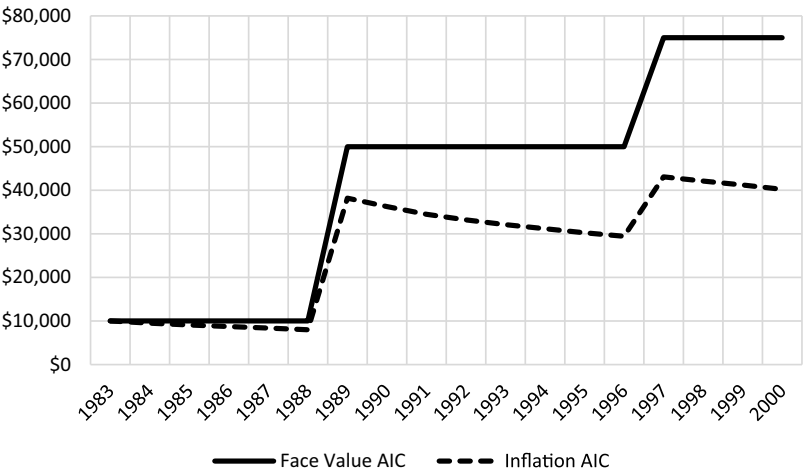
FIGURE 1.

3. Incorporating Demographic and Population Density Data

The next step in building the dataset is to add demographic information, like race, to each record. The FJC dataset does not incorporate information about a litigant's race.[121] The U.S. Census Bureau provides demographic information, but that information is at a county level, not at the individual level.[122]

To combine these two data sources, I converted the FJC dataset from a file in which each record represents one filing to a file in which each record represents the filings in a county and year.[123] This process resulted in a file in which each record contained (1) a count of filings in that county and year, (2) the filing rate per 1,000 people,[124] (3) the average of the amount-in-controversy for each record aggregate, (4) the percent of Black residents in the county that year, (5) the percent of White residents in the county that year, and (6) the poverty-rate.

121. *See generally* CODEBOOK 1970-87, *supra* note 113; CODEBOOK 1988-2020, *supra* note 113.

122. *See* U.S. CENSUS BUREAU, *County Intercensal Tables 1980-1990*, https://www.census.gov/data/tables/time-series/demo/popest/1980s-county.html (click on "1980-1989" to download the excel file for U.S. population by race from 1980 to 1989); U.S. CENSUS BUREAU, *State and County Intercensal Tables* 1999-2000, https://www.census.gov/data/datasets/time-series/demo/popest/intercensal-1990-2000-state-and-county-characteristics.html (click any year, 1990 to 1999, to download a text file containing U.S. population by race for that year); U.S. CENSUS BUREAU, *County Intercensal Datasets: 2000-2010*, https://www.census.gov/data/datasets/time-series/demo/popest/intercensal-2000-2010-counties.html (click on excel file "Intercensal Estimates of the Resident Population by Sex, Race, and Hispanic Origin for Counties: April 1, 2000 to July 1, 2010" to download an excel file for U.S. population by race from 2000 to 2010); U.S. CENSUS BUREAU, *Population by Poverty Status by Counties*, https://www.census.gov/data/tables/time-series/dec/census-poverty.html (click on link for census year to download an excel file for U.S. population poverty-rate by county).

123. For ease of the statistical analysis, each record was indexed on county, year, and a two-digit residence code where each digit represents the residence of either the plaintiff or defendant.

124. Using a simple count of filings could be misleading in counties experiencing growth or decline in overall population. For example, if the number of filings increases over a period of years, that increase may be due to an increase in the population and not any of the independent variables under study. To avoid this problem, I use filing rate per 1,000 people in a county because it is effectively immune to changes in the county's population.

Finally, data from the National Center for Health Statistics for the year 1990 was used to add a population density field to each record designating the county as either located within (1) a large general metropolitan area, (2) a large fringe metropolitan area, (3) a medium metropolitan area, (4) a small metropolitan area, (5) a nonmetropolitan area with a city of 10,000 residents or more, or (6) a nonmetropolitan area without a city of 10,000 residents or more.[125] This process resulted in a final dataset containing 27,233 records representing 254,643 individual case filings.

B. The Before-After Model with Dummy Variables

Statistical analysis of historical panel data is subject to the problem of heterogeneity whereby the effects of unknown characteristics of a population alter the value of the characteristic of interest and thereby produce correlations that are not representative of the true relationship of the study variables.[126] For example, assume we are studying the effect of diet on heart disease. We know that factors like exercise frequency and smoking are causally related to heart disease. As a result, we would incorporate data relating to those factors into our analysis to prevent those factors from altering our outcomes. In this example, exercise and smoking are known covariates. But what if poverty-rate is also a causal factor for heart disease but we are not aware of it and therefore do not include it in our analysis? In that instance, poverty-rate is an unknown covariate, and the results of our analysis might not properly represent the true relationship between diet and heart disease because the incidence of heart disease was also affected by the poverty-rate of the population which was not accounted for in our analysis.

The best method for limiting the effects of heterogeneity is to use a randomized, controlled experiment.[127] In such an experiment the population is first randomly divided into two subpopulations—treatment and control. The treatment population is given the treatment, which means the amount-in-controversy requirement is increased. The control population is not given the treatment and the amount-in-controversy requirement does not change. The populations would be observed for some period of time before and after treatment to determine whether the treatment

---

125. *See* Nat'l Ctr. for Health Stat., Ctr. for Disease Control & Prevention, NCHS Urban – Rural Classification Scheme for Counties, https://www.cdc.gov/nchs/data_access/urban_rural. htm#Data_Files_and_Documentation (scroll down to the heading "Data Files and Documentation," Click on "NCHSurbruralcodes" to download the excel file with the data identifying the population density of each county); *see also* Deborah D. Ingram & Sheila J. Franco, *NCHS Urban-Rural Classification Scheme for Counties,* Nat'l Ctr. Health Stat. 14-16 (2012) (explaining the meaning of population density codes).

126. Populations that differ relative to one or more statistically relevant factors are called "heterogeneous." *See, e.g.,* Ronald A. Fisher, The Design of Experiments 32-33 (9th ed. 1971) (discussing the problem of heterogeneity in the context of pairing and grouping); Damodar Gujarati, Econometrics by Example 5 (2011) (discussing the problem of heterogeneity); Myong-Jae Lee, Micro-Econometrics for Policy, Program, and Treatment Effects 9-10 (2005) (discussing causal inference as compared to statistical association).

127. *See, e.g.,* Christopher H. Achen, The Statistical Analysis of Quasi-Experiments 1-2 (1986) (discussing randomized, controlled experiments).

had an effect.[128] As should be apparent, a randomized, controlled experiment is not a viable method for our study.

Heterogeneity can also be controlled through use of a quasi-experimental study. Quasi-experimental studies specifically lack the element of random assignment to treatment or control.[129] The Analysis described herein uses a before-after model with dummy variables to limit heterogeneity. In before-after analysis the effect of the treatment on the dependent variable is measured within the same group before and after treatment is given.[130] The before-after analysis measures change over time *within the same group* presuming that any change in the tested variable is due *solely* to the treatment.[131] One way to limit heterogeneity in the model is to add dummy variables[132] to the analysis.[133] For example, the Analysis includes a set of dummy variables to account for covariates that are state or year-specific.[134] This produces a before-after model of the following form:

$$FilingRate_{c,t} = \beta_0 + \beta_1 AmtInCtr_t + \beta_2 PercentBlack_{c,t} + \eta_1 State_{1,i} + \eta_2 State_{2,i} + \ldots$$
$$+ \eta_{56} State_{m,i} + \mu$$

where

$FilingRate_{c,t}$ is the filing rate per 1000 people in county c at year t;

β_0 *is* the *y*-intercept;

β_1 *is* the correlation coefficient for the $AmtInCtr_t$ variable;

$AmtInCtr_t$ is the constant-dollar-value amount-in-controversy during year t;

β_2 *is* the correlation coefficient for the $PercentBlack_{c,t}$ variable;

$PercentBlack_{c,t}$ is the percent of county c that is Black in year t;

η_i *is* the correlation coefficient for the $State_{m,i}$ variable;

$State_{m,i}$ is a set of binary dummy variables such that $S_{1,i}$ is set to 1 when i is 1 (the state is Alabama) and to 0 otherwise, $S_{2,i}$ is set to 1 when i is 2 (the state is Alaska) and to 0 otherwise, etc.; and

μ is the error term.

While this format lies at the base of the Analysis, it is modified and supplemented as the relationship between race, diversity jurisdiction, and the amount-in-controversy requirement is studied. At each point in the discussion, the actual equation used in the regression is provided.

---

128. *See, e.g.*, LEE, *supra* note 126, at 1 (discussing treatment and control groups).

129. *See, e.g.*, ACHEN, *supra* note 127, at 2-5.

130. *See* LEE, *supra* note 126, at 64-65.

131. *See id.* at 65.

132. Dummy variables are variables that have a value of 1 if a condition is met and a value of 0 otherwise. GUJARATI, *supra* note 129, at 47.

133. *See* LEE, *supra* note 126, at 79 (noting that difference-in-differences analyses "can deal with unobserved confounders to some extent"); *see also* Andrew Jurs & Scott DeVito, *The Stricter Standard: An Empirical Assessment of Daubert's Effect on Civil Defendants*, 62 CATH. U. L. REV. 675, 716-23 (2013) (discussing that "difference-in-differences" models are a special case of fixed effect analysis).

134. Because the amount-in-controversy requirement is strongly correlated with the year, we do not include year-specific dummy variables when our regression formula contains the amount-in-controversy requirement. Year-specific dummy variables are included if the regression formula does not include the amount-in-controversy requirement variable.

V. RESULTS OF THE ANALYSIS

The Analysis was undertaken to empirically explore the relationship between race and diversity jurisdiction through the lens of changes to the amount-in-controversy requirement. As a first step, it is shown that increasing the amount-in-controversy requirement lowers the filing rate.[135] Next, it is shown that Black claimants are under-represented in cases filed in the federal courts under diversity jurisdiction and that White claimants are over-represented.[136] Finally, we control the effect of potential covariates on this analysis in three ways.

First, we establish that poverty-rate is a covariate for the percentage of a county's residents who are Black—in essence as the poverty-rate increases, so does the percentage of residents who are Black.[137] Adding the poverty-rate of a county to the analysis results in an increase of three-times for the magnitude of the correlation between the percentage of a county's residents who are Black, or White, and the filing rate.[138] In addition, including poverty-rate improves the statistical significance of the correlation with filing rates for both the percentage of a county's residents who are Black and who are White.[139]

Next, we establish that attorneys or claimants who file a claim in federal court under diversity jurisdiction believe that there is geographic bias in the state courts by showing that there is a positive correlation between being an out-of-state plaintiff and filing in federal court.[140] As part of this analysis we demonstrate that factors like race, poverty-rate, and the amount-in-controversy requirement are not covariates for in-state or out-of-state residence because adding them to the analysis does not meaningfully alter the relationship between plaintiff in-state/out-of-state residence and filing rates.[141]

Finally, we establish that county population density—whether the county in which the case is filed is rural or urban—is correlated with filing rates.[142] We find that lower filing rates are correlated with urban counties and higher rates are corelated with rural counties.[143] The population density variable is not a covariate for the correlation between in-state or out-of-state residence with filing rates because its addition does not alter that correlation.[144] At the same time, the population density variable is a covariate for race variables because the inclusion of a population

---

135. *See infra* Part V.A. (explaining the statistical finding that as the constant cost amount-in-controversy requirement increases, filing rates decline).

136. *See infra* Part V.B. (reporting on the statistical finding that the greater the percentage of Black persons in a county, the lower the filing rate).

137. *See infra* Part V.B.ii.a (discussing the effect of the addition of a poverty variable to the correlation between filing rates and in-state or out-of-state residence, and race).

138. *See id.*

139. *See id.*

140. *See infra* Part V.B.ii.b (discussing that a litigant's in-state or out-of-state residence is correlated with filing rates but is not a covariate for percentage of a county's residence who are Black persons relative to filing rates).

141. *Id.*

142. *See infra* Part V.B.ii.c (discussing whether a county's population density is a covariate for percentage of a county's residents who are Black persons relative to filing rates).

143. *See id.*

144. *See id.*

density variable does change the correlation between the percentage of residents of a county who are Black and filing rates.[145]

A. Raising the Amount-In-Controversy Requirement Decreases Filings

Congress' intent in raising the amount-in-controversy requirement for diversity jurisdiction was to restrict access to the federal courts and decrease the number of filings in federal court.[146] As the Analysis demonstrates, this end was achieved by raising the requirement.

In order to determine what relationship filing rates and the amount-in-controversy requirement have to each other, an ordinary least squares ("OLS") regression analysis was performed on Equation 1.[147] This resulted in a statistically significant, negative correlation between the amount-in-controversy requirement and filing rates[148] such that, for every $1,000 increase in the amount-in-controversy requirement there was a 0.92% decrease in filing rates.[149]

$$FilingRate_{c,t} = \beta_0 + \beta_1 AmtInCtr_t + \eta_1 State_1 + \eta_2 State_2 + ... + \eta_{56} State_{56} + \mu_{c,t}$$

Equation 1

The barrier to filing in federal court caused by raising the requirement can also be seen in Figure 2 which shows that, during the study period, as the amount of the amount-in-controversy rose, the filing rate declined.

As noted previously, this type of statistical analysis is subject to the problem of heterogeneity—the possibility that unknown covariates are the actual causes of the effect seen.[150] A before-after model with state-level dummy-variables was used to limit the problem of heterogeneity. To further decrease the likelihood that unknown covariates were affecting the results of the Analysis, additional OLS regressions were performed on equations of the form of Equation 2.

$$FilingRate_{c,t} = \beta_0 + \beta_1 AmtInCtr_t + \beta_2 IndVar_x + \eta_1 State_1 \, \eta_2 State_2 + ... + \eta_{56} State_{56}$$
$$+ \mu_{c,t}$$

Equation 2

---

145. *See id.*

146. *See, e.g.*, H.R. REP. NO. 100-889, at 45 (noting that increasing the amount-in-controversy requirement was needed to help the federal judiciary with its increasing caseload); S. REP. NO. 104-366, at 29 (1996) (same).

147. In Equation 1 *FilingRate$_{c,t}$* is the dependent variable and represents the filing rate, per 1,000 people, in county *c* and year *t. AmtInCtr$_t$* is an independent variable that represents the average constant-dollar-value amount-in-controversy requirement in year *t*. The *State$_i$* variables are dummy variables set to 1 if county *c* is in state *i. β_0* is the x-intercept, *β_1* is the correlation coefficient for the amount-in-controversy variable, and *η_i* is the correlation coefficient for the i$^{\text{th}}$ state variable.

148. The *p*-value is <0.0005 and the correlation coefficient for the requirement is -9.89×10^{-7}.

149. In order to clarify the results of the regression analysis, concrete examples of changes to independent variables are used to show the effect on the independent variable. In so doing, all other variables are held constant at their mean value. In this instance, the mean filing rate was 0.107681 per 1,000 people in a county.

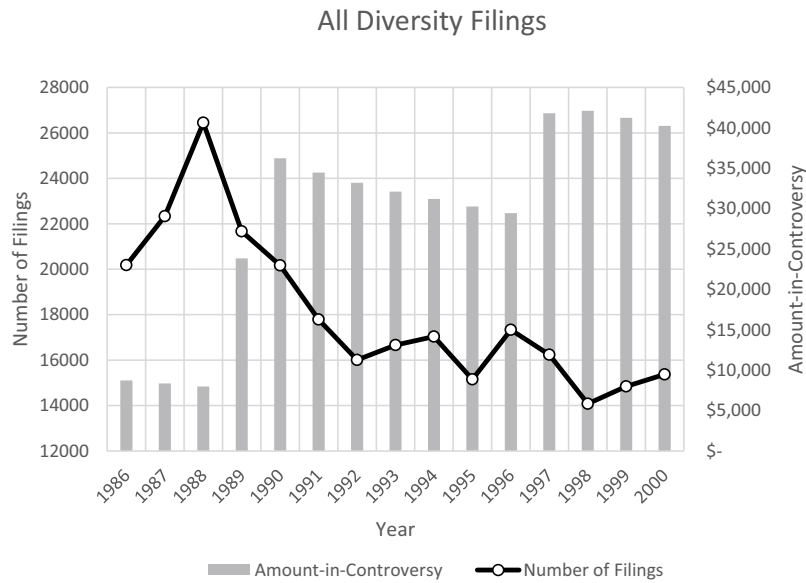150. *See supra* text accompanying note 126.

FIGURE 2.

Eight versions of Equation 2 were used with $IndVar_x$ set, in each, to one of the variables listed in Table 2 *infra*. As seen in Table 2, providing the correlation coefficient for the requirement for each of eight independent variables, the addition of any one of these variables had a de minimis effect on the coefficient for the requirement.[151]

TABLE 2.

IndVar$_x$	*Correlation coefficient for the amount-in- controversy requirement*	*Percent change in value of coefficient with addition of IndVar*
Out-of-State Plaintiff[152]	-1.00×10^{-6}	1.11%
Out-of-State Defendant[153]	-9.51×10^{-7}	-3.84%
Poverty-rate	-9.42×10^{-7}	-4.75%
Percent Black[154]	-9.84×10^{-7}	-0.51%
Percent White[155]	-9.77×10^{-7}	-1.21%
Major metropolitan center[156]	-9.83×10^{-7}	-0.61%
Medium metropolitan center[157]	-9.82×10^{-7}	-0.71
Rural county[158]	-9.72×10^{-7}	-1.72%

---

151. For each of the eight equations, the *p*-value for the correlation between the requirement and filing rates was <0.0005.

The failure of these independent variables, when included in the regression analysis, to significantly alter the correlation coefficient for the amount-in-controversy requirement entails that these variables are not covariates for the relationship between filing rate and the amount-in-controversy requirement. Given the consistent and durable value of the correlation coefficient of the amount-in-controversy requirement relative to filing rate we can safely conclude that raising the amount-in-controversy requirement does precisely what Congress intended—decrease filings in federal courts and, thereby, decrease access to the federal courts.

B. Black Claimants Are Missing from Federal Court

In the previous section, it was established that raising the amount-in-controversy requirement lowers filing rates in general. This section examines the correlation between the percentage of Black people (represented by the variable "%Black") in a county and the filing rate, and the percentage of White people (represented by the variable "%White") in a county and the filing rate.

Here the Analysis finds a statistically significant, negative correlation between % Black and filing rates and a statistically significant positive correlation between % White and filing rates. This indicates that as the percentage of Black people in a community rise, the filing rate declines. Similarly, as the percentage of White people in a community rise, the filing rate increases. In essence, Black claimants are missing from federal diversity cases and their absence is filled by White claimants. The Analysis also finds that there are two covariates that must be accounted for when measuring the effect of %Black on filing rates: poverty-rate and rural status of the county.

1. Increasing the Percentage of Black People in a County is Correlated with Decreasing Filing Rates

To determine the effect of changes to %Black and %White on filing rate, OLS regressions were performed on Equations 3A and 3B.[159]

---

152. This variable identified plaintiffs whose residence was out of state.

153. This variable identified defendants whose residence was out of state.

154. This variable identified the percentage of Black persons in a county and year.

155. This variable identified the percentage of White persons in a county and year.

156. Under the National Center for Health Statistics, a metropolitan statistical area ("MSA") is an area that contains "[a]t least one city with 50,000 or more inhabitants, or . . . [a] U.S. Census Bureau-defined urbanized area of at least 50,000 inhabitants, and a total metropolitan population of at least 100,000 (75,000 in New England)." *See* Ingram & Franco, *supra* note 125, at 15. For purposes of the Analysis, a "major metropolitan center" is either a large central or large fringe metropolitan county in an MSA of 1 million or more of population. *See id.* at 14 tbl. I.

157. For purposes of the Analysis, a medium metropolitan center is a county in an MSA with a population of at least 250,000 but less than 1 million. *See id.* (defining medium and small metropolitan areas).

158. For purposes of the Analysis, a rural county is a county that either "contain[s] all or part of a city of 10,000 or more residents" or "that do[es] not contain any part of a city of 10,000 or more residents." *Id.*

159. Where *PercentBlack$_{c,t}$* is the percentage of county c in year t that was Black ("%Black") and *PercentWhite$_{c,t}$* is the percentage of county c in year t that was White ("%White").

$$FilingRate_{c,t} = \beta_0 + \beta_1 PercentBlack_{c,t} + \eta_1 State_1 + \eta_2 State_2 + ... + \eta_{56} State_{56}$$
$$+ \varphi_1 Year_{1986} + \varphi_2 Year_{1987} + ... + \varphi_{2000} Year_{17} + \mu_{c,t}$$

<div align="right">Equation 3A</div>

$$FilingRate_{c,t} = \beta_0 + \beta_1 PercentWhite_{c,t} + \eta_1 State_1 + \eta_2 State_2 + ... + \eta_{56} State_{56}$$
$$+ \varphi_1 Year_{1986} + \varphi_2 Year_{1987} + ... + \varphi_{17} Year_{2000} + \mu_{c,t}$$

<div align="right">Equation 3B</div>

These regressions found a negative correlation between %Black and filing rates that was just outside the 0.05 p-value for statistical significance. The regressions found a statistically significant positive correlation between the %White and filing rates (see Table 3).

<div align="center">Table 3.</div>

Variable	Correlation coefficient	Amount-In-Controversy p-value
%Black	-0.0272646	0.060
%White	0.0311668	0.016

As we will see, with the addition of two covariates, the correlation between %Black and filing rates becomes statistically significant.[160] Thus, while premature, I will draw conclusions here as if the correlation relative to Equation 3A is statistically significant. Here, a one percentage-point increase in %Black in a county produces a 0.25% decrease in the filing rate while a one-percentage-point increase in %White produces a 0.29% increase in the filing rate.

2. Checking for Covariates: Amount-in-Controversy, Poverty, Out-Of-State Status, and the Urban-Rural Divide

The OLS regression on Equation 3A indicates that the higher the percentage of Black people in a community the lower the filing rate in federal court. Similarly, the OLS regression on Equation 3B shows that the higher the percentage of White people in a community, the greater the filing rate. In essence, Black claimants seem to be excluded from federal court to the benefit of White claimants.

While the use of a fixed effects model and dummy variables decreases the probability that there are unknown covariates, to minimize the impact of the problem of heterogeneity, another set of OLS regressions are performed using other potential covariates. The results of these regressions reinforce the conclusion that Black claimants are absent because they are *Black* persons.

---

160. *See infra* Part V.B.ii.b (discussing the effect of adding poverty-rate to the regression equation); Part V.B.ii.d (discussing the effect of population density variables on the regression equation).

a. The Amount-in-Controversy Requirement is Not a Covariate for Percentage of Black People (Or White People) in a County Relative to Filing Rate

To ensure that the amount-in-controversy requirement did not effect the correlation coefficients for %Black and %White, an OLS regression on Equation 4A and 4B was performed (which, compared to Equations 3A and 3B, has added an independent variable for the amount-in-controversy requirement and eliminated the year-level dummy-variables).

$$FilingRate_{c,t} = \beta_0 + \beta_1 InflationAIC_t + \beta_2 PercentBlack_{c,t} + \eta_1 State_1 + \eta_2 State_2 + ...$$
$$+ \eta_{56} State_{56} + \mu_{c,t};$$

Equation 4A

$$FilingRate_{c,t} = \beta_0 + \beta_1 InflationAIC_t + \beta_2 PercentWhite_{c,t} + \eta_1 State_1 + \eta_2 State_2 + ...$$
$$+ \eta_{56} State_{56} + \mu_{c,t};$$

Equation 4B

The addition of an amount-in-controversy requirement variable did not have a meaningful effect on the correlation coefficients for %Black (a 3.1% change in value) and %White (a 6.3% change in value), and there was a slight improvement in *p*-value for each. (see Table 4)

TABLE 4.

Independent variable	CC without AIC variable	*p*-value without AIC variable	CC with AIC variable	*p*-value with AIC variable
%Black	−0.0272646	0.060	−0.0281115	0.053
%White	0.0311668	0.016	0.0331402	0.011

When regressing on equations containing an amount-in-controversy variable, the Analysis has, thus far, excluded year-level dummy variables because of their strong correlation with the amount-in-controversy requirement. To ensure that doing so did not result in missing a hidden relationship, a regression was performed on Equations 5A and 5B which include both the amount-in-controversy requirement and year-level dummy-variables.

$$FilingRate_{c,t} = \beta_0 + \beta_1 PercentBlack_{c,t} + \beta_2 InflationAIC_t + \eta_1 State_1 + \eta_2 State_2 + ...+$$
$$\eta_{56} State_{56} + \psi_{1986} Year_{1986} + \psi_{1987} Year_{1987} + ... + \psi_{2000} Year_{2000} + \mu_{c,t};$$

Equation 5A

$$FilingRate_{c,t} = \beta_0 + \beta_1 PercentWhite_{c,t} + \beta_2 InflationAIC_t + \eta_1 State_1 + \eta_2 State_2 + ...+$$
$$\eta_{56} State_{56} + \psi_{1986} Year_{1986} + \psi_{1987} Year_{1987} + ... + \psi_{2000} Year_{2000} + \mu_{c,t};$$

Equation 5B

As seen in Table 5, the addition of the year-level dummy variables did not have a meaningful effect on the correlation coefficients for %Black or %White or the *p*-value.

TABLE 5.

Independent variable	CC with AIC and without Year variable	*p*-value with AIC and without Year variable	CC with both AIC and Year variables	*p*-value with both AIC and Year variables
%Black	−0.0281115	0.053	−0.0273002	0.060
%White	0.0331402	0.011	0.0311934	0.016

The inclusion of year-level dummy-variables with the amount-in-controversy variable produced a 2.89% change in the correlation coefficient for %Black relative to Equation 4A and a 5.87% change for %White relative to Equation 5A. In other words, because the addition of variables accounting for unknown effects in a given year and a variable for the amount-in-controversy requirement produce effectively no change in the correlation between the percentage of a county's residents who are Black, or White, and filing rates, those variables cannot be covariates for that relationship. Given the minimal change to the correlation coefficients for %Black and %White when the amount-in-controversy requirement is included in the regression equation, the requirement is best understood as independent and not a covariate for either %Black or %White.

b. Poverty-rate is a Covariate of Percentage of Black People or White People in a County Relative to Filing Rate

The poverty-rate in a county is positively correlated with the percent of Black people in a county.[161] In addition, there is a long-standing link between race and poverty in America due to the effect of systemic racism on people of color in America.[162] These correlations made it critical to determine if poverty-rate is, or is not, a covariate of the percent of Black or White people in a county relative to filing rate. To explore this relationship, a regression analysis was performed using the dataset and Equations 6A and 6B.

---

161. Regressing race and poverty-rate using our analysis-dataset produced a positive correlation between %Black and poverty-rate and a negative correlation between %White and poverty-rate. The correlation coefficient for %Black, where poverty-rate was the dependent variable and the regression equation included state-level and year-level dummy variables, was 0.2281924 with a *p*-value of <0.0005. Similarly, the correlation coefficient for %White was -0.2308187 with a *p*-value of <0.0005. Thus, for every percentage point increase in the percentage of a county that was Black, there was a 2.08% increase in the poverty-rate. While for every percentage point increase in the percentage of a county that was White, there was a 2.11% decrease in the poverty-rate.

162. *See, e.g.*, Deborah Kenn, *Institutionalized, Legal Racism: Housing Segregation and Beyond*, 11 B.U. PUB. INT. L.J. 35, 41-43 (2001) (discussing the harms of institutionalized racism).

$$FilingRate_{c,t} = \beta_0 + \beta_1 PercentBlack_{c,t} + \beta_2 PovertyRate_{c,t} + \beta_3 InflationAIC_t + \eta_1 State_1$$
$$+ \eta_2 State_2 + ... + \eta_{56} State_{56} + \mu_{c,t};$$

<div align="right">Equation 6A</div>

$$FilingRate_{c,t} = \beta_0 + \beta_1 PercentWhite_{c,t} + \beta_2 PovertyRate_{c,t} + \beta_3 InflationAIC_t + \eta_1 State_1$$
$$+ \eta_2 State_2 + ... + \eta_{56} State_{56} + \mu_{c,t};$$

<div align="right">Equation 6B</div>

Unlike the addition of the amount-in-controversy requirement variable, the effect of including a poverty-rate variable on the correlation coefficients for % Black and %White was large and made the correlation for %Black statistically significant.

<div align="center">TABLE 6.</div>

Independent variable	CC Equation 4A & 4B	p-value Equation 4A & 4B	CC Equation 6A & 6B	p-value Equation 6A & 6B
%Black	-0.0272646	0.060	-0.0831024	<0.0005
%White	0.0311668	0.016	0.0937947	<0.0005

The correlation coefficient for %Black, where poverty-rate is included in the regression (Equation 6A), is 3.05 times as large as when poverty-rate is not included in the regression (Equation 3A). And, by adding poverty-rate, the correlation coefficient for %Black becomes statistically significant at well below the 0.05 p-value. Similarly, the correlation coefficient for %White is 3.01 times as large in Equation 6B as in Equation 3B and the statistical significance of the correlation is strengthened.

As a result, a one percentage-point increase in the percent of Black people in a county now accounts for a 0.75% decrease in filing rates (up from a 0.26% decrease without accounting for poverty-rate). As we would expect, there is a similar but opposite result with regard to %White, where a one percentage-point increase in the percent of White people in a county now accounts for a 0.85% increase in filing rates (up from a 0.31% increase without accounting for poverty-rate).

This result makes sense. The correlation coefficient for poverty-rate, in the regression of both equations 6A and 6B is positive.[163] The greater the poverty-rate, the greater the filings in federal court. Moreover, in our dataset %Black and %White are each correlated with poverty-rate and that correlation is statistically significant.[164]

---

163. Relative to %Black and Equation 6A, the coefficient is 0.2409882 with a p-value of <0.0005. Relative to %White and Equation 6B, the coefficient is 0.2660545 with a p-value of <0.0005.

164. With poverty-rate as the dependent variable, and %Black, state-level dummy variables, and year-level dummy variables as the independent variables, the correlation coefficient for %Black is 0.2237589 with a p-value of <0.0005. Thus, a one percentage point increase in %Black is correlated with a 2.08% increase in the

Thus regression on an equation, with %Black or %White as an independent variable, that does not also include an independent variable for poverty-rate would result in the regression having to spread that positive correlation over other variables. Because poverty-rate is correlated with %Black and %White, the regression will naturally alter the correlation coefficient for %Black and %White to account for part of the missing poverty-rate variable.

This occurs because there is a positive correlation between %Black and poverty-rate and a negative correlation between %White and poverty-rate. As a result, some of the information about poverty-rate is "built-into" the %Black and %White variables. For example, if we see an increase in the percent of a county's residents who are Black, we can predict that the poverty-rate in the county is likely to increase as well because %Black and poverty-rate are positively correlated. In other words, if we do not include the poverty-rate variable in the analysis, then the %Black variable will represent both the percent of the county's residents who are Black and, at least to some degree, the county's poverty-rate.

These results show that poverty-rate is a covariate for %Black and %White relative to filing rates. As such, it must be included in the regression formula to ensure that the absence of its positive contribution to filing rates is not mistakenly compensated for by changes to the correlation coefficients for %Black and %White.

c. Attorneys Use Geographic Bias in Deciding Where to File but it is Not a Hidden Covariate

Diversity jurisdiction has traditionally been justified on the premise that out-of-state litigants may be subject to geographic bias in the state courts. As a result, it is possible that a litigant's status as an in-state resident or out-of-state resident may be a covariate that alters the relationship between race and filing rates. Therefore, we must engage in a careful statistical analysis in which we include those residence-related-covariates to determine whether and to what effect a litigant's in-state or out-of-state status affects the relationship between litigant race and filing rates.

As a first step, an OLS regression was performed on Equations 7A and 7B using our dataset to see if there was any correlation between being either an out-of-state plaintiff or out-of-state defendant and filing rate.[165]

$$FilingRate_{c,t} = \beta_0 + \beta_1 AmtInCtr_t + \beta_2 OOSPlaintiff_{c,t} + \eta_1 State_1 \eta_2 State_2 + \ldots$$
$$+ \eta_{56} State_{56} + \mu_{c,t}$$

Equation 7A

---

poverty-rate. Similarly, with poverty-rate as the dependent variable, and %White, state-level dummy variables, and year-level dummy variables as the independent variables, the correlation coefficient for %White is -0.2267018 with a p-value of <0.0005. Thus, a one percentage point increase in %White is correlated with a 2.11% decrease in the poverty-rate.

165. Where $OOSPlaintiff_{c,t}$ is the percentage of filings in county c and year t that were by out-of-state plaintiffs and $OOSDefendant_{c,t}$ is the percentage of filing in county c and year t that were by out-of-state defendants.

$$FilingRate_{c,t} = \beta_0 + \beta_1 AmtInCtr_t + \beta_2 OOSDefendant_{c,t} + \eta_1 State_1 \, \eta_2 State_2 + \ldots$$
$$+ \, \eta_{56} State_{56} + \mu_{c,t}$$

Equation 7B

The regression on Equation 7A found a statistically significant, positive correlation between the percentage of filings by out-of-state plaintiffs and filing rates[166] such that, a one percentage point increase in the percent of filings by out-of-state plaintiffs increases the filing rate by 0.2%. Similarly, the regression on Equation 7B found a statistically significant negative correlation between filings where the defendant resides out-of-state.[167] A one percentage point increase in the percent of filings where the defendant resides out-of-state decreases the filing rate by 0.19%.

These relationships indicate that litigants, or at least their attorneys, believe that the out-of-state status of a litigant affects their chances of success in state court. In essence, because being an out-of-state plaintiff increases the probability that one will file in federal court, the plaintiff or their attorney must believe that the plaintiff's out-of-state status will decrease their chances of success in state court. Similarly, because being an out-of-state defendant decreases the probability that the in-state plaintiff will file in federal court, the in-state plaintiff or their attorney must believe that the defendant's out-of-state status will decrease the defendant's chances of success in state court. These filing choices provide direct insight into how the civil court system is perceived—a place where one's filing decisions are carefully managed to protect against harm arising out of the litigant's out-of-state status. That is, at its core, the problem of geographic bias that diversity jurisdiction was created to alleviate.

Next, the Analysis examined whether geographic bias could be a covariate for the larger analysis of the relationship between filing rates, the amount-in-controversy requirement, and %Black. To do so, an OLS regression was performed on Equations 8A and 8B.

$$FilingRate_{c,t} = \beta_0 + \beta_1 PercentBlack_{c,t} + \beta_2 PovertyRate_{c,t} + \beta_3 InflationAIC_t$$
$$+ \, \beta_4 OOSPlaintiff_{c,t} + \eta_1 State_1 \, \eta_2 State_2 + \ldots + \eta_{56} State_{56} + \mu_{c,t}$$

Equation 8A

$$FilingRate_{c,t} = \beta_0 + \beta_1 PercentBlack_{c,t} + \beta_2 PovertyRate_{c,t} + \beta_3 InflationAIC_t$$
$$+ \, \beta_4 OOSDefendant_{c,t} + \eta_1 State_1 \, \eta_2 State_2 + \ldots + \eta_{56} State_{56} + \mu_{c,t}$$

Equation 8B

The results of these regressions do not support the conclusion that geographic bias is an unknown covariate for any of our earlier correlations because the addition of the geographic bias variables does not meaningfully alter the correlation coefficients for our variables. Comparing the results of Equation 6A, which focused on out-of-

---

166. The correlation coefficient for out-of-state plaintiffs was 0.0211007 with a p-value of <0.0005.

167. The correlation coefficient for out-of-state defendants was -0.020211 with a p-value of <0.0005.

state plaintiffs, with the results of Equation 8A and 8B (Table 7), we see very little change in the correlation coefficients.

TABLE 7.

Independent Variable	Correlation Coefficient (Equation 6A)	Correlation coefficient (Equation 8A)	Correlation coefficient (Equation 8B)
%Black	−0.0831024	−0.0847509	−0.0848627
Poverty-rate	0.2480835	0.2452563	0.2460182
Amount-in-Controversy	−9.14x10^{-7}	−9.26x10^{-7}	−8.77x10-7
OOS Plaintiff	0.0211007[168]	0.0205673	
OOS Defendant		−0.020211[169]	−0.0198919

Because adding an independent variable for plaintiff or defendant residence does not meaningfully alter the other correlation coefficients for %Black and %White, we can conclude that while there is evidence that belief in geographic bias exists, belief in geographic bias is not a hidden covariate relative to filing rates.

d. Counties with a Rural Population Density Are Covariates for Percent of Black People or White People in a County Relative to Filing Rate

In 1981, Bumiller surveyed "a random sample of attorneys . . . from diversity cases in four federal courts" and "a sample of attorneys in corresponding state courts" in an effort to understand the factors affecting choice of federal venue over state venue.[170] She contended that geographic bias was not a relevant factor but rather "fear of favoritism to local interests" was.[171] More precisely, she concluded that out-of-state residents prefer federal court in order to protect themselves from the "provincialism" of rural areas.[172]

Bumiller's analysis indicates that the population density of a county may affect the federal filing rate and may therefore represent a hidden covariate. To explore this, variables relating to population density were examined[173] using an ordinary least squares regression of Equations 9A, 9B, and 9C.

---

168. This coefficient is from the results of regression on Equation 7A.
169. This coefficient is from the results of regression on Equation 7B.
170. Bumiller, *supra* note 99, at 753.
171. *Id.* at 761.
172. *Id.* at 761.
173. Three variables were created—major metropolitan area, medium metropolitan area, and rural area—based on the NCHS Urban-Rural Classification System. *See supra* notes 147-149 (explaining how these variables were derived from the NCHS Urban-Rural Classification Scheme for Counties).

$$FilingRate_{c,t} = \beta_0 + \beta_1 PercentBlack_{c,t} + \beta_2 InflationAIC_t + \beta_3 PovertyRate_{c,t}$$
$$+ \beta_4 OOSPlaintiff_{c,t} + \beta_4 MajorMetro_c + \eta_1 State_1\, \eta_2 State_2 + ...$$
$$+ \eta_{56} State_{56} + \mu_{c,t}$$

<div align="right">Equation 9A</div>

$$FilingRate_{c,t} = \beta_0 + \beta_1 PercentBlack_{c,t} + \beta_2 InflationAIC_t + \beta_3 PovertyRate_{c,t}$$
$$+ \beta_4 OOSPlaintiff_{c,t} + \beta_4 MediumMetro_c + \eta_1 State_1\, \eta_2 State_2 + ...$$
$$+ \eta_{56} State_{56} + \mu_{c,t}$$

<div align="right">Equation 9B</div>

$$FilingRate_{c,t} = \beta_0 + \beta_1 PercentBlack_{c,t} + \beta_2 InflationAIC_t + \beta_3 PovertyRate_{c,t}$$
$$+ \beta_4 OOSPlaintiff_{c,t} + \beta_4 Rural_c + \eta_1 State_1\, \eta_2 State_2 + ... + \eta_{56} State_{56}$$
$$+ \mu_{c,t}$$

<div align="right">Equation 9C</div>

The regression on these equations produced the following correlation coefficients (all statistically significant with p-values below 0.05):

TABLE 8.

Independent Variable	Correlation Coefficients (Equation 8A)	Correlation Coefficients (Equation 9A)	Correlation Coefficients (Equation 9B)	Correlation Coefficients (Equation 9C)
%Black	−0.0847509	−0.074492	−0.0777716	-0.053457
Amount-in-controversy	$−9.26\times10^{-7}$	$−9.32\times10^{-7}$	$−9.32\times10^{-7}$	-9.47×10^{-7}
Poverty-rate	0.2452563	0.2138847	0.2053182	0.1256378
OOS Plaintiff	0.0205673	0.0206838	0.0211236	0.0215362
Major Urban		−0.0157971		
Medium Urban			−0.0267108	
Rural				0.0343622

The regression was repeated using the form of Equations 9A, 9B, and 9C but replacing out-of-state plaintiff with out-of-state defendant. This produced the following correlation coefficients (all statistically significant with p-values below 0.05) (See Table 9)

The results of these regressions both support and contradict Bumiller. It supports her argument by finding that urban litigants are less likely to file in federal court

TABLE 9.

Independent Variable	Correlation Coefficient (Equation 8B)	Correlation Coefficients (Equation 9A)	Correlation Coefficients (Equation 9B)	Correlation Coefficients (Equation 9C)
%Black	−0.0848627	−0.0744723	−0.078914	−0.0535083
Amount-in-controversy	-8.87×10^{-7}	-8.83×10^{-7}	-8.81×10^{-7}	-8.95×10^{-7}
Poverty-rate	0.2460182	0.214873	0.2061514	0.1260533
OOS Defendant	−0.0198919	−0.0201658	−0.023926	−0.0211278
Major Urban		−0.0160223		
Medium Urban			−0.0266794	
Rural				0.0344632

while rural litigants are more likely because urban state courts are less subject to local interest bias and rural courts are more subject to local interest bias. At the same time, the results contradict Bumiller in the sense that the inclusion of the urban and rural variables does not eliminate the statistical significance of the out-of-state status of the defendant or plaintiff nor alter the correlation coefficients by much. Thus, both the population density of a county and the out-of-state status of the litigant matter in attorney choice of federal or state court.

At the same time, these results indicate that population density is a covariate in our analysis. The addition of the rural status of a county produces a decrease in the positive correlation coefficient for the poverty-rate and, simultaneously a decrease in the negative correlation coefficient for %Black. Despite the changes to the correlation coefficients of %Black and poverty-rate, the directionality of the coefficients never changes. Moreover, amount-in-controversy remains negatively correlated at roughly the same value throughout. Thus, while the population density of the county is a covariate, its inclusion does not alter the overall analysis—Black claimants are filing in federal court less often than White claimants.

VI. RAISING THE AMOUNT-IN-CONTROVERSY REQUIREMENT REINFORCES ALIENATION OF BLACK CLAIMANTS FROM THE CIVIL JUSTICE SYSTEM

The Analysis has shown that as the percentage of Black people in a county increases, the federal civil filing rate decreases. This correlation is robust and demonstrates that Black claimants are under-represented in the federal courts. This naturally raises the question as to why are there so many Black claimants absent from the federal courts?

The answer is straight-forward and well-supported in the empirical record. Black claimants are absent from the civil justice system because, through hard experience, they have learned to distrust the system and, as a result, are alienated from it. For example, a 1999 national survey of 1,826 Americans found that "[t]wo-thirds of [Black people surveyed] feel that 'people like them' are treated somewhat or far worse than other people" by the courts.[174] The survey also found that 16.3% of Blacks, compared with 6.8% of Whites and 12.2% of Hispanics, strongly disagreed with the statement that "[j]udges are generally honest and fair in deciding cases."[175]

More recently, Greene, utilizing in-depth interviews, found that "[B]lack respondents were more likely to distrust legal institutions than were white respondents."[176] She further concluded that the cause of this distrust arose along three axes. First, respondents believed seeking help from the civil justice system would be pointless based on their experience with an unjust criminal justice system.[177] Second, respondents had negative experiences with public institutions that made them feel "disrespected," "pathetic," "shameful", and "lost."[178] Finally, due to their experiences with public institutions, including the criminal justice system, respondents created a personal narrative that they were "self-sufficient citizens who take care of their own problems and stay 'out of trouble.'"[179]

This distrust of the justice system alienates Black claimants and creates a systemic barrier to them filing in federal court—a barrier many do not pass through. When the legislature increased the amount-in-controversy requirement it purposely created another barrier to entry that, as the Analysis has shown, was successful in driving down filing rates. While this change to a jurisdictional rule was facially race-neutral, it impacted Black claimants more than White claimants because Black alienation from the courts already kept many Black claimants from filing in federal court. The addition of a second barrier then acted to prevent those Black claimants who passed through the first barrier from filing in federal court. In doing so, this creates a group of Black claimants who desire federal jurisdiction but are denied it. Accordingly, the amount-in-controversy requirement further alienates Black claimants and confirms their suspicions that the civil justice system is simply not for people like them.

While not the central point of this Article, the Analysis has also shown that raising the amount-in-controversy requirement creates a barrier for other vulnerable groups who seek to file in federal court. The positive correlation between filing rates and county poverty-rates, the urban-rural distinction, and defendant's out-of-state status, shows that these litigants are concerned that their interests are not well-served by state court. By raising the amount-in-controversy requirement for diversity jurisdiction, the legislature forces those who do not meet the jurisdictional amount to either

174. NAT'L CTR. STATE COURTS, HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY 8 (1999) (summarizing results of the study).

175. *Id.* at 30 Figure 17.

176. Greene, *supra* note 19, at 1268 (describing the results of the interviews).

177. *See id.* at 1266-67 (discussing why respondents are unlikely to seek legal help).

178. *See id.* at 1267 (same).

179. *See id.* (same).

litigate in what they believe to be biased state courts or to not seek a remedy through the formal civil justice system. Neither result is likely to build trust in the civil justice system.

What is most troubling about these findings is that no effort seems to have been made to determine whether raising the amount-in-controversy requirement would harm any of these vulnerable communities. The economic goal of keeping costs down appears to be the sole driving motivation. Nonetheless, the hope is that, by empirically demonstrating the harmful effects of facially-neutral changes to substantive law and procedural rules on communities of color and other vulnerable groups, Congress and the courts will have the information necessary to correct injustice and promote fairness in the civil justice system.