Location Location Location: The Case for Bankruptcy Venue Reform

By “Coach Vance” Trefethen

***Resolved: The United States federal government should substantially reform its banking, finance, and/or monetary policy.***

Case Summary: Bankruptcy is part of the financial system and the Constitution assigns jurisdiction on it to the federal government. Under current law, a debtor (someone who owes money) can file for bankruptcy in any place where they do business or in their place of incorporation. That means a company (e.g. the Los Angeles Dodgers) that incorporated for convenience in someplace like Delaware can file for bankruptcy there even though they have no employees and no business in Delaware. This is bad because their creditors (those to whom they owe money) must go across the country to chase them down, or else drop out of the process and lose any rights they may have had to file claims for money owed. Venue shopping, the practice of looking for a court that will be most favorable to the debtor, leads to a rigged judicial process that needs to be reformed. This plan enacts a bill that has been introduced multiple times in Congress, but never passed: The Bankruptcy Venue Reform Act. It eliminates venue shopping by requiring companies to file for bankruptcy where they have substantial business and removes “place of incorporation” as an option.  
  
Note: This brief quotes a paper published by the National Conference of Bankruptcy Judges. Evidence from this paper may be cited in both AFF and NEG arguments. It’s obviously a well-qualified source. Their paper presents arguments both for and against this plan and explicitly says at the end that they take no advocacy position on the issue. Don’t raise ethical arguments about quoting against author’s intent, because they present good arguments on both sides and have no intent of advocating for either.

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Location Location Location: The Case for the Bankruptcy Venue Reform Act

A corporation in Dallas, Texas, falls upon hard times and considers bankruptcy. Most of its employees and creditors live in Texas. Its headquarters building is only a 10-minute walk from the Dallas federal bankruptcy court. Yet they file for bankruptcy, of all places, at a federal court in Delaware. We’ll show you why they would do that and why you should put a stop to it, as we affirm that: The United States federal government should substantially reform its banking, finance, and/or monetary policy.

OBSERVATION 1. We offer the following DEFINITIONS.

Substantial

Merriam Webster Online Dictionary 2019 <https://www.merriam-webster.com/dictionary/substantial>

**“**considerable in quantity **:**significantly great”

**Reform**:

Merriam Webster Online Dictionary 2019 <https://www.merriam-webster.com/dictionary/reform>

“ to amend or improve by change of form or removal of faults or abuses”

Bankruptcy. It’s part of our financial system

Pres. George W. Bush 2005. “Remarks on Signing the Bankruptcy Abuse Prevention and Consumer Protection Act of 205” <https://books.google.com/books?id=TtUc4s1BCqwC&pg=PA639&lpg=PA639&dq=%22our+financial+system+stronger+and+better%22+%22integrity+to+the+bankruptcy%22&source=bl&ots=9aHizct5FA&sig=ACfU3U1j6eNnvGePW1Qvn9ao0OYPu0JaKQ&hl=en&sa=X&ved=2ahUKEwid9pTNiM7lAhVGc98KHd4zBwQQ6AEwAXoECAcQAQ#v=onepage&q=%22our%20financial%20system%20stronger%20and%20better%22%20%22integrity%20to%20the%20bankruptcy%22&f=false>

Today we take an important action to strengthen – to continue strengthening our Nation’s economy. The bipartisan bill I’m about to sign makes commonsense reforms to our bankruptcy laws. By restoring integrity to the bankruptcy process, this law will make our financial system stronger and better.

OBSERVATION 2. INHERENCY or the conditions of the Status Quo. Two key FACTS

FACT 1. Venue Shopping.

Federal law lets bankruptcy cases be filed in many different places, allowing debtors to do venue shopping

Robbin Itkin 2018. (bankruptcy attorney) 7 March 2018 “You want to file a bankruptcy case where?????” <https://www.dlapiper.com/en/us/insights/publications/2018/03/global-insight-issue-23/2you-want-to-file-a-bankruptcy-case-where/>

For many years in the US, there has been disagreement among lawyers, judges and institutional creditors concerning the ability of parties under current bankruptcy law to cherry pick the court in which to file bankruptcy. Under current law, a company can file a chapter 11 bankruptcy case either in the place of incorporation or in districts where affiliates have pending bankruptcy cases. This has made jurisdictions like Delaware (a common state of incorporation) a popular place to file. Filers often seek to file bankruptcy cases in jurisdictions (i) where the applicable law may be more favorable; (ii) where judges are perceived to be more user friendly; and/or (iii) where the judges’ approach and rulings are known. This behavior is popularly called "forum shopping" or "venue shopping". In the US, it is not unusual for filers to seek a jurisdiction in a location remote from the actual business operations.

FACT 2. Magnet Courts.

Most large bankruptcies are handled in only 2 federal courts nationwide – the magnet courts

National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 <https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs_public/Venue_White_Paper_-_Final.pdf>

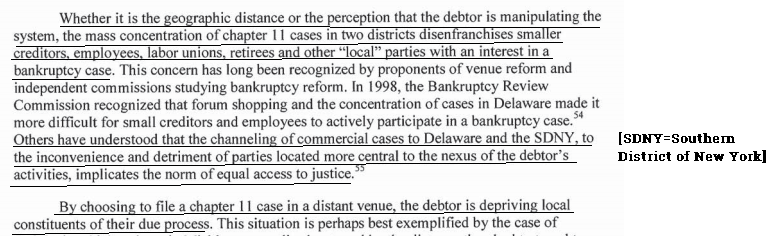
The Bankruptcy Code’s permissive venue provisions have resulted in a distribution of large cases in two districts. The overwhelming majority, between 60 and 70 percent of all large chapter 11 cases, are commenced in bankruptcy courts in the District of Delaware and the Southern District of New York, the magnet courts.

OBSERVATION 3. The HARMS.

HARM 1. Injustice.

Rights are violated when debtors are allowed to choose far-away courts to file bankruptcy

Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association 2016. “Report of the Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association in Support of Venue Fairness” 21 Jan 2016 <https://clla.org/wp-content/uploads/2018/PDFs/Sections/Bankruptcy/1._Report_of_Venue_Fairness-.pdf> (brackets added)



HARM 2. Communities suffer.

When a business goes bankrupt, the local creditors, employees and citizens will suffer if the case is heard in a remote venue where they can’t participate in the process

Peter Califano 2011 (bankruptcy attorney at Cooper White & Cooper in San Francisco where he chairs the bankruptcy and creditors' rights groups) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm> (brackets added)

First, the consequences of corporate bankruptcy are most profound in the communities where the debtor's principal place of business or assets are located. Not only are jobs involved, but they may affect other matters such as hospitals, the closing of plants, and waste removal. Second, if bankruptcies are filed in remote districts, the parties with the most familiarity with the debtor's operations and who have an important stake in the case's outcome might be cut off or minimized in the process. Employees, small creditors, and retirees will suffer.

**END QUOTE. You can imagine yourself, Judge, if a local business owed you $5000 and was going bankrupt. Would you prefer if they filed for bankruptcy in Delaware, or in a city nearby to where you live? Your chances of being able to make your claim known and collect some of the debt will be a lot higher if the bankruptcy is handled locally, and that’s what this Harm is about.**

HARM 3. Rigged system

Venue shopping creates a rigged system with biased outcomes. It destroys the integrity of the judicial process

National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 <https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs_public/Venue_White_Paper_-_Final.pdf> (ellipses in original)

A number of lawyers have conceded that they select certain venues for large chapter 11 cases because the judges have “developed reputations for being pro-debtor and for favoring financial institutions in disputes against creditors. . . .” Corporate executives and boards also have expressed the view that the bankruptcy judges in those jurisdictions are more business friendly and predictable. “The perception is that the deck is stacked in favor of debtors and the institutional players.” According to the former president of the Commercial Law League of America, venue shopping reduces legal discourse in favor of predictability of outcome, and consequently constituents of the bankruptcy system and the general public “become more disillusioned and indifferent.” “Manipulation of bankruptcy venue rules contributes to a perception that in many bankruptcy cases, the outcome is predetermined, and parties are helpless to reverse the tide of decisions by the very largest players.”

OBSERVATION 4. We offer the following PLAN

1. Congress passes HR4421, the Bankruptcy Venue Reform Act of 2019
2. Funding from existing budgets of the federal courts
3. Enforcement through the federal courts.
4. Plan takes effect 30 days after an Affirmative ballot.
5. All Affirmative speeches may clarify

OBSERVATION 5. The Plan SOLVES.

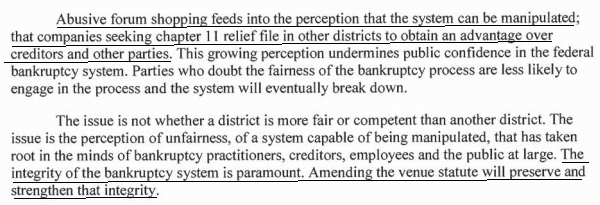
A. Bankruptcy Venue Reform Act ends venue shopping and brings proceedings back to the community

Rep. Zoe Lofgren and Rep. Jim Sensenbrenner 2019. (Logren – D-Calif. Sensenbrenner – R-Wisconsin. Members of the US House of Representatives) Reps. Lofgren and Sensenbrenner Introduce Legislation to End Corporate Bankruptcy Forum Shopping, 19 Sept 2019 Press Release from the office of Rep. Zoe Lofgren <https://lofgren.house.gov/media/press-releases/reps-lofgren-and-sensenbrenner-introduce-legislation-end-corporate-bankruptcy>

U.S. Representatives Zoe Lofgren (D-CA) and Jim Sensenbrenner (R- WI) today introduced the bipartisan Bankruptcy Venue Reform Act of 2019 to ensure that the employees, small businesses, and local communities that are most impacted by a Chapter 11 bankruptcy are able to fully and fairly participate in proceedings. “The outcome of a Chapter 11 bankruptcy proceeding can have a profound impact on local communities,” said Representative Lofgren. “Justice requires that community stakeholders be able to fully participate and that these proceedings be adjudicated by someone from and knowledgeable of the community, rather than allowing corporations to choose a court where an entire cottage industry has been built around favorable decisions that benefit corporate interests above all else.” Representative Sensenbrenner: “Our corporate bankruptcy system has developed into a cottage industry where the better majority of proceedings take place in two states—often far away from the people that will be impacted by the decisions. This bipartisan bill makes key changes to the bankruptcy code that will allow employees and other community stakeholders to participate in the process more fully.” The Bankruptcy Venue Reform Act of 2019 will accomplish this by requiring that Chapter 11 bankruptcy proceedings take place where the principal place of business or principal assets of the corporation are located, where the effects of the bankruptcy are the greatest.

B. Ending venue shopping would preserve the integrity of the bankruptcy system

Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association 2016. “Report of the Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association in Support of Venue Fairness” 21 Jan 2016 <https://clla.org/wp-content/uploads/2018/PDFs/Sections/Bankruptcy/1._Report_of_Venue_Fairness-.pdf>



2A EVIDENCE: Bankruptcy Venue Reform Act

OPENING QUOTES / AFF PHILOSOPHY

Venue Shopping let the Los Angeles Dodgers baseball team file for bankruptcy in Delaware!

Rep. Howard Coble 2011 (R-N. Carolina, and Chairman of the Subcommittee on Courts, Commercial and Administrative Law) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

These rules allow a large Chapter 11 debtor to forum shop for a district it perceives as most friendly to its ultimate goal. This leads to some strange results, as you all know. Recently the Los Angeles Dodgers, an entity with ``Los Angeles'' in its very name, filed for bankruptcy in Delaware, approximately 3,000 miles from the closest California bankruptcy court.

Why do bankruptcy attorneys do venue shopping? Because they want more favorable outcomes

Rep. Trey Gowdy 2011 (R-SC) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

Well, maybe bankruptcy attorneys are different, but usually you pick a venue not based on the experience and expertise of the judge, but whether or not you think you will get a more favorable outcome. It might be that bankruptcy attorneys are just different and they are more interested in fairness than winning, but they would be unique among attorneys if that is what they were motivated by.

DEFINITIONS / TOPICALITY

Text of H.R.4421 - Bankruptcy Venue Reform Act of 2019 is located here

<https://www.congress.gov/bill/116th-congress/house-bill/4421/text>

Bankruptcy is critical to the financial system

David Haynes 2019 (bankruptcy attorney) Are You Avoiding Bankruptcy Because of Stigma? 25 June 2019 <https://www.thebalance.com/bankruptcy-still-carries-stigmas-but-it-shouldn-t-316106>

Without bankruptcy, the entire financial system could collapse. This is because there would be no "out," and if you incurred debt, you would be stuck with it for life.

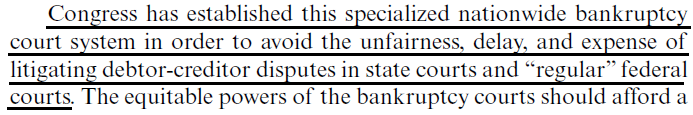
Financial markets include consumer lending, student loans, checking accounts, credit ratings, delinquent debt collection

Cheryl R. Cooper 2019 (Analyst in Financial Economics for Congressional Research Service) 12 July 2019 “An Overview of Consumer Finance and Policy Issues” <https://fas.org/sgp/crs/misc/R45813.pdf>

The major consumer financial markets include mortgage lending, student loans, automobile loans, credit cards and payments, payday loans and other credit alternative financial products, and checking accounts and substitutes. In addition, two important market structures allow these consumer financial products to be offered: (1) the consumer credit reporting system and (2) the debt collection market. These aspects of the consumer credit system facilitate the pricing of credit offers and the resolution of delinquent consumer credit products for most consumer credit markets.

1) Federal. Bankruptcy courts are under federal jurisdiction 2) Finance. They litigate debtor-creditor disputes

Kevin M. Eckhardt and Matthew Mannering 2012 (attorneys; senior associates in the Charlotte office of Hunton & Williams, LLP) PRATT’S JOURNAL OF BANKRUPTCY LAW, Oct 2012 <https://www.hunton.com/files/Publication/e5fde3f9-2390-41c0-9ccf-7e5f8859f32e/Presentation/PublicationAttachment/4e45d656-248f-4a14-aaa8-883f9e1d8866/Reform_of_Bankruptcy_Venue_and_Compensation_Rules.pdf>



“Principal place of business”

Judge Steven Rhodes 2013. (US Bankruptcy Judge, Eastern District of Michigan) 22 Nov 2013 statement to the ABI Commission to Study the Reform of Chapter 11 on Chapter 11 Venue <http://commission.abi.org/sites/default/files/statements/22nov2013/Rhodes-ABI-Commission.docx>

The Supreme Court has defined a corporation’s “principal place of business” as follows:  
We conclude that “principal place of business” is best read as referring to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities. It is the place that Courts of Appeals have called the corporation's “nerve center.” And in practice it should normally be the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination, i.e., the “nerve center,” and not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion).  
*Hertz Corp. v. Friend*, 559 U.S. 77, 92-93, 130 S. Ct. 1181, 1192 (2010).

INHERENCY

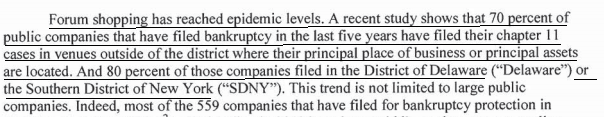
25% of bankruptcies go to just 3 of the 94 districts nationwide

Turnaround Management Association 2019. (professional association for troubled corporate rescue and bankruptcy professionals) Goodbye, Delaware? Impact of Bankruptcy Venue Reform on Business, Boston and You! 13 Sept 2019 <https://turnaround.org/event/goodbye-delaware-impact-bankruptcy-venue-reform-business-boston-and-you>

Restructuring and insolvency professionals across the country have routinely trekked to Wilmington, Delaware, the Southern District of New York, or, more recently, the Southern District of Texas to represent their clients in bankruptcy cases.  In 2017, out of 94 federal judicial districts, over 25% of Chapter 11 business filings were in these three districts alone.

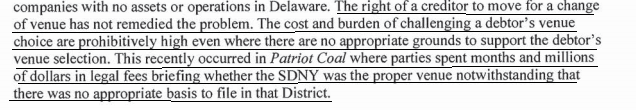
Venue shopping is epidemic. 70% of public company bankruptcies are outside their principal place of business, mostly in Delaware or N.Y.

Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association 2016. “Report of the Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association in Support of Venue Fairness” 21 Jan 2016 <https://clla.org/wp-content/uploads/2018/PDFs/Sections/Bankruptcy/1._Report_of_Venue_Fairness-.pdf>



A/T “Venue can be challenged and transferred” – Doesn’t solve. It’s too expensive to mount a challenge

Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association 2016. “Report of the Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association in Support of Venue Fairness” 21 Jan 2016 <https://clla.org/wp-content/uploads/2018/PDFs/Sections/Bankruptcy/1._Report_of_Venue_Fairness-.pdf>



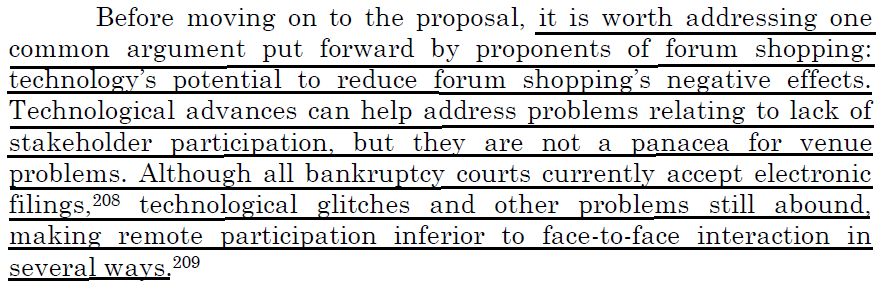
A/T “Technology or Transfer solve” – Transfers don’t happen, technology doesn’t balance the playing field

Prof. Melissa Jacoby 2011 (professor law, Univ. of N. Carolina Law School) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

Some justify the system based on the possibility of requesting transfer and technology. We have already heard some responses to that. Absent support from the most powerful creditors in a case, transfer is not happening in the large cases, and we have known that really for at least 20 years. Technology is helpful but not seamless, and I am open to thinking about better ways to use it. It doesn't balance the playing field.

Remote conferencing doesn’t solve venue distance problems

Prof. Laura Napoli Coordes 2015 (Visiting Assistant Professor, Sandra Day O'Connor College of Law, Arizona State University. J.D., University of Chicago Law School ) VANDERBILT LAW REVIEW “ The Geography of Bankruptcy” <https://www.questia.com/library/journal/1P3-3634551381/the-geography-of-bankruptcy>



Delaware judge refused to send “Energy Future” bankruptcy to Dallas, even though the company headquarters was a 10-minute walk from the Dallas courthouse

[Patrick M. Birney](http://www.lexology.com/2724/author/Patrick_M_Birney/), [Michael R. Enright](http://www.lexology.com/2724/author/Michael_R_Enright/), [Steven J. Boyajian](http://www.lexology.com/2724/author/Steven_J_Boyajian/) and [Travis R. Searles](http://www.lexology.com/2724/author/Travis_R_Searles/) 2014 (attorneys with Robinson & Cole law firm ) 29 July 2014 “Venue reform three years later“ <http://www.lexology.com/library/detail.aspx?g=230db10d-4519-4867-b055-016de5dee778>

Notably, the indenture trustee pointed out that the  debtors’ corporate headquarters location was less than a ten-minute walk from the Dallas bankruptcy  court while the Delaware bankruptcy court was 1,436 miles away, and any court appearance in Delaware  would include costly and time-consuming travel. In short, according to Wilmington Savings, Dallas was a more convenient venue for the company’s constituents and executives. In denying the indenture trustee’s motion, the Delaware bankruptcy court concluded that the decision on the motion was not even a “close call.” The judge stated that the statutory venue provisions authorized the chapter 11 filing in Delaware in the first instance because certain of Energy Future’s corporate affiliates were incorporated there.

Venue forum shopping isn’t just the big corporations, it’s spreading to smaller ones too

National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 <https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs_public/Venue_White_Paper_-_Final.pdf>

Venue shopping has spread to middle market and smaller cases, including real estate cases and chapter 7 business cases. According to Judge Steven Rhodes, the bankruptcy judge (now retired) who presided over the City of Detroit case, “[the] current bankruptcy venue law is the single most significant source of injustice in chapter 11 cases.”

HARMS

Venue shopping is unjust

Judge Stephen Rhodes 2015 (30 years experience as a bankruptcy judge) WALL STREET JOURNAL 9 Feb 2015 “The Baffling Rejection of Venue Reform by the ABI Chapter 11 Reform Commission” <http://blogs.wsj.com/bankruptcy/2015/02/09/the-baffling-rejection-of-venue-reform-by-the-abi-chapter-11-reform-commission/>

But venue laws ought not allow one party in litigation to choose the law that will apply to its case. This is highly prejudicial to the other parties in the case. Law shopping is unjust. There is no sound reason why, for example, a debtor that is based in Fairbanks, Alaska, and that has a collective bargaining agreement with its union in Fairbanks should be permitted to have its right to reject that agreement determined under Second Circuit case law just because it is incorporated in New York or has a subsidiary that filed there first. Such was surely not within the reasonable expectation of the parties to the collective bargaining agreement when they executed it. The law applicable to a debtor’s bankruptcy case ought to be the law applicable in the state of its principle place of business, without an opportunity to choose other law.

Companies could choose any venue to file bankruptcy, making it inconvenient or unfair for creditors

Judge Steven Rhodes 2013. (US Bankruptcy Judge, Eastern District of Michigan) 22 Nov 2013 statement to the ABI Commission to Study the Reform of Chapter 11 on Chapter 11 Venue <http://commission.abi.org/sites/default/files/statements/22nov2013/Rhodes-ABI-Commission.docx>

The Supreme Court has observed, “In most instances, the purpose of statutorily specified venue is to protect the defendant against the risk that a plaintiff will select an unfair or inconvenient place of trial.” *Leroy v. Great W. United Corp.*, 443 U.S. 173, 183-184 (1979). Many other cases echo this view. The treatises also reflect this view. Likewise, the purpose of restricting venue in bankruptcy ought to be to protect creditors against the debtor’s venue choice. The current law, however, does not accomplish that purpose. Under current law, a chapter 11 debtor may file in the state where its only connection is its incorporation or in any state where a subsidiary is incorporated. 11 U.S.C. § 1408. Indeed, it is not too farfetched to observe that under present law, many large corporations can find a way to file for chapter 11 bankruptcy in *any* judicial district. Simply stated, this venue “restriction” does nothing to protect creditors against the debtor’s selection of an unfair or inconvenient forum.

Venue shopping denies participation of some of the parties, compromises the integrity of the judicial process

National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 <https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs_public/Venue_White_Paper_-_Final.pdf>

Many scholars and experts in bankruptcy law believe that venue shopping and the concentration of large chapter 11 cases in two districts is a problem. Several witnesses who testified before the ABI Commission to Study the Reform of Chapter 11 in public hearings held between 2012 and 2014 expressed the view that “venue choice has a negative impact on judicial legitimacy.” “The Honorable Steven Rhodes of the U.S. Bankruptcy Court for the Eastern District of Michigan [Ret.] has stated that venue choice has a negative impact on the judicial legitimacy, especially when it prevents or impairs the meaningful participation of any of the parties, ultimately undermining the integrity of the adjudication process itself.”

Venue shopping demeans the entire system – it suggests the bankruptcy courts are for sale

Prof. Lynn M. LoPucki & Prof. Joseph W. Doherty 2006. (LoPucki - Professor of Law at the UCLA School of Law. Doherty - Visiting Professor of Law at the Harvard Law School) UNIVERSITY OF CHICAGO LAW REVIEW, “Delaware Bankruptcy: Failure in the Ascendancy“ <https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/73.4/73_4_LoPucki_Doherty.pdf>

For example, in a survey by the Federal Judicial Center, 22 percent of bankruptcy judges said that they were aware of one or more Chapter 11 cases filed in another district that should have been transferred to their district but were not. Federal Judicial Center, *Chapter 11 Venue Choice by Large Public Companies* 19 (1997). A large majority of the cases they identified were filed in the District of Delaware or the Southern District of New York. Id at 20. Chicago bankruptcy lawyer Gerald Munitz told the National Bankruptcy Review Commission that forum shopping “demeaned the entire system by suggesting that the bankruptcy courts were for sale.”

Judge Bias: Cases go to Delaware because they do what debtor companies want, and they allow big legal fees

Reuters news service 2014 (journalists Tom Hals and Nick Brown) 29 Apr 2014 Delaware messes with Texas, sparks fight over mega-bankruptcy <http://www.reuters.com/article/2014/04/29/efh-bankrkputcy-venue-idUSL2N0NL1VQ20140429>

Critics have long complained that the Wilmington and Manhattan bankruptcy courts bend over backwards to please lawyers that represent bankrupt companies, often to the detriment of creditors and employees. Lynn LoPucki, a law professor at the University of California Los Angeles, describes a form of quid pro quo in his book "Courting Failure": The court tends to defer to the wishes of debtors while approving big legal fees, so lawyers bring almost every sizeable case to one of those courts.

Legitimacy is undermined because parties are blocked from participating in the legal process

Judge Steven Rhodes 2013. (US Bankruptcy Judge, Eastern District of Michigan) 22 Nov 2013 statement to the ABI Commission to Study the Reform of Chapter 11 on Chapter 11 Venue (brackets and ellipses in original) <http://commission.abi.org/sites/default/files/statements/22nov2013/Rhodes-ABI-Commission.docx>

Venue-shopping in chapter 11 cases undermines judicial legitimacy when it prevents or even impairs the meaningful participation of any of the parties. It also underlines the integrity of the adjudication process itself. Because the fulfillment of the judiciary’s mission depends so fundamentally on its legitimacy in the eyes of the public, chapter 11 venue should be carefully restricted to maximize the participation of the parties. Although there is likely no single venue in a large chapter 11 case that will perfectly facilitate this goal, venue in the district of the debtor’s principal place of business appears to offer the best opportunity.

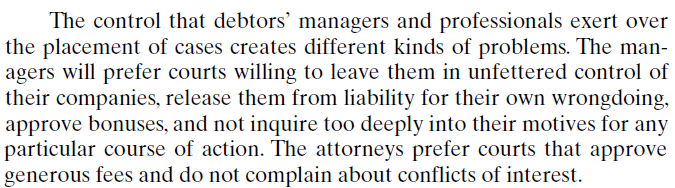
Impact: Legitimacy is key to the functioning of the judicial branch of government and to public respect for the law

Judge Steven Rhodes 2013. (US Bankruptcy Judge, Eastern District of Michigan) 22 Nov 2013 statement to the ABI Commission to Study the Reform of Chapter 11 on Chapter 11 Venue (brackets and ellipses in original) <http://commission.abi.org/sites/default/files/statements/22nov2013/Rhodes-ABI-Commission.docx>

Legitimacy is essential to the proper functioning of the judiciary. “As Americans of each succeeding generation are rightly told, the [Supreme] Court cannot buy support for its decisions by spending money and, except to a minor degree, it cannot independently coerce obedience to its decrees. The Court’s power lies, rather, in its legitimacy.” *Planned Parenthood v Casey*, 505 US 833, 865 (1992). Alexander Hamilton famously stated, “The judiciary has the power of neither the purse nor the sword.” Federalist 78 (Hamilton), in The Federalist Papers 521, 523 (Wesleyan 1961) (Jacob E. Cooke, ed). This commentator concisely argues the case for judicial legitimacy:  
Positive public perception of the judiciary’s role in American political life is indispensable to the effectiveness of the judicial branch. Indeed, this collective perception is the very source of judicial legitimacy, the *sine qua non* of our common law system. The concept of judicial legitimacy resides at the center of the constitutional doctrine of an independent judiciary and is the primary reason why people respect and obey the law. Thus, when the public views the judiciary as legitimate, the legitimacy of the entire legal system is nourished and strengthened. In short, if judicial independence is the lifeblood of the legal body politic, then judicial legitimacy is the immune system. \*\*\* Thus the concern here is not simply whether people generally believe in the legitimacy of judges, but for what reasons and with what reservations.  
Gregory C. Pingree, *Where Lies the Emperor’s Robe? An Inquiry Into the Problem of Judicial Legitimacy*, 86 Or. L. Rev. 1095, 1102 -1103 (2007).

Venue shopping promotes mismanagement. Debtors choose courts that will not supervise their mismanagement or jeopardize their cash bonuses

Prof. Lynn M. LoPucki & Prof. Joseph W. Doherty 2006. (LoPucki - Professor of Law at the UCLA School of Law. Doherty - Visiting Professor of Law at the Harvard Law School) UNIVERSITY OF CHICAGO LAW REVIEW, “Delaware Bankruptcy: Failure in the Ascendancy“ <https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/73.4/73_4_LoPucki_Doherty.pdf>



Real life example: A Memphis, Tenn. Company filed for bankruptcy in Delaware. It cost the landlord $4000-$5000 because he didn’t have the resources to resist

**Analysis: It shows that debtors use a remote venue to avoid paying what they owe when they know the creditor can’t get to the courthouse to make their claim.**

Peter Califano 2011 (bankruptcy attorney at Cooper White & Cooper in San Francisco where he chairs the bankruptcy and creditors' rights groups) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

In the Perkins & Marie Callender's case, this is a company that is headquartered in Memphis, which is in Mr. Cohen's district. The bankruptcy was filed in Delaware. The commencement of the case--the debtor filed a motion to reject various real property leases back to the petition date and, in effect, eliminate any basis to claim administrative rent. The debtor was also allowed to leave its personal property at the premises. One of the landlords was a retiree who did not have the resources to resist the motion. The outcome of the motion probably cost the individual landlord retiree about $4,000 or $5,000.

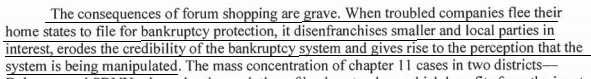
Remote venues hurt small creditors and workers because they can’t collect on their claims

Rep. John Conyers 2011 (D-Michigan) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

By choosing to file for Chapter 11 in a distant venue such as New York, a business--with its principal assets and most of its creditors and employees located in Michigan or California for example--makes it much more difficult for these creditors, particularly smaller creditors and workers, to participate in the case and defend their claims. These creditors are forced to retain counsel in the distant venue and, if they want to physically appear, incur travel costs. In effect, they have to pay more to collect on their claims. As a result, the ability of these small creditors and workers to influence the bankruptcy proceedings is greatly diminished.

Small creditors are disenfranchised – they can’t go to some far-away state to collect debts in the bankruptcy process

Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association 2016. “Report of the Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association in Support of Venue Fairness” 21 Jan 2016 <https://clla.org/wp-content/uploads/2018/PDFs/Sections/Bankruptcy/1._Report_of_Venue_Fairness-.pdf>



Remote venues hurt small creditors, employees and other stakeholders

Rep. Steve Cohen 2011 (D-Tenn.) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

Such a result threatens to undermine the purpose of having venue rules in the first place, which is to ensure that legal right rules and rights be adjudicated in the places most convenient and fair for all the parties in a case. I think a convenient forum is one of the first things you learn about in law school and the need for that. In a Chapter 11 bankruptcy context, filing a case in a venue where a debtor has no substantial ties harms small creditors, employees, and other affected stakeholders who lack the resources of larger creditors and corporate debtors to assert or protect their interest in these distant forums.

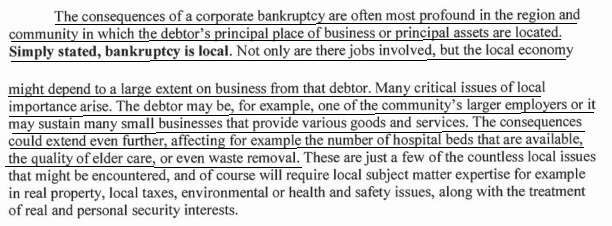
Remote bankruptcy filing is unjust

Judge Steven Rhodes 2013. (US Bankruptcy Judge, Eastern District of Michigan) 22 Nov 2013 statement to the ABI Commission to Study the Reform of Chapter 11 on Chapter 11 Venue <http://commission.abi.org/sites/default/files/statements/22nov2013/Rhodes-ABI-Commission.docx>

Often, law-shopping motivates venue-shopping. To facilitate venue-shopping, law firms representing debtors often maintain elaborate charts detailing what courts have ruled on what issues that their clients are concerned about. This is unjust. A legal system in which there are in the normal course conflicts in judicial decisions ought not allow one party in litigation to choose which of those courts has more favorable decisions and then go there to file its case. There is no sound reason why, for example, a debtor headquartered in New York, should be permitted to have its right to reject a collective bargaining agreement with its union in New York subject to Ninth Circuit case law just because it is incorporated in Alaska or has a subsidiary in Idaho. Such was surely not within the reasonable expectation of the parties to the agreement when they executed it.

Communities suffer: Bankruptcy should be handled locally

Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association 2016. “Report of the Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association in Support of Venue Fairness” 21 Jan 2016 <https://clla.org/wp-content/uploads/2018/PDFs/Sections/Bankruptcy/1._Report_of_Venue_Fairness-.pdf>



Skeel is wrong: Impacts on small businesses and affected individuals alone justify local venues for bankruptcy cases

Honorable Frank J. Bailey 2011 (Chief Judge, Bankruptcy Court for the District of Massachusetts) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

Those opposed to the amendments ask why does all of this matter. Sort of so what. The bankruptcy system is working well, Professor Skeel tells us. Well, as a judge that sits on consumer cases as well as business cases, both large and small, I can tell you that it matters a great deal. In both consumer cases and in business cases, I regularly have employees, small vendor creditors, retirees, former employees who attend hearings in my courtroom. They can generally take public transportation to my courtroom, and I give them the chance to say their piece. And I frequently have to deliver bad news to them, sometimes life-changing bad news to them. And I have found that they can accept that bad news. They are not happy about it, but they can accept that bad news if they understand from whence it is being delivered by a local judge in a Federal system that has placed that local judge in the Boston courthouse where I sit. They may not be happy, but ultimately I believe they are satisfied with the system that Congress has created for them when they have that opportunity.

Venue shopping helps promote mismanagement

Rep. John Conyers 2011 (D-Michigan) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

This effectively permits management of a company--which is most likely to blame for the company's financial distress--to pick and choose the venue with the case law most friendly to management through this affiliate venue filing option. Particularly in cases where collective bargaining agreements may need to be rejected under the Bankruptcy Code, a jurisdiction espousing a pro-management, anti-union perspective would likely be very attractive to a company's management.

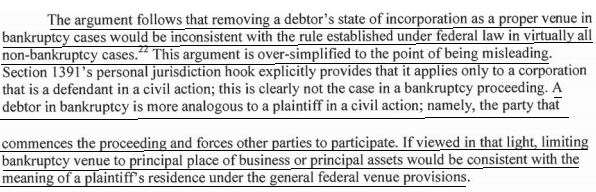
A/T “Bankruptcy is different from other types of cases” – Other cases have the same issues, and it doesn’t justify remote venues

Prof. Melissa Jacoby 2011 (professor law, Univ. of N. Carolina Law School) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

The second point is that the justifications often heard are just not persuasive. Some justify the departure by saying bankruptcy is exceptional. It is different. It involves more parties. It is more complicated. But there are other Federal actions that raise exactly those same concerns. So there is the Judicial Panel on Multi-District Litigation that assigns consolidated cases to certain districts. They don't consider place of incorporation of the corporate defendant. They might consider the headquarters. They consider a variety of other factors, including expertise. But place of incorporation is not among them.

A/T “Bankruptcy venue should be like lawsuit venue” – No, bankruptcy is different

Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association 2016. “Report of the Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association in Support of Venue Fairness” 21 Jan 2016 <https://clla.org/wp-content/uploads/2018/PDFs/Sections/Bankruptcy/1._Report_of_Venue_Fairness-.pdf>



A/T “Importance of Delaware state law on companies incorporated there” – Doesn’t justify moving cases to Delaware

Prof. Melissa Jacoby 2011 (professor law, Univ. of N. Carolina Law School) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

Some justify the current rules based on place of incorporation having a strong tie to bankruptcy and the relationship between corporate law and bankruptcy law. And I agree that bankruptcy courts need to respect State law, including State corporate law, but I am not sure that ties Delaware any more to these cases than the employment law, the tax law, the environmental laws of other jurisdictions. And outside of bankruptcy, when corporations get sued in Delaware, it is not unheard of for them to complain that it is inconvenient, that all of their resources are somewhere else, that their management is across the country.

SOLVENCY / ADVOCACY

Principal place of business should be the venue for bankruptcy law

Judge Steven Rhodes 2013. (US Bankruptcy Judge, Eastern District of Michigan) 22 Nov 2013 statement to the ABI Commission to Study the Reform of Chapter 11 on Chapter 11 Venue <http://commission.abi.org/sites/default/files/statements/22nov2013/Rhodes-ABI-Commission.docx>

Similarly, creditors (and the public) can reasonably expect that a debtor should be required to file its reorganization proceeding in the district of its principal place of business - its nerve center, where the debtor’s officers “direct, control, and coordinate the corporation’s activities.” Only with that restriction can the historical purpose of venue restrictions be fulfilled.

Local adjudication of bankruptcy is better than venue shopping because a local venue can manage the community impacts better than a remote court

Peter Califano 2011 (bankruptcy attorney at Cooper White & Cooper in San Francisco where he chairs the bankruptcy and creditors' rights groups) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm> (brackets added)

The CLLA [Commercial Law League of America] strongly believes that when these businesses fail and need rehabilitation in bankruptcy, the local bankruptcy courts are the best positioned to oversee the process. Let me explain why. First, the consequences of corporate bankruptcy are most profound in the communities where the debtor's principal place of business or assets are located. Not only are jobs involved, but they may affect other matters such as hospitals, the closing of plants, and waste removal. Second, if bankruptcies are filed in remote districts, the parties with the most familiarity with the debtor's operations and who have an important stake in the case's outcome might be cut off or minimized in the process. Employees, small creditors, and retirees will suffer.

Fairness to creditors requires end to bankruptcy venue shopping, and requirement to file at the principal place of business

Judge Stephen Rhodes 2015 (30 years experience as a bankruptcy judge) WALL STREET JOURNAL 9 Feb 2015 “The Baffling Rejection of Venue Reform by the ABI Chapter 11 Reform Commission” <http://blogs.wsj.com/bankruptcy/2015/02/09/the-baffling-rejection-of-venue-reform-by-the-abi-chapter-11-reform-commission/> (ellipses in original)

Likewise, the purpose of restricting venue in bankruptcy ought to be to protect creditors against the debtor’s “unfair or inconvenient” venue choice. Why else have any venue laws? In large cases, the current law, however, does not accomplish that purpose, or really any purpose. On the other hand, requiring a debtor to file where its principal place of business is located, although perhaps imperfect, is more likely to fulfill this purpose. The Supreme Court, in *Hertz Corp. v. Friend (2010)*, defined a corporation’s principal place of business as “the place where a corporation’s officers direct, control, and coordinate the corporation’s activities…the corporation’s ‘nerve center’…the place where the corporation maintains its headquarters.” Significantly, the Supreme Court also observed, “The public often (though not always) considers it the corporation’s main place of business.” Creditors and the public can reasonably expect that a debtor should be required to file its reorganization proceeding in the district of its principal place of business. Only with that restriction can the historical purpose of venue restrictions be fulfilled.

Example: PG&E case. It proves local bankruptcy courts can successfully manage cases

Peter Califano 2011 (bankruptcy attorney at Cooper White & Cooper in San Francisco where he chairs the bankruptcy and creditors' rights groups) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

Now, let me give you an example of a local case that is successful or was successful, the Pacific Gas and Electric Company case. This bankruptcy was the largest utility bankruptcy case ever to be filed. It had $35 billion in assets and approximately 20,000 employees. The case was commenced in the Northern District of California. Immediately local builders and lawyers formed an informal group to negotiate and litigate with the debtor over the assumption of highly regulated and specialized agreements for extending power into new subdivisions. The group was successful in achieving an early resolution for the home builders. There are many examples of this kind of thing in this case. Please note that this case was with the Honorable Dennis Montali resulting in a confirmed plan and a successfully reorganized debtor. This confirms that there are other courts around the country who have the skill and ability to handle a mega bankruptcy case.

Restricting venue restores bankruptcy court legitimacy

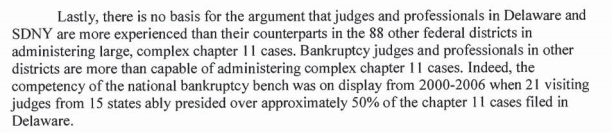
Judge Stephen Rhodes 2015 (30 years experience as a bankruptcy judge) WALL STREET JOURNAL 9 Feb 2015 “The Baffling Rejection of Venue Reform by the ABI Chapter 11 Reform Commission” <http://blogs.wsj.com/bankruptcy/2015/02/09/the-baffling-rejection-of-venue-reform-by-the-abi-chapter-11-reform-commission/>

Venue shopping in chapter 11 cases undermines judicial legitimacy when it prevents or even impairs the meaningful participation of any of the parties. It also undermines the integrity of the adjudicative process itself. Because the fulfillment of the judiciary’s mission depends so fundamentally on its legitimacy in the eyes of the public, chapter 11 venue should be carefully restricted to maximize the participation of the parties. Although no single venue in a large chapter 11 case may perfectly facilitate this goal, venue in the district of the debtor’s principal place of business does offer the best opportunity.

DISADVANTAGE RESPONSES

A/T “Lose the expertise of experienced judges in magnet courts” – Other judges are well qualified

Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association 2016. “Report of the Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association in Support of Venue Fairness” 21 Jan 2016 <https://clla.org/wp-content/uploads/2018/PDFs/Sections/Bankruptcy/1._Report_of_Venue_Fairness-.pdf>



A/T “Lose the expertise of experienced judges in magnet courts” –Other courts are well qualified and we should use them

Honorable Frank J. Bailey 2011 (Chief Judge, Bankruptcy Court for the District of Massachusetts) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

My third point and last point is there are talented and sophisticated judges in other districts. We should be using them. In Massachusetts and all over the country, we have accomplished and sophisticated judges capable of handling their fair share of large, complex business cases. We put a slide up. The slide will speak for itself. These judges are no slackers. In fact, they include the incoming President of the National Conference of Bankruptcy Judges, my colleague, Judge Joan Feeney. The past presidents of that august organization in just the last few years have come from Texas, Nevada, Ohio, and Oregon. The way our judicial system is supposed to work is to rely on the creativity and innovation of judges from around the country in handling these large company cases. Right now, the concentration of cases in the magnet districts, I am afraid, restricts that innovation.

A/T “Lost expertise” – Non-magnet court judges will not be a problem

Prof. Melissa Jacoby 2011 (professor law, Univ. of N. Carolina Law School) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

And finally, some justify with fears that judges will handle the cases less well than judges in magnet courts. And I do think that that is unfounded. Even if it were true, I think there are ways that we could structure the system to overcome that concern.

A/T “Lost expertise if we move away from Delaware and N.Y.” – No evidence those judges are better than others

Prof. Melissa Jacoby 2011 (professor law, Univ. of N. Carolina Law School) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

Certainly there are some judges empirically who have had more experience with big cases than judges in other districts. There are also relatively new judges in New York and Delaware who, again, may be doing a great job but they do not all come from the same level of experience. When we take apart the pieces of what is desired in a judge, we want fairness and competence and accessibility and speed. I think those are things that both the judiciary is well equipped to handle and that also can be adapted and come up with new innovations. I can understand why parties want to hire very experienced lawyers, but I think that expertise--we have to be careful with how we make that argument. We have no evidence that things are going better in these two districts than other places.

Works Cited

1. Merriam Webster Online Dictionary 2019 https://www.merriam-webster.com/dictionary/substantial
2. Pres. George W. Bush 2005. “Remarks on Signing the Bankruptcy Abuse Prevention and Consumer Protection Act of 205” https://books.google.com/books?id=TtUc4s1BCqwC&pg=PA639&lpg=PA639&dq=%22our+financial+system+stronger+and+better%22+%22integrity+to+the+bankruptcy%22&source=bl&ots=9aHizct5FA&sig=ACfU3U1j6eNnvGePW1Qvn9ao0OYPu0JaKQ&hl=en&sa=X&ved=2ahUKEwid9pTNiM7lAhVGc98KHd4zBwQQ6AEwAXoECAcQAQ#v=onepage&q=%22our%20financial%20system%20stronger%20and%20better%22%20%22integrity%20to%20the%20bankruptcy%22&f=false
3. Robbin Itkin 2018. (bankruptcy attorney) 7 March 2018 “You want to file a bankruptcy case where?????” https://www.dlapiper.com/en/us/insights/publications/2018/03/global-insight-issue-23/2you-want-to-file-a-bankruptcy-case-where/
4. National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs\_public/Venue\_White\_Paper\_-\_Final.pdf
5. Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association 2016. “Report of the Venue Committee of the Bankruptcy Section of the Minnesota State Bar Association in Support of Venue Fairness” 21 Jan 2016 https://clla.org/wp-content/uploads/2018/PDFs/Sections/Bankruptcy/1.\_Report\_of\_Venue\_Fairness-.pdf
6. Peter Califano 2011 (bankruptcy attorney at Cooper White & Cooper in San Francisco where he chairs the bankruptcy and creditors' rights groups) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm
7. Rep. Zoe Lofgren and Rep. Jim Sensenbrenner 2019. (Logren – D-Calif. Sensenbrenner – R-Wisconsin. Members of the US House of Representatives) Reps. Lofgren and Sensenbrenner Introduce Legislation to End Corporate Bankruptcy Forum Shopping, 19 Sept 2019 Press Release from the office of Rep. Zoe Lofgren https://lofgren.house.gov/media/press-releases/reps-lofgren-and-sensenbrenner-introduce-legislation-end-corporate-bankruptcy
8. Rep. Howard Coble 2011 (R-N. Carolina, and Chairman of the Subcommittee on Courts, Commercial and Administrative Law) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm
9. Rep. Trey Gowdy 2011 (R-SC) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm
10. https://www.congress.gov/bill/116th-congress/house-bill/4421/text
11. David Haynes 2019 (bankruptcy attorney) Are You Avoiding Bankruptcy Because of Stigma? 25 June 2019 https://www.thebalance.com/bankruptcy-still-carries-stigmas-but-it-shouldn-t-316106
12. Cheryl R. Cooper 2019 (Analyst in Financial Economics for Congressional Research Service) 12 July 2019 “An Overview of Consumer Finance and Policy Issues” https://fas.org/sgp/crs/misc/R45813.pdf
13. Kevin M. Eckhardt and Matthew Mannering 2012 (attorneys; senior associates in the Charlotte office of Hunton & Williams, LLP) PRATT’S JOURNAL OF BANKRUPTCY LAW, Oct 2012 https://www.hunton.com/files/Publication/e5fde3f9-2390-41c0-9ccf-7e5f8859f32e/Presentation/PublicationAttachment/4e45d656-248f-4a14-aaa8-883f9e1d8866/Reform\_of\_Bankruptcy\_Venue\_and\_Compensation\_Rules.pdf
14. Turnaround Management Association 2019. (professional association for troubled corporate rescue and bankruptcy professionals) Goodbye, Delaware? Impact of Bankruptcy Venue Reform on Business, Boston and You! 13 Sept 2019 https://turnaround.org/event/goodbye-delaware-impact-bankruptcy-venue-reform-business-boston-and-you
15. Prof. Laura Napoli Coordes 2015 (Visiting Assistant Professor, Sandra Day O'Connor College of Law, Arizona State University. J.D., University of Chicago Law School ) VANDERBILT LAW REVIEW “ The Geography of Bankruptcy” https://www.questia.com/library/journal/1P3-3634551381/the-geography-of-bankruptcy
16. Patrick M. Birney, Michael R. Enright, Steven J. Boyajian and Travis R. Searles 2014 (attorneys with Robinson & Cole law firm ) 29 July 2014 “Venue reform three years later“ http://www.lexology.com/library/detail.aspx?g=230db10d-4519-4867-b055-016de5dee778
17. National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs\_public/Venue\_White\_Paper\_-\_Final.pdf
18. Judge Stephen Rhodes 2015 (30 years experience as a bankruptcy judge) WALL STREET JOURNAL 9 Feb 2015 “The Baffling Rejection of Venue Reform by the ABI Chapter 11 Reform Commission” http://blogs.wsj.com/bankruptcy/2015/02/09/the-baffling-rejection-of-venue-reform-by-the-abi-chapter-11-reform-commission/
19. Judge Steven Rhodes 2013. (US Bankruptcy Judge, Eastern District of Michigan) 22 Nov 2013 statement to the ABI Commission to Study the Reform of Chapter 11 on Chapter 11 Venue http://commission.abi.org/sites/default/files/statements/22nov2013/Rhodes-ABI-Commission.docx
20. Prof. Lynn M. LoPucki & Prof. Joseph W. Doherty 2006. (LoPucki - Professor of Law at the UCLA School of Law. Doherty - Visiting Professor of Law at the Harvard Law School) UNIVERSITY OF CHICAGO LAW REVIEW, “Delaware Bankruptcy: Failure in the Ascendancy“ https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/73.4/73\_4\_LoPucki\_Doherty.pdf
21. Reuters news service 2014 (journalists Tom Hals and Nick Brown) 29 Apr 2014 Delaware messes with Texas, sparks fight over mega-bankruptcy http://www.reuters.com/article/2014/04/29/efh-bankrkputcy-venue-idUSL2N0NL1VQ20140429
22. Prof. Lynn M. LoPucki & Prof. Joseph W. Doherty 2006. (LoPucki - Professor of Law at the UCLA School of Law. Doherty - Visiting Professor of Law at the Harvard Law School) UNIVERSITY OF CHICAGO LAW REVIEW, “Delaware Bankruptcy: Failure in the Ascendancy“ https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/73.4/73\_4\_LoPucki\_Doherty.pdf
23. Peter Califano 2011 (bankruptcy attorney at Cooper White & Cooper in San Francisco where he chairs the bankruptcy and creditors' rights groups) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm
24. Rep. John Conyers 2011 (D-Michigan) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm
25. Rep. Steve Cohen 2011 (D-Tenn.) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm
26. Peter Califano 2011 (bankruptcy attorney at Cooper White & Cooper in San Francisco where he chairs the bankruptcy and creditors' rights groups) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm
27. Honorable Frank J. Bailey 2011 (Chief Judge, Bankruptcy Court for the District of Massachusetts) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm
28. Prof. Melissa Jacoby 2011 (professor law, Univ. of N. Carolina Law School) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm