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THE MANY STATE DOCTRINES OF FORUM NON CONVENIENS

WILLIAM S. DODGE†

MAGGIE GARDNER††

CHRISTOPHER A. WHYTOCK†††

ABSTRACT

Forum non conveniens is not as ancient or monolithic as U.S. courts often assume. The doctrine, which permits judges to decline to hear cases they believe would more appropriately be heard in another sovereign's courts, was only adopted by the U.S. Supreme Court for use in nonadmiralty cases in 1947; the doctrine's "deep roots in the common law" are thought instead to have grown in the states.

This Article tests that account by surveying the forum non conveniens doctrines of all fifty states and the District of Columbia. What we found should change how judges, practitioners, and scholars view the doctrine. First, forum non conveniens in the states does not

† Martin Luther King, Jr. Professor of Law and John D. Ayer Chair in Business Law, University of California, Davis School of Law.

†† Professor of Law, Cornell Law School.

††† Vice Dean and Professor of Law, University of California, Irvine School of Law. For valuable comments and conversations, we thank Pam Bookman, Zach Clopton, John Coyle, Rebecca Crootof, Mike Dorf, Liz Porter, Alex Reinert, and Aaron Simowitz, as well as the participants in the ASIL International Law in Domestic Courts Interest Group Workshop, the Cornell Law School Faculty Retreat, and the Civil Procedure Workshop at Cardozo Law School. We are especially grateful for the hard work of our research assistants: Kayley Berger, Amanda Cirillo, Alyssa Ertel, Arton Falahati, Andrew Gelfand, Leora Ghadoushi, Cheyenne Hunt-Majer, Julie Joseph, Carissa Lee, Jiao Li, Vincent Palmeri, Morgan Peterson, Zachary Sizemore, Sandeep Somisetty, Ashley Stamgena, Emery Stanton, Alexandra Taylor, Anne Wu, and Samantha Wu.

have a "long history"—it is a twentieth-century phenomenon. Second, before the 1950s, no states permitted dismissal of claims brought against local defendants. Third, state experience with forum non conveniens has been and continues to be highly variable. Most states adopted a forum non conveniens doctrine only after the Supreme Court did; many initially rejected it, and half a dozen still prohibit its use in cases involving in-state plaintiffs or in-state causes of action. Idaho has yet to adopt the doctrine.

In addition to these doctrinal lessons, the states' experience with forum non conveniens provides a useful case study for examining what we term "procedural federalism," meaning the interactions between state and federal institutions that affect procedural development. Procedural federalism reminds us that the procedure we have is not necessarily the "best" procedure we could conceive while simultaneously drawing our attention to pockets of divergence that may offer promising reforms. More broadly, it suggests a different approach to history than the one currently ascendant in federal courts and commentary. The iterative nature of procedural federalism makes clear that doctrines like forum non conveniens do not have perfect pasts, needing only to be rediscovered to be understood properly. Rather, procedural history is useful because it can help us understand how we ended up with the doctrines we have today, in order to better evaluate where we should go next.

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INTRODUCTION

Forum non conveniens, according to U.S. courts, is an "ancient" doctrine[1] with a "long history"[2] and "deep roots in the common law."[3] It permits judges to refuse to hear a case, otherwise properly before the court, when there is another forum where trial will best serve "the convenience of the parties and the ends of justice."[4] In particular, both state and federal courts use forum non conveniens today to dismiss claims brought by foreign plaintiffs against U.S. corporations in the corporations' home courts.[5] Nonetheless, it is well known that federal courts have only exercised this discretionary power since 1947, when the U.S. Supreme Court first recognized a general doctrine of forum non conveniens in *Gulf Oil Corp. v. Gilbert*.[6] To justify that expansion of judicial discretion, the Court invoked state common law tradition,

1. *E.g.*, Simon v. Republic of Hungary, 911 F.3d 1172, 1181 (D.C. Cir. 2018), *vacated and remanded on other grounds*, 141 S. Ct. 691 (2021); Esfeld v. Costa Crociere, S.P.A., 289 F.3d 1300, 1302 n.4 (11th Cir. 2002).

2. *E.g.*, Am. Dredging Co. v. Miller, 510 U.S. 443, 450 (1994); Piper Aircraft Co. v. Reyno, 454 U.S. 235, 248 n.13 (1981); Cap. Currency Exch., N.V. v. Nat'l Westminster Bank PLC, 155 F.3d 603, 606 (2d Cir. 1998).

3. *In re* Pirelli Tire, L.L.C., 247 S.W.3d 670, 675 (Tex. 2007).

4. Koster v. Am. Lumbermens Mut. Cas. Co., 330 U.S. 518, 527 (1947).

5. *See, e.g.*, Hefferan v. Ethicon Endo-Surgery Inc., 828 F.3d 488, 492 (6th Cir. 2016) (affirming an Ohio state court's dismissal of a product liability suit brought by German plaintiffs against a defendant incorporated and headquartered in Ohio); Instituto Mexicano del Seguro Soc. v. Zimmer Biomet Holdings, Inc., 29 F.4th 351, 356 (7th Cir. 2022) (affirming dismissal of a suit brought by Mexican government agency against Indiana medical device company for bribing Mexican government officials). For examples of state court decisions, see *infra* notes 265–266 and accompanying text.

6. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 509 (1947). Four Justices dissented. *Id.* at 512, 517.

explaining that the doctrine "did not originate in federal but in state courts."[7]

The experience of the state courts, however, does not support this standard account of forum non conveniens.[8] We surveyed all fifty states and the District of Columbia to better understand the doctrine and its evolution.[9] What we found should change how judges, practitioners, and scholars view forum non conveniens.

First, state forum non conveniens is not an ancient doctrine; for state courts, forum non conveniens is firmly a twentieth-century development.[10] With the exceptions of New York and Massachusetts, state courts only began recognizing a discretion to decline jurisdiction

7. *Id.* at 505 n.4 (citing decisions from New York and New Hampshire); *see also id.* at 507 (asserting that "[m]any of the states have . . . invest[ed] courts with a discretion to change the place of trial on various grounds, such as the convenience of witnesses and the ends of justice"); *id.* at 507 n.6 (citing decisions from New York, New Hampshire, and Michigan). The Supreme Court later characterized these few citations as a "recit[al of] a long history of valid application of the doctrine by state courts." *Am. Dredging Co.*, 510 U.S. at 450.

8. This is not a new finding as much as a forgotten one. At the time of *Gulf Oil*, several scholars emphasized the weak support of the doctrine in state courts. *See* Edward L. Barrett, Jr., *The Doctrine of Forum Non Conveniens*, 35 CALIF. L. REV. 380, 388–89 (1947) ("[F]ew American courts have actually accepted the doctrine. In most states it has not even been considered. In others it has been rejected. And today it can be said to be in operation in barely half a dozen states . . . ."); Robert Braucher, *The Inconvenient Federal Forum*, 60 HARV. L. REV. 908, 912–14 (1947) (critiquing an early proponent's defense of forum non conveniens for including many state court decisions in which dismissal was not considered discretionary).

9. We have omitted Puerto Rico from our survey because decisions of Puerto Rican courts are in Spanish. It is worth noting, however, that Puerto Rico appears to have adopted forum non conveniens only in 2009, and in doing so it explicitly rejected the *Gulf Oil* framework as impractical, outdated, and out of step with the practice of other countries. *See* Ramírez Sainz v. S.L.G. Cabanillas, 2009 TSPR 151 (2009).

10. There is a longer history of discretion to decline jurisdiction in federal admiralty cases. *See generally* Maggie Gardner, Admiralty, Abstention, and the (Ab)Use of Historical Precedent (Mar. 25, 2022) (unpublished manuscript) (on file with authors) (describing early admiralty practice). But the Supreme Court has disclaimed that admiralty practice as the primary historical basis for forum non conveniens. *See Am. Dredging Co.*, 510 U.S. at 450 ("[T]he doctrine of *forum non conveniens* neither originated in admiralty nor has exclusive application there. To the contrary, it is and has long been a doctrine of general application."). The Court has also invoked the practice of Scottish courts, which coined the phrase "forum non conveniens." *Id.* at 449 ("Although the origins of the doctrine in Anglo-American law are murky, most authorities agree that *forum non conveniens* had its earliest expression not in admiralty but in Scottish estate cases."). The Scottish cases, however, date only to the mid-nineteenth century. *See, e.g.*, Ardavan Arzandeh, *The Origins of the Scottish Forum Non Conveniens Doctrine*, 13 J. PRIV. INT'L L. 130, 147 (2017) (arguing that the discretionary doctrine of forum non conveniens was first recognized in Scottish courts in 1845).

at the turn of the last century.[11] When the Supreme Court decided *Gulf Oil* in 1947, just ten states and the District of Columbia had arguably recognized such discretion[12]—while at least six states had affirmatively rejected it.[13] Indeed, only after the turn of *this* century did Georgia, Montana, Oregon, Rhode Island, and South Dakota first adopt forum non conveniens—and Idaho still has not done so.[14]

Second, states initially permitted forum non conveniens dismissals only when all the parties resided outside the state and the cause of action also arose outside the state[15]—what we will refer to as

11. New York first recognized discretion to decline jurisdiction in 1817 in a maritime dispute between foreign parties regarding a claim that arose outside of the United States. Gardner v. Thomas, 14 Johns. 134, 135 (N.Y. Sup. Ct. 1817). Massachusetts suggested in dicta in 1867 that courts of equity might have discretion to dismiss some cases, Smith v. Mut. Life Ins. of N.Y., 96 Mass. (1 Allen) 336, 343 (1867), though it did not have cause to apply that discretion until 1896, Nat'l Tel. Mfg. Co. v. Dubois, 42 N.E. 510, 510–11 (1896). The next state to recognize a discretion to decline jurisdiction was Texas in 1890. *See* Morris v. Mo. Pac. Ry. Co., 14 S.W. 228, 230 (Tex. 1890).

12. *See* Hagen v. Viney, 169 So. 391, 392–93 (Fla. 1936); Stewart v. Litchenberg, 86 So. 734, 736 (La. 1920), *overruled by* Fox v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll., 576 So. 2d 978, 990 (La. 1991); Foss v. Richards, 139 A. 313, 314–15 (Me. 1927); Universal Adjustment Corp. v. Midland Bank, Ltd., 184 N.E. 152, 160 (Mass. 1933); Strickland v. Humble Oil & Refin. Co., 11 So. 2d 820, 822 (Miss. 1943); Jackson & Sons v. Lumbermen's Mut. Cas. Co., 168 A. 895, 896–97 (N.H. 1933); Carnegie v. Laughlin, 28 A.2d 506, 506–07 (N.J. 1942); Gregonis v. Phila. & Reading Coal & Iron Co., 139 N.E. 223, 226 (N.Y. 1923); *Morris*, 14 S.W. at 230; Morisette v. Canadian Pac. Ry. Co., 56 A. 1102, 1103 (Vt. 1904) (dicta). Dicta in Michigan, Tennessee, and Wisconsin cases suggested an openness to the doctrine, but those states' high courts did not subsequently view these early cases as adopting forum non conveniens. *See* Cray v. Gen. Motors Corp., 207 N.W.2d 393, 395–96 (Mich. 1973) (describing early cases as not resolving the question of discretion); Zurick v. Inman, 426 S.W.2d 767, 769–75 (Tenn. 1968) (noting an early case discussing the matter but treating the question of discretion as a matter of first impression); State v. Belden, 236 N.W. 542, 543 (Wis. 1931) (clarifying that Wisconsin did not permit discretionary dismissals despite dicta in earlier case).

13. *See, e.g.*, Leet v. Union Pac. R.R., 155 P.2d 42, 44 (Cal. 1944); Mattone v. Argentina, 175 N.E. 603, 606 (Ohio 1931); Boright v. Chi., Rock Island & Pac. R.R., 230 N.W. 457, 459–60 (Minn. 1930); Bright v. Wheelock, 20 S.W.2d 684, 700 (Mo. 1929); Herrmann v. Franklin Ice Cream Co., 208 N.W. 141, 143 (Neb. 1926); State v. Belden, 236 N.W. 542, 543 (Wis. 1931). Utah had emphasized that judges must hear cases over which they have jurisdiction, *see* Steed v. Harvey, 54 P. 1011, 1012 (Utah 1898), though the state supreme court later stated the question of discretion had not yet been decided, *see* Mooney v. Denver & Rio Grande W. R.R., 221 P.2d 628, 646 (Utah 1950).

14. *See* AT&T Corp. v. Sigala, 549 S.E.2d 373, 377 (Ga. 2001); San Diego Gas & Elec. Co. v. Gilbert, 329 P.3d 1264, 1272 (Mont. 2014); Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960, 981 (Or. 2016); Kedy v. A.W. Chesterton Co., 946 A.2d 1171, 1179 (R.I. 2008); Rothluebbers v. Obee, 668 N.W.2d 313, 317 (S.D. 2003).

15. New York, which was the first state to adopt discretionary dismissals, was emphatic about this limitation even after *Gulf Oil*. *See, e.g.*, De la Bouillerie v. De Vienne, 89 N.E.2d 15, 15–16 (N.Y. 1949) ("It is only when an action is brought by one nonresident against another for a

"international foreign-cubed cases" when the parties were foreign residents,[16] or as "domestic foreign-cubed cases" when the parties resided in other U.S. states.[17] That restriction began to loosen only after *Gore v. U.S Steel Corp.*,[18] a 1954 decision in which the New Jersey Supreme Court rejected as impermissible forum shopping the plaintiff's efforts to avoid racist juries in Alabama by suing U.S. Steel, a major New Jersey corporation, in its home court.[19] *Gore* set off a chain reaction, albeit a gradual one. New York, for example, cited *Gore* in 1972 when it finally permitted dismissal of claims involving New York parties, with California copying New York's language in 1986.[20] Florida did not permit dismissal of Florida defendants until 1996.[21] In short, the use of forum non conveniens to dismiss cases brought against local defendants is a recent development.

Third, there is no single doctrine of forum non conveniens. Rather, there has always been and continues to be significant variation in how states have approached discretionary dismissals.[22] Even today, while a majority of states use a doctrine similar or identical to that of *Gulf Oil*, a third of the states continue to chart their own doctrinal course.[23] Consider just a few examples. Under the federal doctrine as articulated

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tort committed outside the State that our courts may refuse to take cognizance of the controversy.").

16. The rhetorical label of "foreign-cubed" is problematic because it blurs procedural distinctions and elides the domestic connections a case may have. *See* Maggie Gardner, *Foreignness*, 69 DEPAUL L. REV. 469, 492–93 (2020). We nonetheless use the label here as an accepted shorthand for cases that involve no local parties or claims, with the specifications that, for purposes of forum non conveniens, a party's "foreignness" turns on residency (not citizenship) and the location at which a cause of action arose is determined by contemporaneous choice-of-law principles.

17. Although this may seem an odd turn of phrase, state courts often refer to out-of-state parties, claims, judgments, corporations, and laws as "foreign."

18. Gore v. U.S. Steel Corp., 104 A.2d 670 (N.J. 1954).

19. *Id.* at 676–77. In *Gore*, the family of a Black worker who died at a U.S. Steel plant in Alabama sued U.S. Steel in New Jersey because juries in Alabama were known to undercompensate the injuries of Black claimants. *See id.* at 672. For further discussion of *Gore*, see *infra* Part I.C.

20. *See infra* Part I.C (documenting the influence of *Gore*).

21. Kinney Sys., Inc. v. Cont'l Ins., 674 So. 2d 86, 93 (Fla. 1996).

22. The Supreme Court has recognized as much. *See* Am. Dredging Co. v. Miller, 510 U.S. 443, 453, 456 (1994) (recognizing that forum non conveniens is a matter of "local policy" and that some states may reject its application). Nonetheless, the assumption that *Gulf Oil* represents "the" doctrine of forum non conveniens remains widespread.

23. *See infra* Part II (summarizing current state practice).

in *Gulf Oil* and *Piper Aircraft Co. v. Reyno*,[24] federal courts must first identify an available alternative forum that can hear the case.[25] In contrast, New York and Delaware—two major jurisdictions for U.S. companies—permit dismissal of cases for forum non conveniens even when there is no alternative forum.[26] Whereas under the federal doctrine, dismissal is available in all cases, six states have prohibited the use of forum non conveniens in cases involving certain local connections: Colorado, South Carolina, and Texas prohibit dismissal of cases brought by in-state plaintiffs[27]; Alabama prohibits dismissal of in-state causes of action[28]; and Louisiana and Virginia prohibit both.[29]

In addition to these doctrinal lessons, our findings shed light on the phenomenon of "procedural federalism," which we define as the set of relationships between state and federal actors that affect the development of procedure.[30] Previously, scholars have explored how

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24. Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981).

25. *Id.* at 254 n.22 ("At the outset of any *forum non conveniens* inquiry, the court must determine whether there exists an alternative forum."); Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 506–07 (1947) ("In all cases in which the doctrine of *forum non conveniens* comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them.").

26. Aranda v. Philip Morris USA Inc., 183 A.3d 1245, 1254–55 (Del. 2018); Islamic Republic of Iran v. Pahlavi, 467 N.E.2d 245, 249 (N.Y. 1984). Some state statutes also may not require an alternative forum as a precondition for dismissal. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 71.051 (2015); OKLA. STAT. tit. 12 § 140.3 (2013).

27. COLO. REV. STAT. ANN. § 13-20-1004 (2004); TEX. CIV. PRAC. & REM. CODE ANN. § 71.051(e) (2015); Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110, 112 (S.C. 1979).

28. ALA. CODE § 6-5-430 (1987); ALA. CODE § 6-5-754 (1987).

29. LA. CODE CIV. PROC. ANN. art. 123(B) (2012); VA. CODE ANN. § 8.01-265 (2007).

30. In adopting the phrase "procedural federalism," we build on the work of like-minded scholars who have used the term more narrowly or without formally defining it. *See* Zachary D. Clopton, *Procedural Retrenchment and the States*, 106 CALIF. L. REV. 411, 415 (2018) (referring to procedural federalism while discussing procedural divergence between states and the federal courts); Diego A. Zambrano, *The States' Interest in Federal Procedure*, 70 STAN. L. REV. 1805, 1810–13 (2018) (exploring "federalism in civil procedure," meaning "the multifaceted ways in which federal procedure affects the states" and the various ways in which states in turn are interested in influencing federal procedural developments); Adam N. Steinman, *What Is the* Erie *Doctrine (and What Does It Mean for the Contemporary Politics of Judicial Federalism)*, 84 NOTRE DAME L. REV. 245, 308–09 (2008) (defining "procedural federalism" as "when a federal court is bound by a state procedural rule the same way it is bound" by state substantive law).

The phrase "procedural federalism" has also been used in conjunction with "process-based federalism," or the idea that federalism can be protected through state participation in political processes. *See* Anne C. Dailey, *Federalism and Families*, 143 U. PA. L. REV. 1787, 1794–95 (1995); Jamelle C. Sharpe, *Legislating Preemption*, 53 WM. & MARY L. REV. 163, 177 n.43 (2011); Charles R. Rice, *Limiting the* Younger *Doctrine: A Critique and Proposal*, 67 CALIF. L. REV. 1318, 1340 (1979). There is a connection between such process-based federalism and

federal procedure shapes state procedure, either top-down through the assertion of federal supremacy[31] or bottom-up through the appeal of familiar and ready-made rules[32]; others have highlighted how states can resist that pull of federal conformity.[33] Scholars have also documented in the opposite direction how states can influence the development of federal procedure,[34] as well as how states influence each other.[35] A full understanding of procedural federalism encompasses all these vectors of influence (federal to state, state to federal, and state to state). Because each of these vectors shaped the development of forum non conveniens, the doctrine is a helpful vehicle for studying procedural federalism. Using forum non conveniens as a case study, then, we draw on the social science literature regarding diffusion and innovation to identify potential drivers of procedural development.

One significant driver of procedural convergence is competition among courts with concurrent jurisdiction. Changes in one court system can create hydraulic pressures on other court systems to adapt similarly.[36] With forum non conveniens, such hydraulic pressure

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"procedural federalism" as we understand it because process-based federalism both enables and limits states' ability to shape or diverge from federal procedure. *See* Judith Resnik, *Lessons in Federalism from the 1960s Class Action Rule and the 2005 Class Action Fairness Act: "The Political Safeguards" of Aggregate Translocal Actions*, 156 U. PA. L. REV. 1929, 1931 (2008) (describing translocal organizing as a political safeguard of federalism because it empowers states to push back on federal procedural law); Zambrano, *supra*, at 1814–15 (noting that states lack "sufficiently robust input channels" when it comes to federal procedural reform).

31. *See* Brooke D. Coleman, *Civil-izing Federalism*, 89 TUL. L. REV. 307, 310–11 (2014) (worrying that Supreme Court decisions are unduly restricting state court procedure and urging greater sensitivity to federalism dynamics).

32. *See* Scott Dodson, *The Gravitational Force of Federal Law*, 164 U. PA. L. REV. 703, 736–39 (2016) (gathering examples of states converging around federal procedural and substantive law).

33. *See* Clopton, *supra* note 30, at 425–43 (gathering examples of states rejecting federal procedural retrenchment in pleading, summary judgment, and class action enforcement); *see also* Resnik, *supra* note 30, at 1968–69 (predicting that efforts to control class actions through greater federal procedural control will fail).

34. *See generally* Zambrano, *supra* note 30 (documenting how states attempt to influence federal procedural developments).

35. *See* Clopton, *supra* note 30, at 465 (gathering other examples of state-to-state diffusion of procedural reform); Kellen Funk & Lincoln A. Mullen, *The Spine of American Law: Digital Text Analysis and U.S. Legal Practice*, 123 AM. HIST. REV. 132, 135 (2018) (documenting and theorizing the nineteenth-century spread of procedural reform across U.S. states); Resnik, *supra* note 30 (emphasizing how states coordinate with and influence one another).

36. The Supreme Court has recognized this sort of hydraulic pressure in its *Erie* line of cases. *See, e.g.*, Hanna v. Plumer, 380 U.S. 460, 468 (1965) (describing the "twin aims of the *Erie* rule" as avoiding vertical forum shopping and the inequitable application of the law). As the history of

resulted from the differing ability of defendants to remove cases from state to federal court to take advantage of defendant-friendly procedures.[37] When some defendants' ability to remove to federal court has been limited—for example, in-state defendants in diversity cases[38] or national railroads sued under the Federal Employers' Liability Act ("FELA")[39]—state courts and legislatures have felt pressure to level the playing field for those defendants by matching the federal doctrine of forum non conveniens.[40] That vertical (federal-state) pressure also increased horizontal (state-state) pressure, as holdout states worried that their peers were outcompeting them in avoiding litigation burdens or protecting corporate citizens.[41]

Although the competition driven by such hydraulic pressure is the most significant factor, it does not tell the full story of forum non conveniens. Also pushing toward convergence have been mechanisms of emulation. Resource-constrained courts and legislatures have

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forum non conveniens illustrates, that hydraulic pressure is not limited to diversity cases. *See infra* Part I.B (discussing cases arising under the Federal Employers' Liability Act ("FELA")).

37. The Supreme Court has repeatedly reserved the question of whether federal courts sitting in diversity should apply state doctrines of forum non conveniens. *See* Piper Aircraft Co. v. Reyno, 454 U.S. 235, 248 n.13 (1981) (noting that because "Pennsylvania and California law on *forum non conveniens* dismissals are virtually identical to federal law . . . we need not resolve the *Erie* question); Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 509 (1947) (noting that because New York law was "the same as the federal rule" it was unnecessary to ask "the source from which our rule must flow"); Williams v. Green Bay & W. R.R., 326 U.S. 549, 558–59 (1946) (similarly reserving the *Erie* question). The Court has, however, deemed forum non conveniens to be "procedural" in concluding that the federal doctrine does not control in admiralty cases in state court. Am. Dredging Co. v. Miller, 510 U.S. 443, 453 (1994). The lower federal courts have generally assumed that the federal doctrine controls in diversity cases. *See, e.g.*, Kish v. Wright, 562 P.2d 625, 627 (Utah 1977) ("The doctrine of forum non conveniens . . . has been held applicable in federal courts even where state law has not recognized the doctrine." (citing Giles v. W. Air Lines, Inc., 73 F. Supp. 616, 617–18 (D. Minn. 1947) (applying forum non conveniens shortly after *Gulf Oil* was decided despite acknowledging that Minnesota had rejected the doctrine))); Ibarra v. Orica USA, Inc., No. DR-09-CV-059-AM, 2011 WL 13180231, at *18 n.11 (W.D. Tex. Sept. 21, 2011) (noting that the Texas statute prohibiting dismissal of claims by Texas residents did not apply in federal court); Melaleuca, Inc. v. Kot Nam Shan, No. 4:18-cv-00036-DCN, 2018 WL 1952523, at *3–9 (D. Idaho Apr. 24, 2018) (applying the federal doctrine to dismiss state law claims without considering that Idaho has yet to recognize forum non conveniens). For an argument that *Piper* settled the question indirectly, see Kevin M. Clermont, *The Story of* Piper*: Forum Matters*, *in* CIVIL PROCEDURE STORIES 199, 221 (Kevin M. Clermont ed., 2d ed. 2008).

38. *See* 28 U.S.C. § 1441(b)(2).

39. *See id.* § 1445(a) ("A civil action in any State Court against a railroad or its receivers or trustees, arising under sections 1–4 and 5–10 of the Act of April 22, 1908 (45 U.S.C. 51–54, 55–60), may not be removed to any district court of the United States.").

40. *See infra* Parts I, III.A (documenting these pressures).

41. *See infra* Parts I.E, III.A (documenting responses by state legislatures).

adopted ready-made doctrines used by prestigious leaders with perceived expertise, whether that be the U.S. Supreme Court or dominant states.[42] The momentum created by state adoptions may also have encouraged horizontal emulation, while the construction of social narratives (for instance, the late twentieth-century tort reform movement) swayed some holdout states.[43]

Competition and emulation, however, can also foster divergence: competition for capital can encourage states to develop new defendant-friendly procedures, from New Jersey's expansion of forum non conveniens to protect in-state defendants, to New York's and Delaware's more recent willingness to waive the alternative forum requirement.[44] Other states may then emulate these competition-induced divergences.[45] Divergent innovation may also result from independent judicial reasoning or from the intervention of state legislatures, which may be responsive to broader political constituencies.[46]

This Article's effort to theorize procedural federalism is admittedly preliminary, but it nonetheless offers several contributions to scholarly debates. First, the framework of procedural federalism can help facilitate cross-doctrinal comparisons. Scholars have identified similar patterns with procedural developments as diverse as the enforcement of forum selection clauses,[47] federal class action reform,[48] state skepticism of federal summary judgment and pleading rules,[49] and the spread of the Field Code during the nineteenth century.[50] Second, procedural federalism adds to the *Erie* literature by documenting how the choice of federal doctrine in the context of divergent state doctrines

42. *See infra* Part III.B.1.

43. *See infra* Part III.B.2–3.

44. *See infra* Part III.A.

45. *See infra* Part III.A.

46. *See infra* Part III.C.

47. *See generally* John Coyle & Katherine C. Richardson, *Enforcing Inbound Forum Selection Clauses in State Court*, 53 ARIZ. ST. L.J. 65 (2021) (considering how state law on inbound forum selection clauses reflects but also differs from the U.S. Supreme Court's approach).

48. *See* Resnik, *supra* note 30 (finding that "pressures from local and transnational levels function as 'political safeguards' that limit concentrations of power through countervailing mechanisms that produce policy judgments").

49. *See* Clopton, *supra* note 30, at 425–32.

50. *See* Funk & Mullen, *supra* note 35, at 135 (explaining that "[u]nderstanding the history of the Field Code requires not only attention to its political context but also a detailed examination of the substance of what was borrowed and what was revised in each jurisdiction").

can indeed lead to vertical forum shopping and the inequitable application of law.[51] The story of forum non conveniens demonstrates just how powerful these hydraulic pressures can be.

Third, and perhaps most importantly, procedural federalism recommends a different approach to history than the one currently ascendant in federal courts and commentary. Procedural federalism underscores the dynamic and iterative evolution of common law development, a process in which the "best" reforms do not necessarily win out. It reminds us, in other words, that our current procedural settlements are not perfect. But it also disabuses us of the myth that they ever were. It is often not possible to look back at history to find the "pure" version of a procedural rule as those rules were constantly changing. The better use of history is to understand how and why procedure evolved as it did in order to correct course today—not to reset it entirely.

In summary, the doctrine of forum non conveniens is neither ancient nor fixed. Mechanisms of competition and emulation have led states to converge on a federal doctrine that has serious shortcomings, although independent judicial reasoning and legislative innovations have resulted in divergent doctrines in a number of states. Acknowledging the forces at work behind the doctrine's spread and evolution should free courts and legislatures to focus on improving the doctrine, unencumbered by a mythological past.

This Article proceeds as follows. Part I provides a historical account of the diffusion of forum non conveniens, a story that reflects both gradual convergence on the federal model and striking instances of state initiative and resistance. Part II looks at state laws on forum non conveniens today based on a survey of all fifty states and the District of Columbia, highlighting continuing differences between those doctrines and the federal model. Part III turns from description to theory. Drawing on theories of diffusion and innovation, it considers the processes that have driven both convergence with and divergence from the federal model. Part IV concludes by considering the broader lessons of procedural federalism.

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51. *Cf.* Steinman, *supra* note 30, at 297 (arguing that a full appreciation of these federalism effects should lead federal courts to consider applying state rules regarding pleading, summary judgment, and class actions).

I. THE EVOLUTION OF STATE FORUM NON CONVENIENS

In a 1941 dissent, Justice Felix Frankfurter alluded to "the familiar doctrine of *forum non conveniens*" as among the "manifestations of a civilized judicial system [that] are firmly imbedded in our law."[52] The artistic license of a dissenter notwithstanding, Justice Frankfurter was ahead of his time. By the 1940s, only ten states and the District of Columbia had embraced such discretion to decline jurisdiction, while six had expressly rejected it.[53] More than half of the states had not even considered the issue, and the Supreme Court had only applied such discretion in admiralty cases.[54] The very term "forum non conveniens" was popularized only after New York attorney Paxton Blair's 1929 *Columbia Law Review* article attached it to New York's existing practice.[55]

This Part traces the gradual spread of forum non conveniens across the states. The result of this evolution has been (sometimes begrudging) convergence on the federal doctrine, but with some important differences remaining. Part II explores those points of divergence, while Part III evaluates the mechanisms of the doctrine's diffusion.

A note first, however, on how we identified each state's adoption of forum non conveniens. Because common law development is by definition gradual, and because the concept did not have a clear label until Blair's 1929 article, the date of adoption was not always clear cut. We ruled out cases cited by Blair that turned not on discretion but on jurisdictional and choice-of-law doctrines that *required* dismissal.[56] But

52. Balt. & Ohio R.R. v. Kepner, 314 U.S. 44, 55–56 (1941) (Frankfurter, J., dissenting).

53. *See supra* notes 12–13 and accompanying text.

54. *See* Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 513–14 (1947) (Black, J., dissenting).

55. *See generally* Paxton Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 COLUM. L. REV. 1, 2 (1929) ("[T]he doctrine has but rarely been referred to by name in American cases, yet decisions showing applications of it are numerous . . . ."). As Blair noted, there were isolated references to forum non conveniens in U.S. judicial opinions before 1929, but the discretion to dismiss cases was typically discussed without any doctrinal label. *Id.* at 2. Nonetheless, for ease of reference, this Article at times uses the label of "forum non conveniens" anachronistically as a shorthand for the discretionary power to dismiss cases prior to 1929.

56. This overinclusion of nondiscretionary dismissals has long been a source of criticism of Blair's article, even among scholars who nonetheless encouraged the broader adoption of forum non conveniens. *See, e.g.*, Barrett, *supra* note 8, at 403; Braucher, *supra* note 8. While it is possible that nineteenth-century judges were phrasing as mandatory what were really prudential constraints on excessive jurisdiction, the very fact that they felt the need to use such mandatory phrasing underscores the significance of the switch to explicit discretion in the twentieth century.

should dicta or lower court decisions that did invoke discretion count? Further complicating matters, not all decisions are written down,[57] and not all written decisions are available in the commercial databases—a problem that grows more significant the further back in time one goes.[58]

We thus developed a rule of relying on how each state's own courts describe the state's acceptance of the doctrine. State high courts, after all, are the final authorities on state common law. With the help of research assistants, we searched Westlaw for "forum non conveniens," checked cases retroactively categorized by Westlaw as "forum non conveniens" decisions, and—to capture discussions of discretion that predate Blair's article—reviewed all earlier cases cited by such decisions or by secondary sources. Although this leaves the possibility that some early decisions were overlooked,[59] our "rule" reassures us that we did not miss any early cases that the state's own courts view as relevant to the development of forum non conveniens.[60] We also set aside all cases discussing intra-state venue transfers, as well as venue-related provisions of the Uniform Child Custody Jurisdiction Act and Indian Child Welfare Act.

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57. For example, a federal district court in Oregon noted that an Oregon state court judge had dismissed a similar suit for forum non conveniens, but that state court decision is not available. *See* Heine v. N.Y. Life Ins., 45 F.2d 426, 427 (D. Or. 1930).

58. There is also variation across states in how many state court decisions are available, particularly from lower courts, likely reflecting not just differing workloads but also differing levels of resources.

59. We conducted our searches in 2020. We recognize the limits of text-based searches within a single database. *See* Maggie Gardner, *Dangerous Citations*, 95 N.Y.U. L. REV. 1619, 1675–76 (2020) (suggesting that some cases might not appear in searches because "different databases . . . employ different algorithms"). For our purposes, this limitation is acceptable: an inaccessible opinion, or an opinion not cited by later courts, is an unlikely source of a state's common law doctrine. *See generally* Samuel P. Baumgartner & Christopher A. Whytock, *Enforcement of Foreign Judgments, Systemic Calibration, and the Global Law Market*, 23 THEORETICAL INQUIRIES L. 119, 132–34 (2022) (explaining both the limits of relying on court opinions that can be readily obtained in electronic databases like Westlaw, as well as the theoretical reasons for focusing on such opinions).

60. For example, an early Kentucky case did not use the label "forum non conveniens" but did seem to recognize that jurisdiction over domestic foreign-cubed cases was discretionary. Kirkland v. Greer, 174 S.W.2d 745, 746 (Ky. 1943). It has not been cited, however, by any later available Kentucky decision as a forum non conveniens case; Kentucky courts instead consistently cite to *Carter v. Netherton*, 302 S.W.2d 382 (Ky. 1957), as establishing the doctrine. *See, e.g.*, Beaven v. McAnulty, 980 S.W.2d 284, 286 (Ky. 1998) (noting in an intra-state transfer case that forum non conveniens was "approved" in *Carter*, "which apparently is the earliest Kentucky case in which the doctrine is expressly mentioned or discussed").

For many states, the date of adoption is straightforward: for example, the state high court explicitly stated that it was adopting forum non conveniens as a matter of "first impression,"[61] or the state court initially rejected the doctrine and then later reversed course.[62] Sometimes the earliest available opinion that arguably discusses a discretionary doctrine is a high court decision that affirmatively applies it.[63] For a few states, we measure from the adoption of a forum non conveniens statute if prior precedent had rejected the doctrine or if there was simply no prior judicial discussion of discretion.[64]

Harder are those states in which the earliest decisions discussed discretion only in dicta or were from lower courts. For these states, we count the earliest high court dicta that later decisions cited as addressing forum non conveniens[65]; similarly, we count lower court

61. *E.g.*, St. Louis-S.F. Ry. Co. v. Superior Ct., Creek Cnty., 276 P.2d 773, 775 (Okla. 1954) ("Apparently the question is one of first impression with this court."); Mooney v. Denver & Rio Grande W. R.R., 221 P.2d 628, 646 (Utah 1950). On this basis, we discount earlier dicta suggesting openness to forum non conveniens if a later case explicitly adopts forum non conveniens after characterizing the question as an open one. *See* Cray v. Gen. Motors Corp., 207 N.W.2d 393, 395 (Mich. 1973) (noting that "[t]he questions raised are ones of first impression" that were not resolved by earlier decisions); Zurick v. Inman, 426 S.W.2d 767, 769, 771 (Tenn. 1968) (explicitly recognizing power to dismiss for forum non conveniens despite acknowledging earlier dicta). This decision rule is significant, as the Michigan dicta in particular was highly influential in the early diffusion of forum non conveniens. *See infra* note 75 and accompanying text.

62. *See, e.g.*, Price v. Atchison, Topeka & Santa Fe Ry. Co., 268 P.2d 457, 460 (Cal. 1954) (overruling Leet v. Union Pac. R.R., 155 P.2d 42 (Cal. 1944)).

63. *See, e.g.*, Hagen v. Viney, 169 So. 391, 392–93 (Fla. 1936) (acknowledging discretion to decline jurisdiction in a domestic foreign-cubed case without using the term "forum non conveniens" or citing to prior Florida precedent).

64. We do so even for states in which the statutes appear not to have been used for decades after their adoption. *See, e.g.*, Qualley v. Chrysler Credit Corp., 217 N.W.2d 914, 915 (Neb. 1974) (overruling prior rejection of forum non conveniens in *Herrmann v. Franklin Ice Cream Co.*, 208 N.W. 141, 143 (Neb. 1926), without mentioning the forum non conveniens statute adopted in 1967).

65. When the Massachusetts high court, for example, first exercised discretion to dismiss a case in 1896, it cited to dicta in *Pierce v. Equitable Life Assurance Society of the United States*, 12 N.E. 858, 863 (Mass. 1887), which in turn cited to a suggestion in *Smith v. Mutual Life Insurance Company of New York*, 96 Mass. 336, 343 (1867). Nat'l Tel. Mfg. Co. v. Dubois, 42 N.E. 510, 510 (Mass. 1896). We thus count Massachusetts as recognizing forum non conveniens as of 1867. Likewise, we count New Hampshire from 1902 and Vermont from 1904. *See* Jackson & Sons v. Lumbermen's Mut. Cas. Co., 168 A. 895 (N.H. 1933) (citing Driscoll v. Portsmouth, Kittery & York St. Ry., 51 A. 898, 898 (N.H. 1902)); Burrington v. Ashland Oil Co., 356 A.2d 506, 509 (Vt. 1976) (citing Morisette v. Canadian Pac. Ry. Co., 56 A. 1102 (Vt. 1904)). We also count from the dicta in *First National Bank & Trust Co. v. Pomona Machinery Co.*, 486 P.2d 184, 188 (Ariz. 1971), which is the only Arizona Supreme Court case to discuss forum non conveniens and is cited by the lower courts as establishing the doctrine.

decisions if they are later cited by the state's high court as helping to establish forum non conveniens.[66] In a few states, initial high court decisions explicitly reserved the question of whether to recognize forum non conveniens; we do not count those decisions as adopting forum non conveniens even if later high court decisions suggest otherwise.[67] Finally, we found earlier decisions in a few states that do not use the label "forum non conveniens" but could be characterized as approving discretionary dismissals—but because they have never subsequently been cited as forum non conveniens decisions by courts in their own states, we decline to do so as well.[68]

Although we believe our internal reference rule minimizes the role of our own judgment in dating forum non conveniens adoptions, we have documented our determination for each state in the Appendix to enable replication, comparison, or critique by future scholars.

A. From International Foreign-Cubed to Domestic Foreign-Cubed

From the beginning of the Republic, the presence of foreign ships and crews in U.S. ports generated international foreign-cubed cases in

66. This subrule accounts for three states: Connecticut (1986), Delaware (1958), and New Jersey (1932). *See* Durkin v. Intevac, Inc., 782 A.2d 103, 109 (Conn. 2001) (citing Miller v. United Techs. Corp., 515 A.2d 390, 392 (Conn. Super. Ct. 1986)); Kolber v. Holyoke Shares, Inc., 213 A.2d 444, 445–46 (Del. 1965) (discussing Winsor v. United Air Lines, 154 A.2d 561 (Del. Super. Ct. 1958)); Carnegie v. Laughlin, 28 A.2d 506, 506–07 (N.J. 1942) (adopting lower court opinion citing Sielcken v. Sorenson, 161 A. 47 (N.J. Ch. 1932)). As a counterexample, we did not count a Colorado appellate court decision that predated the Colorado Supreme Court's explicit adoption of forum non conveniens; although the high court acknowledged the prior appellate decision, it nonetheless termed its adoption a matter of first impression, and it recognized a narrower version of the doctrine than the appellate court had. McDonnell-Douglas Corp. v. Lohn, 557 P.2d 373, 374 (Colo. 1976) (noting Allison Drilling Co. v. Kaiser Steel Corp., 502 P.2d 967 (Colo. App. 1972)). In most states, however, high court decisions—dicta or otherwise—predate available lower court decisions discussing forum non conveniens.

67. This subrule led us not to count earlier decisions in Nevada, New Mexico, and Wyoming. *See* State *ex rel.* Swisco, Inc. v. Second Jud. Dist. Ct., 385 P.2d 772, 775 (Nev. 1963) (explaining that "[w]e find it unnecessary to pass on this question" of forum non conveniens); Torres v. Gamble, 410 P.2d 959, 961 (N.M. 1966) (explaining that "[w]e do not consider how we would rule" on the question of forum non conveniens given that the case involved New Mexico residents); Booth v. Magee Carpet Co., 548 P.2d 1252, 1255 n.2 (Wyo. 1976) ("[W]e do not decide whether a trial court in this state can dismiss a suit in reliance upon the doctrine of forum non conveniens.").

68. *See* Kirkland v. Greer, 174 S.W.2d 745, 746 (Ky. 1943) (acknowledging that jurisdiction in foreign-cubed cases is discretionary); Bradbury v. Chi., Rock Island & Pac. Ry. Co., 128 N.W. 1, 4 (Iowa 1910) (discussing, in dicta, jurisdictional discretion in decision interpreting new FELA statute); Baumann v. Hamburg-Am. Packet Co., 51 A. 461, 463 (N.J. 1902) (declining to address whether international foreign-cubed case should be dismissed as a matter of discretion because the defendant had waived the argument).

both state and federal courts.[69] But to avoid having to hear every claim emanating from every foreign ship entering a U.S. harbor, the federal courts quickly developed a discretion to decline admiralty jurisdiction in international foreign-cubed cases.[70] Not surprisingly, the earliest examples of state courts using "forum non conveniens" (though not by that name) similarly involved maritime disputes.[71] In the 1817 case of *Gardner v. Thomas*,[72] New York's high court declined to hear a dispute between a British sailor and the British ship's British master regarding a claim that arose on the high seas.[73] The same court later clarified, however, that New York courts should not *always* decline to hear such international foreign-cubed cases, particularly when "to send the plaintiff to a foreign tribunal, would be a denial of justice."[74] Decades

69. "International foreign-cubed" cases refer to those involving solely non-U.S. plaintiffs, non-U.S. defendants, and non-U.S. causes of action.

70. *See, e.g.*, The Maggie Hammond, 76 U.S. 435, 457 (1869) ("[I]t seems to be settled that our admiralty courts have full jurisdiction over suits between foreigners, if the subject-matter of the controversy is of a maritime nature, but the question is one of discretion in every case . . . ."); Thomson v. The Nanny, 23 F. Cas. 1104, 1107 (D.S.C. 1805) (No. 13,984) ("[A]lthough I do not say that this court has no jurisdiction in matters respecting foreign seamen, yet I think it ought not to exercise any in the case now before it . . . ."); Willendson v. Forsoket, 29 F. Cas. 1283, 1284 (D. Pa. 1801) (No. 17,682) (declining jurisdiction in dispute over seamen's wages on a Danish ship); *see also* Mason v. Blaireau, 6 U.S. (2 Cranch.) 240, 264 (1804) (suggesting there might be discretion to decline jurisdiction in "a case entirely between foreigners").

71. There is an 1806 decision from the Tennessee Supreme Court that identifies the potential need for such discretion in a domestic foreign-cubed case, but that case was nonetheless resolved on the merits. *See* Avery v. Holland, 2 Tenn. 71, 78 (1806) (Overton, J.). As Justice Hugh Lawson White noted,

> I am strongly inclined to think that, if it appears upon the face of the pleadings that both of the litigant parties are foreigners and a foreign contract, we ought not to interpose. By the nature of all governments, courts were constituted to administer justice in relation to their own citizens; and not to do the business of citizens or subjects of other States.

Id. at 79 (White, J.). When Tennessee adopted forum non conveniens in 1968, it quoted this language from *Avery* but suggested the question of forum non conveniens had not yet been directly decided. *See* Zurick v. Inman, 426 S.W.2d 767, 769, 771 (Tenn. 1968).

72. Gardner v. Thomas, 14 Johns. 134 (N.Y. Sup. Ct. 1817).

73. *See id.* at 137–38. As the court noted,

> [O]ur courts may take cognizance of *torts* committed on the high seas, on board of a foreign vessel where both parties are foreigners; but I am inclined to think it must, on principles of policy, often rest in the sound discretion of the court to afford jurisdiction or not, according to the circumstances of the case.

Id.

74. Johnson v. Dalton, 1 Cow. 543, 550 (N.Y. Sup. Ct. 1823) (declining to dismiss an international foreign-cubed case). Massachusetts, in contrast, rejected such discretion to dismiss international foreign-cubed cases, reasoning that the legislature had, since 1650, directed the state courts to hear disputes between foreign parties. *See* Roberts v. Knights, 89 Mass. 449, 451 (1863).

later, the Michigan Supreme Court twice hinted that such discretion to dismiss might be available in international foreign-cubed cases (but only international foreign-cubed cases).[75] The Michigan Supreme Court's dicta and the New York cases proved influential in the early development of forum non conveniens in other states[76] and eventually at the Supreme Court.[77]

It was not until the turn of the twentieth century, however, that any state other than New York began invoking a similar discretionary power.[78] Massachusetts first recognized the possibility of such discretion in foreign-cubed equity cases in 1867 but did not apply that discretion until 1896.[79] Texas recognized a discretion to dismiss domestic foreign-cubed cases in 1890.[80] New York expanded the scope of its doctrine to include domestic foreign-cubed cases around the same

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75. In a case involving Canadian parties regarding a claim that arose in Canada, the Michigan court held the defendant had waived any objection by voluntarily appearing in court. Great W. Ry. Co. of Can. v. Miller, 19 Mich. 305, 315 (1869). "But," it noted, "where the parties are not residents of the United States, and the trespass was committed abroad, the right of action in our courts can only be claimed as a matter of comity, and [the courts] are not compellable to proceed in such cases." *Id.* In a subsequent domestic case involving out-of-state parties, the Michigan Supreme Court held that the judge did *not* have discretion to decline jurisdiction. Cofrode v. Gartner, 44 N.W. 623, 626 (Mich. 1890). Were the question instead "[w]hether courts ought to take jurisdiction in suits between aliens," the court noted it might follow the example of the federal admiralty cases. *Id.* at 625 (discussing Mason v. Blaireau, 6 U.S. (2 Cranch) 240 (1804)). Michigan did not formally adopt forum non conveniens, however, until 1973. *See* Cray v. Gen. Motors Corp., 207 N.W.2d 393, 395 (Mich. 1973) (explaining that *Cofrode* did not settle the question).

76. *See, e.g.*, Morris v. Mo. Pac. Ry. Co., 14 S.W. 228, 230 (Tex. 1890); Mex. Nat'l R.R. v. Jackson, 33 S.W. 857, 860, 862 (Tex. 1896); Morisette v. Canadian Pac. Ry. Co., 56 A. 1102, 1103 (Vt. 1904); *see also* Eingartner v. Ill. Steel Co., 68 N.W. 664, 665–66 (Wis. 1896) (distinguishing these cases in declining to adopt discretion to dismiss domestic foreign-cubed cases).

77. *Gulf Oil* cited New York decisions and the Michigan dicta in *Great Western Railway*; the only other state court decision it cited was a New Hampshire decision that relied on a Massachusetts decision that cited, again, to the Michigan and New York cases. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 505 n.4, 507 n.6 (1947) (citing, inter alia, Jackson & Sons v. Lumbermen's Mut. Cas. Co., 168 A. 895, 896 (N.H. 1933) (citing Universal Adjustment Corp. v. Midland Bank, Ltd., of London, 184 N.E. 152, 158–60 (Mass. 1933) (citing New York decisions and *Great Western Railway*))).

78. Though speculative, two developments might explain the emergence of forum non conveniens in U.S. states at the turn of the twentieth century. First, railroads were transforming the economy into a national one, increasing the number of businesses with presence in multiple states. Second, *Pennoyer v. Neff*, 95 U.S. 714 (1878), had solidified the power of states to assert jurisdiction over foreign-cubed cases based on the temporary presence of the defendant within the state.

79. Nat'l Tel. Mfg. Co. v. Dubois, 42 N.E. 510, 510–11 (Mass. 1896) (invoking Smith v. Mut. Life Ins. of N.Y., 96 Mass. 336 (1867), to dismiss case on discretionary grounds).

80. Morris v. Mo. Pac. Ry. Co., 14 S.W. 228, 230 (Tex. 1890).

time.[81] A handful more came to recognize such discretion in foreign-cubed cases—whether domestic or international—by 1940.[82] But other states were wary of excluding any U.S. citizens from their courts,[83] with six states explicitly rejecting the power to decline jurisdiction by the time the U.S. Supreme Court embraced it in *Gulf Oil*.[84]

To be clear, the state courts were only considering declining jurisdiction in cases that had no in-state party and no in-state cause of action.[85] As New York's high court emphasized around the time of *Gulf Oil*, "Our courts are bound to try an action for a foreign tort when either the plaintiff or the defendant is a resident of this State." Thus, the court summarized, "It is only when an action is brought by one nonresident against another for a tort committed outside the State that our courts may refuse to take cognizance of the controversy."[86]

There were a few seeming exceptions, but they tend to prove the rule as courts took pains to explain why the cases should nonetheless

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81. *See* Burdick v. Freeman, 24 N.E. 949, 950 (N.Y. 1890) (suggesting courts have discretion to dismiss claims between non-New York parties); *see also* McIvor v. McCabe, 16 Abb. Pr. 319, 320, 327 (N.Y. Super. Ct. 1863) (lower court decision dismissing suit between non-New York parties).

82. Foss v. Richards, 139 A. 313, 314 (Me. 1927); Sielcken v. Sorenson, 161 A. 47, 49 (N.J. Ch. 1932); *Jackson & Sons*, 168 A. at 896 (citing Driscoll v. Portsmouth, Kittery & York St. Ry., 51 A. 898 (N.H. 1902)); Hagen v. Viney, 169 So. 391, 392 (Fla. 1936); Morisette v. Canadian Pac. Ry. Co., 56 A. 1102, 1103 (Vt. 1904) (dicta); Stewart v. Litchenberg, 86 So. 734, 736 (La. 1920), *overruled by* Fox v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll., 576 So. 2d 978 (La. 1991).

83. The Michigan Supreme Court emphasized the difference between domestic and foreign parties in *Cofrode v. Gartner*, 44 N.W. 623, 625 (Mich. 1890). Wisconsin may have drawn a similar distinction: even though it repeatedly rejected forum non conveniens in cases involving out-of-state parties, it expressed openness to the idea in a case involving foreign parties. *See* Eingartner v. Ill. Steel Co., 68 N.W. 664, 664–65 (Wis. 1896) (acknowledging New York and Michigan recognized discretion to dismiss transitory actions that "arose in a foreign country, or on the high seas, and both parties to the action were aliens" but refusing its application to a domestic case involving out-of-state parties); Disconto Gesellschaft v. Terlinden, 106 N.W. 821, 822 (Wis. 1906), *aff'd sub nom.* Disconto Gesellschaft v. Umbreit, 208 U.S. 570 (1908) (suggesting there might be discretion to dismiss disputes between foreign parties).

84. *See supra* note 13 and accompanying text.

85. *See, e.g.*, *Morris*, 14 S.W. at 230 ("[I]t has been held in such [transitory] actions, where the parties were non-residents and the cause of action originated beyond the limits of the state, these facts would justify the court in refusing to entertain jurisdiction."); *Foss*, 139 A. at 314 ("[I]n actions between nonresidents based on a cause of action arising outside the state, . . . the courts are not obliged to entertain jurisdiction."); Wertheim v. Clergue, 65 N.Y.S. 750, 751–52 (N.Y. App. Div. 1900) ("It has become the settled law of this state that its courts will not entertain certain actions of tort between nonresidents where the cause of action arose outside of the territorial jurisdiction of the state, unless special reasons are shown why it should do so . . . .").

86. De la Bouillerie v. De Vienne, 89 N.E.2d 15, 15–16 (N.Y. 1949).

be treated as foreign-cubed: New York and Massachusetts, for example, each treated cases with merely nominal local plaintiffs as foreign-cubed cases.[87] New Jersey discounted as an unnecessary party a New Jersey bank whose sole relation to a dispute was that it held the subject corporation's physical shares.[88] And the earliest New Jersey court to apply forum non conveniens did so in a case that involved a New Jersey defendant, but its reasoning reflected more a problem of necessary joinder.[89] Likewise, the U.S. Supreme Court went to lengths in *Koster v. American Lumbermens Mutual Casualty Co.*,[90] the companion case to *Gulf Oil*, to explain why the in-state plaintiff in that shareholder derivative lawsuit was merely a representative of the out-of-state corporation and its primarily out-of-state shareholders.[91] Through the time of *Gulf Oil*, forum non conveniens was a doctrine intended for foreign-cubed cases.

B. Domestic Foreign-Cubed FELA Cases

One particular type of domestic foreign-cubed case[92] preoccupied state courts in the mid-twentieth century: FELA claims. The 1908 FELA statute empowered railroad workers to sue their employers for workplace injuries without running afoul of state-law hurdles to recovery, such as contributory negligence and fellow-servant rules.[93] In addition, a 1910 amendment protected workers' choice to file in state court by prohibiting removal of FELA actions to federal court.[94]

87. In *Pietraroia v. New Jersey & Hudson River Railway & Ferry Co.*, 91 N.E. 120, 121 (N.Y. 1910), the New York court treated the New York plaintiff as fraudulently joined and dismissed the case as effectively involving no New York parties or claims. In *Universal Adjustment Corp. v. Midland Bank, Ltd., of London*, 184 N.E. 152 (Mass. 1933), the Supreme Judicial Court explained that a state statute *required* treating the Massachusetts plaintiff—a corporation created solely for assignment of a foreign bank's claim—as a non-Massachusetts party, rendering the case effectively international foreign-cubed.

88. *See* Carnegie v. Laughlin, 28 A.2d 506, 506–07 (N.J. 1942).

89. *See* Sielcken v. Sorenson, 161 A. 47, 48 (N.J. Ch. 1932) (dismissing case with a minor New Jersey defendant primarily because an indispensable New York defendant could not be joined in a dispute that otherwise involved solely New York parties and New York interests).

90. Koster v. Am. Lumbermens Mut. Cas. Co., 330 U.S. 518 (1947).

91. *Id.* at 519–21; *see also id.* at 522 ("The cause of action which such a plaintiff brings before the court is not his own but the corporation's.").

92. "Domestic foreign-cubed" cases are those involving out-of-state (but not necessarily non-U.S.) plaintiffs, defendants, and causes of action.

93. *See* 45 U.S.C. §§ 51–60.

94. *See* 28 U.S.C. § 1445(a). For more information on the 1910 amendment, see J.C. Gibson, *The Venue Clause and Transportation of Lawsuits*, 18 LAW & CONTEMP. PROBS. 367, 379 (1953).

Injured railroad workers or their next of kin could thus choose to sue railroads in the court of any state where the railroad was operating, even if none of the parties resided in the state and the injury occurred elsewhere.

FELA actions became the crucible through which many state courts considered whether they had discretion to decline jurisdiction over cases involving no state residents and no in-state claims. Five states—Missouri, Minnesota, California, Georgia, and Alabama—initially refused to permit forum non conveniens dismissals of such FELA cases.[95]

New York courts, in contrast, were broadly willing to decline jurisdiction in domestic foreign-cubed actions, at least for tort claims.[96] In 1929, the U.S. Supreme Court in *Douglas v. New York, New Haven & Hartford Railroad Co.*[97] approved New York's refusal to hear FELA actions with no New York connection: such refusal did not offend the Privileges and Immunities Clause as long as the distinction between residents and nonresidents served a legitimate state interest, such as conserving finite judicial resources.[98] The Supreme Court reaffirmed that permission in 1950 in *Missouri ex rel. Southern Railway Co. v. Mayfield*,[99] holding explicitly that states can dismiss FELA cases for forum non conveniens as long as they treated non-FELA cases similarly.[100]

Following *Mayfield*, California, Minnesota, and Missouri reversed their prior decisions and adopted forum non conveniens for all foreign-cubed actions.[101] In contrast, Alabama and Georgia—and later

95. *Ex parte* State *ex rel.* S. Ry. Co., 47 So. 2d 249, 251 (Ala. 1950); Atl. Coast Line R.R. v. Wiggins, 49 S.E.2d 909, 911–12 (Ga. Ct. App. 1948); Leet v. Union Pac. R.R., 155 P.2d 42, 46 (Cal. 1944); Boright v. Chi., Rock Island & Pac. R.R., 230 N.W. 457, 461 (Minn. 1930); Bright v. Wheelock, 20 S.W.2d 684, 700 (Mo. 1929).

96. New York did not apply forum non conveniens to nontort cases until 1952. *See* Bata v. Bata, 105 N.E.2d 623, 626 (N.Y. 1952).

97. Douglas v. N.Y., New Haven & Hartford R.R., 279 U.S. 377 (1929).

98. *Id.* at 387.

99. Mo. *ex rel.* S. R.R. v. Mayfield, 340 U.S. 1 (1950).

100. *Id.* at 3–4.

101. *See* Price v. Atchison, Topeka & Santa Fe Ry. Co., 268 P.2d 457, 460–61 (Cal. 1954); Johnson v. Chi., Burlington & Quincy R.R. Co., 66 N.W.2d 763, 773 (Minn. 1954). Even after *Mayfield*, Missouri declined to adopt forum non conveniens in FELA cases. *See* State *ex rel.* S. Ry. Co. v. Mayfield, 240 S.W.2d 106, 109 (Mo. 1951). But in 1956, Missouri reversed course and adopted forum non conveniens in a non-FELA case, Elliott v. Johnston, 292 S.W.2d 589, 594–95 (Mo. 1956), and explicitly expanded the doctrine to FELA cases in 1970, *see* State *ex rel.* Chi., Rock Island & Pac. R.R. Co. v. Riederer, 454 S.W.2d 36, 39 (Mo. 1970).

Montana, Virginia, and West Virginia—declined to apply forum non conveniens to foreign-cubed FELA actions into the 1980s.[102]

These FELA decisions reveal a raging debate over the appropriate scope of forum shopping. Some judges were sympathetic to the efforts by the plaintiffs' bar to consolidate FELA cases in particular jurisdictions in order to counter the resource advantage held by the railroads. As a Utah judge pointed out, leveling the playing field against the well-represented railroads required enabling plaintiffs' lawyers to concentrate sufficient business in one jurisdiction—and the plaintiffs' bar's need for geographical concentration was precisely why, he speculated, the railroads were urging the adoption of forum non conveniens.[103] Recognizing these dynamics, the Washington Supreme Court flatly refused to recognize forum non conveniens in 1959, casting it as a recent innovation of the corporate defense bar that "create[s] more problems than it solves."[104] Other states that did adopt forum non conveniens also expressed skepticism of the defense bar's complaints about plaintiff-side forum shopping.[105]

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102. *See* Seaboard Coast Line R.R. v. Moore, 479 So. 2d 1131, 1135–36 (Ala. 1985); Brown v. Seaboard Coast Line R.R., 192 S.E.2d 382 (Ga. 1972); State *ex rel.* Burlington N. R.R. v. Eighth Jud. Dist. Ct., 891 P.2d 493, 499 (Mont. 1995); Caldwell v. Seaboard Sys. R.R., 380 S.E.2d 910, 911–12 (Va. 1989); Gardner v. Norfolk & W. Ry. Co., 372 S.E.2d 786 (W.V. 1988).

103. Mooney v. Denver & Rio Grande W. R.R., 221 P.2d 628, 655 (Utah 1950) (Wade, J., concurring in the result).

104. Lansverk v. Studebaker-Packard Corp., 338 P.2d 747, 751 (Wash. 1959). The court added:

> We have not been greatly afflicted with plaintiffs shopping for a forum in which they can vex and harass a defendant and thus force him, or—more usually—it, into an exorbitant settlement because of the cost of presenting a defense. We are unwilling to adopt the very drastic remedy of dismissal for what, in this jurisdiction, is a very rare occurrence.

Id.

When California's high court reversed its prior rejection of forum non conveniens and explicitly adopted the doctrine, the dissent echoed this same critique of the doctrine as a procedural ploy of the corporate defense bar. *See* Price v. Atchison, Topeka & Santa Fe Ry. Co., 268 P.2d 457, 463–64 (Cal. 1954) (Carter, J., dissenting) (accusing the majority of "inject[ing] . . . the most monstrous weapon for obstructing the administration of justice ever conceived by any court or judicial tribunal," allowing "the railroad companies . . . to accomplish through [the courts] what they have been unable to accomplish through the legislative and executive branches of both the state and federal governments"). On the railroads' failed efforts to reform FELA, see Gibson, *supra* note 94, at 384.

105. The Illinois Supreme Court, for example, refused to dismiss for forum non conveniens a case that had already resulted in a jury verdict in favor of a Kentucky plaintiff suing his Kentucky employer for an injury he suffered in Kentucky. Cotton v. Louisville & N. R.R., 152 N.E.2d 385, 385 (Ill. 1958). "Let us examine defendant's solicitude for the taxpayers of St. Clair County," the court wrote:

But some state courts were concerned that the railroad unions and their associated lawyers had gone too far in funneling FELA plaintiffs to particular law firms.[106] According to a Montana judge in 1961, "It can be safely assumed that the proximate cause of the twelve [midwestern] states adopting the legal principle of '*forum non conveniens*' comes as the end result of [a particular] firm's [unethical] activities, or other law firms using the same general unethical tactics."[107] More generally, judges worried that plaintiff-side forum shopping was expanding in light of "[m]odern times, with rapid communications [and] speedy travel."[108] As the Utah Supreme Court explained when adopting forum non conveniens in 1950, FELA "encourages shopping for the most generous jurisdiction, and while we believe injured employees should be afforded reasonable opportunity to present their causes to their best advantage, we do not believe the courts of this state are powerless to slow up a bargain day rush."[109]

Significantly, when FELA plaintiffs wanted to sue in a particular location, they would necessarily sue in state courts—not federal courts. After Congress adopted 28 U.S.C. § 1404 in 1948, federal courts could simply transfer domestic foreign-cubed FELA cases to states with a greater connection to the dispute. State courts did not have that option. Because FELA prevented removal from state to federal courts, FELA

> A reasonable estimate would suggest that it cost $250 in jury fees to try the case at bar. A fair calculation would indicate that at least $20,000 in fees were paid or will be paid counsel for plaintiff, lawyers for the defendant, and the expert medical witnesses, from the $75,000 judgment entered in this case. So while the public is paying $250, there are taxpaying professional members of that same public who are receiving $20,000. It has been estimated in Cook County that filing fees paid by nonresident litigants in F.E.L.A. cases more than offset the cost of jurors for the trial of those cases. It would appear that the economy of St. Clair County is not impaired . . . .

Id. at 397–98.

106. *See, e.g.*, *In re* Bhd. of R.R. Trainmen, 150 N.E.2d 163, 165 (Ill. 1958) (disciplining union and lawyers for an unethical referral scheme for FELA cases beginning in 1930).

107. State *ex rel.* Great N. Ry. v. Dist. Ct. of Second Jud. Dist., 365 P.2d 512, 524 (Mont. 1961) (Doyle, J., concurring). Nonetheless, the Montana court did not see the FELA cases as so numerous as to warrant the adoption of the doctrine. *Id.* at 514 (majority opinion). Montana never did recognize forum non conveniens dismissals in foreign-cubed FELA cases. *See* State *ex rel.* Burlington N. R.R. v. Eighth Jud. Dist. Ct., 891 P.2d 493, 498–99 (Mont. 1995). Ultimately, the U.S. Supreme Court mooted the issue by holding that Montana does not have personal jurisdiction over railroad defendants in foreign-cubed FELA actions. *See* BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549, 1550 (2017). It is worth emphasizing that *Tyrrell*'s holding would have rendered unnecessary many of the state court decisions adopting forum non conveniens in the mid-twentieth century.

108. Mooney v. Denver & Rio Grande W. R.R. Co., 221 P.2d 628, 646 (Utah 1950).

109. *Id.*

plaintiffs wishing to litigate in a particular state were thus incentivized to file in state court. The Minnesota Supreme Court pointed explicitly to the forum-shopping dynamic created by FELA and § 1404 when it overturned its prior precedent in 1954 and embraced forum non conveniens: "The result has been that, instead of sharing the burden . . . with the federal courts, we virtually have become the sole repository for such causes of action and must now carry the whole burden where a resident of a foreign state . . . bring[s] his action in the state of Minnesota."[110] Further, the court continued, "[E]ach time another state adopts the rule [of forum non conveniens,] the inevitable result is that those states remaining in the group not adopting it must of necessity receive and try that many more cases."[111] Minnesota was particularly concerned about California's recent about-face and embrace of forum non conveniens in FELA cases.[112] Oklahoma's Supreme Court similarly linked its embrace of forum non conveniens in 1954 to Congress's adoption of § 1404: if out-of-state plaintiffs were going to sue in Oklahoma state courts to avoid § 1404 transfers, then Oklahoma state courts must have an analogous power to dismiss such out-of-state cases.[113]

C. Expansion to In-State Defendants

The year 1954 proved a turning point for forum non conveniens: the same year that California and Minnesota reversed their precedents to embrace forum non conveniens in foreign-cubed FELA cases, New Jersey quietly revolutionized the doctrine's scope by explicitly permitting forum non conveniens dismissals of cases involving in-state defendants.[114] In *Gore v. U.S. Steel Corp.*, the Alabama widow and children of an Alabaman man who had died while working at an Alabama mill owned by U.S. Steel sued U.S. Steel in New Jersey,

110. Johnson v. Chi., Burlington & Quincy R.R. Co., 66 N.W.2d 763, 772–73 (Minn. 1954).

111. *Id.* at 773.

112. *Id.*

113. St. Louis-S.F. Ry. Co. v. Superior Ct., Creek Cnty., 276 P.2d 773, 777–78 (Okla. 1954).

114. Gore v. U.S. Steel Corp., 104 A.2d 670, 675–77 (N.J. 1954). *Gore* appears to be the first state high court decision to purposefully dismiss a complaint brought against an in-state defendant. Although a prior New Jersey high court decision had dismissed a complaint involving a nominal New Jersey defendant, *see* Carnegie v. Laughlin, 28 A.2d 506, 506–07 (N.J. 1942), *Gore* was different because the defendant's centrality to the dispute was indisputable. In 1950, when Utah adopted forum non conveniens in dismissing a case brought against a Delaware railroad, it noted in passing that the railroad's principal place of business was in Salt Lake City. *Mooney*, 221 P.2d at 631. It is not clear, however, that the court considered the defendant to be a Utah resident.

where the company was incorporated.[115] The plaintiffs' Alabama attorney explained in an affidavit why the plaintiffs had chosen to sue in U.S. Steel's home state: the decedent was Black, and "it [was] recognized generally among attorneys at the Bar in Alabama that juries generally [were] much more conservative in awards for colored claimants than white claimants, and this prevail[ed] particularly in death actions."[116] The New Jersey Supreme Court was unmoved. "Notwithstanding the intimations by the plaintiffs to the contrary," the court remarked, "we assume that the Alabama judicial system is fully equipped to insure their fair and equal treatment at the hands of a local judge and jury."[117] Having recast the plaintiffs' motives from avoiding racially discriminatory juries to seeking simply "a substantially higher verdict," the court found "no proper reason for their having chosen or being permitted to remain in this forum."[118] Reasoning that "New Jersey ha[d] no real connection with the controversy although the defendant [was] a New Jersey corporation," the court dismissed the case.[119]

In defending this expansive application of forum non conveniens, the New Jersey court pointed to the recently adopted 28 U.S.C. § 1404, which empowered federal courts to transfer cases to other federal districts on essentially forum non conveniens grounds. Section 1404, the court emphasized, was being "freely applied [by the federal courts] though a resident plaintiff or a resident defendant was a party to the litigation."[120] The U.S. Supreme Court would clarify the following year, however, that § 1404 is an *easier* standard to meet than forum non conveniens precisely because transfer is a much less extreme remedy than dismissals or even stays.[121] But the distinction between the doctrines is perhaps beside the point: After the adoption of § 1404 in 1948, a New Jersey defendant sued in a New Jersey *federal* court could move to transfer the case to another federal district. But a New Jersey defendant sued in New Jersey *state* court did not have the option of

115. *Gore*, 104 A.2d at 671.

116. *Id.* at 672.

117. *Id.* at 676.

118. *Id.* at 676–77.

119. *Id.* at 676.

120. *Id.* at 675 (gathering federal cases).

121. Norwood v. Kirkpatrick, 349 U.S. 29, 32 (1955) (noting that "[t]he harshest result of the application of the old doctrine of forum non conveniens, dismissal of the action, was eliminated by the provision in § 1404(a) for transfer").

removing to federal court to take advantage of such forum-shopping opportunities (at least as long as no federal question was involved).[122] It was up to states to bring those forum-shopping opportunities to in-state defendants sued in state courts.

Other states' courts invoked *Gore* when expanding forum non conveniens to permit dismissals of cases brought against in-state defendants. A Delaware trial court cited *Gore* in 1958 when dismissing a case brought against a Delaware corporation.[123] The Kansas Supreme Court in 1962 cited *Gore* when it adopted forum non conveniens to dismiss a FELA case brought against a Kansas railroad.[124] In 1973, Michigan cited *Gore* when formally adopting forum non conveniens to dismiss a case brought against General Motors.[125]

But most significantly, in the 1972 case *Silver v. Great American Insurance Co.*, the New York Court of Appeals cited both *Gore* and the Delaware trial court case when overturning its many prior precedents that had explicitly limited forum non conveniens to cases involving no New York parties.[126] Shortly after the decision in *Silver*, the New York legislature added to the state's forum non conveniens statute that "the domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the

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122. *See* 28 U.S.C. § 1441(b)(2).

123. Winsor v. United Air Lines, 154 A.2d 561, 564 (Del. Super. Ct. 1958) (noting that "[p]laintiff cites a great deal of authority" for the proposition that cases involving in-state defendants cannot be dismissed "and it is apparent that many jurisdictions, including New York State, adhere to such [a] rule. . . . Defendant, on the other hand, cites the recent case of [*Gore*]"). *Winsor* is the earliest forum non conveniens decision from a Delaware court, but other early Delaware decisions were careful to distinguish its broad scope. For example, in *Dietrich v. Texas Natural Petroleum Co.*, the court explained:

> If the Courts of this State deny access to litigants having claims against Delaware Corporations, it can well be that we will be the target for further criticism and abuse . . . I think it would be unfortunate if our Courts evinced a disposition to now favor the [Delaware] corporate defendant [through application of forum non conveniens].

Dietrich v. Tex. Nat. Petroleum Co., 193 A.2d 579, 590 (Del. Super. Ct. 1963). Shortly after the Delaware Supreme Court formally adopted forum non conveniens, however, it acknowledged that the doctrine could be used to dismiss cases involving Delaware corporations. *See* Parvin v. Kaufmann, 236 A.2d 425, 427 (Del. 1967).

124. Gonzales v. Atchison Topeka & Santa Fe Ry. Co., 371 P.2d 193, 199 (Kan. 1962).

125. Cray v. Gen. Motors Corp., 207 N.W.2d 393, 397 (Mich. 1973).

126. Silver v. Great Am. Ins., 278 N.E.2d 619, 622–23 (N.Y. 1972) ("Further thought persuades us that our current rule—which prohibits the doctrine of *forum non conveniens* from being invoked if one of the parties is a New York resident—should be relaxed."). The court had previously urged a legislative fix but had grown impatient with the state assembly's inaction. *Id.* at 622 n.6, 623.

action."[127] New York's shift mattered both because the state is an economic powerhouse, home to many U.S. businesses, and because it had long been a leader in the doctrine's development. Notably, California amended its forum non conveniens statute in 1986 to mirror the New York statute, explicitly expanding forum non conveniens to cases involving California plaintiffs or defendants[128]; that language expired in 1992 due to a sunset provision, but by then it had been incorporated into California's common law.[129]

Gore also influenced Wisconsin's codification of forum non conveniens in 1960, the first statute of its kind. The Wisconsin Supreme Court had repeatedly rejected forum non conveniens, at least when cases involved U.S. parties.[130] As part of a larger revision of Wisconsin's procedural laws, however, the Wisconsin legislature adopted a forum non conveniens provision that allowed cases to be stayed (not dismissed) and listed factors to be considered.[131] As made clear by the revision notes, Wisconsin's statute did not simply mimic federal doctrine; rather, it drew heavily from the work of other state courts while also acknowledging that the doctrine was still "not accepted in a numerical majority of the states."[132] In particular, the revision notes cited *Gore* for the proposition that the parties' in-state residency is not determinative.[133]

The Wisconsin statute in turn served as the inspiration for a forum non conveniens provision in the Uniform Interstate and International Procedure Act of 1962 ("UIIPA"), the primary focus of which was a model long-arm statute.[134] Although the UIIPA was withdrawn in 1977, many states either directly adopted the UIIPA provision on forum non conveniens or used it or the Wisconsin statute as a model for their own codifications.[135]

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127. N.Y. C.P.L.R. 327 (1984).

128. Credit Lyonnais Bank Nederland, N.V. v. Manatt, Phelps, Rothenberg & Tunney, 249 Cal. Rptr. 559, 563 (Cal. Ct. App. 1988) (discussing amendment).

129. Stangvik v. Shiley Inc., 819 P.2d 14, 21 (Cal. 1991).

130. *See, e.g.*, Bourestom v. Bourestom, 285 N.W. 426, 429–30 (Wis. 1939) (reiterating that under Wisconsin precedent, the court could not refuse jurisdiction even though the case involved no Wisconsin residents).

131. WIS. STAT. § 801.63 (1960).

132. G.W. Foster, Jr., Revision Notes, WIS. STAT. ANN. § 801.63, at 71 (1960).

133. *Id.* at 72.

134. Hans Smit, *Documents*, 11 AM. J. COMP. L. 412, 422 (1962).

135. *See* ARK. CODE ANN. § 16-4-101(D) (1993); CAL. CIV. PROC. CODE ANN. § 410.30(a) (1992); D.C. CODE ANN. § 13-425 (1970); MD. CTS. & JUD. PROC. CODE ANN. § 6-104(a) (1990);

By the 1970s, a majority of states had embraced forum non conveniens—and that numerical balance itself increasingly mattered to the remaining states.[136] Just fifteen years after its scathing rejection of forum non conveniens, for example, the Washington Supreme Court changed its mind, noting that "[m]ost of the states [cited by the prior decision] have since reversed their position and embraced the forum non conveniens doctrine in some form."[137] Some states nonetheless tried to hold out against the growing tide. Nevada refused to apply forum non conveniens in a case involving Jeep, a Nevada corporation,[138] only to reverse course two years later.[139] In 1978, Florida firmly rejected a lower court's reliance on *Silver* and doubled down on its limitation of forum non conveniens to non-Florida causes of action involving no Florida parties[140]—but it would explicitly reverse that decision in 1996, making the defense of forum non conveniens available to Florida defendants. What changed between 1978 and 1996 was *Piper Aircraft Co. v Reyno*.[141]

D. Foreign Plaintiff–Local Defendant Cases

The U.S. Supreme Court's 1981 decision in *Piper* marked a shift in forum non conveniens being primarily a means of avoiding foreign-cubed cases (whether international or domestic) to being primarily a means of avoiding cases brought by non-U.S. plaintiffs against in-state defendants. *Piper* involved Scottish plaintiffs suing a Pennsylvania aircraft manufacturer and an Ohio propeller manufacturer over an

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MASS. GEN. LAWS ANN. ch. 223A, § 5 (1968); NEB. REV. STAT. ANN. 25-538 (1967); N.C. GEN. STAT. ANN. § 1-75.12 (1967); N.D. R. CIV. P. 4(b)(5) (1971); 42 PA. CONSOL. STAT. ANN. § 5322(e) (1978).

136. Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110, 113 (S.C. 1979) (noting that the doctrine is "applied by the federal courts and a clear majority of our sister states," though suggesting it would not be appropriate to dismiss a claim brought by a South Carolina plaintiff).

137. Werner v. Werner, 526 P.2d 370, 378 (Wash. 1974) (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 84 (Am. L. Inst. 1971)). Two years later, the court explicitly adopted the *Gulf Oil* factors. Johnson v. Spider Staging Corp., 555 P.2d 997, 999–1000 (Wash. 1976).

138. Buckholt v. Second Jud. Dist. Ct., 584 P.2d 672, 673 (Nev. 1978) ("Since Jeep is a resident of this state by virtue of its incorporation, and does business here, we conclude that the district court is obliged to accept jurisdiction. Under these circumstances, the doctrine of Forum non conveniens is inapposite . . . . ").

139. Eaton v. Second Jud. Dist. Ct., 616 P.2d 400, 401 (Nev. 1980) (formally adopting forum non conveniens and rejecting the argument that it is not available for in-state defendants).

140. Houston v. Caldwell, 359 So. 2d 858, 860–61 (Fla. 1978) (rejecting *Silver*).

141. Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981).

airplane crash in Scotland.[142] The plaintiffs originally filed the case in state court in California, but the defendants removed the case to federal court and moved to transfer the case to the Middle District of Pennsylvania, where one of the defendants was based. Once there, they moved to dismiss the case for forum non conveniens, which the district court granted.[143] In approving that dismissal, the Supreme Court did not discuss the propriety of applying forum non conveniens to a suit pending in a defendant's home forum, and after *Piper*, neither did the state courts. Instead, the state courts increasingly echoed *Piper*'s emphasis on the risk of non-U.S. plaintiffs forum shopping into U.S. courts.[144]

Following *Piper*, it became common for state high courts to dismiss tort cases brought by non-U.S. plaintiffs against major local corporations.[145] In 1988, the Supreme Court of Ohio reversed a fifty-seven-year-old precedent rejecting forum non conveniens in order to dismiss a tort suit brought by British plaintiffs against Merrell Dow Pharmaceuticals in the county where Merrell Dow maintained its principal place of business.[146] The Oregon Supreme Court, which adopted forum non conveniens only in 2016, did so to dismiss a tort suit brought by Peruvian plaintiffs against a business incorporated and

142. *Id.* at 238–39.

143. *Id.* at 240–44.

144. *See, e.g.*, *id.* at 252 (worrying that "[t]he American courts, which are already extremely attractive to foreign plaintiffs, would become even more attractive" if forum non conveniens dismissals were harder to obtain, such that "[t]he flow of litigation into the United States would increase and further congest already crowded courts" (footnotes omitted)).

It appears that the first Pennsylvania state court decision applying forum non conveniens in a case with a Pennsylvanian defendant was decided the year after *Piper*. *See* Westerby v. Johns-Manville Corp., 32 Pa. D. & C.3d 163, 178 (Pa. C.P. 1982). As *Westerby* notes, however, the Pennsylvania Supreme Court had previously affirmed dismissal of a FELA claim brought by a Pennsylvanian plaintiff. *See, e.g.*, Rini v. N.Y. Cent. R.R., 240 A.2d 372, 372–74 (Pa. 1968).

145. *See, e.g.*, Jones v. Searle Lab'ys, 444 N.E. 2d 157, 162–63 (Ill. 1982); Bergquist v. Medtronic Inc., 379 N.W.2d 508, 512 (Minn. 1986); Myers v. Boeing, 794 P.2d 1272, 1279–81 (Wash. 1990) (dismissing suit against a Washington corporation but rejecting *Piper*'s reduced deference); Picketts v. Int'l Playtex, Inc., 576 A.2d 518, 524–25 (Conn. 1990) (adopting *Piper*'s reduced deference but declining to dismiss); Stangvik v. Shiley Inc., 819 P.2d 14, 20 (Cal. 1991); Acapolon Corp. v. Ralston Purina Co., 827 S.W.2d 189, 192 (Mo. 1992); Radeljak v. DaimlerChrysler Corp., 719 N.W.2d 40, 48 (Mich. 2006); Anyango v. Rolls-Royce Corp., 971 N.E.2d 654, 660–62 (Ind. 2012); Cardiorentis AG v. IQVIA Ltd., 837 S.E.2d 873, 876 (N.C. 2020).

146. Chambers v. Merrell-Dow Pharm., Inc., 519 N.E.2d 370, 374–75 (Ohio 1988) (noting *Mattone v. Argentina*, 175 N.E. 603 (Ohio 1931), "has failed to weather the legal changes which have occurred in the fifty-seven years since it was handed down, and has lost its effectiveness").

based in Oregon.[147] The Supreme Court of Georgia finally adopted a narrow version of forum non conveniens in 2001, explicitly limited to suits brought by foreign plaintiffs involving foreign causes of action, in order to dismiss a case brought by Venezuelan plaintiffs against a New York corporation and individual Georgia defendants.[148]

The concern in these cases was not one of constitutional unfairness or lack of due process, as corporations are subject to general personal jurisdiction in their home states.[149] Indeed, in civil law countries and the European Union, the defendant's domicile is the *preferred* forum for hearing disputes.[150] Why, then, the move to expand discretionary dismissals to cover in-state corporate defendants? The Florida Supreme Court's 1996 decision in *Kinney System, Inc. v. Continental Insurance Co.* offers some clues.[151] *Kinney* was a domestic foreign-cubed case,[152] though the lower courts had struggled with whether the defendant did sufficient business in the state to count as a Florida "resident" under Florida's precedent.[153] The Florida Supreme Court ignored that question, however, and instead used *Kinney* to overturn its prior precedent and expand forum non conveniens to reach cases involving Florida parties.[154]

In doing so, the Florida Supreme Court invoked "a growing trend in private international law of attempting to file suit in an American state even for injuries or breaches that occurred on foreign soil," warning that "[n]othing in our law establishes a policy that Florida must be a courthouse for the world, nor that the taxpayers of the state must pay to resolve disputes utterly unconnected with this state's

147. Espinoza v. Evergreen Helicopters, 376 P.3d 960, 981 (Or. 2016).

148. AT&T Corp. v. Sigala, 549 S.E.2d 373, 377 (Ga. 2001) (adopting forum non conveniens "for use in lawsuits brought in our state courts by nonresident aliens who suffer injuries outside this country").

149. *See* Daimler AG v. Bauman, 571 U.S. 117, 127 (2014) (holding that corporations are subject to general personal jurisdiction in states where their affiliations are "so 'continuous and systematic' as to render them essentially at home in the forum State").

150. *See* Kevin M. Clermont, *Jurisdictional Salvation and the Hague Treaty*, 85 CORNELL L. REV. 89, 91 (1999) (describing the civil law's jurisdictional system as a "plaintiff follows the defendant's forum"); Council Regulation 1215/2012, art. 4(1), 2012 O.J. (L 351) 1 (EU) ("Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.").

151. Kinney Sys., Inc. v. Cont'l Ins., 674 So. 2d 86 (Fla. 1996).

152. *Id.* at 87.

153. *Id.*

154. *Id.* at 93 n.7.

interests."[155] But *Kinney* was an entirely domestic case; there were no transnational aspects to it. Further, defendants in cases that did lack a nexus to Florida already had access to forum non conveniens, either through Florida's version of the doctrine (if none of the parties were Florida residents, as was arguably the case in *Kinney*), or through removal to federal court (as long as the defendant was not a Florida citizen).[156] Despite the strong language in *Kinney* about the burden of global litigation on Florida courts,[157] *Kinney* was really about Florida corporate defendants. As the *Kinney* court explained, "[w]hen a defendant is a Florida resident, removal may not be permitted. Thus, if Florida applies a less vigorous doctrine of forum non conveniens [than the federal courts], the state actually is disadvantaging some of its own residents."[158]

That disadvantage had both a vertical and a horizontal component. Florida corporate defendants were disadvantaged compared to non-Florida defendants who could remove to federal court and take advantage of the more generous federal doctrine of forum non conveniens. But they were also disadvantaged compared to other U.S. corporations who, when sued in *their* home state courts, could invoke forum non conveniens. That is, U.S. corporations in states that followed *Gore* and *Piper* could avoid defending transnational torts in U.S. courts, while Florida corporations could not.[159] Just as the nonremovability of FELA actions pressured state courts to pursue both vertical and horizontal uniformity in adopting forum non conveniens, so the specter of transnational tort litigation in the late

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155. *Id.* at 87–88 (citing law review articles).

156. Since 1988, Congress has defined corporate citizenship for purposes of diversity jurisdiction as limited to the states in which the corporation is incorporated or has its principal place of business. Pub. L. No. 100-702, § 202, 102 Stat. 4642, 4646 (1988) (codified at 28 U.S.C. § 1332(c)(1)). Removal to federal court in diversity cases would, of course, be limited to disputes that satisfy Congress's amount-in-controversy requirement, but the Florida Supreme Court seemed to have in mind larger claims and more complex cases that would easily surpass that threshold.

157. *See, e.g.*, *Kinney*, 674 So. 2d at 93 ("The use of Florida courts to police activities even in the remotest parts of the globe is not a purpose for which our judiciary was created. . . . Nothing in our Constitution compels the taxpayers to spend their money even for the rankest forum shopping by out-of-state interests.").

158. *Id.* at 88.

159. *Cf.* Stangvik v. Shiley Inc., 819 P.2d 14, 24 (Cal. 1991) (acknowledging as an argument in favor of expanded forum non conveniens "the competitive disadvantage to California business that would result if California manufacturers were called on to defend lawsuits involving extraterritorial injuries").

twentieth century pressured states like Florida to pursue vertical and horizontal uniformity in the breadth of their forum non conveniens doctrines. Where courts did not respond to that hydraulic pressure, state legislatures did.

E. Turning to the Legislatures

Even after *Piper* helped popularize the use of forum non conveniens to avoid transnational tort cases, a handful of state high courts continued to reject the doctrine. Around the late 1980s and early 1990s, legislatures in some of those states took the reins, adopting forum non conveniens by statute—but often in more limited form.

In Texas, for example, Costa Rican farmworkers sued in state court Shell, a Texas-based corporation, and Dole, which operated in Texas the "country's largest chemical manufacturing plant," for the harm caused in Costa Rica by their pesticides, which had been banned in the United States.[160] In a fractured decision in 1990, the Supreme Court of Texas refused to dismiss the suit for forum non conveniens, reasoning that the state's personal injury and wrongful death statute had implicitly prohibited the doctrine's use.[161] The state legislature overturned that decision, adopting in 1993 a forum non conveniens statute specific to personal injury claims.[162] Opponents of the bill argued that it would encourage corporations to move jobs overseas by shielding those corporations from accountability for any wrongdoing, creating "a two-tier justice system that discriminates against poor foreigners injured by Texas companies."[163] The bill's supporters, however, pointed out that California, Florida, and New York—Texas's "major competitors in attracting new investment by international corporations"—all "offer[ed] business protection from foreign lawsuits" via forum non conveniens.[164] Supporters of the bill also expressed concern that the Texas Supreme Court's decision "create[d] an incentive for foreign plaintiffs to sue Texas corporations that might

160. Dow Chem. Co. v. Castro Alfaro, 786 S.W.2d 674, 681 (Tex. 1990).

161. *Id.* at 679.

162. TEX. CIV. PRAC. & REM. § 71.051 (West 1993).

163. TEX. HOUSE RSCH. ORG., BILL ANALYSIS: S.B. 2, at 4 (1993) [hereinafter BILL ANALYSIS].

164. *Id.* Note at this time, Florida's doctrine was still limited to cases without any Florida party. *See supra* notes 151–158 and accompanying text (discussing the subsequent change in Florida's doctrine).

not otherwise be sued because of their limited involvement,"[165] as joinder of Texas defendants would prevent removal to federal court based on diversity jurisdiction. Left uncorrected, then, the Texas Supreme Court decision would turn Texas into "the courthouse for the world."[166] The bill's supporters were ultimately successful in getting the bill adopted. But the new Texas law carved out claims brought by Texas residents, prohibiting dismissal of their personal injury or wrongful death claims for forum non conveniens.[167]

A similar pattern occurred in other states, with state legislatures overriding judicial reticence regarding forum non conveniens but creating exceptions for in-state plaintiffs. After the Supreme Court of Virginia refused to recognize forum non conveniens in a 1989 FELA case,[168] the state legislature adopted a narrow forum non conveniens statute for claims brought by nonresident plaintiffs regarding causes of action that arose outside the commonwealth.[169] In response to a 1986 court of appeals decision rejecting forum non conveniens,[170] the Louisiana legislature adopted a law in 1988 that permitted the doctrine's use, but only for nonmaritime federal claims.[171] After the Louisiana Supreme Court struck down that statute for impermissibly discriminating against federal claims,[172] the Louisiana legislature adopted a broader forum non conveniens statute in 1999 but, like Virginia, limited its use to out-of-state causes of action brought by out-of-state plaintiffs.[173]

Although Colorado courts had recognized forum non conveniens since the 1970s, it was a narrow doctrine that was rarely applied.[174]

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165. BILL ANALYSIS, *supra* note 163, at 3–4.

166. *Id.* at 4.

167. TEX. CIV. PRAC. & REM. § 71.051(e) (West 1993).

168. Caldwell v. Seaboard Sys. R.R., Inc., 380 S.E.2d 910, 912–13 (Va. 1989) (distinguishing between in-state transfers authorized by state statute and dismissal of cases for forum non conveniens, which the court held was not covered by the statute).

169. VA. CODE § 8.91-265 (2022).

170. Kassapas v. Arkon Shipping Agency, Inc., 485 So. 2d 565, 566 (La. Ct. App. 1986).

171. *See* John W. Joyce, Comment, *Forum Non Conveniens in Louisiana*, 60 LA. L. REV. 293, 305–06 (1999). This was the statute at issue in *American Dredging Co. v. Miller*, 510 U.S. 443 (1994).

172. *See* Russell v. CSX Transp., 689 So. 2d 1354, 1355–56 (La. 1997) (finding that article 123 discriminates against claims arising under federal law and affirming the trial court's declaration of its unconstitutionality).

173. LA. CODE CIV. PROC. ANN. art. 123 (1999).

174. *See* McDonnell-Douglas Corp. v. Lohn, 557 P.2d 373, 374 (Colo. 1976) ("[W]e hold that the doctrine of *forum non conveniens* has only the most limited application in Colorado courts,

After a Colorado appellate court refused to dismiss a lawsuit brought by about two thousand Peruvian plaintiffs against a Colorado mining company regarding a mining accident in Peru,[175] the Colorado legislature intervened to liberalize forum non conveniens but only for claims brought by out-of-state plaintiffs.[176] Supporters of the law were concerned about similar cases being filed against other Colorado companies, particularly other mining companies with overseas operations.[177] Given this focus on transnational litigation, it was not an accident that the statute does not require the existence of an adequate alternative forum.[178]

Forum non conveniens had also become an issue within the tort reform movement by the late 1980s. Organizations like the American Tort Reform Association ("ATRA") and the Products Liability Advisory Council, Inc., began filing amicus briefs urging state courts to adopt or expand forum non conveniens.[179] They also turned to state legislatures, urging adoption of tort reform packages that often included forum non conveniens provisions. For example, after the Supreme Court of Alabama rejected forum non conveniens for the third time in a 1985 FELA case,[180] a forum non conveniens provision was included in major tort reform legislation spearheaded by the

and except in most unusual circumstances the choice of a Colorado forum by a resident plaintiff will not be disturbed."); *see also* UIH-SFCC Holdings, L.P. v. Brigato, 51 P.3d 1076, 1079 (Colo. App. 2002) (noting that "no Colorado appellate court has affirmed dismissal for forum non conveniens of a case filed by a resident plaintiff" and adding that "only one reported decision has dismissed a case under this doctrine" since its recognition in 1976).

175. Telephone Interview with Mark Wiegla, Dir., Nomogaia (Oct. 25, 2021). The case was Castillo v. Newmont Mining Corp., No. 02CA1772, 2003 WL 22677806 (Colo. App. Nov. 13, 2003).

176. *See* COLO. REV. STAT. ANN. § 13-20-1001 (2004); *id.* § 13-20-1004.

177. Interview, *supra* note 175.

178. Interview, *supra* note 175. We have not found, however, a Colorado decision dismissing a case for forum non conveniens without the presence of an adequate alternative forum.

179. *See, e.g.*, Kedy v. A.W. Chesterton Co., 946 A.2d 1171, 1179 n.8 (R.I. 2008) (thanking "*amici curiae*, Products Liability Advisory Council, Inc., International Association of Defense Counsel, Chamber of Commerce of the United States of America, American Tort Reform Association, Pharmaceutical Research and Manufacturers of America, Coalition for Litigation Justice, National Association of Manufacturers, and American Insurance Association for their helpful briefs"); Stangvik v. Shiley Inc., 819 P.2d 14, 25 (Cal. 1991) (noting briefs filed by the California Chamber of Commerce and the California Manufacturers Association); Kinney Sys., Inc. v. Cont'l Ins., 674 So. 2d 86, 86–87 (Fla. 1996) (listing counsel for amici interest groups).

180. Seaboard Coast Line R.R. v. Moore, 479 So. 2d 1131, 1135–36 (Ala. 1985).

Alabama Civil Justice Reform Committee and adopted in 1987.[181] The statute does allow dismissal of cases with Alabama plaintiffs or defendants, but it limits forum non conveniens to claims "originating outside [the] state."[182]

Other states that had already recognized forum non conveniens still adopted forum non conveniens provisions as part of broader tort reform packages pushed by the ATRA. To shake the ATRA's "judicial hellhole" label—which the ATRA uses to identify states whose courts it deems particularly unfavorable to defendants—Mississippi in 2004 passed tort reform that included a forum non conveniens provision.[183] Oklahoma adopted a very similar statute as part of its tort reform legislation in 2009,[184] which the ATRA awarded its first annual "Gold Medal for the Best State Civil Justice Legislation."[185] West Virginia also labored to escape the ATRA's "judicial hellhole" label,[186] adopting a forum non conveniens provision as part of a tort reform package in 2003,[187] even though West Virginia's Supreme Court of Appeals had already reversed course to embrace forum non conveniens in 1990[188] and extended its scope to include in-state defendants in 1994.[189] When Georgia adopted its tort reform package

181. *See* Robert D. Hunter, *Alabama's 1987 Tort Reform Legislation*, 18 CUMB. L. REV. 281, 284 (1988). The provision was particularly meant to address foreign-cubed FELA actions. *See id.* at 287 & n.19.

182. ALA. CODE § 6-5-430 (1987).

183. MISS. CODE ANN. § 11-11-3(4) (2004). On the "judicial hellholes" label, see for example David Maron & Walker W. (Bill) Jones, *Taming an Elephant: A Closer Look at Mass Tort Screening and the Impact of Mississippi Tort Reforms*, 26 MISS. COLL. L. REV. 253, 256–57 (2006/2007).

184. OKLA. STAT. tit. 12 § 140.3 (West 2009).

185. AM. TORT REFORM ASS'N, JUDICIAL HELLHOLES REPORT 2009/2010, at 32 (2009), https://www.judicialhellholes.org/wp-content/uploads/2020/09/2010_report.pdf [https://perma.cc/M98U-7A6V].

186. *See* Elizabeth G. Thornburg, *Judicial Hellholes, Lawsuit Climates and Bad Social Science: Lessons from West Virginia*, 110 W. VA. L. REV. 1097, 1098–99 (2008) (noting persistence of label despite pro-defendant reforms in West Virginia's laws); *see also id.* at 1117–18 (noting that the 2002 and 2003 judicial hellhole reports called on states to adopt forum non conveniens).

187. *See* Cary Silverman & Richard R. Heath, Jr., *A Mountain State Transformation: West Virginia's Move into the Mainstream*, 121 W. VA. L. REV. 27, 39–41 (2018) (describing the subsequent development of the law).

188. *Compare* Gardner v. Norfolk & W. Ry. Co., 372 S.E.2d 786, 793 (W. Va. 1988) (rejecting forum non conveniens), *with* Norfolk & W. Ry. Co. v. Tsapis, 400 S.E.2d 239, 244 (W. Va. 1990) (adopting forum non conveniens).

189. Abbott v. Owens-Corning Fiberglass Corp., 444 S.E.2d 285, 289 (W. Va. 1994) (citing California, Delaware, Michigan, and New York state cases to this effect).

in 2005, it included a forum non conveniens provision that appeared to conflict with *another* forum non conveniens statute adopted in 2003: whereas the 2003 statute had been limited to claims brought by non-Georgia residents regarding non-Georgia causes of action,[190] the 2005 statute contained no such limitations.[191]

In short, some state legislatures adopted forum non conveniens provisions as part of larger legislative efforts without much consideration—whether the UIIPA in the 1960s or tort reform in the late twentieth century. But when state legislatures more purposefully intervened to overcome some of the last pockets of judicial resistance to forum non conveniens, they often created exceptions for local plaintiffs or local causes of action, resulting in state doctrines that are narrower than the federal doctrine. We explore these and other points of divergence in the next Part.

II. STATE FORUM NON CONVENIENS TODAY

This Part details the ways in which current state doctrines of forum non conveniens differ from the federal model for forum non conveniens adopted in *Gulf Oil* and elaborated in *Piper*. The federal model has several important characteristics. First, there is a threshold requirement of an available and adequate alternative forum.[192] Second, there is a presumption in favor of the plaintiff's choice of forum,[193] although this presumption is weaker when the plaintiff is foreign.[194] Third, a court must weigh various private and public interest factors to decide if dismissal is warranted.[195] Fourth, the federal doctrine of forum non conveniens is available to defendants across the board, without exclusions for local plaintiffs, local defendants, or local causes of action.[196]

By our count, thirty-one states and the District of Columbia follow the basic federal model for forum non conveniens or a doctrine very

190. GA. CODE ANN. § 50-2-21(b) (2003).

191. *See* GA. CODE ANN. § 9-10-31.1 (2005).

192. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254 n.22 (1981); Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 506–07 (1947).

193. *Piper*, 454 U.S. at 255; *Gulf Oil*, 330 U.S. at 508.

194. *Piper*, 454 U.S. at 256.

195. *Gulf Oil*, 330 U.S. at 508–09; *see also* Atl. Marine Constr. Co. v. U.S. Dist. Ct., 571 U.S. 49, 62 n.6 (2013); Am. Dredging Co. v. Miller, 510 U.S. 443, 448 (1994); *Piper*, 454 U.S. at 241 n.6.

196. Congress has limited the availability of forum non conveniens for suits brought under the Antiterrorism Act. 18 U.S.C. § 2334(d).

close to it. But a full one-third of the states—Alabama, Colorado, Delaware, Idaho, Indiana, Louisiana, Missouri, New York, Oklahoma, Oregon, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin—diverge from the federal model in one or more significant ways.[197] First, five states—Delaware, New York, Colorado, Oklahoma, and Texas—have either definitely or possibly eliminated the threshold requirement of an alternative forum by converting it into a factor to be weighed.[198] Second, a few states differ in the deference accorded to the plaintiff's choice of forum: Oregon and Washington have expressly rejected the federal doctrine's reduced deference to foreign plaintiffs' choice of forum, while Delaware has adopted a unique scheme that gives greater deference to a plaintiff's choice of forum as long as the Delaware action is the first action filed.[199] Third, nine states differ from the federal doctrine in the factors they consider. Delaware and Virginia emphasize private interest factors; Colorado, Missouri, New York, Utah, and West Virginia have added factors that more closely scrutinize a case's connection to the forum; and Indiana and Wisconsin have done both.[200] Fourth, six states—Alabama, Colorado, Louisiana, South Carolina, Texas, and Virginia—have limited the application of the doctrine by excluding its application to local plaintiffs, local causes of action, or both.[201] Finally, Idaho has yet to adopt any version of forum non conveniens.[202]

This Part begins by examining the various ways that state law follows or departs from the federal model in each of these four areas: alternative forum, deference to the plaintiff's choice of forum, factors, and exclusions. The final section of this Part ties these pieces together, briefly describing the most important states that have charted their own courses on forum non conveniens.

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197. In Montana and Vermont, the case law is too sparse to categorize. *See* Harrington v. Energy W., Inc., 356 P.3d 441 (Mont. 2015); Burrington v. Ashland Oil Co., 356 A.2d 506 (Vt. 1976).

198. *See infra* Part II.A.

199. *See infra* Part II.B.

200. *See infra* Part II.C.

201. *See infra* Part II.D.

202. The closest Idaho's high court has come to considering forum non conveniens is a decision that reversed a dismissal for forum non conveniens because the trial court had not first resolved a challenge to personal jurisdiction. *See* Marco Distrib., Inc. v. Biehl, 555 P.2d 393, 396–97 (Idaho 1976). Idaho does, however, permit discretionary dismissals if parallel litigation is pending elsewhere. *See* IDAHO R. CIV. P. 12(b)(8) (2016) (allowing a court to dismiss if "another action pending between the same parties for the same cause").

A. Differences in the Alternative Forum Requirement

The federal doctrine of forum non conveniens has a threshold requirement of an available and adequate alternative forum.[203] Courts in thirty-seven states have similarly held that the existence of an alternative forum is a threshold requirement.[204] In eight more, there are statutes or court rules to the same effect.[205]

New York and Delaware, however, treat the existence of an alternative forum not as a prerequisite, but as simply a factor to consider. In 1984, the New York Court of Appeals acknowledged that "the availability of another suitable forum is a most important factor"

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203. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254 n.22 (1981); Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 506–07 (1947). *Piper* sets a low bar, considering an alternative forum available if the defendant is subject to jurisdiction and service of process there and adequate if it provides at least some remedy. *See* RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 424 reporters' note 3 (Am. L. Inst. 2018) (summarizing case law on the adequate and available alternative forum requirement).

204. *Ex parte* Preston Hood Chevrolet, Inc., 638 So. 2d 842, 845 (Ala. 1994); Bromley v. Mitchell, 902 P.2d 797, 803 (Alaska 1995); Parra v. Cont'l Tire N.A., Inc., 213 P.3d 361, 364 (Ariz. Ct. App. 2009); Stangvik v. Shiley Inc., 819 P.2d 14, 18 (Cal. 1991); Picketts v. Int'l Playtex, Inc., 576 A.2d 518, 526 n.13 (Conn. 1990); Kinney Sys., Inc. v. Cont'l Ins. Co., 674 So. 2d 86, 90 (Fla. 1996); UFJ Bank Ltd. v. Ieda, 123 P.3d 1232, 1240 (Haw. 2005); Fennell v. Ill. Cent. R.R. Co., 987 N.E.2d 355, 359 (Ill. 2012); Gonzales v. Atchison Topeka & Santa Fe Ry. Co., 371 P.2d 193, 199 (Kan. 1962); Douglas Mach. & Eng'g Co. v. Hyflow Blanking Press Corp., 229 N.W.2d 784, 791 (Iowa 1975); Carter v. Netherton, 302 S.W.2d 382, 384 (Ky. 1957); Corning v. Corning, 563 A.2d 379, 380 (Me. 1989); Johnson v. G.D. Searle & Co., 552 A.2d 29, 33 (Md. 1989); Gianocostas v. Interface Grp.-Mass., Inc., 881 N.E.2d 134, 140 (Mass. 2008); Cray v. Gen. Motors Corp., 207 N.W.2d 393, 398 (Mich. 1973); Paulownia Plantations de Pan. Corp. v. Rajamannan, 793 N.W.2d 128, 133 (Minn. 2009); 3M Co. v. Johnson, 926 So. 2d 860, 864 (Miss. 2006); Acapolon Corp. v. Ralston Purina Co., 827 S.W.2d 189, 191 (Mo. 1992); Harrington v. Energy W., Inc., 356 P.3d 441, 448 (Mont. 2015); Christian v. Smith, 759 N.W.2d 447, 457 (Neb. 2008); Provincial Gov't of Marinduque v. Placer Dome, Inc., 350 P.3d 392, 396 (Nev. 2015); Vandam v. Smit, 148 A.2d 289, 291 (N.H. 1959); Yousef v. Gen. Dynamics Corp., 16 A.3d 1040, 1049 (N.J. 2011); Marchman v. NCNB Tex. Nat'l Bank, 898 P.2d 709, 720 (N.M. 1995); Vicknair v. Phelps Dodge Indus., Inc., 767 N.W.2d 171, 177 (N.D. 2009); Chambers v. Merrell-Dow Pharm., Inc., 519 N.E.2d 370, 373 (Ohio 1988); Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960, 983 (Or. 2016); Plum v. Tampax, Inc., 160 A.2d 549, 553 (Pa. 1960); Kedy v. A.W. Chesteron Co., 946 A.2d 1171, 1183 (R.I. 2008); Nienow v. Nienow, 232 S.E.2d 504, 507–08 (S.C. 1977); Rothluebbers v. Obee, 668 N.W.2d 313, 317 (S.D. 2003); Zurick v. Inman, 426 S.W.2d 767, 771–72 (Tenn. 1968); Alvarez Gottwald v. Dominguez de Cano, 568 S.W.3d 241, 249 (Tex. App. 2019); Energy Claims Ltd. v. Catalyst Inv. Grp. Ltd., 325 P.3d 70, 76 (Utah 2014); Sales v. Weyerhaeuser Co., 177 P.3d 1122, 1125 (Wash. 2008); Mace v. Mylan Pharm., Inc., 714 S.E.2d 223, 232 (W. Va. 2011); Saunders v. Saunders, 445 P.3d 991, 999 (Wyo. 2019).

205. ARK. CODE ANN. § 16-4-101(D) (1993); GA. CODE ANN. §§ 50-2-21 (2003) & 9-10-31.1 (2005); ILL. S. CT. R. 187(2) (2018); IND. R. TRIAL P. 4.4(D) (2022); LA. CODE CIV. PROC. ANN. art. 123(B) (2012); N.C. GEN. STAT. ANN. § 1-75.12(a) (1967); VA. CODE ANN. § 8.01-265 (2007); WIS. STAT. ANN. § 801.63(1) (1960).

for forum non conveniens but concluded that making it a requirement "would place an undue burden on New York courts forcing them to accept foreign-based actions unrelated to this State merely because a more appropriate forum is unwilling or unable to accept jurisdiction."[206] In 2018, the Delaware Supreme Court similarly rejected the threshold requirement of an available alternative forum in an effort to stem transnational litigation against Delaware corporations.[207]

Four other states have statutes listing the existence of an alternative forum as a factor for the court to consider in deciding whether to dismiss for forum non conveniens: Colorado,[208] Oklahoma,[209] Texas,[210] and West Virginia.[211] The West Virginia Supreme Court has held, however, that its state statute presupposes an alternative forum, such that it continues to be a threshold requirement.[212] Courts in Colorado, Oklahoma, and Texas have not yet addressed the question.[213]

B. Differences in Deference

The federal doctrine begins with a strong presumption in favor of the plaintiff's choice of forum but makes that presumption weaker when the plaintiff is foreign.[214] When the plaintiff is a forum resident,

206. Islamic Republic of Iran v. Pahlavi, 467 N.E.2d 245, 249 (N.Y. 1984).

207. Aranda v. Philip Morris USA Inc., 183 A.3d 1245, 1252–55 (Del. 2018).

208. COLO. REV. STAT. § 13-20-1004 (2022). Colorado's statute authorizes dismissal only when the plaintiff is not a resident of Colorado. *See infra* note 245 and accompanying text.

209. OKLA. STAT. ANN. tit. 12, § 140.3 (West 2022).

210. TEX. CIV. PRAC. & REM. CODE ANN. § 71.051(b)(1) (West 2022). Texas's statute applies only to personal injury cases. *Id.*

211. W. VA. CODE § 56-1-1a (2022).

212. Mace v. Mylan Pharm., Inc., 714 S.E.2d 223, 232 (W. Va. 2011).

213. In a case decided before enactment of its statute in 2013, the Oklahoma Supreme Court held that an alternative forum was a threshold requirement, expressly rejecting New York's common law position. Binder v. Shepard's Inc., 133 P.3d 276, 279–80 (Okla. 2006). In Texas, the common law doctrine applicable in non-personal-injury cases requires the existence of an alternative forum. *See* Alvarez Gottwald v. Dominguez de Cano, 568 S.W.3d 241, 249 (Tex. App. 2019) ("[U]nder common law *forum non conveniens* analysis, whether a forum is both available and adequate is a threshold question to be answered before a court can weigh the public and private factors considered in a common law *forum non conveniens* analysis.").

214. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255–56 (1981). *Piper*'s distinction between domestic and foreign plaintiffs was based on assumptions about convenience. *Id.* at 250. The suspicion was that a foreign plaintiff who chose to bring suit in the United States was engaged in illegitimate forum shopping. *Id.* at 252 n.19.

every state that has adopted forum non conveniens, as well as the District of Columbia, begins with a strong presumption in favor of the plaintiff's choice of forum.[215]

Piper's rule of less deference for foreign plaintiffs is also widely followed. By our count, courts in nineteen states and the District of Columbia give less deference to a foreign plaintiff's choice of forum.[216]

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215. *Ex parte* Preston Hood Chevrolet, Inc., 638 So. 2d 842, 845 (Ala. 1994); Baypack Fisheries, LLC v. Nelbro Packing Co., 992 P.2d 1116, 1119 (Alaska 1999); Parra v. Cont'l Tire N.A., Inc., 213 P.3d 361, 364 (Ariz. Ct. App. 2009); Wal-Mart Stores, Inc. v. U.S. Fid. & Guar. Co., 76 S.W.3d 895, 899 (Ark. Ct. App. 2002); Stangvik v. Shiley Inc., 819 P.2d 14, 20 (Cal. 1991); McDonnell-Douglas Corp. v. Lohn, 557 P.2d 373, 374 (Colo. 1976); Picketts v. Int'l Playtex, Inc., 576 A.2d 518, 524 (Conn. 1990); Mills v. Aetna Fire Underwriters Ins. Co., 511 A.2d 8, 10 (D.C. App. 1986); Cortez v. Palace Resorts, Inc., 123 So. 3d 1085, 1096 (Fla. 2013); Lesser v. Boughey, 965 P.2d 802, 805 (Haw. 1998); Fennell v. Ill. Cent. R.R. Co., 987 N.E.2d 355, 360 (Ill. 2012); DePuy Orthopaedics, Inc. v. Brown, 29 N.E.3d 729, 733 n.4 (Ind. 2015); Silversmith v. Kenosha Auto Transp., 301 N.W.2d 725, 727 (Iowa 1981); Gonzales v. Atchison Topeka & Santa Fe Ry. Co., 371 P.2d 193, 197 (Kan. 1962); Lykins Enters., Inc. v. Felix, Nos. 2006–SC–000142–DG & 2006–SC–000624–DG, 2007 WL 4139637, at *4 (Ky. Nov. 21, 2007); Osborn v. Ergon Marine & Indus. Supply, Inc., 85 So. 3d 687, 687 (La. 2012); MacLeod v. MacLeod, 383 A.2d 39, 42 (Me. 1978); Jones v. Prince George's Cnty., 835 A.2d 632, 645 (Md. 2003); New Amsterdam Cas. Co. v. Estes, 228 N.E.2d 440, 444 (Mass. 1967); Anderson v. Great Lakes Dredge & Dock Co., 309 N.W.2d 539, 542 (Mich. 1981); Bergquist v. Medtronic, Inc., 379 N.W.2d 508, 511 (Minn. 1986); Mo. Pac. R.R. Co. v. Tircuit, 554 So. 2d 878, 882 (Miss. 1989); Anglim v. Mo. Pac. R.R., 832 S.W.2d 298, 302 (Mo. 1992); Harrington v. Energy W., Inc., 356 P.3d 441, 448 (Mont. 2015); Ameritas Inv. Corp. v. McKinney, 694 N.W.2d 191, 202 (Neb. 2005); Provincial Gov't of Marinduque v. Placer Dome, Inc., 350 P.3d 392, 396 (Nev. 2015); Leeper v. Leeper, 354 A.2d 137, 138 (N.H. 1976); Yousef v. Gen. Dynamics Corp., 16 A.3d 1040, 1049 (N.J. 2011); Bata v. Bata, 105 N.E.2d 623, 626 (N.Y. 1952); Cardiorentis AG v. IQVIA Ltd., 837 S.E.2d 873, 876 (N.C. 2020); Vicknair v. Phelps Dodge Indus., Inc., 767 N.W.2d 171, 178 (N.D. 2009); Chambers v. Merrell-Dow Pharms., Inc., 519 N.E.2d 370, 373 (Ohio 1988); Conoco, Inc. v. Agrico Chem. Co., 115 P.3d 829, 833 (Okla. 2004); Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960, 985 (Or. 2016); McConnell v. B. Braun Med. Inc., 221 A.3d 221, 227 (Pa. Super. Ct. 2019); Kedy v. A.W. Chesterton Co., 946 A.2d 1171, 1183 (R.I. 2008); Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110, 114 (S.C. 1979); Rothluebbers v. Obee, 668 N.W.2d 313, 318 (S.D. 2003); Zurick v. Inman, 426 S.W.2d 767, 772 (Tenn. 1968); Quixtar Inc. v. Signature Mgmt. Team, LLC, 315 S.W.3d 28, 31 (Tex. 2010); Energy Claims Ltd. V. Catalyst Inv. Grp. Ltd., 325 P.3d 70, 78 (Utah 2014); Burrington v. Ashland Oil Co., 356 A.2d 506, 510 (Vt. 1976); RMBS Recovery Holdings, I, LLC v. HSBC Bank USA, N.A., 827 S.E.2d 762, 771 (Va. 2019); Johnson v. Spider Staging Corp., 555 P.2d 997, 1000 (Wash. 1976); Littmann v. Littmann, 203 N.W.2d 901, 907 (Wis. 1973); Saunders v. Saunders, 445 P.3d 991, 1002 (Wyo. 2019); *see also* GA. CODE ANN. § 9-10-31.1(a)(7) (2022) (referring to "[t]he traditional deference given to a plaintiff's choice of forum"); MISS. CODE ANN. § 11-11-3(4)(a)(vii) (2022) (same); W. VA. CODE ANN. § 56-1-1a(a) (2022) (providing that "the plaintiff's choice of a forum is entitled to great deference"). Delaware, as discussed below, applies an even stronger presumption against dismissal. *See infra* notes 226–228 and accompanying text.

216. *Parra*, 213 P.3d at 364; *Stangvik*, 819 P.2d at 20 n.4; *Picketts*, 576 A.2d at 524–25; *Mills*, 511 A.2d at 10–11; *Cortez*, 123 So. 3d at 1096; *Fennell*, 987 N.E.2d at 360; *DePuy Orthopaedics*, 29 N.E.3d at 733 n.4; Univ. of Md. Med. Sys. Corp. v. Kerrigan, 174 A.3d 351, 360–61 (Md. 2017); Radeljak v. DaimlerChrysler Corp., 719 N.W.2d 40, 48 (Mich. 2006); *Bergquist*, 379 N.W.2d at

A few state statutes have tried to codify the rule.[217] The states are divided, however, over whether *Piper*'s rule of less deference applies only to non-U.S. residents (as four states have held)[218] or also to U.S.

512; Ill. Cent. R.R. Co. v. Samson, 799 So. 2d 20, 23 (Miss. 2001); Acapolon Corp. v. Ralston Purina Co., 827 S.W.2d 189, 192 (Mo. 1992); *Placer Dome*, 350 P.3d at 396; Marchman v. NCNB Tex. Nat'l Bank, 898 P.2d 709, 720 (N.M. 1995); Kurzke v. Nissan Motor Corp. in U.S.A., 752 A.2d 708, 714 (N.J. 2000); Islamic Republic of Iran v. Pahlavi, 467 N.E.2d 245, 249 (N.Y. 1984); *Cardiorentis AG*, 837 S.E.2d at 876; *Chambers*, 519 N.E.2d at 373; Bochetto v. Piper Aircraft Co., 94 A.3d 1044, 1056 (Pa. Super. 2014); *Rothluebbers*, 668 N.W.2d at 318; *Quixtar Inc.*, 315 S.W.3d at 31.

In *Iragorri v. United Technologies Corp.*, the Second Circuit adopted a sliding-scale approach that adjusts the level of deference depending on whether the plaintiff's choice was motivated by "valid" reasons or "forum-shopping reasons," with "the plaintiff's residence in relation to the chosen forum" as just one of the relevant factors. Iragorri v. United Techs. Corp., 274 F.3d 65, 72 (2d Cir. 2001) (en banc). Several other circuits adopted the same approach. Shi v. New Mighty U.S. Tr., 918 F.3d 944, 949 (D.C. Cir. 2019); Hefferan v. Ethicon Endo-Surgery Inc., 828 F.3d 488, 494 (6th Cir. 2016); Kisano Trade & Inv. Ltd. V. Lemster, 737 F.3d 869, 876 (3d Cir. 2013); Vivendi SA v. T-Mobile USA Inc., 586 F.3d 689, 695 (9th Cir. 2009). Courts in four states have followed *Iragorri*'s sliding scale approach. Certain Underwriting Members of Lloyd's v. Prime Holdings Ins. Servs., Inc., 306 So. 3d 1086, 1093 (Fla. Dist. Ct. App. 2020); *Kerrigan*, 174 A.3d at 360; Kedy v. A.W. Chesterton Co., 946 A.2d 1171, 1183 (R.I. 2008); Energy Claims Ltd. V. Catalyst Inv. Grp. Ltd., 325 P.3d 70, 79 (Utah 2014); *see also Silversmith*, 301 N.W.2d at 728 (adopting an approach similar to *Iragorri*'s twenty years earlier).

217. West Virginia's statute provides that "the plaintiff's choice of a forum is entitled to great deference, but this preference may be diminished when the plaintiff is a nonresident and the cause of action did not arise in this state." W. VA. CODE § 56-1-1a(a) (2022). Because of the second condition, the West Virginia Supreme Court has held that great deference must be given even to foreign country plaintiffs when their cause of action arises in the state. Nezan v. Aries Techs., Inc., 704 S.E.2d 631, 644 (W. Va. 2010).

Alabama's forum non conveniens provision governing commercial aviation accidents lists as a factor "[t]he state in which the claimant resides, giving deference to the claimant's choice of forum only if the claimant is a resident of this state." ALA. CODE § 6-5-754(c)(1) (2022). But Alabama's more general provision on forum non conveniens contains no similar provision. ALA. CODE § 6-5-430 (2022).

Georgia's and Mississippi's essentially identical state statutes each list as a factor "[t]he traditional deference given to a plaintiff's choice of forum." GA. CODE ANN. § 9-10-31.1(a)(7) (2022); MISS. CODE ANN. § 11-11-3(4)(a)(vii) (2022). Mississippi has continued to refer to the deference factor in its prior case law, which the statute codified, reading that factor to adopt *Piper*'s rule for out-of-state plaintiffs. *See* 3M Co. v. Johnson, 926 So. 2d 860, 866 (Miss. 2006) ("The wholly out-of-state appellees have not chosen their home forum, and therefore this Court should afford them less deference than traditionally expected." (citing *Piper*, 454 U.S. at 255–56)). Georgia has not interpreted its equivalent statutory language.

218. *Cortez*, 123 So. 3d at 1096; *DePuy Orthopaedics*, 29 N.E.3d at 733 n.4; Kennecott Holdings Corp. v. Liberty Mut. Ins. Co., 578 N.W.2d 358, 360 (Minn. 1998). A Tennessee court has rejected lesser deference for sister-state plaintiffs, *Pantuso v. Wright Med. Tech. Inc.*, 485 S.W.3d 883, 897 (Tenn. Ct. App. 2015), but Tennessee has not expressly embraced *Piper*'s rule with respect to foreign-country plaintiffs.

plaintiffs who reside in other states (as nine states and the District of Columbia have held).[219]

But not all states agree with *Piper*'s rule of less deference for foreign plaintiffs, however defined. The Washington Supreme Court expressly rejected the rule in 1990 for three reasons.[220] First, the court emphasized that the federal common law doctrine of forum non conveniens was not binding on state courts and that this part of *Piper* was joined only by a four-Justice majority.[221] Second, the court found fault with *Piper*'s reasoning: "Why is it less reasonable to assume that a plaintiff from British Columbia, who brings suit in Washington, has chosen a less convenient forum than a plaintiff from Florida bringing the same suit?"[222] Giving "less deference to foreign plaintiffs based on their status as foreigners," the court said, "raises concerns about xenophobia."[223] Third, the court found *Piper*'s rule unnecessary because "[p]roper application of the *Gulf Oil* factors alone will lead to fair and equitable results" and "protect[] against any perceived threat of foreign plaintiffs flooding United States courts."[224] The Oregon Supreme Court, which adopted forum non conveniens only in 2016, "agree[d] with the Washington Supreme Court that there is no principled reason to vary the degree of deference afforded to the

219. Coonley & Coonley v. Turck, 844 P.2d 1177, 1182 (Ariz. Ct. App. 1993); Nat'l Football League v. Fireman's Fund Ins., 157 Cal. Rptr. 3d 318, 339 (Cal. Ct. App. 2013); Mills v. Aetna Fire Underwriters Ins., 511 A.2d 8, 10–11 (D.C. 1986); *Fennell*, 987 N.E.2d at 360; *Kerrigan*, 174 A.3d at 359; *3M Co.*, 926 So. 2d at 866; Doe v. Archdiocese of Phila., 221 A.3d 616, 628 (N.J. Super. L. Div. 2019); Travelers Cas. & Sur. Co. v. Cincinnati Gas & Elec. Co., 862 N.E.2d 201, 205 (Ohio Ct. App. 2006); *McConnell*, 221 A.3d at 227; *Quixtar Inc.*, 315 S.W.3d at 31. Illinois and Maryland have even applied *Piper*'s rule of less deference in intrastate cases when the plaintiff files suit outside her home county. Dawdy v. Union Pac. R.R. Co., 797 N.E.2d 687, 69 (Ill. 2003); *Kerrigan*, 174 A.3d at 360. These jurisdictions have arguably adopted a rule that is *more* restrictive than the federal doctrine, which gives the same strong deference to all U.S. resident plaintiffs regardless of the state in which they reside. *See, e.g.*, Zions First Nat'l Bank v. Moto Diesel Mexicana, S.A. de C.V., 629 F.3d 520, 525 (6th Cir. 2010).

220. Myers v. Boeing Co., 794 P.2d 1272, 1280–81 (Wash. 1990).

221. *Id.* at 1280.

222. *Id.* at 1281. The court went on to ask: "[W]hy is it less reasonable to assume that a plaintiff, who is a Japanese citizen residing in Wenatchee, who brings suit in Washington, has chosen a less convenient forum than a plaintiff from Florida bringing the same suit?" *Id.* This second question misunderstands *Piper*'s rule, which turns not on citizenship but on residence. *See* Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 (1981) (distinguishing between "resident or citizen plaintiffs and foreign plaintiffs"); *see also* RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 424 reporters' note 4 (Am. L. Inst. 2018) ("A resident alien's choice of a U.S. forum is entitled to the same deference as a U.S. citizen's.").

223. *Myers*, 794 P.2d at 1281.

224. *Id.*

plaintiff's choice of forum based on where the plaintiff, or real party in interest, resides."[225]

Delaware has diverged from the federal doctrine's deference rules in a different way. Delaware has adopted a higher standard than the federal rule by requiring a showing of "overwhelming hardship" to the defendant if the Delaware action was the first one filed.[226] Delaware's "overwhelming hardship" standard for first-filed actions makes it one of the most difficult states in which to obtain a forum non conveniens dismissal. Also uniquely, Delaware changes its standard when the Delaware action was filed after a similar action was filed in another sovereign's court. When the Delaware action was filed second and the first action remains pending, there is a "strong preference" for litigation where the first action was filed.[227] And when the Delaware action was filed second but the first action is no longer pending, "the analysis is not tilted in favor of the plaintiff or the defendant."[228]

In summary, Delaware gives more deference to the plaintiff's choice of forum than the federal rule unless the Delaware action was filed second, in which case it gives less. And although many states have followed *Piper*'s lead and given less deference to foreign plaintiffs, Oregon and Washington have expressly rejected *Piper* on this point.

C. Differences in Factors to Be Weighed

In *Gulf Oil*, the U.S. Supreme Court articulated private and public interest factors for courts to consider when applying the federal doctrine of forum non conveniens. For private interest factors, the Court listed access to proof, the availability of witnesses, the possibility of viewing the premises, "and all other practical problems that make

225. Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960, 987 (Or. 2016). The court explained: "[W]hether an action should be dismissed or stayed for *forum non conveniens* turns not on whether that forum is convenient for the *plaintiff,* but on whether litigating there would be so inconvenient generally—for litigants, third parties, and the court—that the court ought to override the plaintiff's choice." *Id.*

226. Chrysler First Bus. Credit Corp. v. 1500 Locust Ltd. P'ship, 669 A.2d 104, 105 (Del. 1995). This standard originated in *Kolber v. Holyoke Shares, Inc*., 213 A.2d 444, 447 (Del. 1965).

227. Gramercy Emerging Mkts. Fund v. Allied Irish Banks, P.L.C., 173 A.3d 1033, 1044 (Del. 2017) (quoting DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 5.01 (2017)). This standard originated in *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g Co.*, 263 A.2d 281, 283 (Del. 1970).

228. *Gramercy Emerging Mkts. Fund*, 173 A.3d at 1035.

trial of a case easy, expeditious and inexpensive."[229] The Court went on to mention "the enforcibility [sic] of a judgment if one is obtained" and whether the plaintiff was harassing the defendant by inflicting unnecessary expenses.[230] On the public interest side, *Gulf Oil* mentioned court congestion, the burden of jury duty, avoiding conflict of laws problems, familiarity with the governing law, and the "local interest in having localized controversies decided at home."[231]

In many states, the common law doctrines, and even the forum non conveniens statutes, show the strong influence of the *Gulf Oil* factors.[232] Thirty states and the District of Columbia have incorporated *Gulf Oil*'s factors directly into their common law doctrines.[233] Other

229. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947). *Piper* added the "inability to implead potential third-party defendants." Piper Aircraft Co. v. Reyno, 454 U.S. 235, 259 (1981).

230. *Gulf Oil*, 330 U.S. at 508.

231. *Id.* at 508–09.

232. Idaho has not adopted a doctrine of forum non conveniens, and in Montana and Vermont, the sparse case law has not addressed the factors to be considered. *See* Harrington v. Energy W., Inc., 356 P.3d 441 (Mont. 2015) (making no mention of the factors to be considered); Burrington v. Ashland Oil Co., Inc., 356 A.2d 506 (Vt. 1976) (same).

233. Cal Fed Partners v. Heers, 751 P.2d 561, 562 (Ariz. Ct. App. 1987); Stangvik v. Shiley Inc., 819 P.2d 14, 17–18 (Cal. 1991); Durkin v. Intevac, Inc., 782 A.2d 103, 122 (Conn. 2001); Mills v. Aetna Fire Underwriters Ins., 511 A.2d 8, 10 (D.C. Ct. App. 1986); Kinney Sys., Inc. v. Cont'l Ins., 674 So. 2d 86, 89 (Fla. 1996); AT&T Corp. v. Sigala, 549 S.E.2d 373, 375–76 (Ga. 2001); Lesser v. Boughey, 965 P.2d 802, 805 (Haw. 1998); Fennell v. Ill. Cent. R.R. Co., 987 N.E.2d 355, 360 (Ill. 2012); Silversmith v. Kenosha Auto Transp., 301 N.W.2d 725, 727 (Iowa 1981); Gonzales v. Atchison Topeka & Santa Fe Ry. Co., 371 P.2d 193, 196–97 (Kan. 1962); Lykins Enters., Inc. v. Felix, No. 2006–SC–000142–DG, 2007 WL 4139637, at *4 (Ky. Nov. 21, 2007); MacLeod v. MacLeod, 383 A.2d 39, 42 (Me. 1978); Johnson v. G.D. Searle & Co., 552 A.2d 29, 31 (Md. 1989); New Amsterdam Cas. Co. v. Estes, 228 N.E.2d 440, 443–44 (Mass. 1967); Paulownia Plantations de Pan. Corp. v. Rajamannan, 793 N.W.2d 128, 137 (Minn. 2009); Ameritas Inv. Corp. v. McKinney, 694 N.W.2d 191, 202 (Neb. 2005); Provincial Gov't of Marinduque v. Placer Dome, Inc., 350 P.3d 392, 397–98 (Nev. 2015); Leeper v. Leeper, 354 A.2d 137, 139 (N.H. 1976); Yousef v. Gen. Dynamics Corp., 16 A.3d 1040, 1049 (N.J. 2011); Marchman v. NCNB Tex. Nat'l Bank, 898 P.2d 709, 720 (N.M. 1995); Vicknair v. Phelps Dodge Indus., Inc., 767 N.W.2d 171, 178 (N.D. 2009); Chambers v. Merrell-Dow Pharms., Inc., 519 N.E.2d 370, 373–74 (Ohio 1988); Conoco, Inc. v. Agrico Chem. Co., 115 P.3d 829, 833 (Okla. 2004); Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960, 988–92 (Or. 2016); Plum v. Tampax, Inc., 160 A.2d 549, 553 (Pa. 1960); Kedy v. A.W. Chesterton Co., 946 A.2d 1171, 1184–85 (R.I. 2008); Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110, 113 (S.C. 1979); Rothluebbers v. Obee, 668 N.W.2d 313, 318 (S.D. 2003); Zurick v. Inman, 426 S.W.2d 767, 771–72 (Tenn. 1968); Myers v. Boeing Co., 794 P.2d 1272, 1276 (Wash. 1990); Saunders v. Saunders, 445 P.3d 991, 999–1000 (Wyo. 2019). Three of these jurisdictions have held that a court should consider the public interest factors only as a tiebreaker if the private interest factors are "in equipoise." Coulibaly v. Malaquias, 728 A.2d 595, 601 (D.C. Ct. App. 1999) (quoting Pain v. United Techs. Corp., 637 F.2d 775, 784 (D.C. Cir. 1980)); *Kinney Sys.*, 674 So. 2d at 91 (same); *see also Durkin*, 782 A.2d at 112. But the rest consider both sets of factors in all cases.

states have lists that overlap substantially with *Gulf Oil*'s,[234] sometimes adding factors such as "the nature of the case," the convenience of the alternative forum, and the "choice of forum by plaintiff,"[235] or the distance from the accident and the moving party's promptness in raising the doctrine.[236] Several states that have codified forum non conveniens have also incorporated *Gulf Oil*'s factors, while sometimes adding more.[237] In addition, *Gulf Oil* has influenced the interpretation of state statutes even when those statutes do not expressly incorporate its factors or refer to private and public interests. Courts in Alabama and Louisiana, for example, have looked to *Gulf Oil*'s factors to interpret the statutory phrase "interests of justice."[238]

But nine states have not been content simply to copy *Gulf Oil*'s balancing test. Some have eschewed *Gulf Oil*'s public interest factors entirely. When the Delaware Supreme Court recognized a common law doctrine of forum non conveniens in 1958, it adopted only *Gulf Oil*'s private interest factors.[239] Virginia's forum non conveniens statute permits dismissal "for good cause shown,"[240] which the Virginia

234. *See, e.g.*, Crowson v. Sealaska Corp., 705 P.2d 905, 908 (Alaska 1985) (listing, among others, "ease of access of proof, the availability and cost of obtaining witnesses, . . . and the desirability of litigating local matters in local courts" (quoting Goodwine v. Superior Ct., 407 P.2d 1, 4 (Cal. 1965)); Life of Am. Ins. Co. v. Baker-Lowe-Fox Ins. Mktg., Inc., 873 S.W.2d 537, 539 (Ark. 1994) ("The factors to be considered . . . are the convenience to each party in obtaining documents or witnesses, the expense involved to each party, the condition of the trial court's docket, and any other facts or circumstances affecting a just determination.").

235. Cardiorentis AG v. IQVIA Ltd., 837 S.E.2d 873, 875 (N.C. 2020).

236. Cray v. Gen. Motors Corp., 207 N.W.2d 393, 399 (Mich. 1973).

237. GA. CODE ANN. § 9-10-31.1(a) (2022) (incorporating *Gulf Oil* factors and adding the "traditional deference given to a plaintiff's choice of forum"); MISS. CODE ANN. § 11-11-3(4)(a) (2022) (same as Georgia); OKLA. STAT. ANN. tit. 12, § 140.3 (2022) (referring to "the balance of the private interests of the parties and the public interest of the state" and adding five more); TEX. CIV. PRAC. & REM. CODE ANN. § 71.051(b) (West 2022) (same as Oklahoma).

238. *Ex parte* Transp. Leasing Corp., 128 So. 3d 722, 730 (Ala. 2013); Martinez v. Marlow Trading, S.A., 894 So. 2d 1222, 1226–27 (La. App. 2005).

239. Winsor v. United Air Lines, 154 A.2d 561, 563 (Del. Super. Ct. 1958). In *General Foods Corp. v. Cryo-Maid, Inc.*, the Delaware Supreme Court followed *Winsor* and omitted the public interest factors, listing four private interest factors drawn from *Gulf Oil* plus consideration of whether Delaware law governs the claim. Gen. Foods Corp. v. Cryo-Maid, Inc., 198 A.2d 681, 684 (Del. 1964). Delaware later added a sixth factor, whether a similar action was pending elsewhere. Parvin v. Kaufmann, 236 A.2d 425, 427 (Del. 1967); *see also* Aranda v. Philip Morris USA Inc., 183 A.3d 1245, 1251 (Del. 2018) (listing six factors). For a more detailed account of Delaware's development, see *infra* notes 287–295 and accompanying text.

240. VA. CODE ANN. § 8.01-265 (2022).

Supreme Court has read to incorporate *Gulf Oil*'s private interest factors, but not its public interest factors.[241]

Others have swapped *Gulf Oil*'s public interest factors, which focus on administrative burdens, for a greater emphasis on the degree of nexus between the dispute and the forum. Missouri's distinctive list of factors includes the "place of accrual of the cause of action, . . . the residence of the parties, [and] any nexus with the place of suit."[242] Utah similarly lists "the location of the primary parties" and "where the fact situation creating the controversy arose."[243] And New York considers whether "both parties to the action are nonresidents" and whether "the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction."[244] In Colorado and West Virginia, the forum non conveniens statutes similarly refer to residence and where the cause of action arose but with the difference that it is only the *plaintiff's* residence that counts.[245] The factors targeting connections to the parties and the cause of action in these states go beyond *Gulf Oil*'s "interest in having localized controversies decided at home."[246] They allow courts to police against cases that lack a strong nexus to the forum, keeping with the doctrine's previous limitation to such cases.[247]

Finally, a couple of states have done both. When Wisconsin's legislature adopted the doctrine of forum non conveniens by statute in 1960, it surveyed both state and federal practice and developed its own approach to forum non conveniens—which it notably limited to stays. It simplified the relevant factors to four:

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241. RMBS Recovery Holdings, I, LLC v. HSBC Bank USA, N.A., 827 S.E.2d 762, 771 (Va. 2019).

242. State *ex rel.* Chi. Rock Island & Pac. R.R. v. Riederer, 454 S.W.2d 36, 39 (Mo. 1970) (en banc).

243. Summa Corp. v. Lancer Indus., Inc., 559 P.2d 544, 546 (Utah 1977).

244. Islamic Republic of Iran v. Pahlavi, 467 N.E.2d 245, 248 (N.Y. 1984).

245. COLO. REV. STAT. ANN. § 13-20-1004(1) (2022) ("(a) The claimant or claimants named in the motion are not residents of the state of Colorado; . . . (c) The injury or damage alleged to have been suffered occurred outside of the state of Colorado . . . ."); W. VA. CODE § 56-1-1a(a)(4)–(5) (2020) ("(4) The state in which the plaintiff(s) reside; (5) The state in which the cause of action accrued . . . ."). Colorado's statute also has a distinctive structure, requiring a court to dismiss if it finds all five of the statutory factors are satisfied, while giving the court discretion to dismiss if it finds that the plaintiff is a nonresident and at least one of the other factors is met. COLO. REV. STAT. ANN. § 13-20-1004 (2022).

246. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947).

247. *See supra* Part I. In contrast, the federal doctrine addresses this concern by manipulating the degree of deference for foreign plaintiff's choice of forum rather than by adding factors.

> (a) Amenability to personal jurisdiction in this state and in any alternative forum of the parties to the action; (b) Convenience to the parties and witnesses of trial in this state and in any alternative forum; (c) Differences in conflict of law rules applicable in this state and in any alternative forum; or (d) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.[248]

Indiana adopted the same list by court rule.[249] The Wisconsin-Indiana list emphasizes the private interests of the parties (particularly (b) and (d)) while omitting factors regarding burdens on local courts.[250] It also adds consideration of the parties' connection to the forum state, with (a)'s reference to "personal jurisdiction" serving as a proxy for such consideration,[251] as well as concern about shopping for more favorable law via (c)'s reference to "differences in conflict of law rules."[252] More than tinkering around the edges of *Gulf Oil*'s balancing test, these alternative sets of factors downplay local burdens and return the doctrine's focus to foreign-cubed cases and concerns about fundamental fairness.

In summary, although most states have adopted *Gulf Oil*'s factors, nine states have adopted alternative sets of factors that focus entirely on private interests, emphasize the degree of nexus between the dispute and the forum, or both.

D. Exclusions of Particular Parties or Causes of Action

Another characteristic of the federal doctrine of forum non conveniens is that it is available to defendants across the board, without exclusions for local plaintiffs,[253] local defendants,[254] or local causes of

248. WIS. STAT. § 801.63(3) (2022).

249. IND. R. TRIAL P. 4.4(C) (2022).

250. The revision notes for the original 1960 statute suggest a conscious decision not to include factors like court congestion and the burden of jury duty. *See* G.W. Foster, Jr., Revision Notes, WIS. STAT. ANN. § 801.63, at 301 (1960) (noting that "[t]here is considerable dispute about the handling of the cause imported to take advantage of less crowded dockets at the forum").

251. The revision notes refer more directly to the "[r]esidence of the parties." *Id.* at 300.

252. Again, the revision notes are more direct: "[D]ismissal has been ordered where it appeared likely that the conflict of laws rule at the forum would produce a result different from the one obtainable in the more convenient court." *Id.*

253. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 n.23 (1981) ("[D]ismissal should not be automatically barred when a plaintiff has filed suit in his home forum.").

254. Although the defendants in *Piper* were initially sued in California, they successfully moved to transfer the case to Piper's home state of Pennsylvania, at which point it was dismissed

action.[255] Several states have departed from this aspect of the federal doctrine by creating exceptions for cases involving local plaintiffs, local causes of action, or both—but not, notably, for cases involving local defendants.

South Carolina courts have recognized an exception to forum non conveniens for local plaintiffs as a matter of common law,[256] while the legislatures of Colorado[257] and Texas[258] have created exceptions for local plaintiffs by statute. The Alabama legislature decided instead to exclude local causes of action. After the Alabama Supreme Court declined to recognize forum non conveniens,[259] Alabama's legislature in 1987 passed a general forum non conveniens statute for contract and tort claims arising outside the state,[260] and, in 2013, it passed a narrower statute for claims against commercial aircraft manufacturers arising from accidents outside the state.[261] Louisiana and Virginia similarly do not have a court-created doctrine of forum non conveniens.[262] When the legislatures in those states adopted forum non conveniens by

for forum non conveniens. *See* Reyno v. Piper Aircraft Co., 630 F.2d 149, 154–55 (3d Cir. 1980) (noting that Piper Aircraft Co. was a Pennsylvania corporation).

255. In *Piper*, the district court had determined that Pennsylvania law would govern the claims against Piper Aircraft. *Piper*, 454 U.S. at 243.

256. Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110, 113–14 (S.C. 1979). *Braten* reaffirmed dictum in an earlier decision relying on a court access provision in the South Carolina Constitution. *See* Chapman v. S. Ry. Co., 95 S.E.2d 170, 173 (S.C. 1956) (quoting S.C. CONST. art. I, § 15 (1895)).

257. COLO. REV. STAT. § 13-20-1004(1)(a) (2022) (permitting dismissal only if "[t]he claimant or claimants named in the motion are not residents of the state of Colorado"). Colorado courts continue to apply the state's common law doctrine to suits by state residents, but according to a recent decision, they have never dismissed such a case. Cox v. Sage Hosp. Res., LLC, 413 P.3d 302, 304 n.2 (Colo. App. 2017).

258. TEX. CIV. PRAC. & REM. CODE ANN. § 71.051(e) (West 2022) (prohibiting dismissal of personal injury and death cases if the plaintiff is a legal resident of Texas or a "derivative claimant" who claims damages from the injury of death of a legal resident).

259. *See* Seaboard Coast Line R.R. Co. v. Moore, 479 So. 2d 1131, 1135–36 (Ala. 1985).

260. ALA. CODE § 6-5-430 (2014). The Alabama Supreme Court has held that, for the 1987 statute to apply, *all* the plaintiff's claims must arise outside of Alabama. *Ex parte* DaimlerChrysler Corp., 952 So. 2d 1082, 1088 (Ala. 2006).

261. ALA. CODE § 6-5-754 (2014). The latter provision was part of the "Alabama Commercial Aviation Business Improvement Act of 2013," which also adopted statutes of limitations and repose. *Id.* § 6-5-753. It was adopted the same year that Airbus Industries established a manufacturing facility in Alabama. *See* Jerry Underwood, *Airbus Breaks Ground for First U.S. Assembly Line in Alabama*, MADE IN ALA. (Apr. 8, 2013), https://www.madeinalabama.com/2013/04/airbus-groundbreaking-in-alabama [https://perma.cc/3MAJ-SPVC].

262. *See supra* Part I.

statute, they permitted dismissal only when the cause of action arises outside of the state *and* the plaintiff is a nonresident.[263]

These exclusions of local plaintiffs and local causes of action make the absence of similar exclusions for local defendants even more striking. As described in Part I.C, no state permitted forum non conveniens dismissals of cases brought against local defendants before 1954. Although a few states today disfavor forum non conveniens motions in suits against local defendants,[264] courts in twelve states and the District of Columbia explicitly permit dismissals of cases brought against in-state defendants, including such commercially important states as California, Delaware, Florida, Illinois, Michigan, and New

263. LA. CODE CIV. PROC. ANN. art. 123(B) (2012); VA. CODE ANN. § 8.01-265 (2007) (emphasis added). Before 2005, this was also true of Georgia. In 2001, the Georgia Supreme Court adopted the federal doctrine of forum non conveniens but only with respect to suits "by nonresident aliens who suffer injuries outside this country." AT&T Corp. v. Sigala, 549 S.E.2d 373, 377 (Ga. 2001). In 2003, the Georgia legislature codified the doctrine, limiting it to residents of other states for actions accruing in other states. GA. CODE ANN. § 50-2-21(b). Then, in 2005, the legislature adopted a separate statute with no exclusions for local plaintiffs or local causes of action. GA. CODE ANN. § 9-10-31.1. The Georgia Supreme Court has held, however, that the 2005 statute applies only when the alternative forum is the court of another state, La Fontaine v. Signature Rsch., Inc., 823 S.E.2d 791, 794 (Ga. 2019), which presumably means that the 2003 statute would govern when the alternative forum is the court of another country. The bottom line is that Georgia's law today parallels the federal doctrine, but only because of two interventions by the state legislature.

264. *See, e.g.*, Digit. Equip. Corp. v. Int'l Digit. Sys. Corp., 540 A.2d 1230, 1232 (N.H. 1988) (stating that "a [forum non conveniens] motion is not ordinarily granted where the forum selected by the plaintiff is the defendant's home State. A suit against a New Hampshire defendant 'presents a weak case for declining jurisdiction'"); Santa Fe Eng'rs, Inc. v. Carolina Door Prods., Inc., 268 S.E.2d 581, 582 (S.C. 1980) ("We think the trial judge correctly denied the motion where, as here, the party seeking to invoke the doctrine is a resident of this State, the contract was to be performed in this State, and the other pending litigation is so indirectly related.").

York,[265] while other states have dismissed cases against local defendants without comment on this question.[266]

E. Charting Different Courses

In sum, despite the pull of the federal doctrine, a full third of the states have charted different courses. This Section summarizes the divergences noted above by providing integrated accounts of forum non conveniens in key states.

Idaho deserves first mention because it is today the only U.S. state not to have adopted a doctrine of forum non conveniens.[267] Alabama,[268]

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265. Coonley & Coonley v. Turck, 844 P.2d 1177, 1182 (Ariz. Ct. App. 1993); Stangvik v. Shiley Inc., 819 P.2d 14, 21 (Cal. 1991); Hazout v. Tsang Mun Ting, 134 A.3d 274, 291 (Del. 2016); Pitts v. Woodward & Lothrop, 327 A.2d 816, 817 (D.C. 1974); Kinney Sys., Inc. v. Cont'l Ins. Co., 674 So. 2d 86, 93 n.7 (Fla. 1996); Jones v. Searle Lab'ys, 444 N.E.2d 157, 162 (Ill. 1982); Gonzales v. Atchison Topeka & Santa Fe Ry. Co., 371 P.2d 193, 199 (Kan. 1962); Radeljak v. DaimlerChrysler Corp., 719 N.W.2d 40, 43 (Mich. 2006); Acapolon Corp. v. Ralston Purina Co., 827 S.W.2d 189, 193 (Mo. 1992); Eaton v. Second Jud. Dist. Ct., 616 P.2d 400, 401 (Nev. 1980) ("Although the location of a defendant corporation in this state is significant, and should weigh heavily against the granting of such a motion, the doctrine of forum non conveniens is not limited to a single factor."), *overruled on other grounds by* Pan v. Eighth Jud. Dist. Ct., 88 P.3d 840, 844 (Nev. 2004); Gore v. U.S. Steel Corp., 104 A.2d 670, 675–76 (N.J. 1954); Silver v. Great Am. Ins., 278 N.E.2d 619, 622 (N.Y. 1972); Wright v. Consol. Rail Corp., 215 A.3d 982, 996 (Pa. Super. 2019); Abbott v. Owens-Corning Fiberglas Corp., 444 S.E.2d 285, 288 (W. Va. 1994).

266. *See, e.g.*, *Ex parte* Transp. Leasing Corp., 128 So. 3d 722, 725 (Ala. 2013); Durkin v. Intevac, Inc., 782 A.2d 103, 107 n.2 (Conn. 2001); AT&T Corp. v. Sigala, 549 S.E.2d 373, 377 (Ga. 2001); UFJ Bank Ltd. v. Ieda, 123 P.3d 1232, 1240 (Haw. 2005); McCracken v. Eli Lilly & Co., 494 N.E.2d 1289, 1294 (Ind. Ct. App. 1986); Gianocostas v. Interface Grp.-Mass., Inc., 881 N.E.2d 134, 140 (Mass. 2008); Bergquist v. Medtronic, Inc., 379 N.W.2d 508, 512 (Minn. 1986); Alston v. Pope, 112 So. 3d 422, 428 (Miss. 2013); Harrington v. Energy W., Inc., 396 P.3d 114, 120 (Mont. 2017); Cardiorentis AG v. IQVIA Ltd., 837 S.E.2d 873, 881 (N.C. 2020); Chambers v. Merrell-Dow Pharms., Inc., 519 N.E.2d 370, 374, 379 (Ohio 1988); Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960, 997 (Or. 2016); *In re* Bridgestone/Firestone, 138 S.W.3d 202, 210 (Tenn. App. 2003); Myers v. Boeing Co., 794 P.2d 1272, 1282 (Wash. 1990).

267. In *Marco Distributing, Inc. v. Biehl*, the Idaho Supreme Court held that a trial court could not consider dismissing on grounds of forum non conveniens before first determining that it had personal jurisdiction. Marco Distrib., Inc. v. Biehl, 555 P.2d 393, 397 (Idaho 1976). In the forty-six years since, the Idaho high court has not returned to the question whether to recognize the doctrine as part of Idaho law, although Idaho's Rules of Civil Procedure do allow a court to dismiss if "another action pending between the same parties for the same cause." IDAHO R. CIV. P. 12(b)(8) (2016).

268. Alabama requires the existence of an alternative forum, *Ex parte* Preston Hood Chevrolet, Inc., 638 So. 2d 842, 845 (Ala. 1994), has a strong presumption in favor of the plaintiff's choice of forum, *Ex parte* Auto-Owners Ins. Co., 548 So. 2d 1029, 1032 (Ala. 1989), and has adopted *Gulf Oil*'s factors, *Ex parte* Transp. Leasing Corp., 128 So. 3d at 730.

Louisiana,[269] South Carolina,[270] and Virginia[271] have generally interpreted their doctrines of foreign non conveniens consistently with the federal doctrine, but the scope of those doctrines is nonetheless limited, as discussed above.[272]

Like South Carolina, Colorado and Texas also distinguish between local and out-of-state plaintiffs, but the legal landscape in each of these states is more complex. The Colorado Supreme Court recognized a common law doctrine of forum non conveniens in 1976 but held that it "has only the most limited application in Colorado courts, and except in most unusual circumstances the choice of a Colorado forum by a resident plaintiff will not be disturbed."[273] In 2004, the Colorado legislature expanded the availability of forum non conveniens for suits by nonresident plaintiffs.[274] Colorado's law of forum non conveniens today differs from the federal doctrine in several important ways. First, under the 2004 statute, the existence of an alternative forum is listed as a factor, potentially eliminating it as a threshold requirement.[275] Second, Colorado's other statutory factors require a connection to the forum, specifically directing the court to consider whether the claimants "are not residents of the state of Colorado" and whether "[t]he injury or damage alleged to have been suffered occurred outside of the state of Colorado."[276] Third, Colorado limits its statutory doctrine to out-of-state plaintiffs.[277] In-state plaintiffs are subject only to the much narrower common law doctrine,

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269. The Louisiana Supreme Court has stated that "[t]he plaintiff's initial choice of forum is entitled to deference," Osborn v. Ergon Marine & Indus. Supply, Inc., 85 So. 3d 687, 687 (La. 2012), and the Court of Appeals has relied on *Gulf Oil*'s factors, Boudreaux v. Able Supply Co., 19 So. 3d 1263, 1268 (La. Ct. App. 2009).

270. South Carolina requires the existence of an alternative forum, Nienow v. Nienow, 232 S.E.2d 504, 508 (S.C. 1977), has a strong presumption in favor of the plaintiff's choice of forum, Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110, 113 (S.C. 1979), and has adopted *Gulf Oil*'s factors, *id.*

271. The plaintiff's choice of forum is entitled to a "presumption of correctness," and the Virginia Supreme Court has relied on *Gulf Oil*'s private interest factors—though not its public interest factors—to decide when dismissal for "good cause" is warranted. RMBS Recovery Holdings, I, LLC v. HSBC Bank USA, N.A., 827 S.E.2d 762, 771 (Va. 2019).

272. *See supra* Part II.D.

273. McDonnell-Douglas Corp. v. Lohn, 557 P.2d 373, 374 (Colo. 1976).

274. COLO. REV. STAT. ANN. §§ 13-20-1001 to -1004 (2022); *see also supra* notes 176–178 and accompanying text (describing adoption of the statute).

275. *Id.* § 13-20-1004(1)(b).

276. *Id.* § 13-20-1004(1)(a), (c).

277. *Id.* § 13-20-1004(1)(a).

which appears never to have been applied to dismiss an in-state plaintiff's claims.[278] Fourth, if all the statutory factors are met, the statute seems to *require* the case be dismissed.[279]

Texas has a common law doctrine of forum non conveniens that closely resembles the federal one,[280] but most forum non conveniens motions are governed instead by its statute regarding personal injury and death cases.[281] Statutory forum non conveniens in Texas differs from the federal doctrine in two important ways: it treats the existence of an alternative forum as a factor, which may mean that it is no longer a threshold requirement,[282] and it prohibits dismissal "if the plaintiff is a legal resident of this state or a derivative claimant of a legal resident of this state."[283]

Finally, New York and Delaware merit special consideration as significant business jurisdictions. New York pioneered discretionary dismissals, influencing the adoption of the federal doctrine in *Gulf Oil*.[284] More recently, New York was the first state to reject the existence of an alternative forum as a threshold requirement,[285] a position later followed by Delaware. New York's list of factors also emphasizes connection to the forum, asking courts to consider whether "both parties to the action are nonresidents" and whether "the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction."[286]

Delaware has perhaps the most distinctive forum non conveniens doctrine of all the states. The Delaware Supreme Court first recognized forum non conveniens in 1964, but it adopted only *Gulf Oil*'s private interest factors plus the additional factor of whether Delaware law governs the claims.[287] The following year, the court held that forum non conveniens dismissal "may occur only in the rare case in which the

278. Cox v. Sage Hosp. Res., LLC, 413 P.3d 302, 304 n.2 (Colo. App. 2017).

279. *See* COLO. REV. STAT. ANN. § 13-20-1004 (2022) ("In any action otherwise properly filed in a court of this state, a motion to dismiss without prejudice under the doctrine of forum non conveniens *shall* be granted if [all conditions are met]." (emphasis added)).

280. *See* Quixtar Inc. v. Signature Mgmt. Team, LLC, 315 S.W.3d 28, 32 (Tex. 2010).

281. *See id.* (noting that "Texas's forum non conveniens statute governs in most situations").

282. TEX. CIV. PRAC. & REM. CODE ANN. § 71.051(b)(1) (West 2022).

283. *Id.* § 71.051(e).

284. *See supra* notes 72–77 and accompanying text.

285. Islamic Republic of Iran v. Pahlavi, 467 N.E.2d 245, 249 (N.Y. 1984).

286. *Id.* at 248.

287. Gen. Foods Corp. v. Cryo-Maid, Inc., 198 A.2d 681, 684 (Del. 1964).

combination and weight of the factors to be considered balance overwhelmingly in favor of the defendant,"[288] a standard that ultimately became Delaware's "overwhelming hardship" standard.[289] In 1967, the court added a sixth factor for consideration, the pendency of similar actions elsewhere,[290] and then in 1970 it made the standard for dismissal turn on whether the Delaware action was filed first or second.[291] When there is a prior action pending elsewhere, the supreme court held, a court's "discretion [to dismiss] should be exercised freely."[292] But the court reaffirmed its "established rules of forum non conveniens where (1) no other action is pending elsewhere between the same parties involving the same issues, or (2) such other pending action was filed subsequently to the Delaware action."[293] More recently, the state supreme court held that if the action in another jurisdiction was filed first but was then dismissed, there is no presumption in favor of either the plaintiff or the defendant.[294] Finally, in 2018, the Delaware Supreme Court joined New York in rejecting a threshold requirement of an alternative forum.[295] In short, more than fifty years of development have left Delaware with a doctrine of forum non conveniens that is very different from the federal rule.

Indiana, Missouri, Oklahoma, Oregon, Utah, Washington, West Virginia, and Wisconsin also diverge from the federal doctrine, though in more limited ways. Table 1 summarizes all these divergences.

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288. Kolber v. Holyoke Shares, Inc., 213 A.2d 444, 447 (Del. 1965).

289. *See* Chrysler First Bus. Credit Corp. v. 1500 Locust Ltd. P'ship, 669 A.2d 104, 105 (Del. 1995) ("A plaintiff's choice of forum should not be defeated except in the rare case where the defendant establishes, through the *Cryo-Maid* factors, overwhelming hardship and inconvenience.").

290. Parvin v. Kaufmann, 236 A.2d 425, 427 (Del. 1967).

291. McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g. Co., 263 A.2d 281, 283–84 (Del. 1970).

292. *Id.* at 283.

293. *Id.* at 284.

294. Gramercy Emerging Mkts. Fund v. Allied Irish Banks, P.L.C., 173 A.3d 1033, 1044 (Del. 2017).

295. Aranda v. Philip Morris USA Inc., 183 A.3d 1245, 1252 (Del. 2018) ("We think that treating the issue [of an alternative forum] as a factor to be considered, rather than as a requirement, gives the issue the weight it deserves in the *forum non conveniens* analysis.").

TABLE 1

	Alternative Forum	**Difference in Deference**	**Factors diverge from *Gulf Oil***	**Exclusions from coverage**	**Not adopted**
Alabama				✓	
Colorado	(✓)		✓	✓	
Delaware	✓	✓	✓		
Idaho					✓
Indiana			✓		
Louisiana				✓	
Missouri			✓		
New York	✓		✓		
Oklahoma	(✓)				
Oregon		✓			
South Carolina				✓	
Texas	(✓)			✓	
Utah			✓		
Virginia			✓	✓	
Washington		✓			
West Virginia			✓		
Wisconsin			✓		

In summary, a significant number of states have charted independent courses for forum non conveniens. These states include some that may exercise general personal jurisdiction over a significant number of defendants, in particular Delaware (based on incorporation) and New York (based on principal place of business).[296]

296. Other states may exercise general jurisdiction over corporations that are important in particularly industries—for example, Colorado with respect to mining and Alabama and Washington with respect to aircraft manufacturing.

It remains for us to consider why some states have converged on the federal model for forum non conveniens while others have pulled away.

III. THEORIZING PROCEDURAL FEDERALISM

As our analysis reveals, a growing number of states adopted forum non conveniens doctrines over time,[297] and those doctrines have tended to converge around the federal model.[298] Today, most states and the District of Columbia follow the federal model or a doctrine very close to it.[299] This is in spite of the fact that state courts are not required to follow the federal forum non conveniens doctrine.[300] Figure 1 provides a visual representation of these developments by plotting over time the number of states and the District of Columbia that have adopted a forum non conveniens doctrine (adoption)[301] and that have followed

297. *See supra* Part I.

298. *See supra* Part II.

299. *See supra* Part II.

300. *See* Am. Dredging Co. v. Miller, 510 U.S. 443, 456–57 (1994) (explaining that forum non conveniens is a matter of "local policy" and clarifying that "[w]hat we have prescribed for the federal courts with regard to *forum non conveniens* is not applicable to the States").

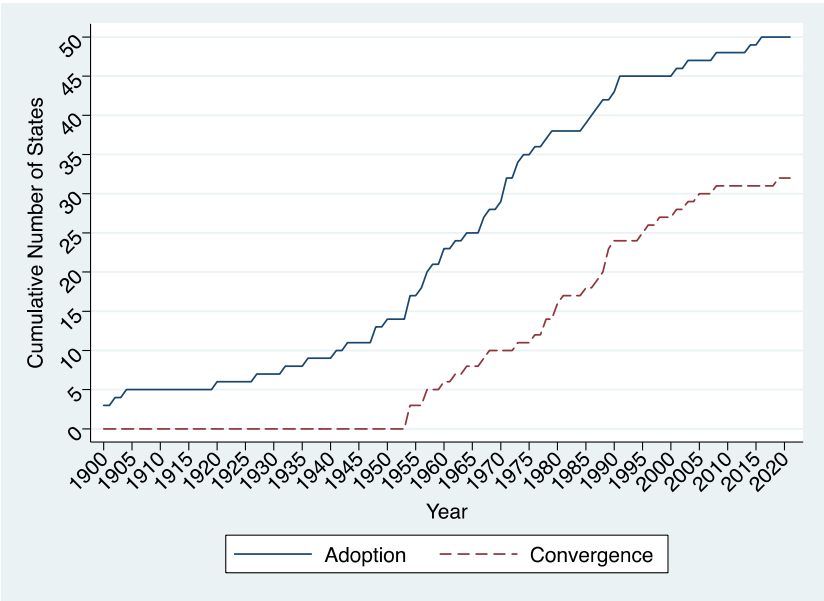
301. We used the following authorities to date state adoptions of forum non conveniens doctrines for purposes of Figure 1: Gardner v. Thomas, 14 Johns. 134, 1817 WL 1463 (N.Y. Sup. Ct. 1817); Smith v. Mut. Life Ins. of N.Y., 96 Mass. 336, 343 (1867) (dicta); Morris v. Mo. Pac. Ry. Co., 14 S.W. 228 (Tex. 1890); Driscoll v. Portsmouth, Kittery & York St. Ry., 51 A. 898, 898 (N.H. 1902); Morisette v. Canadian Pac. Ry. Co., 56 A. 1102, 1103 (Vt. 1904); Stewart v. Litchenberg, 86 So. 734, 736 (La. 1920), *overruled by* Fox v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll., 576 So. 2d 978, 991 (La. 1991); Foss v. Richards, 139 A. 313, 314 (Me. 1927); Sielcken v. Sorenson, 161 A. 47, 48 (N.J. Ch. 1932); Hagen v. Viney, 169 So. 391, 392–93 (Fla. 1936); Curley v. Curley, 120 F.2d 730, 732 (D.C. Cir. 1941); Strickland v. Humble Oil & Refin. Co., 11 So. 2d 820, 822 (Miss. 1943); Harbrecht v. Harrison, 38 Haw. 206 (1948); Whitney v. Madden, 79 N.E.2d 593, 595 (Ill. 1948); Mooney v. Denver & Rio Grande W. R.R., 221 P.2d 628, 648–49 (Utah 1950); Price v. Atchison, Topeka & Santa Fe Ry. Co., 268 P.2d 457, 458 (Cal. 1954); Johnson v. Chi., Burlington & Quincy. R.R., 66 N.W.2d 763, 770 (Minn. 1954); St. Louis-S.F. Ry. v. Superior Ct., Creek Cnty., 276 P.2d 773, 777 (Okla. 1954); Elliott v. Johnston, 292 S.W.2d 589, 595 (Mo. 1956); Running v. S.W. Freight Lines, Inc., 303 S.W.2d 578, 582 (Ark. 1957); Carter v. Netherton, 302 S.W.2d 382, 384 (Ky. Ct. App. 1957); Winsor v. United Air Lines, 154 A.2d 561, 564 (Del. Super. Ct. 1958); Plum v. Tampax, Inc., 160 A.2d 549, 553 (Pa. 1960); WIS. STAT. ANN. § 801.63(1) (2022), originally WIS. STAT. § 262.19 (1960); Gonzales v. Atchison Topeka & Santa Fe Ry. Co., 371 P.2d 193, 196 (Kan. 1962); MD. CTS. & JUD. PROC. CODE ANN. § 6-104(a) (1964); NEB. REV. STAT. ANN. § 25-538 (1967); N.C. GEN. STAT. ANN. § 1-75.12 (1967); Zurick v. Inman, 426 S.W.2d 767, 771 (Tenn. 1968); Rath Packing Co. v. Intercontinental Meat Traders, Inc., 181 N.W.2d 184, 189–90 (Iowa 1970) (dicta); First Nat'l Bank & Tr. Co. v. Pomona Mach. Co., 486 P.2d 184, 188 (Ariz. 1971) (dicta); IND. R. TRIAL P. 4.4(C)–(E) (1971); N.D. R. CIV. P. 4(b)(5) (1971); Cray v. Gen. Motors Corp., 207 N.W.2d 393, 398 (Mich. 1973); McLam v. McLam, 510 P.2d 914, 914 (N.M. 1973); Werner v. Werner, 526 P.2d 370, 378 (Wash. 1974); McDonnell-Douglas Corp. v. Lohn,

the federal model more specifically (convergence).[302]

557 P.2d 373, 374 (Colo. 1976); Buckholt v. Second Jud. Dist. Ct., In & For Washoe Cnty., 584 P.2d 672, 673 (Nev. 1978); Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110, 113 (S.C. 1979); Crowson v. Sealaska Corp., 705 P.2d 905, 907–08 (Alaska 1985); Miller v. United Techs. Corp., 515 A.2d 390, 392 (Conn. Super. Ct. 1986); ALA. CODE § 6-5-430 (1987); Chambers v. Merrell-Dow Pharms., Inc., 519 N.E.2d 370, 373 (Ohio 1988); Norfolk & W. Ry. v. Tsapis, 400 S.E.2d 239, 244 (W. Va. 1990); VA. CODE ANN. § 8.01-265 (1991); W. Tex. Utils. Co. v. Exxon Coal USA, Inc., 807 P.2d 932, 935 (Wyo. 1991); AT&T Corp. v. Sigala, 549 S.E.2d 373, 377 (Ga. 2001); Rothluebbers v. Obee, 668 N.W.2d 313, 323 (S.D. 2003); Kedy v. A.W. Chesterton Co., 946 A.2d 1171, 1179 (R.I. 2008); San Diego Gas & Elec. Co. v. Gilbert, 329 P.3d 1264, 1272 (Mont. 2014); Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960, 981 (Or. 2016).

302. Consistent with our discussion in Part II, we count states as converging around the federal model when they adopt *Gulf Oil*'s private and public interest factors unless they diverge significantly from the federal model in any respects highlighted in Parts II.A, B, and D and Table 1. We used the following cases to date convergence by states for purposes of Figure 1: Gore v. U.S. Steel Corp., 104 A.2d 670, 673 (N.J. 1954); Price v. Atchison Topeka & Santa Fe Ry. Co., 268 P.2d 457, 461–62 (Cal. 1954); St. Louis-S.F. Ry. Co. v. Superior Ct., Creek Cnty., 276 P.2d 773, 778–79 (Okla. 1954); Running v. S.W. Freight Lines, Inc., 303 S.W.2d 578, 581 (Ark. 1957); Walsh v. Crescent Hill Co., 134 A.2d 653, 654 (D.C. 1957); Plum v. Tampax, Inc., 160 A.2d 549, 553 (Pa. 1960); Gonzales v. Atchison Topeka & Santa Fe Ry., 371 P.2d 193, 196–97 (Kan. 1962); Giseburt v. Chi., Burlington, 195 N.E.2d 746, 748 (Ill. 1964); New Amsterdam Cas. Co. v. Estes, 228 N.E.2d 440, 443–44 (Mass. 1967); Zurick v. Inman, 426 S.W.2d 767, 771–72 (Tenn. 1968); Cray v. Gen. Motors Corp., 207 N.W.2d 393, 398–99 (Mich. 1973); Leeper v. Leeper, 354 A.2d 137, 139 (N.H. 1976); MacLeod v. MacLeod, 383 A.2d 39, 42 (Me. 1978); Hague v. Allstate Ins., 289 N.W.2d 43, 46 (Minn. 1978); Motor Inn Mgmt., Inc. v. Irvin-Fuller Dev. Co., Inc., 266 S.E.2d 368, 371 (N.C. Ct. App. 1980); Eaton v. Second Jud. Dist. Ct., In and For Washoe Cnty., Dept. No. 7, 616 P.2d 400, 401 (Nev. 1980); Silversmith v. Kenosha Auto Transp., 301 N.W.2d 725, 727 (Iowa 1981); Crowson v. Sealaska Corp., 705 P.2d 905, 908 (Alaska 1985); Cal Fed Partners v. Heers, 751 P.2d 561, 562–63 (Ariz. App. 2d Div. 1987); Chambers v. Merrell-Dow Pharms., Inc., 519 N.E.2d 370, 373 (Ohio 1988); Mo. Pac. Ry. Co. v. Tircuit, 554 So. 2d 878, 882 (Miss. 1989); Johnson v. G.D. Searle & Co., 552 A.2d 29, 31 (Md. 1989); Union Carbide Corp. v. Aetna Cas. & Sur. Co., 562 A.2d 15, 20 (Conn. 1989); Norfolk & W. Ry. Co. v. Tsapis, 400 S.E.2d 239, 242 (W. Va. 1990); Marchman v. NCNB Tex. Nat'l Bank, 898 P.2d 709, 720 (N.M. 1995); Kinney Sys., Inc. v. Cont'l Ins., 674 So. 2d 86, 91–92 (Fla. 1996); Lesser v. Boughey, 965 P.2d 802, 805 (Haw. 1998); AT&T Corp. v. Sigala, 549 S.E.2d 373, 376 (Ga. 2001); Rothluebbers v. Obee, 668 N.W.2d 313, 318 (S.D. 2003); Ameritas Inv. Corp. v. McKinney, 694 N.W.2d 191, 202 (Neb. 2005); Lykins Enters., Inc. v. Felix, Nos. 2006-SC-000142-DG & 2006-000624-DG, 2007 WL 4139637, at *4 (Ky. Nov. 21, 2007); Kedy v. A.W. Chesterton Co., 946 A.2d 1171, 1184–85 (R.I. 2008); Vicknair v. Phelps Dodge Indus., Inc., 767 N.W.2d 171, 178 (N.D. 2009); Saunders v. Saunders, 445 P.3d 991, 999–1000 (Wyo. 2019). Two states that originally converged around the federal doctrine later diverged when they adopted forum non conveniens statutes: Oklahoma in 2009 and West Virginia in 2007. *See* OKLA. STAT. tit. 12, § 140.3 (West 2009); W. VA. CODE § 56-1-1a (Acts 2007, c. 1, eff. June 7, 2007). We drop these states from our count in their respective years of divergence.

FIGURE 1: ADOPTION AND CONVERGENCE OF FORUM NON CONVENIENS



NOTES: Figure 1 plots the cumulative number of states (and the District of Columbia) that have adopted a forum non conveniens doctrine and that have converged around the federal forum non conveniens doctrine in particular.

On the other hand, we have shown that a substantial number of states—approximately one-third of them—have rejected or modified significant aspects of the federal model, such as the alternative forum requirement, the degree of deference owed to a plaintiff's choice of forum, the factors to be weighed, and the doctrine's scope of application.[303] The result is not only considerable divergence from the federal model, but also significant variation among states.

Complex patterns of procedural convergence and divergence like these are not unique to forum non conveniens.[304] So far, however, scholars have generally emphasized one tendency or the other. Professor Scott Dodson argues that "states have routinely followed federal law even when adherence is not compelled. Rather than blaze

303. *See supra* Part II.

304. *See supra* notes 47–50 and accompanying text.

their own paths, states tend to look to federal law as their starting points. It is as if federal law exerts a kind of gravitational pull on states."[305] Others highlight how state courts "dance to their own drummer" when developing common law.[306] Indeed, states have diverged from federal procedure in important ways, including in the law of pleading, summary judgment, class actions, and standing,[307] as well as the rules of civil procedure more generally.[308]

Our assessment is that convergence has predominated over divergence in the case of state forum non conveniens doctrines. But in our view, the even more interesting question—both for state forum non conveniens and for procedural federalism more generally—is what explains the dynamics of convergence and divergence. Building on our examination of state forum non conveniens doctrines, we draw on social science theories of diffusion—which aim to explain how policy-making by one government can affect policy-making by other

305. Dodson, *supra* note 32, at 705. Dodson has, even more forcefully, referred to "rampant mimicry" by states. *Id.* at 718–19. However, we think this would be an exaggeration as applied to the state forum non conveniens doctrines we have analyzed; *see also* Hon. Ralph Artigliere, Chad P. Brouillard, Reed D. Gelzer, Kimberly Reich & Steven Teppler, *Diagnosing and Treating Legal Ailments of the Electronic Health Record: Toward an Efficient and Trustworthy Process for Information Discovery and Release*, 18 SEDONA CONF. J. 209, 254 n.70 (2017) (explaining that "[f]ederal law strongly influences developing state law, especially where the state rules are like the federal rules," as with discovery rules); Joseph A. Grundfest & Kristen A. Savelle, *The Brouhaha over Intra-Corporate Forum Selection Provisions: A Legal, Economic, and Political Analysis*, 68 BUS. LAW. 325, 381–82 (2013) ("[F]ederal law today strongly influences state law governing forum selection disputes . . . .").

306. *See* Gregory A. Caldeira, *The Transmission of Legal Precedent: A Study of State Supreme Courts*, 79 AM. POL. SCI. REV. 178, 192 (1985) ("National political institutions may dominate much of the time in most fields of endeavor, but in the development of the common law, state supreme courts dance to their own drummer.").

307. *See* Clopton, *supra* note 30, at 411 (documenting "state courts deviating from *Twombly* and *Iqbal* on pleading; the *Celotex* trilogy on summary judgment; *Wal-Mart v. Dukes* on class actions; and Supreme Court decisions on standing and international law"); *see also* Resnik, *supra* note 30 (predicting divergence in aggregate litigation trends).

308. *See* John B. Oakley & Arthur F. Coon, *The Federal Rules in State Courts: A Survey of State Court Systems of Civil Procedure*, 61 WASH. L. REV. 1367, 1369 (1986) (finding that "only a minority of states have embraced the system and philosophy of the Federal Rules wholeheartedly enough to permit classification as true federal replicas"); John B. Oakley, *A Fresh Look at the Federal Rules in State Courts*, 3 NEV. L.J. 354, 355 (2002) (finding that "[n]ot only has the trend toward state conformity to the federal rules stopped accelerating—it has substantially reversed itself"); *see also* Funk & Mullen, *supra* note 35, at 157 (mapping state-to-state diffusion of the Field Code across U.S. states and arguing that this diffusion counters the common account of federally driven reform during the post-Civil War era).

governments[309]—to develop some empirically informed conjectures about why states have generally followed the federal forum non conveniens model, and why they sometimes have not. Specifically, we identify three processes that appear to have influenced the development of state forum non conveniens doctrines: competition, emulation, and innovation. By doing so, we also hope to shed light on the dynamics of procedural federalism more generally.

Our analysis suggests that competition is the most important driver of state adoption of forum non conveniens doctrines and convergence around the federal model, with emulation also playing a significant role. On the other hand, innovation appears to be the primary contributor to divergence from the federal model, although our analysis indicates that in some cases competition also contributes to divergence.

A. Competition

We think competition offers the primary explanation for state adoption of forum non conveniens doctrines and the strong tendency of states to converge around the federal model. According to competition theory, governments compete to attract good things (such as tax bases, investment, or jobs) and repel bad things (such as pollution or crime).[310] When one government adopts a policy to achieve those ends, other governments may adopt the same policy in an effort to remain competitive. For example, states may compete to attract and retain businesses. To do so, they may adopt business-friendly policies, such as lower taxes, less regulation, or limits on tort liability. If some states adopt such policies, other states may feel compelled to follow in order to retain in-state businesses and remain competitive in attracting

309. *See* Erin R. Graham, Charles R. Shipan & Craig Volden, *The Diffusion of Policy Diffusion Research in Political Science*, 43 BRIT. J. POL. SCI. 673, 675 (2013) ("[D]iffusion occurs when one government's decision about whether to adopt a policy innovation is influenced by the choices made by other governments."). For what is widely considered the seminal work on diffusion, see generally Jack L. Walker, *The Diffusion of Innovations Among the American States*, 63 AM. POL. SCI. REV. 880 (1969).

310. *See* Frank Dobbin, Beth Simmons & Geoffrey Garrett, *The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?*, 33 ANN. REV. SOCIO. 449, 458 (2007); CHRISTOPHER Z. MOONEY, THE STUDY OF U.S. STATE POLICY DIFFUSION: WHAT HATH WALKER WROUGHT? 21 (2020) ("Competition leads states to 'emulate policies of other states to achieve an economic advantage . . . or to avoid being disadvantaged.' The 'driving force' behind competition-driven diffusion is mobility—of people, firms, and capital." (citations omitted)).

new business.[311] As applied to state forum non conveniens doctrines, this competitive process appears to have two dimensions: horizontal and vertical.

1. *Horizontal Dimension*. First, there is a horizontal inter-state dimension to this competition.[312] The expansion of forum non conveniens to reach claims brought against in-state defendants,[313] for example, may be explained by horizontal competition: Once New Jersey made its move in *Gore*, states that did not do the same were putting their own residents at a comparative disadvantage, which these states then sought to rectify. And the more states that followed New Jersey's lead, the greater the market pressure was on other states to do the same. Neighboring New York cited *Gore* in reversing its long-standing, explicit policy limiting forum non conveniens to foreign-cubed cases,[314] a development the legislature then codified.[315] New York's legislative reform then served as the model for California's.[316] The California Supreme Court subsequently suggested that this expansion would help relieve California businesses from a "competitive disadvantage."[317] Similarly, when Texas passed a forum non conveniens statute to overrule a Texas Supreme Court decision refusing to dismiss a suit by foreign plaintiffs against Texas businesses, supporters of the legislation highlighted the doctrine's availability in California, Florida, and New York, and they argued that the codification was needed to compete against those states for investment by multinational corporations.[318]

311. *See* Dobbin et al., *supra* note 310, at 457 ("Competition theorists . . . point[] to changes in incentives. . . . [W]hen a country's competitors simplify regulatory requirements, ameliorate investment risks, and reduce tax burdens, that country comes under pressure to follow suit."); MOONEY, *supra* note 310, at 22 ("The hypothesized motive is that people and firms locate to the polity that best matches their ideal policy regime."); *id.* at 23 ("States compete for firms directly through targeted tax and regulation incentives and indirectly by developing a generally 'business-friendly' regulatory regime.").

312. *Cf.* Funk & Mullen, *supra* note 35, at 157–61 (noting state interest in drawing capital investment as motivation for procedural reform).

313. *See supra* Part I.C (discussing the expansion of forum non conveniens).

314. Silver v. Great Am. Ins., 278 N.E.2d 619, 623 (N.Y. 1972).

315. N.Y. C.P.L.R. 327(a) (1972).

316. *See* Credit Lyonnais Bank Nederland, N.V. v. Manatt, Phelps, Rothenberg & Tunney, 249 Cal. Rptr. 559, 564–65 (Cal. Ct. App. 1988) (discussing context of the statutory amendment).

317. Stangvik v. Shiley Inc., 819 P.2d 14, 24 (Cal. 1991).

318. BILL ANALYSIS, *supra* note 163, at 4; *see also supra* Part I.E.

There is also evidence of horizontal competition by states to protect their courts from bearing a disproportionate share of litigation burdens vis-à-vis each other. For example, when the Minnesota Supreme Court overturned its prior precedent to adopt forum non conveniens, it flagged other states' adoption of the doctrine and worried that "each time another state adopts [the doctrine,] the inevitable result is that those states remaining in the group not adopting it must of necessity receive and try that many more cases."[319]

We have so far emphasized how competition may lead to greater convergence around the federal model, but competition may sometimes push states to diverge. For example, as we have already pointed out, New York and Delaware have both rejected the federal doctrine's requirement of an alternative forum, relegating it instead to a factor weighed alongside the other private and public interest factors.[320] In justifying this shift, both states' courts focused on forum shopping and judicial resource concerns, again suggesting competition to reduce litigation burdens. For example, New York's high court claimed that such a requirement "would place an undue burden on New York courts [by] forcing them to accept foreign-based actions unrelated to this State merely because a more appropriate forum is unwilling or unable to accept jurisdiction."[321] The Delaware Supreme Court based its rejection of the alternative forum requirement partly on the concern that transnational cases "are complex and strain judicial resources."[322]

Considerations of political economy may also have contributed to New York's and Delaware's competition-induced rejection of the alternative forum requirement. A large number of businesses are incorporated or have their principal places of business in these states and are therefore subject to personal jurisdiction in them.[323] Eliminating the alternative forum requirement makes it easier for these in-state businesses to obtain a forum non conveniens dismissal when sued in their home-state courts, thereby reinforcing the

319. Johnson v. Chi., Burlington & Quincy R.R., 66 N.W.2d 763, 773 (Minn. 1954).

320. *See supra* Part II.A.

321. Islamic Republic of Iran v. Pahlavi, 467 N.E.2d 245, 249–50 (N.Y. 1984).

322. Aranda v. Philip Morris USA Inc., 183 A.3d 1245, 1252–54 (Del. 2018).

323. *See* Daimler AG v. Bauman, 571 U.S. 117, 137 (2014).

competitive status of these states as leading jurisdictions for businesses.[324]

These opinions exhibit a certain protectionist impulse, with the courts adjusting their forum non conveniens doctrines to offer enhanced protection for local courts, local taxpayers, and local defendants against the burdens of litigation involving foreign parties or events. They suggest that competition may in some cases produce state forum non conveniens doctrines with features that are even more favorable to defendants than the federal model.[325]

2. *Vertical Dimension*. Second, state and federal doctrines interacted in ways that amplified competitive pressures to protect in-state parties. If states do not recognize forum non conveniens, or if they apply a version of the doctrine that is more limited than the federal model, plaintiffs may prefer to file their claims in state courts to reduce the likelihood of dismissal. If there is a basis for federal jurisdiction, defendants may then seek removal to federal court in order to take advantage of the federal forum non conveniens doctrine or the federal transfer statute.[326] But when some defendants are barred from removing cases—as are defendants in FELA cases or in-state defendants when the only basis for federal subject matter jurisdiction is diversity of citizenship—those defendants will not be able to access those federal forum-shopping tools.[327] That inability to remove can

324. Note, however, that Delaware's "overwhelming hardship" standard for dismissal in cases first filed in Delaware is more demanding than the federal doctrine. *See* Gramercy Emerging Mkts. Fund v. Allied Irish Banks, P.L.C., 173 A.3d 1033, 1044 (Del. 2017).

325. Conversely, states that have decided not to follow New York and Delaware in rejecting the alternative forum requirement have emphasized justice concerns rather than forum shopping and judicial resource concerns. *See* Binder v. Shepard's Inc., 133 P.3d 276, 279–80 (Okla. 2006) (explaining that "[w]hile future international developments might require us to reconsider the *Pahlavi* rule in similar extreme conditions, it will not serve the purposes of justice in this rather more ordinary situation" and holding that "the existence of a viable alternate forum is a prerequisite to the application of the doctrine of forum non conveniens"); Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960, 987 (Or. 2016) (holding that "considering the nature of *forum non conveniens* as an extraordinary equitable remedy and the deference owed to every plaintiff's forum choice, . . . a trial court may dismiss or stay an action for *forum non conveniens* only when the moving party demonstrates that there is an adequate alternative forum available"); Vicknair v. Phelps Dodge Indus., Inc., 767 N.W.2d 171, 179 (N.D. 2009) (rejecting invitation to follow New York, characterizing its *Pahlavi* decision as an "outlier case," and noting that "it will not serve the purposes of justice in this rather more ordinary situation" (quoting *Binder*, 133 P.3d at 279)).

326. *See* 28 U.S.C. § 1404.

327. This disparate treatment of in-state and out-of-state parties is one of the consequences of vertical legal disuniformity criticized in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 74–75 (1938)

further encourage plaintiffs to file in state courts, which in turn encourages state courts to adopt forum non conveniens to correct for that incentive and provide their resident defendants with equivalent forum-shopping tools. The more states do so, the greater the competitive pressure on other states to follow suit becomes.[328]

These vertical and horizontal forces combine to create hydraulic pressure on states to adopt a forum non conveniens doctrine (or conform an existing doctrine to be at least as favorable to defendants as the federal model) so that their resident defendants are not competitively disadvantaged compared to businesses based in other states. As the Florida Supreme Court explained, "when a defendant is a Florida resident, removal may not be permitted. Thus, if Florida applies a less vigorous doctrine of the forum non conveniens [than the federal courts], the state actually is disadvantaging some of its own residents."[329] Similarly, supporters of Texas's forum non conveniens legislation argued that it was necessary to remove "an incentive for foreign plaintiffs to sue Texas corporations" who, unlike out-of-state corporations, would be unable to remove to federal court and then seek dismissal under the federal doctrine.[330]

Finally, the competition to reduce litigation burdens that operates horizontally among states also appears to operate vertically between state and federal courts. For example, because FELA prohibits removal to federal court, the Minnesota Supreme Court[331] and the

("*Swift v. Tyson* . . . made rights . . . vary according to whether enforcement was sought in the state or in the federal court; and the privilege of selecting the court in which the right should be determined was conferred upon the non-citizen. Thus, the doctrine rendered impossible equal protection of the law.").

328. *See supra* Part I.B (discussing this pattern in the context of FELA actions); Part I.D (discussing this pattern in the context of transnational tort cases).

329. Kinney Sys., Inc. v. Cont'l Ins. Co., 674 So. 2d 86, 88 (Fla. 1996).

330. BILL ANALYSIS, *supra* note 163, at 3–4; *see also supra* Part I.E. Another theory of diffusion is based on federal coercion of states to adopt federal policies. *See* MOONEY, *supra* note 310, at 12 (stating that the mechanisms of diffusion include coercion). One might reasonably characterize the impact of federal removal, forum non conveniens, and transfer doctrine as a form of coercion rather than competition. However, we do not discern any deliberate federal effort to force, or even encourage, states to adopt the forum non conveniens doctrine in general or the federal version of it in particular. For this reason, we are not convinced that coercion (as understood in diffusion research) is an apt characterization of the spread of forum non conveniens. *See* Pamela J. Clouser McCann, Charles R. Shipan & Craig Volden, *Top-Down Federalism: State Policy Responses to National Government Discussions*, 45 PUBLIUS: J. FEDERALISM 495, 496 (2015) ("Studies of top-down diffusion tend to focus on state laws that are adopted following national laws that feature . . . grants, mandates, or preemptions.").

331. Johnson v. Chi., Burlington & Quincy R.R., 66 N.W.2d 763, 772 (Minn. 1954).

Oklahoma Supreme Court[332] recognized that a failure to adopt forum non conveniens at the state level would encourage plaintiffs to file more suits in the state courts, causing them to bear a greater burden of FELA suits as compared to the federal courts.[333] When the Delaware Supreme Court followed New York in rejecting the alternative forum requirement, its reasoning likewise focused on the allocation of litigation burdens between state and federal courts: "Much has changed in the *forum non conveniens* landscape since the United States Supreme Court's recognition of the doctrine in 1947. . . . With the doors to the federal courthouses closing, state courts now shoulder more of the transnational litigation."[334]

B. Emulation

Emulation appears to be a secondary driver of state convergence around the federal model of forum non conveniens.[335] Emulation theory posits that "policy makers [are] constrained by bounded rationality, lacking the information and cognitive capacity to assess the costs and benefits of each and every alternative."[336] Instead, there is a tendency to adopt the policies of a community of experts because policymakers have, by participating in that community, internalized its norms.[337] There is also a tendency to follow the ideas of peer policy communities or a more prestigious community[338]—not because of an

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332. St. Louis-S.F. Ry. Co. v. Superior Ct., Creek Cnty., 276 P.2d 773, 777–78 (Okla. 1954).

333. *See supra* Part I.B.

334. Aranda v. Philip Morris USA Inc., 183 A.3d 1245, 1252–53 (Del. 2018).

335. *See* MOONEY, *supra* note 310, at 12 (identifying emulation as one of the principal mechanisms of diffusion).

336. Dobbin et al., *supra* note 310, at 452; *see also* MOONEY, *supra* note 310, at 27 ("Emulation can be thought of as a cognitive strategy to cope with state policymakers' problematic information environment. Thus, policymaker capacity and incentives may determine when it is used. For example, [others] demonstrate that legislatures with fewer staff are more likely to copy legislative language directly from other states." (citations omitted)).

337. *See* MOONEY, *supra* note 310, at 26 ("The idea is that 'communities of policy experts' develop policy-relevant standards, which members of those communities internalize. . . . As a result, state policymakers may feel normative pressure to achieve some national or professional standard. Thus, the motive force behind policy emulation may simply be 'pride in keeping up with modern trends.'" (citations omitted)).

338. *See* MOONEY, *supra* note 310, at 28 ("The small-group literature hypothesizes that lower-ranked community members will emulate higher-ranked members . . . ." (citations omitted)); Dobbin et al., *supra* note 310, at 454 ("Given changing norms and uncertainty about which policies are most effective, policy makers copy the policies that they see experts promoting and leading countries embracing or policies that they see their peers embracing.").

evidence-based analysis of the effectiveness of a policy, but because of the characteristics of the community that has enacted the policy.[339]

We believe three channels of emulation in particular may help explain convergence in forum non conveniens doctrines: reliance on the perceived expertise of prestigious adopters; building momentum among states adopting the federal model; and the construction of a set of ideas about forum shopping and the forum non conveniens doctrine's role in reducing it, which were then internalized by judges and legislators.

1. *Prestige and Perceived Expertise.* First, state court judges are unlikely to have the resources to assess the costs and benefits of each possible model for a change in the law, including the adoption of or modifications to the forum non conveniens doctrine.[340] Adoption of the U.S. Supreme Court's model—based not on an assessment of how well that model has worked compared to other models, but rather because of the status and visibility of the Supreme Court as an institution—offers a safe decision-making shortcut.[341]

The value of *Gulf Oil*'s ready-made framework is perhaps reflected in the differing impacts of two contemporaneous reform efforts in the 1960s. During that era, a number of state legislatures adopted the forum non conveniens provision of the Uniform Law Commission's ("ULC's") Uniform Interstate and International

339. Thus, emulation is different than learning, which is a distinct mechanism of diffusion. Learning entails a government's examination of other governments' policies for solving a given problem and analyzing the effects of those policies to determine whether to adopt a similar policy. MOONEY, *supra* note 310, at 26–27 ("Rather than policy information, policymakers tend to base their emulation decisions on 'actor characteristics,' 'copying the actions of another in order to look like that other,' rather than to achieve a substantive policy goal. While learning has a fact-based frame, . . . emulation is norm based.") (citations omitted); *id.* at 28 ("Unlike with learning, where a wide variety of information could flow across state borders, emulation is all about copying legislative language." (citations omitted)). Based on our observations, state courts have tended to adopt the federal model without positing a particular problem, analyzing evidence to understand how well the federal model has actually mitigated the problem, and discussing what can be learned by the federal experience with its forum non conveniens doctrine. That pattern suggests "emulation" more than "learning," as the terms are used by political scientists.

340. *Cf.* Funk & Mullen, *supra* note 35, at 142–43 (highlighting resource constraints as a major driver of states' copying of New York's procedural reforms).

341. *See* Caldeira, *supra* note 306, at 178 (explaining that "[d]ecision makers on appellate courts . . . look for and use the experience" of other courts because of "the very real need for information in the face of high levels of uncertainty," as well as "the pervasiveness of precedent, regardless of source, as a norm of judicial choice making in the United States" (citations omitted)).

Procedure Act of 1962 ("UIIPA").[342] Insofar as the ULC's uniform acts—including UIIPA—are intended to serve as models for state legislation, they might be understood as instruments of emulation by design. But the forum non conveniens statutes based on the UIIPA have rarely been invoked by state courts, perhaps because its forum non conveniens provision was so vague.[343] There was a gap of thirty-five years, for example, between Maryland's adoption of the UIPPA and its first judicial application of forum non conveniens.[344] In Nebraska, the statute marked a reversal of the state courts' position on forum non conveniens, yet it appears that no Nebraska court cited to the statute for twenty-five years; when the Nebraska Supreme Court overturned its precedent and approved forum non conveniens in 1974, it made no mention of the law.[345]

Arguably more influential was the forum non conveniens provision in the *Restatement (Second) of Conflict of Laws*, the draft of which was circulating by the late 1950s. The *Restatement*'s language is just as vague as that of the UIIPA,[346] but unlike the UIIPA, it was accompanied by extensive commentary—and that commentary drew almost exclusively on federal court precedent, including quoting the private and public interest factors from *Gulf Oil*.[347] When the Kentucky courts adopted forum non conveniens in 1957, they cited the *Restatement (Second)*—as did Pennsylvania in 1960 and Kansas in

342. *See supra* Part I.C (listing Arkansas, California, District of Columbia, Maryland, Massachusetts, Nebraska, North Carolina, North Dakota, and Pennsylvania). The Uniform Law Commission was originally known as the National Conference of Commissioners on Uniform State Laws.

343. The UIIPA provision reads: "When the court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any conditions that may be just." UNIFORM INTERNATIONAL PROCEDURE ACT § 1.05 (UNIF. L. COMM'N 1962).

344. *See* Johnson v. G.D. Searle & Co., 552 A.2d 29, 32 (Md. 1989) (discussing adoption of the statute). Similarly, there appears to be a gap of twenty-five years between North Dakota's adoption of the UIIPA provision and its first forum non conveniens decision. *See* Commonwealth Land Title Ins. Co. v. Pugh, 555 N.W.2d 576, 579 (N.D. 1996) (discussing North Dakota's UIIP provision); *see also* N.D. R. CIV. P. 4(b)(5) (implementing UIIPA provision).

345. *See* Qualley v. Chrysler Credit Corp., 217 N.W.2d 914, 915–16 (Neb. 1974).

346. RESTATEMENT (SECOND) OF THE CONFLICT OF LAWS § 84 (Am. L. Inst. 1971) ("A state will not exercise jurisdiction if it is a seriously inconvenient forum for the trial of the action provided that a more appropriate forum is available to the plaintiff.").

347. *Id.* cmt. c.

1962.[348] Perhaps not coincidentally, both Pennsylvania and Kansas simultaneously adopted the *Gulf Oil* framework for analyzing forum non conveniens.[349] Other states that had recognized discretion to dismiss cases before *Gulf Oil* also began to revise their doctrines to mirror the federal framework.[350] The *Restatement*'s greater impact as a focus of emulation seems to have been due in part to its harnessing the prestige of the federal courts by citing federal case law, rather than due to any intrinsic differences in the *Restatement*'s and the UIIPA's particular formulations of the forum non conveniens doctrine.

Emulation driven by a combination of prestige and resource constraints can also operate horizontally, encouraging convergence around regional leaders.[351] As Professors Kellen Funk and Lincoln Mullen found with states' adoption of New York's Field Code in the nineteenth century, state legislation was often more similar to that of neighboring states than to New York's original version.[352] Likewise, states adopting or reforming forum non conveniens often looked to regional leaders: for example, Maine and New Hampshire cited Massachusetts in adopting forum non conveniens before *Gulf Oil*[353]; Alaska relied heavily on California cases in its late adoption[354]; Virginia

348. Gonzales v. Atchison Topeka & Santa Fe Ry. Co., 371 P.2d 193, 197–99 (Kan. 1962); Carter v. Netherton, 302 S.W.2d 382, 384 (Ky. Ct. App. 1957); Plum v. Tampax, Inc., 160 A.2d 549, 552–53 (Pa. 1960).

349. *Gonzales*, 371 P.2d at 196–97; *Plum*, 160 A.2d at 553.

350. Walsh v. Crescent Hill Co., 134 A.2d 653, 654 (D.C. 1957); MacLeod v. MacLeod, 383 A.2d 39, 42 (Me. 1978); New Amsterdam Cas. Co. v. Estes, 228 N.E.2d 440, 443–44 (Mass. 1967); Leeper v. Leeper, 354 A.2d 137, 139 (N.H. 1976).

351. *See* Caldeira, *supra* note 306, at 191 ("These [state court] judges, like their colleagues in legislative halls, evince a marked propensity to rely on the lead of the more professional, prestigious courts located in the more diverse and populous states.").

352. *See* Funk & Mullen, *supra* note 35, at 150–51 (noting in particular the legal affinity of Maine and Massachusetts, Virginia and West Virginia, and Washington and California).

353. *See* Foss v. Richards, 139 A. 313, 314 (Me. 1927) (citing Nat'l Tel. Mfg. Co. v. Dubois, 165 Mass. 117 (1896)); Jackson & Sons v. Lumbermen's Mut. Cas. Co., 168 A. 895, 896 (N.H. 1933) (citing Universal Adjustment Corp. v. Midland Bank, Ltd., of London, 184 N.E. 152 (Mass. 1933)). Vermont cited New York. *See* Morisette v. Canadian Pac. Ry. Co., 56 A. 1102, 1103 (Vt. 1904) (citing Gardner v. Thomas, 14 Johns. 134 (N.Y. Sup. Ct. 1817)). These five Northeast states made up half the states that had adopted forum non conveniens before *Gulf Oil*.

354. *See* Crowson v. Sealaska Corp., 705 P.2d 905, 908 (Alaska 1985) (citing California cases when first considering the applicability of forum non conveniens).

and West Virginia moved almost in lockstep[355]; and Oregon and Montana paid attention to Washington's decisions.[356]

There are several plausible explanations for such regional emulation, as Funk and Mullen suggest. There may be a shared socialization among the lawyers, judges, or legislators in neighboring states, particularly in terms of regional identity and priorities.[357] It may even matter what books are on judges' shelves,[358] in which case we might expect state courts whose decisions are published in the same regional reporter to cite more frequently to one another.

One puzzle is why Delaware's distinctive doctrine did not draw any adherents, regional or otherwise.[359] It could be that Delaware is simply not perceived to be as prestigious on procedural questions as the U.S. Supreme Court or states like New York, California, or Massachusetts. Or it could be that it was simply too late: almost half of the states had already adopted forum non conveniens by the time the Delaware Supreme Court articulated its unique approach in 1964. These conjectures aside, the lack of states emulating Delaware does not alter our conclusion that emulation based on the perceived expertise of prestigious adopters is one factor that helps explain the general patterns of convergence we observe.

2. *Momentum*. Second, momentum among states adopting the forum non conveniens doctrine also appears to have played a role. As some diffusion scholars argue, "[o]nce diffusion reaches a tipping point, it often speeds up, and policies spread to polities for which they were not originally designed." The reason may be "that once new

355. The supreme courts of West Virginia and Virginia each declined to adopt a forum non conveniens doctrine in FELA cases in 1988 and 1989 respectively. Caldwell v. Seaboard Sys. R.R. 380 S.E.2d 910, 912–13 (Va. 1989); Gardner v. Norfolk & W. Ry. Co., 372 S.E.2d 786, 793 (W.V. 1988). In 1990, the West Virginia Supreme Court reversed course, permitting dismissals for forum non conveniens, Norfolk & W. Ry. Co. v. Tsapis, 400 S.E.2d 239, 244 (W. Va. 1990), while the Virginia legislature adopted a narrow doctrine of forum non conveniens by statute in 1991. 1991 Va. Acts 862.

356. *See* Espinoza v. Evergreen Helicopters, 376 P.3d 960, 987 (Or. 2016) (following reasoning of Myers v. Boeing, 794 P.2d 1272 (Wash. 1990)); State *ex rel.* Great N. Ry. v. Dist. Ct., 365 P.2d 512, 514 (Mont. 1961) (declining to adopt doctrine of forum non conveniens at that time in part because "our sister state [of Washington] has not seen fit to adopt the rule").

357. *See* Funk & Mullen, *supra* note 35, at 150.

358. *See id.* at 151 (identifying how portions of Washington's reforms were influenced by Indiana's, presumably because one commissioner had been a judge in Indiana and may have brought Indiana legal materials with him to Washington).

359. *See supra* Part II.E (summarizing Delaware's doctrine).

policies reach a certain threshold of adoption, others will come to take the policy for granted as necessary and will adopt it whether or not they have need of it."[360] This dynamic may explain why late adopters invoked the widespread adoption of forum non conveniens among other states, like South Carolina in 1979,[361] Ohio in 1988,[362] Georgia in 2001,[363] and Rhode Island in 2008.[364] In particular, when the Washington Supreme Court reversed its earlier decision rejecting forum non conveniens, it noted that "[m]ost of the states in that minority [that had rejected forum non conveniens] have since reversed their position and embraced the forum non conveniens doctrine in some form."[365]

We do not, however, perceive any nationwide "tipping point" in the doctrine's diffusion among the states. Instead, as Figure 1 shows, the increase in the number of states adopting the doctrine is, very roughly, linear. Perhaps the reason we do not observe a tipping point is that the spread of forum non conveniens has occurred largely through common law, which courts cannot independently decide to change. Rather, courts are "reactive"—they must wait for parties to bring litigation to them that offers an opportunity for change—and due to courts' reactive roles there may be "a strong element of idiosyncrasy" in the diffusion of common law innovations.[366]

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360. Dobbin et al., *supra* note 310, at 454.

361. *See* Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110, 113 (S.C. 1979) (noting that the doctrine is "applied by the federal courts and a clear majority of our sister states" and emphasizing—albeit incorrectly—that only Montana had rejected its adoption).

362. *See* Chambers v. Merrell-Dow Pharms., Inc., 519 N.E.2d 370, 372 & n.3 (Ohio 1988) (gathering thirty-nine state doctrines to establish that forum non conveniens had "become firmly entrenched in the common law of virtually every Anglo-American jurisdiction").

363. *See* AT&T Corp. v. Sigala, 549 S.E.2d 373, 377 (Ga. 2001) (justifying adoption of forum non conveniens, despite prior rejection, in part because "adopting the doctrine places this state in line with both the federal courts and the majority of the states").

364. *See* Kedy v. A.W. Chesterton Co., 946 A.2d 1171, 1180 n.9 (R.I. 2008) ("Our survey of sister jurisdictions reveals that forty-six states have recognized the doctrine of *forum non conveniens* for cases not involving child custody disputes.").

365. Werner v. Werner, 526 P.2d 370, 378 (Wash. 1974).

366. *See* Bradley C. Canon & Lawrence Baum, *Patterns of Adoption of Tort Law Innovations: An Application of Diffusion Theory to Judicial Doctrines*, 75 AM. POL. SCI. REV. 975, 985 (1981) ("Because courts are dependent upon litigants' demands, a strong element of idiosyncrasy governs the diffusion of tort doctrines. . . . The courts' reactive role contrasts with the initiatory powers of legislatures and administrative agencies."); *see also* MARTIN SHAPIRO & ALEC STONE SWEET, ON LAW, POLITICS, AND JUDICIALIZATION 293 (2002) (noting that "litigants activate courts"). This lack of judicial opportunity, for example, is a plausible explanation for Idaho's "hold out" status.

3. *Narratives*. Third, the construction of new ideas about the purpose of forum non conveniens may have played a role in state adoptions and modifications of the doctrine.[367] In earlier stages of the evolution of the federal forum non conveniens doctrine, justice for the parties was a major animating concern.[368] State court judges expressed concern in the 1940s and 1950s that forum non conveniens would unfairly restrict plaintiffs' access to justice.[369] After the U.S. Supreme Court's *Piper* decision, the focus turned to concerns about supposedly growing levels of transnational litigation, foreign plaintiffs congesting federal courts, and the need for forum non conveniens as an anti-forum-shopping measure.[370]

This ideational shift appears to have influenced some state courts and state legislatures. For example, when the Florida Supreme Court extended its forum non conveniens doctrine to in-state defendants

367. *See* Dobbin et al., *supra* note 310, at 462 ("Constructivists see the diffusion of liberal policies as a matter of ideology, broadly understood. . . . Experts and international organizations promote formal theories with policy implications, and the rhetorical power of these theories carries new policies around the world."); Graham et al., *supra* note 309, at 685–87 (noting role of interest groups, policy advocates, academic entrepreneurs, and research institutes).

368. *See, e.g.*, Koster v. Am. Lumbermen's Mut. Cas. Co., 330 U.S. 518, 527–28 (1947) (stating forum non conveniens "looks to the realities that make for doing justice"); Williams v. Green Bay & W. R.R., 326 U.S. 549, 554–56 (1946) (noting forum non conveniens "was designed as an instrument of justice" (citations omitted)); Rogers v. Guar. Tr. Co. of N.Y., 288 U.S. 123, 151 (1933) (Cardozo, J., dissenting) ("The doctrine of *forum non conveniens* is an instrument of justice. Courts must be slow to apply it at the instance of directors charged as personal wrongdoers, when justice will be delayed, even though not thwarted altogether, if jurisdiction is refused."); Can. Malting Co. v. Patterson S.S., 285 U.S. 413, 423 (1932) (characterizing the forum non conveniens doctrine as allowing courts to "occasionally decline, in the interest of justice, to exercise jurisdiction"); *see also* Christopher A. Whytock & Cassandra Burke Robertson, *Forum Non Conveniens and the Enforcement of Foreign Judgments*, 111 COLUM. L. REV. 1444, 1455 (2011) (arguing that "rather than a single-minded focus on convenience—which the doctrine's Latin name may suggest—the doctrine's overarching purpose is best understood as being to promote the ends of justice"); Barrett, *supra* note 8, at 384 (describing problem addressed by forum non conveniens doctrine as "limiting the plaintiff's choice of forums without permitting the defendant to escape or minimize his obligations").

369. *See supra* notes 103–105 and accompanying text.

370. *See* Piper Aircraft Co. v. Reyno, 454 U.S. 235, 252 (1981) (expressing concern that "American courts, which are already extremely attractive to foreign plaintiffs, would become even more attractive. The flow of litigation into the United States would increase and further congest already crowded courts"). For an argument that this transnational forum shopping claim lacks theoretical and empirical foundations, see Christopher A. Whytock, *Transnational Litigation in U.S. Courts: A Theoretical and Empirical Reassessment*, 19 J. EMPIRICAL LEGAL STUD. 4, 4 (2022) [hereinafter Whytock, *Transnational Litigation in U.S. Courts*].

twenty years after it had explicitly refused to do so,[371] it asserted that forum shopping by foreign plaintiffs was imposing a burden on domestic courts and businesses.[372] Georgia's courts had long rejected the doctrine,[373] but in 2001, its supreme court recognized forum non conveniens for "lawsuits brought in our state courts by nonresident aliens who suffer injuries outside this country" in part to "discourage[] foreign plaintiffs from suing in Georgia courts to litigate their tort claims in an American court."[374] After the Texas Supreme Court refused to dismiss a case brought by Costa Rican plaintiffs against a Texas-based corporation,[375] the state legislature adopted a bill overturning the decision, with the bill's supporters asserting that the court's precedent would otherwise turn Texas into "the courthouse for the world."[376] Similarly, Colorado enacted a forum non conveniens statute (even though a very narrow version of the doctrine was already part of Colorado common law) in response to a state appellate court's refusal to dismiss claims brought by Peruvian plaintiffs against a Colorado mining company and concerns that similar suits would otherwise be brought by foreign plaintiffs against Colorado businesses.[377]

Business-oriented interest groups contributed to the construction of these ideas about forum shopping and linked them to broader tort reform efforts.[378] Recent decisions adopting forum non conveniens acknowledge the interventions of such interest groups as amici.[379] Moreover, as documented above, several states adopted forum non conveniens legislation as part of tort reform packages lobbied for by interest groups, including Alabama, Mississippi, Oklahoma, and West

371. *See* Houston v. Caldwell, 359 So. 2d 858, 859 (Fla. 1978) (affirming a "long line of Florida cases which restrict the application of the doctrine of forum non conveniens to cases in which both parties to an action are nonresidents and in which the cause of action arose outside of Florida").

372. *See supra* notes 135–143 and accompanying text.

373. *See* Atl. Coast Line R.R. v. Wiggins, 49 S.E.2d 909, 911 (Ga. Ct. App. 1948) (refusing to adopt forum non conveniens in a case brought by a Georgia plaintiff); Brown v. Seaboard Coast Line R.R., 192 S.E.2d 382, 383 (Ga. 1972) (refusing to recognize forum non conveniens in a FELA case); S. Ry. Co. v. Goodman, 380 S.E.2d 460, 461–62 (Ga. 1989) (same).

374. AT&T Corp. v. Sigala, 549 S.E.2d 373, 377 (Ga. 2001).

375. Dow Chem. Co. v. Castro Alfaro, 786 S.W.2d 674 (Tex. 1990).

376. BILL ANALYSIS, *supra* note 163, at 4.

377. *See supra* Part I.E.

378. *See supra* Part I.E. *See generally* Whytock, *Transnational Litigation in U.S. Courts*, *supra* note 370 (documenting interest group advocacy around the concept of forum shopping).

379. *See supra* note 179 and accompanying text (gathering examples).

Virginia.[380] Another social construction—the concept of "judicial hellholes"—seems to have played a role too, with some states adopting forum non conveniens legislation as part of their efforts to escape the "judicial hellhole" label placed upon them by the ATRA.[381]

In sum—and as diffusion theorists would expect[382]—we believe emulation has played a significant role in the diffusion of the forum non conveniens doctrine. Three factors in particular—the perceived expertise of prestigious leaders, momentum among states, and the social construction of ideas about forum shopping—appear to have contributed to the diffusion of forum non conveniens and subsequent reforms to the doctrine through emulation.

C. Innovation

Emulation and competition appear to have primarily pushed states toward convergence around the federal forum non conveniens model.[383] We also noted that competition may have pulled some states toward divergence in certain cases,[384] though competition may eventually lead other states to converge in turn around those divergent reforms. However, we think a third process has played an even more important role in state divergences from the federal model: innovation.[385] Innovations are law or policy changes driven primarily by "political, economic, or social characteristics internal to the jurisdiction."[386] Internal sources of innovation may include interest groups and policy entrepreneurs.[387] Innovation may be distinguished from diffusion, which is driven largely by external determinants that

380. *See supra* Part I.E.

381. *Id.*

382. *See generally* CHRISTOPHER Z. MOONEY, THE STUDY OF U.S. STATE POLICY DIFFUSION: WHAT HATH WALKER WROUGHT? 27 (2020) (identifying emulation as one of the principal mechanisms of diffusion); Dobbin et al., *supra* note 310, at 449 (same).

383. *See supra* Part III.A–B.

384. *See supra* Part II.

385. *See generally* ANDREW KARCH, DEMOCRATIC LABORATORIES: POLICY DIFFUSION AMONG THE AMERICAN STATES (2007) (offering a framework for understanding policy diffusion across states).

386. Frances Stokes Berry & William D. Berry, *Innovation and Diffusion Models in Policy Research*, *in* THEORIES OF THE POLICY PROCESS 253, 254 (Christopher M. Weible & Paul A. Sabatier eds., 4th ed. 2018).

387. *See id.* at 269–71.

lead to adoption of laws or policies that have already been adopted by one or more other jurisdictions.[388]

There are several forms that such innovation can take. First, state judges or lawmakers may start from scratch in designing a doctrine. Recall Delaware's distinctive doctrine[389]: although Delaware referred to New York precedent when it dropped its alternative forum requirement, the doctrine's other divergences from the federal model were not obviously based on other states' doctrines or driven by a competitive impulse to adapt to changes previously made by other states, suggesting that Delaware's is a story of innovation rather than merely emulation or competition.[390] Similarly, Wisconsin's forum non conveniens statute, adopted in 1960, is limited to stays and has a distinctive list of factors that diverge from the federal model.[391] Although the statute was based on a legislative study of other states' forum non conveniens doctrines, it copied neither the federal model nor any existing state model.

Second, judges can critically engage with legal precedent from other jurisdictions and, finding it unpersuasive, forge a different path.[392] In this vein, the Washington Supreme Court initially rejected forum non conveniens because it disagreed with the diagnosis of the problem, foresaw that the doctrine would lead to delays and excessive litigation, and worried that its application would be variable and thus uncertain.[393] Having later adopted the doctrine, the same court

388. *See* KARCH, *supra* note 385, at 1–3 (distinguishing innovation itself from the diffusion of innovation). Another approach is to label diffusion as a particular form of innovation driven by external rather than internal determinants. *See* Berry & Berry, *supra* note 386.

389. *See supra* Part II.E (summarizing Delaware's doctrine).

390. As discussed above, between 1964 and 1970, Delaware developed a distinctive set of factors, adopted a higher standard for dismissal, and finally made the standard for dismissal turn on whether the Delaware action was filed first or second. *See supra* notes 226–228 and accompanying text. Although none of these decisions expressly rejected the federal doctrine, they reveal a high court that was making independent decisions at a time when other states such as Illinois, Massachusetts, and Tennessee were converging on the federal doctrine. *See* Giseburt v. Chi., Burlington & Quincy R.R., 195 N.E.2d 746, 747–49 (Ill. App. 1964); New Amsterdam Cas. Co. v. Estes, 228 N.E.2d 440, 443–44 (Mass. 1967); Zurick v. Inman, 426 S.W.2d 767, 771–72 (Tenn. 1968).

391. *See supra* Part II.C (discussing the Wisconsin statute).

392. *Cf.* Clopton, *supra* note 30, at 425–27, 428–45 (gathering examples of state courts disagreeing with federal procedural developments).

393. Lansverk v. Studebaker-Packard Corp., 338 P.2d 747, 751–52 (Wash. 1959); *see also id.* at 751 (noting that "after a careful review of the case authority and the numerous law review articles bearing upon the subject . . . , we are not satisfied that the application of the doctrine does not create more problems than it solves").

engaged in similar independent reasoning—rather than following a preexisting model or responding to competitive concerns—when it rejected *Piper*'s "lesser deference" standard for a foreign plaintiff's choice of forum as illogical,[394] xenophobic,[395] and unnecessary.[396]

Third, state courts and legislators may innovate in response to internal constraints or political interests. Several state codifications—including those of Colorado, Louisiana, Texas, and Virginia—exclude suits brought by local plaintiffs from the scope of the doctrine.[397] In those states, internal political processes may have contributed to the local plaintiff exclusions, with legislators having incentives to avoid limiting voters' access to their home-state courts. In some states—including Colorado,[398] Georgia,[399] and South Carolina[400]—court access provisions in state constitutions have also been understood as limiting the discretion of courts to decline jurisdiction over actions filed by in-state plaintiffs.

It would seem that all states would have an incentive to ensure court access for local plaintiffs. Why, then, have most states not excluded in-state plaintiffs from their forum non conveniens doctrines? One possible explanation is that these more limited statutes were uniformly adopted in response to state courts' refusal to adopt forum non conveniens or to apply it liberally. The concerns voiced by judges—often linked to state constitutional provisions—may have activated political interests or simply attracted greater attention than

394. Myers v. Boeing Co., 794 P.2d 1272, 1281 (Wash. 1990) (explaining "[t]he [*Piper*] Court is comparing apples and oranges" because it "purports to be giving lesser deference to the foreign plaintiffs' choice of forum when, in reality, it is giving lesser deference to *foreign plaintiffs*, based solely on their status as foreigners" and that "it is not necessarily less reasonable to assume that a foreign plaintiff's choice of forum is convenient").

395. *Id.* ("The Court's reference to the attractiveness of United States courts to foreigners, combined with a holding that, in application, gives less deference to foreign plaintiffs based on their status as foreigners, raises concerns about xenophobia.").

396. *Id.* ("Finally, we decline to adopt [*Piper*] because it simply is not necessary. Proper application of the *Gulf Oil* factors alone will lead to fair and equitable results."). The Oregon Supreme Court in turn found the *Myers* reasoning to be persuasive, agreeing with the Washington Supreme Court that "there is no principled reason to vary the degree of deference afforded to the plaintiff's choice of forum based on where the plaintiff . . . resides." Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960, 987 (Or. 2016).

397. *See supra* Part II.D (describing statutory exclusions).

398. *See* McDonnell-Douglas Corp. v. Lohn, 557 P.2d 373, 374 (Colo. 1976).

399. *See* Brown v. Seaboard Coast Line R.R., 192 S.E.2d 382, 383 (Ga. 1972) (invoking the state constitution when refusing to recognize forum non conveniens).

400. *See* Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110, 112 (S.C. 1979) (citing dictum in *Chapman v. Southern Railway Co.*, 95 S.E.2d 170 (S.C. 1956), which quoted the South Carolina Constitution's court access provision).

did forum non conveniens provisions in larger legislative packages like the UIIPA or tort reform efforts.

* * *

We do not mean to suggest that the dominant tendency of states to converge around the federal doctrine is entirely due to competition and emulation. Nor do we think that innovation is likely to be the sole reason for divergences from the federal model. However, based on the patterns we have observed, considered in light of established theories of diffusion, we believe competition is the primary explanation for convergence, with emulation also playing a significant role. Although competition also appears to have contributed to divergence from the federal doctrine in several instances, competition may in turn convert those points of divergence into new points of convergence. We thus believe processes of innovation offer the primary explanation for divergence. Overall, competition, emulation, and innovation together offer a promising account for the gradual and uneven spread of forum non conveniens across the states. More broadly, we believe such mechanisms together may help make sense of the complex dynamics of procedural federalism in other contexts, too.

IV. CONCLUSION: THE LESSONS OF PROCEDURAL FEDERALISM

As our findings demonstrate, most states have converged around the federal forum non conveniens doctrine.[401] This reinforces the notion that federal law exerts a "gravitational" pull on states even when states are not required to follow it.[402] However, we do not observe mere "rampant mimicry."[403] Instead, this Article shows that a substantial number of states have rejected aspects of the federal model.[404] Our analysis illuminates a system of procedural federalism in which different mechanisms of convergence and divergence, operating both vertically and horizontally, interact over time to produce a constantly evolving status quo.

That systemic perspective, in turn, provides three important lessons. First, although further research would be necessary to

401. *See supra* Part II.

402. *See generally* Dodson, *supra* note 32 (gathering examples of states converging around federal procedural and substantive law).

403. Dodson, *supra* note 32, at 718–19.

404. *See supra* Part II.

determine the extent to which our account is generalizable to other areas of procedural law, our analysis suggests that mechanisms of competition and emulation will tend to lead to procedural convergence. Further, because mechanisms of competition in particular will often favor defendant and business interests, procedural federalism will tend to promote defendant-friendly doctrines. There are, of course, advantages to the vertical state-federal and horizontal state-to-state uniformity in procedural rules. It can reduce the likelihood of different outcomes for like cases merely because they are filed in different courts and, as a result, it can lower incentives for forum shopping. But the pressure toward convergence may make it too difficult for states to break away from the federal model when it would otherwise be their preference to do so.[405] Federal judges and legislators should be aware of just how much pressure they place on state prerogatives when they limit access to federal removal or when judges, in *Erie* analyses, decide to apply federal outcome-determinative procedures in diversity cases.[406]

Second, understanding procedural federalism as an iterative and dynamic process reminds us that the procedure we end up with will not necessarily—or even likely—be the "best" procedure we could conceive. Indeed, the *Gulf Oil* framework around which most states have converged falls short on several dimensions. As multiple state courts have pointed out, *Gulf Oil*'s emphasis on the territorial location of evidence and witnesses is outdated given the revolutions in technology and transportation since 1947.[407] A better set of factors might place (as some states have already done) a greater emphasis on nexus with the forum, whether in terms of where the parties reside, where the cause of action arose, or which sovereign's law will be

405. *See* MOONEY, *supra* note 310, at 29 ("[E]mulation can have negative consequences, if the result is the adoption of 'faddish,' 'inappropriate or hasty' policy, or 'policies that are either unsuitable for their immediate problems, or worse, are outright policy failures.'" (citation omitted)). *Cf.* Dodson, *supra* note 32, at 705 ("[S]tates often follow federal law for woefully inadequate reasons, and sometimes for no reason at all.").

406. *See* Coleman, *supra* note 31, at 329–31 (critiquing the Supreme Court for not taking federalism concerns seriously in the procedural context); Zambrano, *supra* note 30, at 1815 (emphasizing the importance of federal actors "adequately internaliz[ing] procedure's effect on the states").

407. *See, e.g.*, Energy Claims Ltd. v. Catalyst Inv. Grp. Ltd., 325 P.3d 70, 81 (Utah 2014) ("Given that in today's world litigants can easily transport electronic documents to virtually any forum of litigation, the location of documentary evidence will rarely, if ever, tip the scale of convenience in favor of a given jurisdiction.").

applied.[408] And *Piper*'s distinction between foreign and "local" plaintiffs has caused confusion and generated criticism[409]; the underlying concern can better be addressed—again, as some states have shown—by considering the convenience of *all* parties as part of the multi-factor balancing test.[410] An optimistic view of procedural federalism would emphasize the innovation and divergence in forum non conveniens that has already generated alternatives to these shortcomings of the federal model. But the forces of procedural federalism will typically be stacked against reforms that would make cases harder to dismiss.

Third, a systemic view of procedural federalism forces us to reconsider how we invoke history to justify today's procedure. Forum non conveniens, for example, does not have the long or stable pedigree that judges have at times presumed. If the metric for judging today's procedure is yesterday's procedure, then what would be the "correct" version of forum non conveniens? The most plausible answer would be a doctrine limited to cases involving no local parties or causes of actions. Or one could go further back and limit forum non conveniens to admiralty cases involving solely foreign parties, which was the only form of discretionary dismissals recognized by federal courts at the Founding.[411]

But we submit that the proper use of history, at least when it comes to evaluating procedure, is not as a series of isolated snapshots. There is no reason to think that the temporary procedural settlement at any one moment was either perfect or stable. Instead, history is useful because it can help us understand the dynamic and imperfect processes that led to the doctrines we have today, in order to evaluate where we should go next.

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408. *See supra* Part II.C (gathering additional factors considered by states).

409. *See supra* Part II.B (identifying confusion over how to apply this distinction to interstate cases); *see also* Christopher A. Whytock, *The Evolving Forum Shopping System*, 96 CORNELL L. REV. 481 (2011) (presenting statistical analysis of forum non conveniens decisions showing that foreign nationality of a plaintiff substantially and statistically significantly increases likelihood of dismissal, even after controlling for factors associated with convenience, and thus suggesting the lesser deference standard is not merely a proxy for convenience but rather may discriminate against foreign plaintiffs).

410. *See supra* Part II.B (describing different state approaches to *Piper*'s foreign-plaintiff distinction).

411. On the admiralty roots of forum non conveniens, see generally Maggie Gardner, *Admiralty's Influence*, 91 GEO. WASH. L. REV. ___ (forthcoming 2023).

APPENDIX: THE FORUM NON CONVENIENS DOCTRINE ("FNC") IN THE 50 STATES AND THE DISTRICT OF COLUMBIA

	Rejected FNC	**Adopted FNC**[412]	**Adopted *Gulf Oil* factors**	**Adopted *Piper*'s lesser deference**	**FNC statute**
Ala.	1950. *Ex parte* State *ex rel.* S. Ry. Co., 47 So. 2d 249, 250 (Ala. 1950) (FELA); s*ee also* Cent. of Ga. Ry. Co. v. Phillips, 240 So. 2d 118, 120 (Ala. 1970) (FELA); Seaboard Coast Line R.R. Co. v. Moore, 479 So. 2d 1131, 1135–36 (Ala. 1985) (FELA)	1987. ALA. CODE § 6-5-430	2013. *Ex parte* Transp. Leasing Corp., 128 So. 3d 722, 730 (Ala. 2013) (interpreting the 1987 statute)		1987. ALA. CODE § 6-5-430 (limited to claims arising outside the state) 2013. ALA. CODE § 6-5-754 (limited to claims against aircraft manu-facturers)[413]
Alaska		1985. Crowson v. Sealaska Corp., 705 P.2d 905, 907–08 (Alaska 1985)	1985. Crowson v. Sealaska Corp., 705 P.2d 905, 908 (Alaska 1985) (adopting factors that substantially overlap with *Gulf Oil*)		

412. Not all of the states initially used the label "forum non conveniens" to describe discretionary dismissals.

413. *See* ALA. CODE § 6-5-752 (defining "accident" for "purposes of this article" as "[a]n incident resulting in personal injury, death, or damage to property arising out of or relating to commercial aviation aircraft").

	Rejected FNC	**Adopted FNC[412]**	**Adopted *Gulf Oil* factors**	**Adopted *Piper*'s lesser deference**	**FNC statute**
Ariz.		1971. First Nat'l Bank & Tr. Co. v. Pomona Mach. Co., 486 P.2d 184, 188 (Ariz. 1971)	1987. Cal Fed. Partners v. Heers, 751 P.2d 561, 562–63 (Ariz. App. 1987)	1987. Cal Fed. Partners v. Heers, 751 P.2d 561, 562 (Ariz. App. 1987)	
Ark.		1957. Running v. S.W. Freight Lines, Inc., 303 S.W.2d 578, 580 (Ark. 1957)	1957. Running v. S.W. Freight Lines, Inc., 303 S.W.2d 578, 581 (Ark. 1957) (adopting factors that substantially overlap with *Gulf Oil*)		1963. ARK. CODE ANN. § 16-4-101(D) (UIIPA) 2017. ARK. CODE ANN. § 1-1-103(d)(2) (Anti-Sharia)
Cal.	1944. Leet v. Union Pac. R.R., 155 P.2d 42, 44 (Cal. 1944) (FELA)	1954. Price v. Atchison, Topeka & Santa Fe Ry., 268 P.2d 457, 458 (Cal. 1954) (FELA)	1954. Price v. Atchison, Topeka & Santa Fe Ry., 268 P.2d 457, 461–62 (Cal. 1954) (FELA)	1991. Stangvik v. Shiley Inc., 819 P.2d 14, 20 (Cal. 1991)	1969 (operative 1970). CAL. CIV. PROC. CODE ANN. § 410.30(a) (UIIPA)[414]

414. In 1986, the California legislature added, "[The] domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action." That language expired in 1992, but the California courts embraced it in the interim as part of the common law doctrine. *See* Stangvik v. Shiley Inc., 819 P.2d 14, 21 (Cal. 1991) ("[T]he presumption of convenience to a defendant which follows from its residence in California remains in effect despite the amendment of section 410.30. But . . . this presumption is not conclusive.").

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
Colo.		1976. McDonnell-Douglas Corp. v. Lohn, 557 P.2d 373, 374 (Colo. 1976)[415]			2004. COLO. REV. STAT. § 13-20-1004 (limited to non-Colorado plaintiffs)
Conn.		1986. Miller v. United Techs. Corp., 515 A.2d 390, 392 (Conn. Super. Ct. 1986); *see also* Union Carbide Corp. v. Aetna Cas. & Sur. Co., 562 A.2d 15, 19 (Conn. 1989)[416]	1989. Union Carbide Corp. v. Aetna Cas. and Sur. Co., 562 A.2d 15, 21 (Conn. 1989)	1990. Picketts v. Int'l Playtex, Inc., 576 A.2d 518, 524–25 (Conn. 1990)	

415. An earlier Colorado appellate decision had applied forum non conveniens. *See* Allison Drilling Co. v. Kaiser Steel Corp., 502 P.2d 967, 968 (Colo. Ct. App. 1972). *McDonnell-Douglas*, however, treated the question as one of first impression while describing a narrower version of forum non conveniens than that articulated in *Allison Drilling*. *See* McDonnell-Douglas Corp. v. Lohn, 557 P.2d 373, 374 (Colo. 1976) ("[W]e hold that the doctrine of *forum non conveniens* has only the most limited application in Colorado courts, and except in most unusual circumstances the choice of a Colorado forum by a resident plaintiff will not be disturbed.").

416. Although the Connecticut Supreme Court did not adopt forum non conveniens until 1989, *Miller*'s discussion of forum non conveniens continues to be cited by Connecticut courts, including by the high court itself. *See, e.g.*, Durkin v. Intevac, Inc., 782 A.2d 103, 131 (Conn. 2001).

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
Del.		1958. Winsor v. United Air Lines, 154 A.2d 561, 564 (Del. Super. Ct. 1958); *see also* Gen. Foods Corp. v. Cryo-Maid, Inc., 198 A.2d 681, 683–84 (Del. 1964)[417]			
D.C.		1941. Curley v. Curley, 120 F.2d 730, 732 (D.C. Cir. 1941); *see also* Melvin v. Melvin, 129 F.2d 39, 40 (D.C. Cir. 1942)[418]	1957. Walsh v. Crescent Hill Co., 134 A.2d 653, 654 (D.C. 1957)	1986. Mills v. Aetna Fire Underwriters Ins. Co., 511 A.2d 8, 10 (D.C. App. 1986)	1970. D.C. CODE ANN. § 13-425 (UIIPA)

417. *Winsor* was the first of a series of Delaware trial court decisions discussing forum non conveniens that led to the high court's decision in *Cryo-Maid*. *See* Chrysler Corp. v. Dann, 171 A.2d 223, 226 (Del. Super. Ct. 1961); Dietrich v. Tex. Nat. Petroleum Co., 193 A.2d 579, 584 (Del. Super. Ct. 1963). Citing to *Winsor* and *Chrysler* as well as to two unpublished decisions, *Dietrich* concluded that "there now can be no doubt but that Delaware courts recognize" forum non conveniens. *Dietrich*, 193 A.2d at 584. In *Cryo-Maid*, the Delaware Supreme Court also cited to *Winsor*. Gen. Foods Corp. v. Cryo-Maid, Inc., 198 A.2d 681, 683–84 (Del. 1964).

418. *Melvin* is the first local DC decision to refer to "forum non conveniens" by name. Melvin v. Melvin, 129 F.2d 39, 40 n.4 (D.C. Cir. 1942). Subsequent decisions, however, refer to *Curley* as a forum non conveniens case. *See, e.g.*, Simons v. Simons, 187 F.2d 364, 364 (D.C. Cir. 1951); Gross v. Owen, 221 F.2d 94, 96 & n.1 (D.C. Cir. 1955).

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
Fla.		1936. Hagen v. Viney, 169 So. 391 (Fla. 1936)	1996. Kinney Sys., Inc. v. Cont'l Ins. Co., 674 So. 2d 86, 91–92 (Fla. 1996)	Cortez v. Palace Resorts, Inc., 123 So. 3d 1085, 1095–96 (Fla. 2013)	
Ga.	1948. Atl. Coast Line R. Co. v. Wiggins, 49 S.E.2d 909, 911–12 (Ga. Ct. App. 1948) (FELA); *see also* Brown v. Seaboard Coast Line R.R. Co., 192 S.E.2d 382, 383 (Ga. 1972) (FELA)	2001. AT&T Corp. v. Sigala, 549 S.E.2d 373, 377 (Ga. 2001) (limited to nonresident aliens and non-U.S. causes of action)	2001. AT&T Corp. v. Sigala, 549 S.E.2d 373, 376 (Ga. 2001)		2003. GA. CODE ANN. § 50-2-21 (limited to non-Georgia resident plaintiffs and non-Georgia causes of action) 2005. GA. CODE ANN. § 9-10-31.1 (no limits[419])
Haw.		1948. Harbrecht v. Harrison, 38 Haw. 206, 209 (1948)[420]	1998. Lesser v. Boughey, 965 P.2d 802, 805 (Haw. 1998)		
Idaho[421]					

419. It is unclear whether Georgia's 2005 law "impliedly repeals" its 2003 law. *See* Hewett v. Raytheon Aircraft Co., 614 S.E.2d 875, 882 n.6 (Ga. Ct. App. 2005). Cases have not invoked the 2003 law since the 2005 law has been in effect. Unlike the 2003 law, the 2005 law is not limited to nonresident plaintiffs and to causes of action arising outside of Georgia. In 2019, however, the Georgia Supreme Court interpreted the 2005 law as only permitting dismissal in favor of alternative forums within the United States. La Fontaine v. Signature Rsch., Inc., 823 S.E.2d 791, 794 (Ga. 2019).

420. The territorial courts had recognized forum non conveniens by name as early as 1932, but only in an intraterritorial context. *See* Bailey v. Gay, 32 Haw. 404, 415 (1932).

421. Idaho has not adopted a forum non conveniens doctrine.

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
Ill.		1948. Whitney v. Madden, 79 N.E.2d 593, 595 (Ill. 1948)	1964. Giseburt v. Chi., Burlington, 195 N.E.2d 746, 748 (1964); *see also* People *ex rel.* Compagnie Nationale Air France v. Giliberto, 383 N.E.2d 977, 985 (Ill. 1978)	1982. Jones v. Searle Lab'ys, 444 N.E.2d 157, 162–63 (Ill. 1982)	
Ind.		1971. IND. R. TRIAL P. 4.4(C)-(E)		2015. DePuy Orthopaedics, Inc. v. Brown, 29 N.E.3d 729, 733 n.4 (Ind. 2015)	1971. IND. R. TRIAL P. 4.4(C)-(E)
Iowa		1970. Rath Packing Co. v. Intercont'l Meat Traders, Inc., 181 N.W.2d 184 (Iowa 1970)[422]	1981. Silversmith v. Kenosha Auto Transp., 301 N.W.2d 725, 727 (Iowa 1981)		

422. Although *Rath Packing* discussed forum non conveniens only in dicta, later Iowa courts have cited *Rath Packing* as recognizing forum non conveniens. Rath Packing Co. v. Intercont'l Meat Traders, Inc., 181 N.W.2d 184, 189–90 (Iowa 1970); *see, e.g.*, Silversmith v. Kenosha Auto Transp., 301 N.W.2d 725, 727 (Iowa 1981) (explaining that prior to *Rath Packing*, "this court had not determined whether a trial court possessed the power to dismiss an action because it was brought in an inconvenient forum. We recognized in *Rath Packing*, however, that courts have such power, although it is 'rarely' exercised as a basis for declining subject-matter jurisdiction"). An earlier Iowa decision had similarly referenced discretionary dismissals. *See* Bradbury v. Chi., R.I. & Pac. Ry. Co., 128 N.W. 1, 4 (Iowa 1910) (explaining that "[e]ven where the cause of action arises in a foreign country, suits may be maintained in our courts, though jurisdiction can be declined," but that "this is seldom done unless from fear of inability to do full justice through lack of knowledge of the laws of the place where the cause of action arose"). But unlike *Roth*, *Bradbury* has not been described by later Iowa courts as a forum non conveniens decision.

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
Kan.		1962. Gonzales v. Atchison Topeka & Santa Fe Ry. Co., 371 P.2d 193 (Kan. 1962) (FELA)	1962. Gonzales v. Atchison Topeka & Santa Fe Ry. Co., 371 P.2d 193, 196–97 (Kan. 1962)		2012. KAN. STAT. ANN. § 60-5105 (Anti-Sharia)
Ky.		1957. Carter v. Netherton, 302 S.W.2d 382 (Ky. Ct. App. 1957)[423]	2007. Lykins Enters., Inc. v. Felix, Nos. 2006–SC–000142–DG, 2006–SC–000624–DG, 2007 WL 4139637, at *4 (Ky. Nov. 21, 2007)		

423. Later Kentucky courts cite *Carter* as establishing forum non conveniens. *See, e.g.*, Beaven v. McAnulty, 980 S.W.2d 284, 286 (Ky. 1998) (noting in an intrastate transfer case that forum non conveniens was "approved" in *Carter*, "which apparently is the earliest Kentucky case in which the doctrine is expressly mentioned or discussed"). We found an earlier decision that seems to acknowledge discretion to dismiss; that decision states:

> We do not agree with appellant's contention that the Courts of Kentucky should decline to take jurisdiction merely because the parties to the litigation are nonresidents and the cause of action accrued outside the State. Granted that in such cases the exercise of jurisdiction by the Kentucky Courts is discretionary, nevertheless, in the absence of special circumstances making it impracticable to do full justice between the parties, the principles of comity would seem to dictate their exercise of such jurisdiction.

See Kirkland v. Greer, 174 S.W.2d 745, 746 (Ky. 1943). But that case has not subsequently been cited by Kentucky courts as a forum non conveniens decision, so we do not count it here.

	Rejected FNC	**Adopted FNC[412]**	**Adopted *Gulf Oil* factors**	**Adopted *Piper*'s lesser deference**	**FNC statute**
La.	1991. Fox v. Bd. of Supervisors of La. State U. & Agr. & Mech. Coll., 576 So. 2d 978, 990 (La. 1991) (rejecting a common law doctrine of forum non conveniens)	1920. Stewart v. Litchenberg, 86 So. 734, 736 (La. 1920), *overruled by* Fox v. Bd. of Supervisors of La. State U. & Agr. & Mech. Coll., 576 So. 2d 978 (La. 1991)	1971. Smith v. Globe Indem. Co., 243 So. 2d 882 (La. Ct. App. 1971), *overruled by* Fox v. Bd. of Supervisors of La. State U. & Agr. & Mech. Coll., 576 So. 2d 978 (La. 1991); *see also* Martinez v. Marlow Trading, S.A., 894 So. 2d 1222, 1226–27 (La. Ct. App. 2005)		1988. LA. CODE CIV. PROC. ANN. art. 123(b) (limited to out-of-state plaintiffs and out-of-state causes of action)[424]
Me.		1927. Foss v. Richards, 139 A. 313, 314 (Me. 1927)	1978. MacLeod v. MacLeod, 383 A.2d 39, 42 (Me. 1978)		
Md.		1964. MD. CTS. & JUD. PROC. CODE ANN. § 6-104(a)[425]	1989. Johnson v. G.D. Searle & Co., 552 A.2d 29, 31 (Md. 1989)		1964. MD. CTS. & JUD. PROC. CODE ANN. § 6-104(a) (UIIPA)

424. The original 1988 statute only allowed dismissal for federal statutory claims (excluding maritime or Jones Act claims) and was limited to non-Louisiana causes of actions and non-Louisiana plaintiffs. The state supreme court ruled that version unconstitutional in 1997. Russell v. CSX Transp., 689 So. 2d 1354 (La. 1997). A new statute was passed in 1999, limited to non-Louisiana causes of actions and non-Louisiana plaintiffs.

425. Although Maryland adopted the UIIPA provision in 1964, no available decision appears to have applied it until *Johnson* in 1989.

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
Mass.		1867. Smith v. Mut. Life Ins. Co. of N.Y., 96 Mass. 336, 343 (Mass. 1867); *see also* Universal Adjustment Corp. v. Midland Bank, Ltd., of London, Eng., 184 N.E. 152, 159 (Mass. 1933)[426]	1967. New Amsterdam Cas. Co. v. Estes, 228 N.E.2d 440, 443–44 (Mass. 1967)		1968. MASS. GEN. LAWS ANN. ch. 223A, § 5 (UIIPA)
Mich.		1973. Cray v. Gen. Motors Corp., 207 N.W.2d 393, 398 (Mich. 1973)[427]	1973. Cray v. Gen. Motors Corp., 207 N.W.2d 393, 398 (Mich. 1973) (adopting factors that substantially overlap with *Gulf Oil* and adding other factors)	2006. Radeljak v. DaimlerChrysler Corp., 719 N.W.2d 40, 48 (Mich. 2006)	

426. Modern cases cite to *Universal Adjustment* as establishing forum non conveniens in Massachusetts; *Universal Adjustment* was also the first Massachusetts decision to approve dismissal of cases at law. Nonetheless, we count from *Smith*'s dicta regarding discretion to dismiss because subsequent Massachusetts decisions cited *Smith* for the proposition that "[t]he courts of equity in this state are not open to the plaintiff as matter of strict right, but as matter of comity." Nat'l Tel. Mfg. Co. v. Dubois, 42 N.E. 510, 510 (Mass. 1896).

427. Despite oft-cited dicta in earlier cases like *Great Western Railway Co. v. Miller*, 19 Mich. 305 (1869), and *Cofrode v. Gartner*, 44 N.W. 623 (Mich. 1890), *Cray* described the question of forum non conveniens as one of first impression for Michigan. Cray v. Gen. Motors Corp., 207 N.W.2d 393, 395 (Mich. 1973).

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
Minn.	1914. State v. Dist. Ct. of Waseca Cnty., 148 N.W. 463, 464 (Minn. 1914) (FELA); *see also* Boright v. Chi., Rock Island & Pac. R.R. Co., 230 N.W. 457, 460 (Minn. 1930)	1954. Johnson v. Chi., Burlington & Quincy R.R. Co., 66 N.W.2d 763, 770 (Minn. 1954) (FELA)	1978. Hague v. Allstate Ins. Co., 289 N.W.2d 43, 46 (Minn. 1978)	1986. Bergquist v. Medtronic, Inc., 379 N.W.2d 508, 512 (Minn. 1986)	
Miss.		1943. Strickland v. Humble Oil & Refining Co., 11 So. 2d 820, 822 (Miss. 1943)	1989. Mo. Pac. R.R. Co. v. Tircuit, 554 So. 2d 878, 882 (Miss. 1989)	1989. Mo. Pac. R.R. Co. v. Tircuit, 554 So. 2d 878, 882 (Miss. 1989)	2004. MISS. CODE ANN. § 11-11-3(4)
Mo.	1929. Bright v. Wheelock, 20 S.W.2d 684, 700 (Mo. 1929) (FELA)	1956. Elliott v. Johnston, 292 S.W.2d 589, 595 (Mo. 1956)		1992. Acapolon Corp. v. Ralston Purina Co., 827 S.W.2d 189, 192 (Mo. 1992)	
Mont.	1961. State *ex rel.* Great N. Ry. v. Dist. Ct. of Second Jud. Dist., 365 P.2d 512, 521 (Mont. 1961) (FELA)	2014. San Diego Gas & Elec. Co. v. Gilbert, 329 P.3d 1264, 1272 (Mont. 2014)			

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
Neb.	1926. Herrmann v. Franklin Ice Cream Co., 208 N.W. 141, 143 (Neb. 1926)	1967. NEB. REV. STAT. ANN. § 25-538; *see also* Qualley v. Chrsyler Credit Corp., 217 N.W.2d 914, 915–16 (1974)[428]	2005. Ameritas Inv. Corp. v. McKinney, 694 N.W.2d 191, 202 (Neb. 2005)		1967. NEB. REV. STAT. ANN. § 25-538 (UIIPA)
Nev.		1978. Buckholt v. Second Jud. Dist. Ct., 584 P.2d 672, 673 (Nev. 1978).[429]	1980. Eaton v. Second Jud. Dist. Ct., 616 P.2d 400, 401 (Nev. 1980)	2015. Provincial Gov't of Marinduque v. Placer Dome, Inc., 350 P.3d 392, 396 (Nev. 2015)	
N.H.		1902. Driscoll v. Portsmouth, Kittery & York St. Ry., 51 A. 898, 898 (N.H. 1902)[430]	1976. Leeper v. Leeper, 354 A.2d 137, 139 (N.H. 1976)		

428. Although Nebraska adopted the UIIPA provision in 1967, it was not cited by a court until 1993. *See* Woodmen of World Life Ins. Soc. v. Walker, 510 N.W.2d 439 (Neb. Ct. App. 1993). In overturning *Hermann* in 1974, *Qualley* did not mention the statute.

429. An earlier decision had discussed forum non conveniens but specifically reserved deciding whether Nevada recognized the doctrine. *See* State *ex rel.* Swisco, Inc. v. Second Jud. Dist. Ct., 385 P.2d 772, 775 (Nev. 1963) ("We find it unnecessary to pass on this question [of forum non conveniens] . . . ."). Although *Buckholt* also rejected the application of forum non conveniens to the facts of that case, the Nevada Supreme Court later cited *Buckholt* as recognizing the doctrine. *See Eaton*, 616 P.2d at 401.

430. The full text of the *Driscoll* opinion is:

> The defendants do not contend that the courts of this state cannot entertain jurisdiction of the action, but say it is within their discretion whether they will do so or not. If so, the question is one of fact, rather than of law, and should be decided in the superior court.

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
N.J.	1848. Hale v. Lawrence, 21 N.J.L. 714, 727 (1848)	1932. Sielcken v. Sorenson, 161 A. 47, 48 (N.J. Ch. 1932); *see also* Carnegie v. Laughlin, 28 A.2d 506, 506 (N.J. 1942)[431]	1954. Gore v. U.S. Steel Corp., 104 A.2d 670, 673 (N.J. 1954)	2000. Kurzke v. Nissan Motor Corp. in U.S.A., 752 A.2d 708, 714 (N.J. 2000)	
N.M.		1973. McLam v. McLam, 510 P.2d 914, 916 (N.M. 1973)[432]	1995. Marchman v. NCNB Tex. Nat. Bank, 898 P.2d 709, 720 (N.M. 1995)	1995. Marchman v. NCNB Tex. Nat. Bank, 898 P.2d 709, 720 (N.M. 1995)	
N.Y.		1817. Gardner v. Thomas, 14 Johns. 134, 138, 1817 WL 1463 (N.Y. Sup. Ct. 1817)		1984. Islamic Republic of Iran v. Pahlavi, 467 N.E.2d 245, 249 (N.Y. 1984)	1972. N.Y. C.P.L.R. 327(a) (UIIPA)

Driscoll v. Portsmouth, Kittery & York St. Ry., 51 A. 898, 898 (N.H. 1902). Despite this sparse language, *Driscoll* is cited as a forum non conveniens case by later New Hampshire Supreme Court decisions. *See* Jackson & Sons v. Lumbermen's Mut. Cas. Co., 168 A. 895, 896 (N.H. 1933); Van Dam v. Smit, 148 A.2d 289, 291 (N.H. 1959).

431. Although a lower court decision, *Sielcken* has frequently been cited as a forum non conveniens case by New Jersey courts. An earlier decision referenced discretionary dismissals, *see* Baumann v. Hamburg-Am. Packet Co., 51 A. 461, 463 (N.J. 1902), but it has not been cited by subsequent courts as a forum non conveniens case.

432. An earlier case seemed to acknowledge forum non conveniens but did not apply the doctrine. Torres v. Gamble, 410 P.2d 959, 961 (N.M. 1966). We count from *McLam* instead because it explicitly adopted forum non conveniens and did not cite to *Torres*.

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
N.C.		1967. N.C. GEN. STAT. ANN. § 1-75.12.	1980. Motor Inn Mgmt., Inc. v. Irvin-Fuller Dev. Co., 266 S.E.2d 368, 371 (N.C. Ct. App. 1980)	2020. Cardiorentis AG v. IQVIA Ltd., 837 S.E.2d 873, 876 (N.C. 2020)	1967. N.C. GEN. STAT. ANN. § 1-75.12
N.D.		1971. N.D. R. CIV. P. 4(b)(5) (UIIPA)	2009. Vicknair v. Phelps Dodge Indus., Inc., 767 N.W.2d 171, 178 (N.D. 2009)		1971. N.D. R. CIV. P. 4(b)(5) (UIIPA)
Ohio	1931. Mattone v. Argentina, 175 N.E. 603, 605 (Ohio 1931)	1988. Chambers v. Merrell-Dow Pharm., Inc., 519 N.E.2d 370 (Ohio 1988)	1988. Chambers v. Merrell-Dow Pharm., Inc., 519 N.E.2d 370, 373 (Ohio 1988)	1988. Chambers v. Merrell-Dow Pharm., Inc., 519 N.E.2d 370, 373 (Ohio 1988)	
Okla.		1954. St. Louis-S.F. Ry. Co. v. Superior Ct., Creek Cnty., 276 P.2d 773, 777 (Okla. 1954)	1954. St. Louis-S.F. Ry. Co. v. Superior Ct., Creek Cnty., 276 P.2d 773, 778-79 (Okla. 1954)		2009. OKLA. STAT. ANN. tit. 12, § 140.3 2013. OKLA. STAT. ANN. tit. 12, § 20 (Anti-Sharia)

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
Or.		2016. Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960 (Or. 2016)[433]	2016. Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960, 988-92 (Or. 2016)	[Rejected[434]]	
Pa.		1960. Plum v. Tampax, Inc., 160 A.2d 549 (Pa. 1960)[435]	1960. Plum v. Tampax, Inc., 160 A.2d 549, 553 (Pa. 1960)	2014. Bochetto v. Piper Aircraft Co., 94 A.3d 1044, 1056 (Pa. Super. 2014)	1976 (effective 1978). 42 PA. CONSOL. STAT. ANN. § 5322(e) (UIIPA)
R.I.		2008. Kedy v. A.W. Chesteron Co., 946 A.2d 1171 (R.I. 2008)	2008. Kedy v. A.W. Chesterton Co., 946 A.2d 1171, 1184–85 (R.I. 2008)		

433. There are earlier hints that Oregon courts were open to forum non conveniens. *See, e.g.*, Heine v. N.Y. Life Ins. Co., 45 F.2d 426, 427 (D. Or. 1930) (noting that local state judge had exercised discretion to dismiss a similar case). We count from *Espinoza* because that decision surveyed the prior case law before concluding, "[W]e *now* recognize [forum non conveniens] as part of Oregon law." Espinoza v. Evergreen Helicopters, Inc., 376 P.3d 960, 981 (Or. 2016) (emphasis added).

434. The Oregon Supreme Court rejected *Piper*'s differential treatment of nonlocal plaintiffs in *Espinoza*, 376 P.3d at 985–86.

435. Two years earlier, the Pennsylvania high court had referenced the doctrine of forum non conveniens. Fairchild Engine & Airplane Corp. v. Bellanca Corp., 137 A.2d 248, 250–51 (Pa. 1958). We count from *Tampax* because it more clearly addressed and adopted the doctrine and because more than eighty decisions have cited *Tampax* as establishing forum non conveniens in Pennsylvania.

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
S.C.	1956. Chapman v. S. Ry. Co., 95 S.E.2d 170, 173 (S.C. 1956)[436]	1979. Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110 (S.C. 1979)[437]	1979. Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110, 113 (S.C. 1979)		
S.D.		2003. Rothluebbers v. Obee, 668 N.W.2d 313, 323 (S.D. 2003)	2003. Rothluebbers v. Obee, 668 N.W.2d 313, 318 (S.D. 2003)	2003. Rothluebbers v. Obee, 668 N.W.2d 313, 318 (S.D. 2003)	
Tenn.		1968. Zurick v. Inman, 426 S.W.2d 767, 771 (Tenn. 1968)[438]	1968. Zurick v. Inman, 426 S.W.2d 767, 771–72 (Tenn. 1968)		

436. *Chapman* rejected the application of forum non conveniens in cases brought by South Carolina residents, but it did not address whether the doctrine was available in other cases.

437. We count from *Braten* because the decision opens by stating that the court "adopt[s] the doctrine of *forum non conveniens*," Braten Apparel Corp. v. Bankers Tr. Co., 259 S.E.2d 110, 111 (S.C. 1979), and later notes that "this Court has never expressly adopted or rejected the doctrine of *forum non conveniens*." *Id.* at 112. As *Braten* noted, however, the court had previously rejected applying forum non conveniens to the facts of a prior case. *See* Nienow v. Nienow, 232 S.E.2d 504 (1977).

438. An early Tennessee decision expressed concern about hearing a contract dispute between North Carolina residents. *See* Avery v. Holland, 2 Tenn. 71, 79 (1806) (opinion of White, J.) ("I am strongly inclined to think that, if it appears upon the face of the pleadings that both of the litigant parties are foreigners and a foreign contract, we ought not to interpose."). *Zurick* acknowledged this passage in *Avery* but treated forum non conveniens as a matter of first impression. *See* Zurick v. Inman, 426 S.W.2d 767, 769, 771 (Tenn. 1968) ("It results and we so hold courts of general jurisdiction in Tennessee have inherent power to apply the doctrine of forum non conveniens as a ground for refusal to exercise jurisdiction over a cause of action arising beyond the boundaries of Tennessee.").

	Rejected FNC	**Adopted FNC[412]**	**Adopted *Gulf Oil* factors**	**Adopted *Piper*'s lesser deference**	**FNC statute**
Tex.	Dow Chem. Co. v. Castro Alfaro, 786 S.W.2d 674, 674 (Tex. 1990) (for wrongful death/personal injury cases)[439]	Morris v. Mo. Pac. Ry. Co., 14 S.W. 228, 230 (Tex. 1890)[440]		2007. *In re* Pirelli Tire, L.L.C., 247 S.W.3d 670, 675 (Tex. 2007)	1993. TEX. CIV. PRAC. & REM. CODE ANN. § 71.051 (applies to personal injury actions and limited to nonresident plaintiffs)
Utah		1950. Mooney v. Denver & Rio Grande W. R.R. Co., 221 P.2d 628, 648–49 (1950) (FELA)			

439. In *Castro Alfaro*, the Texas Supreme Court held that a 1913 statute had abrogated the doctrine of forum non conveniens in wrongful death and personal injury actions. Dow Chem. Co. v. Castro Alfaro, 786 S.W.2d 674, 674 (Tex. 1990). The state legislature effectively overturned that decision in 1993 when it approved the use of forum non conveniens to dismiss wrongful death or personal injury claims brought by non-Texas residents. Wrongful Death–Forum Non Conveniens, Ch. 4 (1993) (codified as amended at 2015 Tex. Civ. Prac. & Rem. Code Ann. § 71.051). A common law doctrine of forum non conveniens is still available in Texas for other types of claims. *See, e.g.*, Quixtar Inc. v. Signature Mgmt. Team, LLC, 315 S.W.3d 28, 29–30 (Tex. 2010) (applying the common law doctrine of forum non conveniens).

440. *Morris* is the earliest case cited by the Texas Supreme Court in *Castro Alfaro*, although *Castro Alfaro* noted that the relevant passage in *Morris* was dicta. *Castro Alfaro*, 786 S.W.2d at 677. We did not find an earlier decision that treated dismissal as a matter of discretion rather than a lack of legal authority.

	Rejected FNC	Adopted FNC[412]	Adopted *Gulf Oil* factors	Adopted *Piper*'s lesser deference	FNC statute
Vt.		1904. Morisette v. Canadian Pac. Ry. Co., 56 A. 1102, 1103 (1904)[441]			
Va.	1989. Caldwell v. Seaboard Sys. R.R., 380 S.E.2d 910, 910 (Va. 1989) (FELA)	1991. VA. CODE ANN. § 8.01-265 (limited to nonresident plaintiffs and out-of-state causes of action)	2019. RMBS Recovery Holdings, I, LLC v. HSBC Bank USA, N.A, 827 S.E.2d 762, 763-64 (Va. 2019)		1991. VA. CODE ANN. § 8.01-265 (limited to nonresident plaintiffs and out-of-state causes of action)
Wash.	1959. Lansverk v. Studebaker-Packard Corp., 338 P.2d 747, 748 (Wash. 1959)	1974. Werner v. Werner, 526 P.2d 370, 378 (Wash. 1974)	1990. Myers v. Boeing Co., 794 P.2d 1272, 1276 (Wash. 1990)	[Rejected[442]]	

441. *Morisette* discussed forum non conveniens only in the hypothetical. Morisette v. Canadian Pac. Ry. Co., 56 A. 1102, 1103 (1904) ("Without saying what might or ought to have been done if a motion [to dismiss for forum non conveniens] had been made at the outset of the case, we do not feel at liberty . . . to say that the proceeding should have been dismissed."). Though it is a close call, we nonetheless count from *Morisette* because it is cited by subsequent Vermont decisions that discuss the discretion to dismiss and because those subsequent decisions do not treat forum non conveniens as a question of first impression. *See* Wellman v. Mead, 107 A. 396, 401 (1919) (citing *Morisette* for the proposition that "[c]ourts sometimes refuse to act where all the parties are nonresidents"); Burrington v. Ashland Oil Co., 356 A.2d 506, 509 (Vt. 1976) (affirming refusal to dismiss a case for forum non conveniens without treating it as a novel question and citing *Morisette* for the proposition that Vermont courts sometimes hear foreign-cubed cases).

442. Myers v. Boeing Co., 794 P.2d 1272, 1280–81 (Wash. 1990).

	Rejected FNC	**Adopted FNC[412]**	**Adopted *Gulf Oil* factors**	**Adopted *Piper*'s lesser deference**	**FNC statute**
W. Va.	1988. Gardner v. Norfolk & W. Ry. Co., 372 S.E.2d 786, 793 (W. Va. 1988) (FELA)	1990. Norfolk & W. Ry. Co. v. Tsapis, 400 S.E.2d 239, 244 (W. Va. 1990) (FELA)	1990. Norfolk & W. Ry. Co. v. Tsapis, 400 S.E.2d 239, 242 (W. Va. 1990) (FELA)	1990. Norfolk & W. Ry. Co. v. Tsapis, 400 S.E.2d 239, 243 (W. Va. 1990)	2007 (effective 2008). W. VA. CODE ANN. § 56-1-1a(a)[443]
Wis.	1896. Eingartner v. Ill. Steel Co., 68 N.W. 664 (Wis. 1896)[444]	1960. WIS. STAT. ANN. § 801.63(1), originally WIS. STAT. § 262.19			1960. WIS. STAT. ANN. § 801.63(1), originally WIS. STAT. § 262.19
Wyo.		1991. W. Tex. Utilities Co. v. Exxon Coal USA, Inc., 807 P.2d 932, 935 (Wyo. 1991)[445]	2019. Saunders v. Saunders, 445 P.3d 991, 999-1000 (Wyo. 2019)		

443. *Morris v. Crown Equip. Corp*., 633 S.E.2d 292 (W. Va. 2006), struck down an initial statute passed in 2003 on the grounds that it unconstitutionally discriminated against nonresident plaintiffs. A 2018 amendment to the 2007 statute reinstated the initial statute's door-closing provision, barring suits by nonresident plaintiffs regarding causes of action arising outside of West Virginia unless the plaintiff is unable to obtain jurisdiction in the state where the cause of action did arise or is suing a West Virginia defendant. W. VA. CODE ANN. § 56-1-1(c).

444. *Eingartner* and other Wisconsin decisions that rejected forum non conveniens all involved residents of other U.S. states. *See, e.g.*, State v. Belden, 236 N.W. 542, 542 (Wis. 1931); Bourestom v. Bourestom, 285 N.W. 426, 428 (Wis. 1939). In dicta in *Disconto Gesellschaft v. Terlinden*, 106 N.W. 821, 823 (Wis. 1906), *aff'd*, 208 U.S. 570 (1908), the court suggested there might be discretion to dismiss a suit brought by a foreign plaintiff against a foreign defendant regarding a foreign bankruptcy, but that question was never directly addressed.

445. For the proposition that Wyoming courts have the discretion to dismiss cases for forum non conveniens, *West Texas Utilities* cited *Booth v. Magee Carpet Co.*, 548 P.2d 1252 (Wyo. 1976). W. Tex. Utils. Co. v. Exxon Coal USA, Inc., 807 P.2d 932, 935 (Wyo. 1991). We do not count from *Booth*, however, because that decision explicitly stated that "[b]ecause this question [of forum non conveniens] has not been presented and is not necessary of decision, we do not decide whether a trial court in this state can dismiss a suit in reliance upon the doctrine of forum non conveniens." *Booth*, 548 P.2d at 1255 n.2.