Forum Shopping and Judge Shopping: An Empirical Analysis of Immigration Policy Cases

by

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Abstract

This article measures the extent of forum and judge shopping in cases challenging the legality of immigration policies during the Biden and Trump administrations. The evidence shows that both liberal and conservative plaintiffs engage in forum shopping, but only conservative plaintiffs engage in judge shopping. The limited evidence now available suggests that recent attempts to curb forum and judge shopping – the Supreme Court's decision in *Trump* v. *CASA* (2025) and the Judicial Conference's 2024 policy regarding district-wide assignment – have been ineffective in curbing judge and forum shopping. To prevent forum and judge shopping, this article recommends nationwide random assignment of litigation of national importance.

Keywords: forum shopping, judge shopping, immigration, CASA, random assignment

JEL classification code: K41, K40, K37, D72, P48

1 Introduction

Forum shopping, and its close cousin, judge shopping, have received increased attention in recent years. Widely covered Supreme Court arguments in *CASA*[1]

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[1] *Trump* v. *CASA,* 145 S. Ct. 2540 (2025).

criticized nationwide injunctions for encouraging forum shopping. Similarly, the press has noted disapprovingly the fact that the state of Texas has repeatedly chosen to file cases with nationwide implications in single-judge divisions (Wall Street Journal 2025). Whereas the prior literature on forum shopping emphasized patent litigation and bankruptcy, the more recent debate has focused on high-profile, politicized litigation relating to topics such as abortion policy and birthright citizenship.

This article examines forum shopping and judge shopping in immigration cases filed during the first and second Trump administrations and during the Biden administration. It finds that forum shopping is real and helps both liberal and conservative litigants secure more favorable judges. That is, litigants are able to file their cases in districts where they are more likely to get an ideologically-aligned judge, and, in fact, they succeed in getting judges that are, on average, aligned with their ideology. The analysis also finds some evidence of judge shopping; that is, litigants are able to get their cases heard by judges who are more ideologically aligned than the average judge in the district. Nevertheless, judge shopping seems to be a strategy used only by conservative litigants, and it is confined to a few districts in Texas. The fact that there is no evidence of judge shopping by liberal plaintiffs probably does not reflect liberal reluctance to judge shop, but rather the reality that, for reasons discussed below, liberals have fewer opportunities and less incentive to judge shop.

Although this article is primarily empirical, it is worth noting that most people consider forum shopping and judge shopping to be bad, although it is not clear why. One possible problem with forum shopping and judge shopping is that it means that cases are more likely to be decided by judges who are outliers – very liberal or very conservative – rather than by moderate judges. Extreme judges are more likely to make decisions that offend large numbers of people and contribute to political polarization. Forum shopping and judge shopping are also problematic because they give the plaintiff a systematic litigation advantage. In addition, under some theories of judicial decision-making, the decisions of such judges are more likely to be "wrong" from a normative perspective. Forum shopping and judge shopping can also be bad if they contribute to forum selling, that is, if they contribute to efforts by judges to attract cases by distorting procedure or law, see Klerman & Reilly (2016), but there is little evidence of forum selling in the cases examined here. Eisenberg & LoPucki (1999) argue that the main problem is that there is a lot of variation between judges in how they are likely to decide cases, which makes the law non-uniform and unpredictable. While that variation fuels forum shopping, the problem is the non-uniformity and unpredictability of the courts, not forum shopping itself.

The article also examines recent efforts to curb forum shopping and judge shopping. The Supreme Court's decision in *CASA*[2] restricting nationwide injunctions was partially justified as an attempt to curb forum shopping. The empirical analysis here, although preliminary, suggests that *CASA* has had little effect. In March 2024, the federal Judicial Conference recommended that districts

[2] *Id.*

restrain judge shopping by randomly assigning cases seeking nationwide remedies among all judges in the district, rather than allowing assignment based on the division (subdivision of the district) where a case was filed. The cases examined here again suggest no effect, although the number of relevant cases is small so the analysis may have insufficient power to detect an effect, even if one exists.

This article also contributes to the literature by providing a way of measuring and comparing the extent of forum and judge shopping across litigants and courts and over time. As discussed in Section 2, no prior articles have done that, in part because they tend to focus on a small number of courts (e.g. the Eastern District of Texas or the District of Delaware) and one type of litigant (e.g. patentees or bankrupt companies).

Section 2 summarizes the literature on forum shopping and judge shopping. Section 3 discusses the legal rules and doctrines – principally venue statutes -- that determine where a plaintiff can file, and which thus enable or constrain forum shopping. This section also discusses judge assignment rules, which may make judge shopping possible. Section 4 describes the data. Section 5 presents quantitative evidence of forum shopping and judge shopping. Section 6 analyzes the effect of the Supreme Court's decision in *CASA*, which attempted to restrict forum shopping, and of the March 2024 Judicial Conference policy, which attempted to curb judge shopping. Section 7 performs a robustness check by limiting analysis to cases involving state plaintiffs. Section 8 discusses policy implications and possible reforms that might be more effective.

2 Literature

The literature on forum shopping and judge shopping is largely segmented by subject area. Klerman & Reilly (2016), Anderson, J. J. (2015), and Anderson, J. J., & Gugliuzza, P. R. (2021) focus on patent litigation. In particular, they discuss the phenomenon that, for certain periods, one court – the Eastern District of Texas between 2012 and 2016 and the Western District of Texas between 2019 and 2021 -- heard over half of all patent disputes in the United States. This part of the literature emphasizes that such a concentration reflects not just forum shopping by plaintiffs, but also efforts to attract cases by the judges, a phenomenon the literature calls "judge shopping" or "court competition." This literature also highlights judge shopping, which is enabled by districts that allow litigants to choose to litigate in divisions with a small number of judges or even a single judge, or which have case assignment rules that assign all patent cases to a single judge. Atkinson (2009) examined the effect on forum shopping of the establishment in 1982 of the Court of Appeals for the Federal Circuit, which created more uniformity in the interpretation of patent law.

There is also a substantial literature about forum shopping and judge shopping in bankruptcy litigation. This literature initially focused on the competition between the Southern District of New York and the District of Delaware, although more recently the Southern District of Texas has replaced the S.D.N.Y. as Delaware's biggest competitor. (Eisenberg & LoPucki 1999; Klerman & Reilly 2016; LoPucki 2022). Levitin (2023) examines judge shopping

in big Chapter 11 cases. LoPucki & Kalin (2001) and LoPucki (2005) also make the important normative point that, in their view, the competition for bankruptcy cases was a "race to the bottom" which made it more likely that companies that went through the bankruptcy process would have to file for bankruptcy again in the future. Brown (2024) makes the interesting observation that the competition for bankruptcy cases had effects on the labor market.

Hubbard (2013), like Atkinson (2009) discussed above, used an event study methodology. In particular, Hubbard examined the impact of the Supreme Court's decision in *Shady Grove* on the choice to file in federal or state court.

A small literature also examines forum shopping across subject areas. Clermont & Eisenberg (1995) found that plaintiffs tended to have much higher success rates when cases were resolved in the court where the plaintiff filed them as compared to cases that were transferred to another court. Ahmed (2010) examined where plaintiffs filed different types of cases and found that, in a number of areas, plaintiffs tended to file cases in districts where the judges were more liberal. Like this article, Ahmed used JCS scores and the percentage of judges appointed by Republican presidents as proxies for ideology. Gugliuzza (2026) examines judge shopping generally, but not from a quantitative perspective.

More recently, substantial attention has focused on forum shopping and judge shopping in high-profile litigation challenging the constitutionality or legality of administrative and executive actions. Bray (2017) criticized the forum shopping that tends to accompany suits for nationwide injunctions. Botoman (2018) documented the way divisional case assignments facilitate judge shopping, especially in high profile constitutional and administrative litigation. Stephen Vladek (2023, 2025), in a series of Substack posts, highlighted the way that parties, especially conservative plaintiffs, have taken advantage of single-judge districts, especially in Texas, to select favorable judges.

3 Legal Background

In general, the plaintiff chooses where to file a case from among the courts where the rules of jurisdiction and venue allow it to file. In ordinary cases, for example those involving breach of contract or personal injury, there are perhaps two or three courts where the plaintiff can file. In most of the cases considered here, however, a savvy plaintiff can structure her suit to enable her to file in any of the ninety-four federal district courts.[3] This somewhat unusual situation arises from the fact that in cases challenging the legality of an executive order or federal rule, the plaintiff generally sues the federal official responsible for enforcing the order or rule. Under the relevant federal venue statute, 28 USC 1391(e)(1)(C), suits against "an officer or employee of the United States or any agency thereof acting

[3] One exception to this generalization is when the plaintiff is petitioning for review of orders of removal under 8 U.S.C. 1225(b). In those situations, 8 U.S.C. 1252(e)(3)(a) requires the plaintiff to file the case in the federal District Court for the District of Columbia. Because the plaintiff has no choice of where to file such cases, they are excluded from the analysis. The authors thank David Hausman for pointing out this restrictive venue statute.

in his official capacity…," may be brought where "the plaintiff resides…" Courts have interpreted that statute to mean that multiple joined plaintiffs, or an organization with members in multiple states, can sue wherever one plaintiff or affected member resides (Wright & Miller, 14D Fed. Prac. & Proc. Juris. § 3815 (4th ed.) n. 39). Thus, as long as there is one affected person residing in the district, the lawyers can sue there. If a group of immigrants is challenging an order or regulation, there are usually affected persons in every district, so the lawyer can choose to sue in any district. Similarly, if a state or group of states is challenging a law, they can choose to file in any district of any of the litigating states.[4] States have played a key role in challenging orders and regulations as too favorable to immigrants. Because Texas is one of the states most active in such litigation, and, since, as discussed below, Texas is a particularly attractive place for conservative litigants, conservative states challenging a rule as too liberal will usually have the option of suing in one of the four federal district courts in Texas, or in a federal district in another conservative state.

Many assume that the norm in federal court is random assignment at the district level. That is, a litigant who files a case in a particular district has an equal chance of having the case assigned to any judge in the district. Nevertheless, Botoman (2018) showed that only about a third of districts have adopted such a system. Instead, most federal districts employ some degree of divisional assignment. Divisions are administrative subdivisions of a district, usually centered on a particular courthouse. Most districts have multiple courthouses and thus multiple divisions. In districts where there is divisional assignment, litigants may be allowed to select a particular division to hear their case, and the case will be randomly assigned to judges whose chambers are in that division or to judges otherwise associated with that division. When the number of judges in or associated with the division is reasonably large and the judges are similar to the district's judges as a whole, divisional assignment does not provide opportunities for judge shopping. When the number of judges in or associated with a division is small and the judges are not representative of the district as a whole, the possibility of judge shopping arises. Botoman (2018) identifies a number of districts which have divisions where a single judge hears over half of the cases. Those districts present tempting opportunities for judge shopping. The most notorious of such districts are the four federal districts in Texas, where conservative litigants have successfully litigated important cases, such as a challenge to the legality of Deferred Action for Childhood Arrivals (DACA) and a challenge to the FDA's approval of the mifepristone abortion pill.

The problem of forum shopping was a key argument in Samuel Bray's influential article against nationwide injunctions. (Bray 2017). In 2025, in *Trump* v. *CASA*, the Supreme Court adopted most of Bray's arguments and held that

[4] Although it might seem that when states are plaintiffs, they must sue in a federal district in one of the plaintiff states, 1391(e)(1)(B) also allows suit where "a substantial part of the events … giving rise to the claim occurred," which means that, in cases like those analyzed here, where government officials are enforcing a policy nationally, even state plaintiffs could sue just about anywhere. Conservative states could, undoubtedly, sue in the District of the District of Columbia, where federal policy is formed, but it is not surprising that they never do so in the cases studied in this article.

nationwide injunctions generally exceed the equitable authority that Congress has given to the federal courts. The Court echoed Bray's arguments that such injunctions encourage forum shopping, and that curbing forum shopping provides a reason to restrict such injunctions.

In 2024, the Judicial Conference responded to the problem of judge shopping by adopting a non-binding policy that district courts should use district-wide random assignment in all cases involving nationwide injunctions or declaratory relief (United States Courts 2024). Soon thereafter, also in 2024, Senator Schumer introduced a bill, S. 4096, the "End Judge Shopping Act," which would make the Judicial Conference policy binding.

4 Data

The data for this study are all cases filed in federal district court challenging the legality of Trump or Biden administration actions relating to immigration and citizenship. Cases analyzed include those disputing the legality of the use of the Alien Enemies Act, those challenging Trump's executive order on birthright citizenship, and those arguing that the Deferred Action for Childhood Arrivals (DACA) policy was illegal. Cases heard by immigration judges and immigration cases that disputed the application of settled law – e.g., whether an individual is subject to removal or deportation under provisions of the Immigration and Naturalization Act that were not affected by new orders or policies of the second Trump administration – were not included.[5] Cases filed during the second Trump administration were assembled by Just Security as part of its Litigation Tracker. According to its website, "Just Security is an editorially independent, non-partisan, daily digital law and policy journal … based at the Reiss Center on Law and Security at New York University School of Law." Cases filed during the Biden Administration and first Trump Administration were assembled through Westlaw searches that aimed to mimic the inclusion criteria used by Just Security. The Just Security database was last checked on April 4, 2026, so the cases could, in theory, span a little more than 9 years, from January 20, 2017 (Trump's first inauguration) through April 4, 2026. In fact, the earliest case in the dataset was filed on January 28, 2017, and the last was filed on February 23, 2026. Appendix A describes the search strategy in greater detail.

Immigration policy cases are an excellent place to examine forum and judge shopping because the stakes are high, legal constraints on where to file are weak, and there are a substantial number of such cases brought by both pro-immigration and anti-immigration individuals, groups, and states. In addition, as discussed below, decisions by liberal and conservative judges are likely to decide such cases differently, so standard measures of ideology – such as party of the appointing president and JCS scores – are good proxies for litigant preferences. Of course, other cases, such as environmental litigation, might also be appropriate analysis.

[5] As noted above in footnote 3, cases challenging orders of removal under 8 U.S.C. 1225(b) were also excluded.

The date filed was ascertained by examining docket sheets on Westlaw and/or by examining the complaint itself. Where there were amendments, the date of the first complaint was used.

Whether the plaintiff filing the case was liberal or conservative was coded by a law student research assistant based on the identity of the plaintiff(s) and the claims brought. In practice, classification was easy. Cases brought by immigrants, immigrant rights organizations, and blue states challenging policies that disadvantaged immigrants were classified as brought by liberal plaintiffs. Cases brought by red states challenging policies as too favorable to immigrants were coded as brought by conservatives.

The ideology of judges was measured in two ways. The principal measure was Judicial Common Space (JCS) scores, which give each judge a score between negative and positive one based on the ideology of the nominating president and the Senators in the relevant state. (Epstein et al. 2007). The higher the score, the more conservative the judge; the more negative, the more liberal. The average JCS score for federal judges is roughly zero. The JCS scores for court of appeals judges were downloaded from Lee Epstein's website. JCS scores for district court judges were downloaded from Christina Boyd's website (Boyd 2015). Both are current through 2024, which means there are JCS scores for all relevant judges, except those who were nominated most recently. An alternative way of measuring judicial ideology is whether the judge was appointed by a Democratic or Republican President. Although much cruder than JCS scores, this method has two advantages: it is very easy to interpret, and it is available for all judges, even those for whom JCS scores are not yet available.

Information on judges, including the appointing president, was downloaded from Federal Judicial Center (FJC) Biographical Directory webpage. The FJC updates these data daily.

Table 1 provides summary statistics for the key variables.

Table 1
Summary Statistics

Variable	N	Mean	Standard Deviation	Minimum	Maximum
Filing date	193	8/14/2022	3.08 years	1/28/2017	2/23/2026
Liberal plaintiff	193	0.891	0.312	0	1
JCS score	192	-0.034	0.457	-0.631	0.693
Appointed by Republican President	193	0.378	0.486	0	1

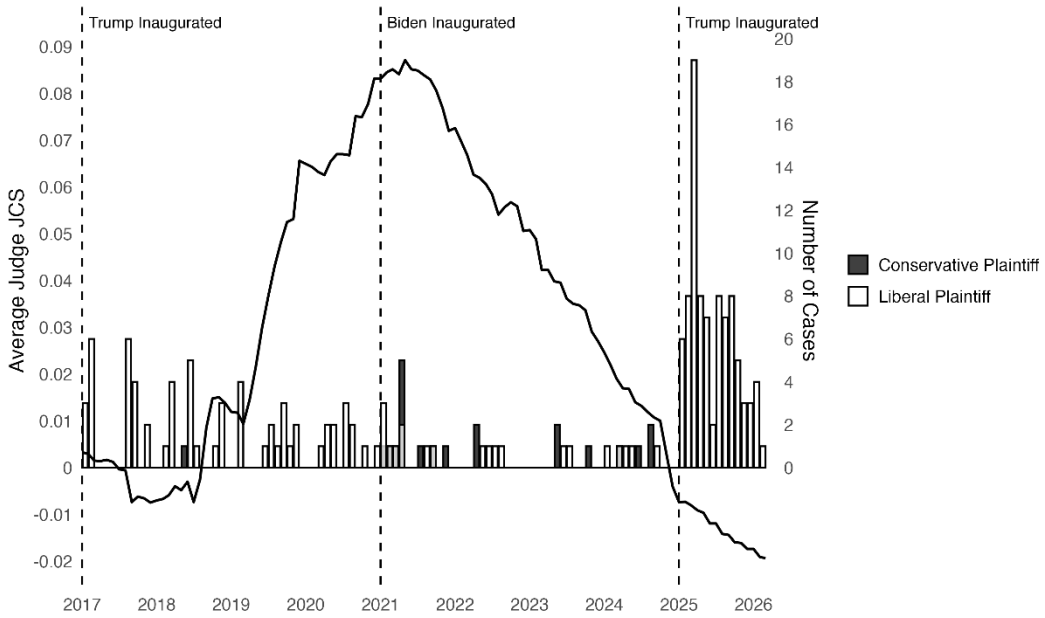
Notes. Liberal Plaintiff and Appointed by Republican President are dummy variables that take the value 1 when the plaintiff is liberal or the judge was appointed by a Republican president, and 0 otherwise.

To facilitate comparison and to measure the extent to which the judge or court hearing the case was liberal or conservative, for each observation (case filed), we also compute (a) where the district court judge hearing the case's JCS score ranks (both as a positive integer and as a percentile) as compared to other judges in the relevant judicial district, (b) where the average JCS score of the judges on the relevant district court ranks (both as a positive integer and as a percentile) as compared to other district courts, (c) where the average JCS score of judges on the court of appeals that would hear appeals in the relevant case ranks (both as a positive integer and as a percentile) as compared to other federal courts of appeals, (d) where the relevant district court's fraction of Republican appointees ranks (both as a positive integer and as a percentile) as compared to other district courts, and (e) where relevant court of appeals' fraction of Republican appointees ranks (both as a positive integer and as a percentile) as compared to other federal courts of appeals. All of these comparisons were performed by analyzing the JCS scores or appointing presidents of confirmed, non-senior judges on the relevant courts on the date filed. By calculating these measures for judges who were active at the time the case was filed, these comparisons reflect the judge and court's position relative to other judges at the time the plaintiff filed its case and thus reflect the changing composition of the federal court. As discussed further below, the composition of the federal courts changes (albeit slowly) as presidents appoint new judges and older judges retire.

JCS scores and the party of the appointing president are highly predictive of outcomes. In simple regressions of these two factors on the outcomes of the cases analyzed in this paper, a one-point increase in JCS score predicted a 29.5 percentage point increase in conservative decisions, and cases decided by Republican-appointed judges were thirty-eight percentage points more likely to be decided in a conservative way than cases decided by Democratic appointees.

Although JCS scores average around zero, there is some variation in time, as indicated in Figure 1 below.

Figure 1
Average District Court JCS scores and Number of Cases Over Time



During the relevant period, the average district court judge JCS score varied between about -0.03 and 0.09. In general, it rises during the Trump administrations, as new judges get appointed (e.g., 2019-2021), and falls during the Biden administration (e.g., 2021-2025). While the change is relatively small, it matters for two reasons. First, it means that it is important to calculate all relevant averages and percentiles at the time a case was filed. Because, as discussed in more detail below, the relevant null hypothesis is that a plaintiff got the average judge, it is important to calculate the average properly. Second, as shown in the graph in the solid and hollow bars, the number of cases brought by liberal and conservative plaintiffs is not constant over time. All but one of the cases brought by conservative plaintiffs was brought during the Biden administration, and most were brought toward the beginning of the Biden administration. That is, most conservative challenges were brought during the period when the district court bench was most conservative (2021-2023). This means that, unless, as mentioned above, one takes into account the date a case was filed, one might exaggerate the extent to which conservative plaintiffs are able to get favorable (more conservative) judges. Conversely, most cases brought by liberal plaintiffs were brought early in the first and second Trump administrations (2017-19, and 2025-2026) when the judiciary was at its most liberal, again reinforcing the need to take into account the date filed when calculating the extent to which plaintiffs successfully forum or judge shopped. A similar figure could be produced for the fraction of Republican appointees over time, which would show that, on average, less than half of judges were Republican appointees, but that liberal plaintiffs

tended to sue when the fraction of Republican appointees was lower, while conservative plaintiffs tended to sue when the fraction was higher.

5 Forum Shopping and Judge Shopping: The Evidence

One way to measure forum and judge shopping is to compare the JCS scores of judges hearing cases brought by liberal plaintiffs to those brought by conservative plaintiffs. Panel A of the Table 2 (below) shows that there was a large difference in the average judge JCS scores in cases brought by liberal plaintiffs as compared to average judge JCS scores in cases brought by conservative plaintiffs.

Table 2
The Combined Effect of Forum and Judge Shopping

Liberal Plaintiff			Conservative Plaintiff			Conservative Advantage	
Value	Divergence	*P*-value	Value	Divergence	*P*-value	Value	*P*-value
Panel A. Judge JCS Scores							
-0.093 (0.034) N = 171	-0.101 *-0.093-0.008*	0.002	0.449 (0.060) N = 21	0.390 *0.449-0.059*	0.000	0.289	0.003
Panel B. Percentile of Judge JCS Score as Compared to All Federal District Court Judges							
41.6 (2.3) N = 171	-8.4 *41.6-50.0*	0.000	74.2 (4.4) N = 21	24.2 *74.2-50.0*	0.000	15.8	0.016
Panel C. Fraction of Judges who are Republican Appointees							
0.314 (0.035) N = 172	-0.101 *0.314-0.415*	0.008	0.905 (0.066) N = 21	0.432 *0.905-0.473*	0.000	0.330	0.003

Notes. The first number in the first two Value columns is the average value. The second value, in parentheses, is the standard error. The third value, prefaced by "N=," is the number of observations. Divergence means difference from what would be expected with random assignment of cases to judges. The italicized text in the Divergence column shows how Divergence was calculated; the first value is the average from the column to the left, and the second value is the value one would expect with random assignment of cases to judges. Conservative Advantage is the Divergence for conservative plaintiffs minus the negative of Divergence for liberal plaintiffs. *P*-values are two-sided and calculated using 10,000 draws with replacement from values (e.g., JCS scores) of all district court judges at the filing date. The null hypotheses for *p*-values are that Divergence = 0 and Conservative Advantage = 0.

When a case was brought by a liberal plaintiff, the average JCS score was -0.093, whereas the average JCS scores in cases brought by a conservative plaintiff was 0.449. That is, cases brought by liberal plaintiffs were heard by judges who were slightly liberal, while cases brought by conservative plaintiffs were heard by judges who were very conservative. The Divergence column shows how the average JCS scores diverge from what would be expected with random assignment. As discussed in the prior section, while the average judge has a score close to zero, the actual average varies over time, and because of differences in when suits were brought, is farther from zero for conservative plaintiffs than for liberal plaintiffs. The divergence from expectation, both for liberal plaintiffs and

conservative plaintiffs, -0.101 and 0.390, is highly statistically significant at conventional levels ($p < 0.005$). In addition, the absolute value of the divergence is almost four times larger for conservative plaintiffs than for liberal plaintiffs. The difference in those absolute values, which the table calls the Conservative Advantage, is 0.289, and has a *p*-value of 0.003. That is, on average, the conservativeness of judges who heard cases brought by conservative plaintiffs was greater than the liberalness of judges who heard cases brought by liberal plaintiffs, and that conservative advantage is highly statistically significant.

Panel B helps understand the magnitude of the differences in JCS scores by ranking the JCS score of each district court judge as compared to all other district court judges serving at the time the complaint was filed. District court judges hearing cases brought by liberal plaintiffs were, on average, in the forty-second percentile. That is, forty-two percent of federal district court judges serving at the time the complaint was filed had lower JCS scores (i.e., were more liberal) and fifty-eight percent had higher JCS scores (i.e., were more conservative). Put another way, the judges hearing cases brought by liberal plaintiffs were somewhat more liberal than the median judge; that is, those judges were, on average, eight percentiles more liberal than the median judge. On the other hand, in cases brought by conservative plaintiffs, on average, the judge was at the seventy-fourth percentile of conservativeness. That is, conservative plaintiffs were able to get judges who were far more conservative than the median; those judges were, on average, twenty-four percentiles above the median. The extremely low *p*-values in the third and sixth columns indicate that the fact that both liberal and conservative plaintiffs had cases heard by judges who were ideologically aligned with them is not likely the product of chance, and the low *p*-value in the last column indicates that the conservative advantage -- the fact that conservative plaintiffs get judges sixteen percentiles more ideologically aligned with them than liberal plaintiffs – is unlikely to be just a matter of chance.

A simpler way of measuring forum and judge shopping is to ask whether liberal plaintiffs were able to have their cases heard by judges appointed by Democratic presidents, and whether conservative plaintiffs were able to have their cases heard by judges appointed by Republican presidents. Panel C of Table 2 presents the results, which are somewhat startling. Cases brought by liberal plaintiffs were heard by Republican appointees 31% of the time, which means they got Democratic appointees, who were more likely to rule in a favorable way, 69% of the time. Cases brought by conservative plaintiffs were heard by Republican appointees an astonishing 90% of the time. When one takes into account, as discussed in Section 3, that the judiciary had more Democratic appointees than Republican appointees during the relevant periods and that liberals tended to sue when there were the fewest Republican appointees, the Divergence for liberal plaintiffs is relatively small (ten percentage points fewer Republican appointees than one would expect), while the divergence for conservative plaintiffs is very large (forty-three percentage points more Republican appointees than one would expect). As indicated in the last column, this conservative advantage is highly statistically significant, as is the Divergence for both liberal and conservative plaintiffs.

In sum, whether ideology is measured by JCS scores or the party of the appointing president, both liberal and conservative plaintiffs were able to get their cases heard by judges who were closer to them ideologically, and conservative plaintiffs were more effective in doing so.

The results in Table 2 show that plaintiffs were able to get judges likely to be favorable to their positions, but they beg the question of how. There are two main possibilities: forum shopping and judge shopping. That is, plaintiffs may have been filing their cases in districts where the average judge was favorable to their views (forum shopping), or plaintiffs may have been able to obtain judges who were more favorable to their views than the average in the district (judge shopping). Of course, plaintiffs may have been doing both: filing in districts with judges who were, on average, more disposed to favor them, and, using local rules to secure judges who were more disposed to favor them than the average judge in the district. The next subsections explore forum shopping and judge shopping separately.

5.1 Forum Shopping

Table 3 explores the first option, forum shopping, by looking at measures of the judicial ideology of the district court where the plaintiff filed. That is, whereas Table 2 analyzes the ideology of *the individual judge* hearing the case, Table 3 measures the ideology of the *average judge in the district* where the case was filed.

Table 3
Forum Shopping, As Measured by District Court Ideology

Liberal Plaintiff			Conservative Plaintiff			Conservative Advantage	
Value	Divergence	*P*-value	Value	Divergence	*P*-value	Value	*P*-value
Panel A. JCS Scores for All Judges in the District							
-0.108 (0.018) N = 172	-0.141 *-0.108-0.033*	0.000	0.249 (0.040) N = 21	0.178 *0.249-0.072*	0.001	0.037	0.529
Panel B. Percentile of JCS Scores for All Judges in the District as compared to Average JCS Score of all District Courts							
33.2 (2.0) N = 172	-16.8 *33.2-50.0*	0.000	71.7 (4.2) N = 21	21.7 *71.7-50.0*	0.001	4.90	0.481
Panel C. Fraction of All Judges in the District who are Republican Appointees							
0.304 (0.017) N = 172	-0.138 *0.304-0.443*	0.000	0.681 (0.042) N = 21	0.193 *0.681-0.489*	0.003	0.054	0.430
Panel D. Percentile of Fraction of All Judges in the District who are Republican Appointees as Compared to the Fraction Republican Appointees in all District courts							
37.0 (1.7) N = 172	-13.0 *37.00-50.00*	0.000	73.9 (4.0) N = 21	23.9 *73.9-50.0*	0.000	10.9	0.111

Notes. The first number in the first two Value columns is the average value. The second value, in parentheses, is the standard error. The third value, prefaced by "N=," is the number of observations. Divergence means difference from what would be expected with random assignment of cases to district courts. The italicized text in the Divergence column shows how Divergence was calculated; the first value is the average from the column to the left, and the second value is the value one would expect with random assignment of cases to district courts. Conservative Advantage is the Divergence for conservative plaintiffs minus the negative of Divergence for liberal plaintiffs. *P*-values are two-sided and calculated using 10,000 draws with replacement from values (e.g., average JCS scores for all judges in the district) of all district courts at the filing date. The null hypothesis for *p*-values for Liberal Plaintiff and Conservative Plaintiff is Divergence = 0, that is, random assignment of cases to districts. The null hypotheses for *p*-values are that Divergence = 0 and Conservative Advantage = 0.

Panel A shows that both conservative and liberal plaintiffs filed their cases in districts where the average JCS score was favorable to them. Liberal plaintiffs filed their cases in districts where the average district court judge had a JCS score of -0.108. That is, liberal plaintiffs filed their cases in districts where the average district court judge was slightly liberal. Conservative plaintiffs filed their cases in districts where the average district court judge had a JCS score of 0.249, that is, moderately conservative. For both liberal and conservative plaintiffs, the divergence from what one would expect with random assignment to districts has a very low *p*-value (< 0.005), indicating that the JCS scores are highly likely to reflect forum shopping rather than random chance. Nevertheless, once one takes into account the fact that the judiciary is overall slightly conservative, the divergence for liberal and conservative plaintiffs has a similar absolute value (0.141 and 0.178) and the conservative advantage is small and not statistically significant. That is, the very high *p*-value in the last column indicates that there is a high chance that the apparent conservative advantage is just the result of chance. So, overall, Panel A shows that both liberal and conservative plaintiffs forum shop, and they do so to roughly the same extent.

Panel B puts the figures from Panel A in perspective by comparing the average JCS score of the district where the plaintiff filed to the average JCS score of other district courts. Liberal plaintiffs sued in districts that were, on average, at the thirty-third percentile of conservativeness, and so seventeen percentiles more liberal than the median. Similarly, conservative plaintiffs sued in districts that were, on average, at the seventy-second percentile, and so twenty-two percentiles more conservative than the median. Panel B confirms that both liberals and conservatives were successfully forum shopping. As with Panel A, the conservative advantage is not statistically significant, indicating that both liberals and conservatives were forum shopping to roughly the same degree.

Panel C measures the ideology of the district by asking what percentage of the district court's judges were appointed by Republican presidents. Again, litigants get judges who are likely to be closer to their own ideology. Liberal plaintiffs chose courts where only thirty percent of judges were appointed by Republicans; which means the courts hearing their cases had, on average, seventy percent judges appointed by Democrats. Similarly, conservative litigants brought cases in districts where sixty-eight percent of judges were appointed by Republican presidents and thus more likely to be sympathetic to their cases. Although by this measure it would seem the liberal plaintiffs were more successful in suing in districts where judges are likely to be sympathetic to their cases, the Divergence columns, which take into account the fact that the judiciary had more Democratic appointees, indicates that the courts hearing cases brought by conservative plaintiffs were slightly farther from the average, and the difference (the conservative advantage) is not statistically significant.

Panel D puts the figures in Panel C in perspective by comparing the average fraction of Republican appointed judges in the district where the case was filed to the average fraction of Republican appointees in other districts. The results confirm that both liberal and conservative plaintiffs sue in districts with more trial judges appointed by presidents who are ideologically aligned. Panel D shows a

conservative advantage, 10.9 percentiles, albeit one that has a p-value that is not statistically significant at conventional levels (0.111).

Overall, both liberal and conservative plaintiffs are able to and do sue in districts that have judges who are ideologically aligned, whether ideological alignment is measured by JCS scores or the fraction of Republican-appointed judges. While there is some evidence that conservative plaintiffs are more effective in forum shopping, the conservative advantage is not statistically significant.

Comparing Tables 2 and 3 also provides some preliminary evidence, developed further below, about judge shopping. If one looks at liberal plaintiffs, one can see that the average JCS scores (-0.093 and -0.108) and the fraction Republican appointee (0.314 and 0.304) of the judge hearing the case and of the district in which the judge sits are similar, or indicate (for Panels B) that liberal plaintiffs get judges who are *less* liberal than the average in the district (41.6th percentile v 33.2nd). This is strong evidence that liberal plaintiffs are *not* judge shopping. On the other hand, if one looks at conservative plaintiffs, there is substantial evidence of judge shopping; the average JCS score of judges hearing cases brought by conservatives is 0.449, whereas the average JCS score of the judges in the districts where they sue is only 0.249. Similarly, ninety percent of judges hearing claims by conservative litigants were appointed by Republican presidents, whereas only sixty-eight percent of judges in the districts where they sue were Republican appointees. Relatedly, the fact that the measures of the conservative advantage in Table 2 have very low *p*-values whereas the *p*-values in Table 3 are high suggests that the overall conservative advantage (seen in Table 2), does not come from forum shopping (Table 3), but rather from some other causes. As shown in the next subsection, that cause is judge shopping.

Before further investigation of judge shopping, however, it is important to consider another measure of forum shopping. It is of relatively little benefit to have a sympathetic district court judge if that judge's decisions are likely to be reversed by an unfavorable court of appeals. Table 4 therefore examines the ideology of the courts of appeals that would hear appeals from the districts in which conservative and liberal plaintiffs sue.

Table 4
Forum Shopping, As Measured by Court of Appeals Ideology

Liberal Plaintiff			Conservative Plaintiff			Conservative Advantage	
Value	Divergence	*P*-value	Value	Divergence	*P*-value	Value	*P*-value
Panel A. JCS Scores for All Court of Appeals Judges in the Court of Appeals with Jurisdiction over the Relevant District Court							
0.009 (0.015) N = 172	-0.076 *0.009-0.085*	0.000	0.240 (0.018) N = 21	0.134 *0.240-0.106*	0.001	0.058	0.170
Panel B. Percentile of JCS Scores for All Court of Appeals Judges in the Court of Appeals with Jurisdiction over the Relevant District Court as Compared to Other Courts of Appeals							
34.7 (2.4) N = 172	-15.3 *34.7-50.0*	0.000	74.5 (4.3) N = 21	24.5 *74.5-50.0*	0.000	9.2	0.204
Panel C. Fraction Republican Appointees of All Court of Appeals Judges in the Court of Appeals with Jurisdiction over the Relevant District Court							
0.427 (0.016) N = 172	-0.082 *0.427-0.509*	0.000	0.659 (0.022) N = 21	0.123 0.659-0.536	0.006	0.041	0.388
Panel D. Percentile of Fraction Republican Appointees of All Court of Appeals Judges in the Court of Appeals with Jurisdiction over the Relevant District Court as Compared to Other Courts of Appeals							
36.4 (2.4) N = 172	-13.6 *36.4-50.0*	0.000	74.5 (4.0) N = 21	24.5 *74.5-50.0*	0.000	10.9	0.134

Notes. The first number in the first two Value columns is the average value. The second value, in parentheses, is the standard error. The third value, prefaced by "N=," is the number of observations. Divergence means difference from what would be expected with random assignment of cases to courts of appeals. The italicized text in the Divergence column shows how Divergence was calculated; the first value is the average from the column to the left, and the second value is the value one would expect with random assignment to courts of appeals. Conservative Advantage is the Divergence for conservative plaintiffs minus the negative of Divergence for liberal plaintiffs. *P*-values are two-sided and calculated using 10,000 draws with replacement from values (e.g., average JCS scores for all court of appeals judges …) of all courts of appeals at the filing date. The null hypotheses for *p*-values are that Divergence = 0 and Conservative Advantage = 0.

Panel A compares the average JCS scores of courts of appeals that would review cases brought by liberal and conservative plaintiffs. The courts of appeals that would hear appeals from cases brought by liberal plaintiffs have JCS scores that are essentially zero, whereas courts of appeals that would hear appeals in cases brought by conservative plaintiffs have average JCS scores of 0.240. Although it would appear that liberal plaintiffs are not taking into account the ideology of courts of appeals, this is an illusion. The average court of appeals was somewhat conservative during this period (average JCS of 0.085 when liberal plaintiffs filed their cases), so liberal plaintiffs were, in fact, suing in districts where the court of appeals was more liberal than average, as can be seen from the Liberal Plaintiff Divergence column as well as in Panel B, which shows that liberal sued in courts of appeals at the thirty-fifth percentile of conservativeness (and so fifteen percentiles more liberal than the median). Conservatives were, of course, also suing in districts where appeals went to courts of appeals sympathetic to them, but, while it appears that they were more successful in getting courts of appeals ideologically aligned with them (a Conservative Advantage of 5.8 points), the difference has a high *p*-value.

Panel B puts Panel A in perspective. The courts of appeals in which liberal claims would be heard were at the thirty-fifth percentile of conservativeness as measured by JCS scores (as compared to other courts of appeals), whereas the courts of appeals in which conservative claims would be heard were at the seventy-fourth percentile. That is a huge, forty percentile difference, which again suggests large amounts of forum shopping by both liberal and conservative plaintiffs. Although it would appear that conservatives were more successful in forum shopping for favorable courts of appeals, the conservative advantage of 9.2 percentiles is not statistically significant at conventional levels.

Panels C and D measure court of appeals ideology by analyzing the percentage of court of appeals judges who were appointed by Republicans. Again, there is a huge gulf between the courts of appeals that would hear appeals from cases brought by liberal claimants and those that would hear appeals in cases brought by conservatives. As with Panels A and B, although there is evidence that conservative litigants are better at forum shopping, the *p*-values are high.

5.2 Judge Shopping

As noted above, litigants can procure a favorable judge either by suing in a district where the average judge is more favorable (forum shopping), or by getting a judge who is more favorable than the average in the district (judge shopping), or both. The analysis in the previous subsection focused on forum shopping and found powerful evidence that it is happening to a significant degree. It also found some evidence suggestive of judge shopping, and this subsection delves deeper into that topic. Table 5 analyzes judge shopping directly.

Table 5
Judge Shopping

Liberal Plaintiff		Conservative Plaintiff		Conservative Advantage	
Value	*P*-value	Value	*P*-value	Value	*P*-value
Panel A. The Difference between the District Judge's JCS Score and the District Average JCS Score					
0.015 (0.032) N = 171	0.558	0.199 (0.062) N = 21	0.014	0.215	0.011
Panel B. The District Court Judge's JCS Percentile as Compared to Other District Court Judges in the Same District					
51.8 (2.3) N = 171	0.391	61.0 (5.8) N =21	0.086	12.8	0.058
Panel C. The Difference between the Fraction Republican-Appointed Judges Hearing the Case and the Fraction of Republican-Appointed Judges in the District					
0.010 (0.034) N =172	0.776	0.223 (0.067) N = 21	0.007	0.233	0.013

Notes. The first number in the first two Value columns is the average value. The second value, in parentheses, is the standard error. The third value, prefaced by "N=," is the number of observations. The Divergence column in this chart is omitted because the divergence in Panels A and C is the value in the first and third columns, and the divergence for Panel B can be easily calculated by subtracting 50.0 from the first two Value columns. Conservative Advantage is the divergence for conservative plaintiffs minus the negative of divergence for liberal plaintiffs. *P*-values are two-sided and calculated using 10,000 draws with replacement from values (e.g., the difference between the judge's JCS score and the district average) of all district courts judges at the filing date. The null hypotheses for *p*-values are that Divergence = 0 and Conservative Advantage = 0.

Panel A measures judge shopping by computing the average difference between the JCS scores of the district judges hearing the cases and the average JCS scores of the judges in the districts in which those judges sit. It finds no evidence of judge shopping by liberal plaintiffs. Liberal plaintiffs, in fact, get judges who are slightly more conservative than the average (JCS scores 0.015 higher, i.e., more conservative). In contrast, conservative plaintiffs get judges with JCS scores, on average, 0.199 higher than the average in the district (*p*-value = 0.014), which is powerful evidence of judge shopping. Panel B measures judge

shopping in a slightly different way. It computes percentile of the JCS score of the district court judge hearing the case as compared to other judges in the same district. Liberal plaintiffs get judges at the fifty-first percentile of conservativeness, that is, slightly more conservative than the median in the district. In contrast, conservative plaintiffs get judges at the sixty-first percentile of conservativeness, eleven percentage points above the median. Although this is consistent with the idea of judge shopping, the difference is slightly above the conventional 0.05 cutoff for statistical significance (p-value = 0.058). Panel C measures judge shopping in a third way, by comparing the fraction of Republican-appointed district court judges hearing the cases in the dataset to the fraction of Republican judges in the district. Again, there is no evidence of judge shopping by liberal plaintiffs. They get Republican-appointed (and Democratic-appointed) judges about as often as one would expect with random assignment. Conservative litigants, however, are twenty-two percentage points more likely to get a Republican-appointed judge than one would expect with random assignment. The difference is statistically significant at conventional levels. As one would expect, the last two columns of Panel C show a significant conservative advantage that is statistically significant at conventional levels. Together, the three panels of Table 5 provide substantial evidence of judge shopping by conservative litigants, no evidence of judge shopping by liberal plaintiffs, and solid evidence of a conservative advantage in judge shopping.

The districts that are most notorious for judge shopping are the four federal districts in Texas. Table 6 breaks down the three measures of conservative judge shopping by Texas and non-Texas districts.

Table 6
Judge Shopping by Conservative Plaintiffs by Location (Texas or Elsewhere)

All Districts		Texas Federal Districts Only		All Districts Without Texas Federal Districts	
Value	*P*-value	Value	*P*-value	Value	*P*-value
Panel A. The Difference between the District Judge's JCS Score and the District Average JCS Score					
0.199 (0.062) N = 21	0.014	0.348 (0.032) N = 10	0.008	0.064 (0.099) N = 11	0.516
Panel B. The District Court Judge's JCS Percentile as Compared to Other District Court Judges in the Same District					
61.0 (5.8) N = 21	0.086	75.0 (4.4) N = 10	0.007	48.3 (9.0) N =11	0.847
Panel C. The Difference between the Fraction Republican-Appointed Judges Hearing the Case and the Fraction of Republican-Appointed Judges in the District					
0.223 (0.067) N = 21	0.007	0.377 (0.039) N = 10	0.004	0.083 (0.109) N = 11	0.437

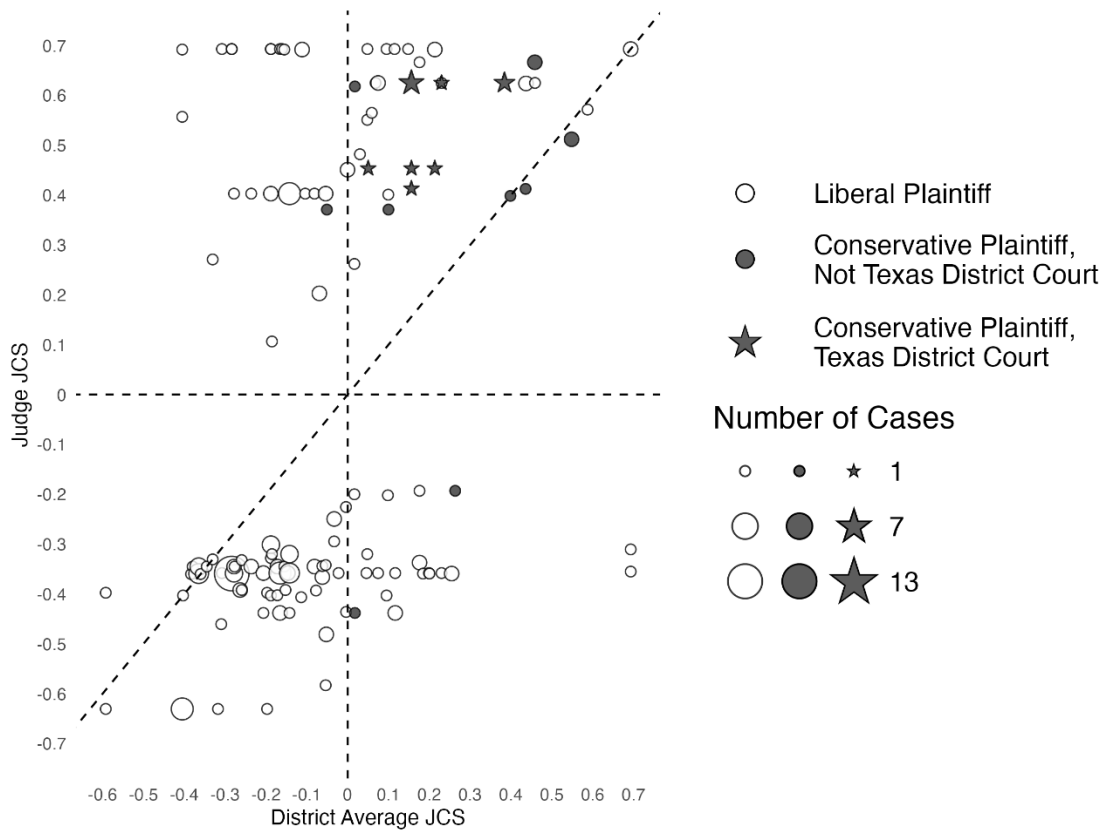
Notes. The first number in the Value columns is the average value. The second value, in parentheses, is the standard error. The third value, prefaced by "N=," is the number of observations. The Divergence column in this chart is omitted because the divergence is the value in Value columns, except for Panel B where it is the value in the Value columns minus 50.0. *P*-values are two-sided and calculated using 10,000 draws with replacement from values (e.g., the difference between the judge's JCS score and the district average) of all district court judges at the filing date. The null hypothesis for *p*-values is that Divergence = 0.

The three panels tell a consistent story. There is a large amount of judge shopping in the four federal district courts in Texas; even with the small number of observations, the difference is statistically significant at conventional levels. On the other hand, if Texas districts are excluded, there is little evidence of judge shopping. When Texas districts are excluded, the method in Panel B – the percentile JCS score of the judge hearing the case – shows that conservative litigants actually get judges who are slightly more liberal (JCS scores below the median) than average. The other measures show a small increased likelihood of getting a more conservative judge than the average in the district, but by no measure is the difference even close to statistical significance at conventional levels.

5.3 Graphical summary

Figure 2 below summarizes the evidence of forum and judge shopping.

Figure 2
Forum Shopping and Judge Shopping



Each dot or star represents one or more cases. The size of the dot or star represents the number of cases. Cases brought by liberal plaintiffs are open

circles. Cases brought by conservative plaintiffs are solid circles, except those brought in Texas are solid stars. The vertical axis is the JCS score for the judge hearing the case, and the horizontal axis is the average JCS score for the district in which the case was brought. If there were no forum and no judge shopping the dots would be distributed roughly symmetrically across the vertical and horizontal axes and across the 45-degree line.[6] As can be seen, the distribution is not symmetric. The open circles tend to be in the left half of the graph, and the solid circles and stars tend to be in the right half of the graph, indicating forum shopping by both liberal and conservative plaintiffs. In addition, solid circles and stars are mostly above the 45-degree line, indicating judge shopping by conservative litigants (i.e., that judge JCS scores tend to be higher than district JCS scores). There is no similar pattern for open circles; there are a large number of open circles above and below the 45-degree line, indicating no judge shopping by liberal plaintiffs.

5.4 Explanations

The evidence in this section raises three questions:

1) Why is there so much forum shopping and judge shopping in these cases?
2) Why isn't there even more forum shopping and judge shopping in these cases?
3) Why do only conservative litigants judge shop?

5.4.1 Why is there so much forum shopping and judge shopping in these cases?

The answer to this question is relatively simple: because the law allows it. As discussed in section 3 ("Legal Background") the rules of venue and judge assignment allow those bringing suits against nationwide federal policies to sue almost anywhere. It is not that litigants in these cases are somehow more immoral, more strategic, or smarter than other litigants. It is just that, in most other types of cases, forum choice is limited and judge shopping is impossible. In most cases, the plaintiff chooses the most favorable forum from among a small number of legally permissible courts allowed by the rules of jurisdiction and venue. In situations, like patents in the early 2000s and bankruptcy in the late 1900s, where the rules of jurisdiction and venue allowed similarly broad choice, we also saw rampant forum shopping and judge shopping. (Klerman & Reilly 2016, Anderson 2014, Eisenberg & LoPucki 1999).

5.4.2 Why isn't there even more forum shopping and judge shopping in these cases?

[6] The distribution would not be exactly symmetric both because of random variation and because, as discussed in section 4, the average JCS score is not precisely zero.

Given that, as discussed in Section 3 of this article, plaintiffs in these cases can usually file in any federal district, why don't we see litigants always filing in the most favorable district rather than a district only somewhat more favorable? That is, why, as shown in Table 2, do liberal litigants file in districts that are, on average, at the thirty-third percentile of conservativeness rather than the least conservative (most liberal, zeroth percentile), and why do conservative plaintiffs file in districts that are, on average, at the seventy-second percentile of conservativeness rather than at the 100th percentile?

There is no easy answer to that question, but there are a few possibilities. First, litigants may have better information about which courts are likely to be favorable than the crude metrics (JCS scores and percent Republican appointees) used in this article. That is, litigants may, in fact, be forum and judge-shopping to the maximum extent -- filing their cases in the districts where they are likely to get the most favorable judges – but just doing so in ways that are not fully captured by the metrics used in this article. For example, the Texas Attorney General filed *Texas* v. *United States*, the case challenging Biden's Deferred Action for Childhood Arrivals (DACA) in the Brownsville division of the Southern District of Texas, and Judge Hanen was assigned the case. The Southern District of Texas is a conservative district, but as measured by JCS scores, its percentile is "only" seventy-eight. Similarly, although Judge Hanen is conservative (JCS score of 0.454), he was not the most conservative judge serving at the time (that judge had a JCS score of 0.693), and Judge Hanen was only at the seventy-eighth percentile of conservativeness as compared to all federal district court judges serving at that time. Nevertheless, the Texas Attorney General probably chose the district that was, in fact, the best for the case and got the judge who was ideal from his perspective. The Southern District of Texas has divisional assignment, the Brownsville division had only two judges, and Judge Hanen had been an outspoken and public critic of Biden's immigration policies. (Botoman 2018, pp. 302-303). Hanen's extreme views on immigration are not reflected in his JCS score. Nevertheless, the Texas Attorney General was surely aware of them and took a wise gamble that, by filing in Brownsville, he would have a 50-50 chance of getting Judge Hanen. Other cases, brought by both liberal and conservative plaintiffs are likely to be similar in that the plaintiffs had information about which districts and/or which judges would be favorable that is not captured in the metrics used here. So, plaintiffs may, in fact, be forum and judge shopping to the greatest extent possible given the "rules of the game," but that fact may be reflected only crudely in the statistics in this section. Put another way, the statistics in this section probably underestimate the extent of forum and judge shopping.

Second, the fear of reversal by an appellate court may deter litigants from choosing outlier districts or judges. After all, a favorable district court ruling is of little use if it is likely to be reversed on appeal.

Third, there may be institutional and/or reputational constraints on how much forum shopping and judge shopping litigants can do. Even the Texas Attorney General found it necessary to provide at least some flimsy reason, other than forum and judge shopping, why he filed cases where he did. (Botoman 2018, p.307). Litigants may have feared what eventually happened, that by forum shopping and judge shopping too aggressively, that they would call attention to

the rules enabling their conduct and those rules would be changed to curb the practice.

Fourth, Section 3 may somewhat exaggerate the ability of parties, especially liberal plaintiffs, to forum shop. While it is true that, in a case with nationwide impact, a public interest group wanting to bring a suit can, in theory, almost always find a litigant living in the most liberal district, that may not always be practical. The exigencies of time may force groups to file with plaintiffs they can find easily, and the need to defend a particular person currently threatened with adverse action (deportation, prosecution, job loss) may force them to challenge an executive order or regulation in the district where that person lives or is detained, rather than in the district they would ideally want to litigate it. To the extent that the government may have transported the defendant to an unfavorable place (e.g. Texas) before the plaintiff's lawyer could file the case, the plaintiff may be forced to litigate in a less than optimal forum. The transportation of potential plaintiffs to unfavorable locations may, in fact, reflect a kind of defendant forum shopping available uniquely to the federal government as defendant.

5.4.3 Why do only conservative litigants judge shop?

I doubt the reason is that liberal plaintiffs are more virtuous and restrain themselves from taking advantage of judge-shopping opportunities. Rather, it is likely that there are fewer (if any) liberal districts that allow judge shopping. As discussed in Section 3, judge shopping is possible where there is divisional assignment of judges, and where divisions have one or a small number of judges. There is some disagreement about how many such divisions exist and/or existed. Botoman (2018, Appendix A) lists twenty-nine districts that assign cases by division and have at least one division where one judge heard more than half of the cases. While most are in red or purple states, a handful (six) are in liberal states, which begs the question why liberal plaintiffs don't file in those districts. Of course, it would make sense to file in such districts only if the judge in the division with a single dominant judge was more liberal than the average in the district (or if the judge is close to the average and the litigant is risk-averse). Since judges with a single dominant judge are likely to be rural, and rural areas are likely to be more conservative, it is unlikely that liberal plaintiffs would find such divisions attractive.

In addition, even when such single dominant judge districts exist, the district and its judges may take steps to bar judge shopping. For example, the Eastern Division of the Central District of California has had, at various times, a single dominant judge. Nevertheless, judge shopping is not easy there because the local rules direct that, in cases against the United States,[7] cases are assigned to the Eastern Division only if "50% or more of the plaintiffs who reside in the district reside in the Eastern Division." (General Order 14-03 § 1.B.1.a.(1)(b), 2014). Thus, an organization bringing suit on behalf of members throughout the U.S.

[7] It is unclear whether this rule would also apply to cases against agencies and/or officers of the federal government.

would be unlikely to be able to bring suit in the Eastern Division.[8] In addition, even if liberal plaintiffs can sue in the division, the case may be transferred or reassigned.[9] In contrast, judges in the Texas districts with a single dominant judge, have not transferred or reassigned cases even when judge shopping was blatant. (Vladek 2023).

Christoph Engel's comment points out that there is greater variance in the JCS scores of conservative judges (those with positive scores) than of liberal judges (those with negative scores). This means that there is much to be gained by shopping for a judge who is more conservative than the average conservative judge, but little to be gained by shopping for a judge who is more liberal than the average liberal judge.

In truth, it is difficult to know exactly why only conservative litigants seem to benefit from judge shopping. To really know, one would need to know the assignment rules of all the divisions. As Botoman discovered when he researched the topic, the rules are often not publicly available, and some districts and divisions will not divulge them even upon request. In addition, one would need to know the reassignment and transfer policies and practices of all districts and divisions, and that is also extremely difficult if not impossible to ascertain. Given the opacity of the system, it is possible that there are judge-shopping opportunities that liberal plaintiffs simply haven't found (yet). Maybe conservative litigants have just been more successful in finding them. Nevertheless, given the incentives to find such districts, the best explanation is that while judge shopping is possible for conservative plaintiffs, there are simply no good opportunities for liberal plaintiffs to judge shop. Of course, they can still forum shop – seek districts that have a greater proportion of liberal judges – but it appears that there are no liberal judge shopping opportunities. That is, it appears that there are no districts with divisional assignment and divisions where there is a high probability of getting and keeping a judge who is significantly more favorable than the average in the district.

6 The Effect of Recent Reforms

6.1 The effect of Trump v. CASA

As discussed in section 3, one of the goals of *Trump* v. *CASA* was to reduce forum shopping in cases involving nationwide relief. Table 7 below tests whether *CASA* succeeded in reducing forum shopping by comparing various measures of forum shopping before and after June 27, 2025, when *CASA* was decided. Because *CASA* was decided during the second Trump administration, there were no immigration policy challenges by conservative plaintiffs brought after January 20, 2025, so the analysis in the table below is restricted to suits brought by liberal plaintiffs.

[8] A clever plaintiff's lawyer might still be able to file the case in the Eastern Division by finding plaintiffs who reside and excluding non-resident plaintiffs.

[9] See, e.g., case described in footnote 1 of Vladek 2025.

Table 7
Forum Shopping Before and After *CASA*

Before *CASA*			After *CASA*			Change	
Value	Divergence	*P*-value	Value	Divergence	*P*-value	Value	*P*-value
Panel A. Average JCS Scores for All Judges in the District							
-0.151 (0.033) N = 48	-0.174 *-0.151-0.023*	0.000	-0.142 (0.027) N = 41	-0.159 *-0.142-0.017*	0.000	0.015	0.788
Panel B. Average Percentiles of Average District JCS Scores as compared to Average JCS Score of all District Courts							
29.9 (3.8) N = 48	-20.1 *29.9-50.0*	0.000	33.5 (3.0) N = 41	-16.5 *33.5-50.0*	0.000	3.6	0.567
Panel C. Average Fraction Republican Appointees of All Judges in the District							
0.269 (0.031) N = 48	-0.163 *0.269-0.433*	0.000	0.277 (0.023) N = 41	-0.150 0.277-0.426	0.002	0.014	0.844
Panel D. Average Percentile of Fraction Republican Appointees in the District as Compared to the Fraction Republican Appointees in all District courts							
34.8 (3.0) N = 48	-15.2 *34.8-50.0*	0.000	37.5 (2.4) N = 41	-12.5 *37.5-50.0*	0.007	2.7	0.667

Notes. The first number in the first two Value columns is the average value. The second value, in parentheses, is the standard error. The third value, prefaced by "N=," is the number of observations. Divergence means difference from what would be expected with random assignment of cases to district courts. The italicized text in the Divergence column shows how Divergence was calculated; the first value is the average from the column to the left, and the second value is the value one would expect with random assignment of cases to district courts. Change is the Divergence after *CASA* minus the Divergence before *CASA*. *P*-values are two-sided and calculated using 10,000 draws with replacement from values (e.g., average JCS scores for all judges in the district) of all district courts at the filing date. The null hypotheses for *p*-values are that Divergence = 0 and Change = 0. Only cases brought by liberal plaintiffs on or after January 20, 2025 are analyzed because there are no cases brought by conservative plaintiffs after *CASA.*

Table 7 shows that *CASA* made almost no difference. All four panels show a slight reduction in forum shopping after *CASA*, but the reductions are far from statistical significance (*p*-values near 1).

An examination of the post-*CASA* cases makes clear why *CASA* made so little difference. The *CASA* decision stated that there were three types of cases in which nationwide relief might still be appropriate: 1) cases in which the remedy was setting aside a regulation (vacatur) under the Administrative Procedure Act rather than issuing an injunction using the court's equitable powers, 2) cases involving class actions, and 3) cases in which full relief could not be afforded to the parties before the court unless relief was granted nationwide. Plaintiffs found it easy to frame their cases as requesting vacatur or to secure class action certification (thus satisfying the first or second exception), and were often able to convince the district court that nationwide relief was necessary to afford relief to the parties before the court (thus satisfying the third exception).[10] This phenomenon can be seen in *CASA* itself, where, on remand, the district court decided that, in spite of the Supreme Court's decision, a nationwide injunction remained appropriate because *CASA* was a class action involving children across the U.S.[11] Perhaps future cases will restrict vacatur, tighten the requirements for class actions, or narrow the grounds on which parties can argue that nationwide relief is necessary. But until then, *CASA* is likely to have little effect.

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[10] The ease with which cases could be fit into one of these three exceptions is illustrated by the six immigration and citizenship cases involving nationwide injunctions that were identified in a July 16, 2025, Congressional Research Service Report as issued between January 20, 2025 and June 27, 2025, and for which the government might "seek modification … in light of the *CASA* decision." (pp. 6-11). In fact, the government tried to get a narrower injunction in all six after the Supreme Court's decision in *CASA,* but in all six the lower courts found ways to keep nationwide injunctions in place. Two did so by finding that the relief was vacatur under the APA, two found that nationwide relief was appropriate because the district court had certified a nationwide class, and two ruled that nationwide relief was necessary to give relief to state parties. See *Washington* v. *Trump*, 145 F. 4th 1013, 1038 (9th Cir. July 23, 2025) (nationwide relief necessary for State parties); *CASA* v. *Trump*, 2024 WL 2257625, *8-*9 (D. Md. August 7, 2025) (nationwide injunction appropriate because class includes every child in the US who is subject to the Executive Order); *O. Doe* v *Trump*, 157 F.4th 35, 82 (1st Cir. October 3, 2025) (nationwide relief necessary for state parties; also waiver issue); *Pacito* v. *Trump*, 169 F. 4th 895, 939 (9th Cir. March 5, 2026) (nationwide relief appropriate because a nationwide class had been certified, and class certification was not challenged on appeal); *D.V.D*. v *Dept of Homeland Security*, 2026 Westlaw 521557 *40-41 (D. Mass. Feb. 25, 2026) (relief was vacatur, so not affected by *CASA*); *Doe* v *Noem*, 796 F.Supp.3d 599 (N.D. Cal Aug. 22, 2025) (relief was vacatur, so not affected by *CASA*).

[11] *CASA* v. *Trump*, *supra*.

6.2. The effect of the 2024 Judicial Conference policy

As noted in Section 3, on March 12, 2024, the Judicial Conference adopted a policy that "District Courts should apply district-wide assignment to" all cases involving nationwide injunctions or declaratory relief relating to federal regulations and orders. The explicit goal was to prevent judge shopping. Unfortunately, the policy is too new to tell if it is working. The number of cases is just too small for reliable statistical inference. Nevertheless, Table 8 measures judge shopping before and after March 12, 2024, to see if any effect can be detected. Because section 5.2 found no evidence of judge shopping by liberal plaintiffs, the table is restricted to cases brought by conservative plaintiffs.[12] Because there is only one such challenge during the first Trump administration and none during the second, Table 8 is restricted to suits during the Biden administration. Table 8 uses the same measures of judge shopping as Table 6 above.

[12] We did, however, check for changes in judges shopping among liberal plaintiffs using the same metrics and same period as for conservative plaintiffs. Like the analysis for conservative litigants in the main text, the statistics suggest an *increase* in judge shopping after the Judicial Conference policy according to the first two metrics for judge shopping, but not the third. None of the differences is even close to statistically significant, except the pre- and post-Judicial Conference policy difference according to the metric used in Panel B -- the district court judge's JCS percentile as compared to other district court Judges in the same district – has a p-value of 0.096, which is marginally significant by conventional standards. Given the small numbers, the change is probably just a random fluke.

Table 8
Judge Shopping Before and After 2024 Judicial Conference Policy

Before Policy		After Policy		Change	
Value	*P*-value	Value	*P*-value	Value	*P*-value
Panel A. The Difference between the District Judge's JCS Score and the District Average JCS Score					
0.187 (0.076) N = 16	0.055	0.198 (0.121) N = 4	0.344	0.012	0.949
Panel B. The District Court Judge's JCS Percentile as Compared to Other District Court Judges in the Same District					
60.1 (7.0) N = 16	0.175	60.6 (14.4) N = 4	0.537	0.5	0.976
Panel C. The Difference between the Fraction Republican-Appointed Judges Hearing the Case and the Fraction of Republican-Appointed Judges in the District					
0.205 (0.082) N = 16	0.039	0.219 (0.129) N = 4	0.494	0.013	1.000

Notes. The first number in the first two Value columns is the average value. The second value, in parentheses, is the standard error. The third value, prefaced by "N=," is the number of observations. The Divergence column in this chart is omitted because the divergence in Panels A and C is the value in the first and third columns, and the divergence for Panel B can be easily calculated by subtracting 50.0 from the first two Value columns. Change is the divergence for after the policy minus the divergence before the policy. *P*-values are two-sided and calculated using 10,000 draws with replacement from values (e.g., the difference between a judge's JCS score and the district average JCS score) for all district court judges at the filing date. The null hypotheses for *p*-values are that Divergence = 0 and Change = 0. Only cases brought by conservative plaintiffs during the Biden administration are analyzed.

The table shows essentially no change after the Judicial Conference policy. The p-values of the differences are all extremely high, although given the small sample sizes, high *p*-values are to be expected even if there were an effect (as one can see even in the second and fourth column). As a result, looking at the values themselves (the first, third, and fifth columns) may be more probative. They show small differences and all in the wrong direction, suggesting conservative litigants were, if anything, more successful in getting favorable judges after the Judicial Conference policy.

As noted, one should be cautious about inferences from such small samples and from such a small period of time. Nevertheless, it is worth considering why the policy seems to have had so little effect. One possibility is that it will eventually have an effect, but the effect will be delayed. The policy required implementation by each district court, and many courts took a long time to change their judge assignment rules. For example, the District of Massachusetts did not change its case-assignment rules until February 11, 2025, nearly a year after the Judicial Conference promulgated its policy (Vladeck 2025) and after the time window examined in Table 8.

Another reason that the Judicial Conference policy may have had so little effect is that it is nonbinding guidance, and at least one of the districts most notorious for judge shopping, the Northern District of Texas, announced that it would *not* adopt the Judicial Conference's recommended changes (Schumer-Godbey Correspondence 2024). While there do not appear to be any similar announcements by other Texas districts, there is also no evidence that any Texas district has changed its case assignment rules in response to the Judicial Conference's policy. Since, as discussed above, judge shopping seems to be a problem primarily, if not exclusively, in federal districts in Texas, the fact that they have not changed their case assignment practices is the best explanation for why the data show no effect of the Judicial Conference policy.

7. A Robustness Check

As noted in section 4, conservative plaintiffs in the dataset were mostly states, whereas liberal plaintiffs were mostly individuals and immigrant rights groups. It is possible, therefore, that the differences discussed above between liberal and conservative plaintiffs in forum and judge shopping reflect the different entities suing, rather than anything about their ideology. To check this, the analysis in Tables 2-5 was run with data only from suits with state plaintiffs. Although this reduced the number of liberal plaintiff cases to seventeen, the results were remarkably similar to those for the full sample; most importantly, both liberal and conservative state plaintiffs forum shopped, but only conservative state parties judge shopped. Of course, given the small sample size, the results were usually, at best, only marginally significant at conventional levels, but the signs and magnitudes were similar to those of the full sample.

8. Effective Reforms

While the previous section suggests that the reforms tried so far have been ineffective, other reforms could prevent both forum shopping and judge shopping in cases involving the legality of federal policies, like the immigration policy cases analyzed here.

To prevent forum shopping, one must amend the federal venue statute, 28 U.S.C. 1391(e), so that it no longer allows plaintiffs to file in their home district when suing federal officers or agencies and seeking nationwide relief. Instead, such cases could be channeled to a single federal court, such as the U.S. District for the District of Columbia, which already handles a large fraction of cases

involving challenges to federal regulations. Alternatively, if one wanted to preserve the benefits of having multiple courts weigh in on issues of national policy, one could establish a centralized assignment system in which cases seeking nationwide relief would be randomly assigned to any federal judge, irrespective of the judge's district and the plaintiff's preferences.[13] The United States already has a nationwide assignment system for multi-district litigation, although it does not involve random assignment. So, there is precedent for nationwide assignment in the federal courts. A third solution might be random assignment to a three-judge panel. Although ideally the judges would be from different parts of the country, practical considerations would probably require all three judges to be members of the same district or region. Random assignment to a three-judge panel would help ensure less ideological decision-making by assuring that extremely liberal or conservative judges could not make decisions unilaterally.[14]

To prevent judge shopping, one would need to make the Judicial Conference's 2024 policy, mandating district-wide random assignment, mandatory rather than optional. As noted in Section 3, legislation has already been introduced to do just that. Of course, if the proposal in the previous paragraph for nationwide random assignment were adopted, it would not be necessary to mandate district-wide random assignment, at least not for cases covered by the nationwide random assignment.

9. Conclusion

Forum shopping is a widespread phenomenon. Both liberal and conservative litigants forum shop and are able to get their cases heard in districts that are likely to be favorable to their cases. Judge shopping is less widespread. Only conservative litigants judge shop, and only cases filed in the federal district courts in Texas provide evidence of successful judge shopping. Curbing forum shopping and judge shopping requires major reforms, such as nationwide random assignment of cases involving nationwide relief or centralization of such cases in a single district (e.g., the U.S. District Court for the District of Columbia) with random assignment among all judges in that district.

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[13] The revised statute would, of course, have to be carefully drafted to prevent evasion. For example, a clever litigant might ask for an injunction that covers the entire United States except one small county with a small population. Legislation would have to be drafted to prevent such evasions.

[14] Such three-judge panels are currently used for constitutional challenges to redistricting. 28 U.S.C. § 2284(a).

Appendix. Search Methods

Cases were identified through searches in Westlaw and Lexis of federal court decisions addressing challenges to federal immigration policy during the first Trump (January 20, 2017–January 20, 2021) and Biden (January 20, 2021–January 20, 2025) administrations. Searches for the Biden administration were conducted in both Westlaw and Lexis; because the results overlapped and did not yield additional relevant cases, the first Trump administration searches were conducted in Westlaw alone.

For both administrations, searches combined the name of the President or relevant executive-branch officials and agencies with immigration-policy terms. Core search strings included variations of:

- President's name /p (immigra! or immigration /s polic!)
- DHS /p (immigra! or immigration /s polic!)
- CBP /p (immigra! or immigration /s polic!)
- USCIS /p (immigra! or immigration /s polic!)

Additional searches used agency names, agency acronyms, and the names of key administration officials whose names frequently appeared in case names, including Attorneys General (Sessions, Barr, Garland) and Secretaries of Homeland Security (Wolf and Mayorkas).

All searches were limited to the relevant presidential term and to federal courts. All searches were designed to identify cases involving TROs, preliminary injunctions, permanent injunctions, stays, mandatory injunctions, vacatur, and other forms of injunctive relief through a combination of database filters and searches within results for terms such as "injunction," "enjoin!," "TRO," and "temporary restraining order." Cases were then manually reviewed to determine whether they involved requests for, grants of, denials of, stays of, or reversals of TROs, preliminary injunctions, permanent injunctions, or vacatur affecting federal immigration policy. During this review process, cases addressing immigration policy only tangentially (e.g., through citations to immigration-policy cases without independent discussion of immigration policy) were excluded.
Case histories were examined to locate additional relevant opinions. Case dockets were used to find and review complaints.

Cases challenging immigration policies during the second Trump administration were also identified through the Just Security *Litigation Tracker: Legal Challenges to Trump Administration Actions*, filtered for immigration and citizenship cases. The tracker was last reviewed on April 4, 2026. To ensure consistency with the methodology used for the first Trump and Biden administrations, parallel Westlaw searches employing substantially similar search terms and filters were also conducted. These searches yielded largely the same set of relevant cases as the Just Security Tracker, although the Just Security Tracker yielded a number of unpublished opinions not available on Westlaw.

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