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The Corporate Census

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THE CORPORATE CENSUS

ABSTRACT. I present the first database of nearly all entity formations in the United States. All previous studies were based on small subsets of corporations, such as only large public corporations. Looking at the entire population destabilizes core empirical assumptions in the field. While Delaware is commonly thought to be the leader for incorporations, its law is usually around #5. While Delaware is thought to have taken New Jersey's leading role in the early 20th century, New Jersey actually continues to beat Delaware until the mid-1980s. While commentators worry about "DExit," noting a few high-profile firms departing Delaware in recent months, 2025 has actually proven to be Delaware's strongest ever. These findings are proof of concept applications, inviting other scholars to use the data to refine and test other hypotheses.

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Introduction

A foundational principle of American corporate law is that firms may incorporate in any state, thereby adopting that state's law. From this premise flows a rich array of consequences. States may compete to attract incorporations[1]—seeking to collect filing fees,[2] stimulate legal work for local attorneys,[3] or demonstrate friendliness to business interests.[4] This competition may constitute a "race to the bottom," with states tailoring laws to erode market discipline, harm workers and tort victims, or weaken minority shareholder protection.[5] Alternatively, it may be a race to the top, the "genius" of American corporate law, as states strive to balance competing interests and deliver an efficient structure to enrich shareholders and, ultimately, all of us.[6] Or perhaps the race is orthogonal to quality: a toward deregulation[7] or simply the gravitational pull of network effects.[8]

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[1] *See*, *e.g.*, Stephen J. Choi & Andrew T. Guzman, *Choice and Federal Intervention in Corporate Law*, 87 VA. L. REV. 961, 961 (2001) (arguing that states compete for corporate charters). The vigor of this competition has been debated. *See* Lucian Arye Bebchuk & Assaf Hamdani, Essay, *Vigorous Race or Leisurely Walk: Reconsidering the Competition over Corporate Charters*, 112 YALE L.J. 553 (2002); Marcel Kahan & Ehud Kamar, *The Myth of State Competition in Corporate Law*, 55 STAN. L. REV. 679 (2002).

[2] *See* William L. Cary, *Federalism and Corporate Law: Reflections Upon Delaware*, 83 YALE L.J. 663, 669 (1974) ("For revenue reasons, 'creating a favorable climate [for corporations]' is declared to be the public policy of [Delaware].") (citation omitted). ROBERTA ROMANO, THE GENIUS OF AMERICAN CORPORATE LAW 15–16 (1993); John C. Coffee, Jr., *The Future as History: The Prospects for Global Convergence in Corporate Governance and Its Implications*, 93 NW. U. L. REV. 641, 650 (1999); Michael Klausner, *Corporations, Corporate Law, and Networks of Contracts*, 81 VA. L. REV. 757, 841–42 (1995).

[3] Jonathan R. Macey & Geoffrey P. Miller, *Toward an Interest-Group Theory of Delaware Corporate Law*, 65 TEX. L. REV. 469, 493–94 (1987); *cf.* Robert Daines, *The Incorporation Choices of IPO Firms*, 77 N.Y.U. L. Rev. 1559 (2002) (finding a law firm effect in state law selection).

[4] Henry N. Butler, *Corporate-Specific Anti-Takeover Statutes and the Market for Corporate Charters*, 1988 WIS. L. REV. 365 (1988); Roberta Romano, *The Future of Hostile Takeovers: Legislation and Public Opinion*, 57 U. CIN. L. REV. 457, 461 n.11 (1988); Lynn M. LoPucki, *Corporate Charter Competition*, 102 MINN. L. REV. 2101, 2104 (2018) (discussing business friendliness).

[5] Louis K. Liggett Co. v. Lee, 288 U.S. 517, 557–60 (1933) (Brandeis, J. dissenting) ("[In the competition for corporate charters, l]esser States, eager for the revenue derived from the traffic in charters, had removed safeguards from their own incorporation laws. . . . The race was one not of diligence but of laxity. . . . [T]he great industrial States yielded in order not to lose wholly the prospect of the revenue and the control incident to domestic incorporation."); *see also* Mark J. Roe, *Delaware's Competition*, 117 HARV. L. REV. 588, 594–95 (2003) (summarizing the "race-to-the-bottom" theory); William L. Cary, *Federalism and Corporate Law: Reflections Upon Delaware*, 83 YALE L.J. 663, 665–66 (1974).

[6] *See generally* ROBERTA ROMANO, THE GENIUS OF AMERICAN CORPORATE LAW (1993); Roberta Romano, *Competition for Corporate Charters and the Lesson of Takeover Statutes*, 61 FORDHAM L. REV. 843, 843 (1993) ("competition among states for the business of corporate charters . . . is the genius of American corporate law"); Ralph K. Winter, *Private Goals and Competition Among State Legal Systems*, 6 HARV. J.L. & PUB. POL'Y 127, 128–29 (1982); Ralph K. Winter, *State Law, Shareholder Protection, and the Theory of the Corporation*, 6 J. LEGAL STUD. 251 (1977); *see generally* FRANK EASTERBROOK & DANIEL FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW (1991).

[7] LoPucki, *supra* note 4, at 2101; *cf*. Bernard S. Black, *Is Corporate Law Trivial?: A Political and Economic Analysis*, 84 NW. U. L. REV. 542 (1990).

[8] Sarath Sanga, *Network Effects in Corporate Governance*, 63 J.L. & ECON. 1 (2020); Michael Klausner, *Corporations, Corporate Law, and Networks of Contracts*, 81 VA. L. REV. 757, 841–51 (1995).

Underlying these possibilities is a core assumption about how corporations respond to legal incentives: states that offer attractive legal regimes will attract or retain formations. This assumption structures our focus on Delaware. The First State has "won" the incorporation race because it charters so many corporations.[9] The key questions then become why Delaware leads, whether it will retain that lead, and whether its dominance is desirable. This perceived centrality influences both scholarship and pedagogy.

But this narrative rests on surprisingly thin empirical foundations. We know little about where firms actually incorporate.[10] That ignorance is itself a consequence of corporate federalism: each state maintains its own records, often in inconsistent and opaque formats. As a result, it has long been difficult to verify Delaware's purported dominance, let alone pinpoint when or why it arose.

To be sure, we have a good understanding of where public companies incorporate, which have been the central focus of the corporate federalism debate. Among such firms, Delaware's dominance is well understood.[11] Yet public corporations make up only a tiny fraction of U.S. business entities. Even at their peak in the late 1990s, public firms numbered fewer than 8,000; today, there are fewer than 4,300. By contrast, the U.S. has tens of millions of active private business firms. Scholars increasingly recognize the importance of studying these firms, especially given the shrinking public-company pool.[12] Yet we still know relatively little about where private firms form, what legal regimes they select, and how those choices vary across entity types or states.[13]

This Article addresses that empirical gap. It presents a near-complete dataset of entity formations—including corporations, LLCs, and other business forms—for all U.S. states, dating back to the nation's founding. The database includes about 100 million formations and allows for granular, longitudinal analysis of state popularity, entity-type trends, and legal or economic shocks. I refer to it as the "Corporate Census." Like any population census, it should support future research.

This Article also offers several proof-of-concept analyses. These draw on the new data to confirm, complicate, or challenge widely held assumptions. Among the findings previewed below:

- **Delaware law is only the fifth or sixth most popular body of corporate law.** Emphasizing Delaware in the classroom therefore prepares students for large public company work but may underserve the bulk of the market.

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[9] Michael Barzuga, *Nevada v. Delaware: The New Market for Corporate Law* 1 (July 2024) (Euro. Corp. Governance Inst. Working Paper No. 761/2024), https://ssrn.com/abstract=4746878 ("For decades and decades, Delaware has been the undisputed leader in the market for corporate law.").

[10] Bebchuk & Hamdani, *supra* note 1, at 564 ("surprisingly little effort has been taken to examine the actual patterns of incorporations.").

[11] *See* Omari S. Simmons, *Branding the Small Wonder: Delaware's Dominance and the Market for Corporate Law*, 42 U. RICH. 1129, 1129–32 (2008); William J. Carney et al., *Lawyers, Ignorance, and the Dominance of Delaware Incorporation*, 2 HARV. BUS. L. REV. 124 (2012).

[12] *See*, *e.g.*, Kathleen M. Kahle & René M. Stulz, *Is the US Public Corporation in Trouble?*, 31 J. ECON. PERSPECTIVES 67 (2017).

[13] LoPucki, *supra* note 4, at 2104 (asserting that "nearly all of the empirical . . . have been confined to" the "public-company context."). *See*, *e.g.*, Ofer Eldar & Lorenzo Magnolfi, *Regulatory Competition and the Market for Corporate Law*, 12 AM. ECON. J. MICROECONOMICS 60 (2020).

- **New Jersey's decline relative to Delaware did not occur in the early 20th century, as commonly thought.** On the contrary, New Jersey continued to outpace Delaware in attracting new charters until the mid-1980s.
- **Florida and California, not Nevada or Texas, pose the most significant contemporary challenge to Delaware's share,** at least outside the public company context. California's growth may be in part a function of the pseudo-foreign corporation statute, which discourages private firms from reincorporating.
- **Delaware has increased its relative and absolute level of chartering in 2025,** suggesting that the state has effectively managed the controversies that raised the threat of "DExit."[14]

These examples demonstrate the range of inquiries the dataset enables; they are illustrative rather than exhaustive. The Corporate Census should contribute to the literatures on corporate federalism, firm behavior, and legal institutional design. But these findings are interesting in their own right, too.

Ultimately, these findings help contextualize Delaware's status rather than undermine it. The story of American entity law is no longer a binary contest—Delaware versus New Jersey or New York. Nor is it hegemonic, Delaware against all. Instead, it is a segmented field, in which Delaware dominates the high-stakes world of public company law, while model and uniform acts govern most of the private-sector economy, and other players carve out their own niches. Delaware has become a brand: widely adopted by firms with complex needs and national aspirations, but increasingly bypassed by the vast majority of businesses.

If that story diminishes Delaware's role, other parts of the Census underscore it. Delaware recently undertook the most significant changes to its corporate law in decades—reforms aimed at retaining chartering business in the wake of controversial court rulings.[15] Reassuring data about recent months are consistent with a longer trend of resilience: history suggests that momentum in this space is hard to gain or lose quickly. New Jersey recovered from missteps, and Delaware's rise was gradual. Today's reformers might take comfort in that stability—and proceed deliberately, not defensively.

The rest of the Article proceeds as follows. Part I describes a new dataset and the process by which it was built. The next five parts explore interesting findings within the data. Part II discusses the early competition between New Jersey and Delaware that led to the latter's rise. Part III discusses the extent and character of Delaware in its most successful period. Part IV explores how Delaware competes with other states. Part V describes how the corporation (Delaware and otherwise) competes with other business entities. Part VI considers the rise of uniform and model acts as vectors of competition. Then Part VII draws out large themes from the forgoing discoveries, in order to direct the agenda of new research and teaching. A brief conclusion follows.

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[14] S.B. 21, 153rd Gen. Assemb., Reg. Sess. (Del. 2025). *See also* Jonathan Macey, *How to Make Delaware Safe for Incorporation*, WALL ST. J. (Feb. 24, 2025), https://www.wsj.com/opinion/how-to-make-delaware-safe-for-incorporation-business-corporations-policy-law-46b2c03b (discussing possible effects of SB 21 and Concurrent Resolution 17).

[15] Jennifer Antonik, *Delaware's Corporate Law Bill Sails Through Senate*, DEL. BUS. TIMES (Mar. 13, 2025), https://delawarebusinesstimes.com/news/delawares-corporate-law-passes-senate/.

I. Data

The Corporate Census comprises of a 100-million-entity dataset that underpins every analysis that follows. This Part briefly describes the process by which that dataset was constructed. Readers who wish to download the panel data or codebook are invited to view the online appendix to the article.[16]

A. The First Searches

This project began with a labor-intensive, five-year search for state entity formation data. For each state, my research assistants and I sought materials on entity formation. States differ greatly on their openness to research. Delaware, for instance, publicizes recent annual aggregates,[17] but does not disclose older totals.

Most states provide searchable databases that can be used to locate filings.[18] Still, many databases omit whole categories,[19] block large-scale scraping,[20] conflate or omit entity types,[21] and some states maintain no public interface at all. [22] Delaware charges prohibitive fees to access filings.[23]

Where online retrieval failed, we contacted officials. Some states shared freely. Vermont sent pdf scans of hand-written corporate filings. Others sold data at modest cost.[24] Others simply lacked comprehensive historical records.[25]

Ultimately, we secured usable statistics for most—but not all—states. The exercise, though incomplete, yielded two dividends: (i) intriguing primary source materials, such as the Vermont

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[16] https://www.andrewverstein.com/corporate-census.

[17] DEL. DIV. OF CORPS., ANNUAL REPORT STATISTICS (2019), https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2019-Annual-Report.pdf; DEL. DIV. OF CORPS., ANNUAL REPORT STATISTICS (2018), https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2018-Annual-Report.pdf; DEL. DIV. OF CORPS., ANNUAL REPORT STATISTICS (2024), https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2024-Annual-Report.pdf. Other states are similar. *E.g.*, *Total Business Entities as of October 1, 2024*, MICH. LICENSING & REGUL. AFFS., https://www.michigan.gov/lara/bureau-list/cscl/corps/other/total-business-entities-as-of-october-1-2024.

[18] *Quarterly Data*, FLA. DEP'T OF STATE: DIV. OF CORPS., https://dos.myflorida.com/sunbiz/other-services/data-downloads/quarterly-data (last visited Feb. 22, 2025).

[19] *Quarterly Business & Economic Indicators Report*, COLO. SEC'Y OF STATE, https://www.sos.state.co.us/pubs/business/quarterlyReports/index.html (last visited Feb. 22, 2025) (no way to search for the number of limited partnerships); *State of Hawaii Data Book*, STATE OF HAW., https://dbedt.hawaii.gov/economic/databook (last visited Feb. 22, 2025) (omitting non-profit corporations).

[20] *Connecticut Businesses Starts and Stops*, CONN. DATA COLLABORATIVE, http://ctbusiness.ctdata.org/#/starts-and-stops (last visited Feb. 22, 2025).

[21] *Search Business Registration*, N.C. SEC'Y OF STATE, https://www.sosnc.gov/online_services/search/by_title/search_Business_Registration_changes (last visited Feb. 22, 2025) (including foreign corporations alongside domestic corporations).

[22] Texas, for example, appears to have no website suitable for this sort of search; instead, Texas has a "Franchise Tax Account Status Search" page, which provides very limited data. *Franchise Tax Account Status Search*, TEX. COMPTROLLER OF PUB. ACCT'S., https://mycpa.cpa.state.tx.us/coa (last visited Feb. 22, 2025).

[23] *Delaware Entity Search*, DEL. DIV. OF CORPS., https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx (last visited Jan. 5, 2026).

[24] E.g. Iowa. Cite to email correspondence.

[25] *For-Profit Business Creation Filings* (1994-2013), MO. BUS. FILINGS (Feb. 12, 2014), [https://web.archive.org/web/20210115060923/https://www.sos.mo.gov/CMSImages/Business/20YearNewBusinessFilings.pdf] (providing records only from 1994-2013).

charters, and (ii) a concrete sense of the challenges that has hampered prior work. It also supplied a baseline against which to compare the second, more scalable approach.

B. OpenCorporates

In 2022 we negotiated a bulk download from OpenCorporates,[26] a Certified B Corporation that aggregates filings from 143 jurisdictions.[27] This draft includes data downloaded in October of 2025. OpenCorporates buys or scrapes incorporation data, sometimes lobbying to push jurisdictions toward greater openness,[28] sometimes litigating.[29]

The U.S. tranche contained ~102 million filings representing ~95 million entities—some dating to the late eighteenth century. These entries contain all the information a state obtained with the filing. For a corporate formation, this would include the date of formation of course, but also much more – often including the entity's officers and registered address.

Raw breadth, however, is not the same as research readiness. The download included UCC statements, foreign registrations, and other non-formation documents. It also reflects thousands of local coding conventions. In some cells, a corporation is a "corporation." In others, a corporation is a "general corporation" or a "corporation, profit." And states also differ substantively in what the codes mean. In Delaware, non-profit corporations are, legally, a subcategory of corporation.[30] In many other states, they get their own statute. West Virginia had more than 143 entity types, Illinois had just four. It requires substantial legal knowledge to know how the different categories ought to be compared.[31] Meaningful comparison demanded extensive cleaning, classification, and deduplication.

We therefore:

- Standardized company-type, status, and home-jurisdiction variables (preserving originals for auditability).[32]
- Trained a rule-based classifier—iteratively crosschecked against a manual codebook—to assign each record to one of seven core entity types and 43 subtypes.

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[26] *Purpose*, OPENCORPORATES, https://opencorporates.com/purpose (last visited Feb. 18, 2025).

[27] *OpenCorporates Unifies Official Company Data from All 50 US States*, OPENCORPORATES BLOG (Dec. 13, 2022), https://blog.opencorporates.com/2022/12/13/press-release-opencorporates-unifies-official-company-data-from-all-50-us-states; Jackson Torchia, *OpenCorporates "Walks the Walk" with B Corp Certification*, OPENCORPORATES BLOG (Oct. 24, 2023), https://blog.opencorporates.com/2023/10/24/opencorporates-b-corp-certification. As far as I can tell, this Article is the first one to use OpenCorporates data, but OpenCorporates has indicated their willingness to support other researchers.

[28] *New Jurisdiction: Illinois (2,800,000 Companies)*, OPENCORPORATES BLOG (Nov. 16, 2022), https://blog.opencorporates.com/2022/11/16/new-jurisdiction-illinois-2800000-companies ("[W]e're proud Illinois took the progressive step last year to make its company information available as open data, legislating to overturn what were previously restrictive terms and conditions about its use. Along the way, we helped those crafting the bill to maximise the positive impact of the open company data.").

[29] *OpenCorporates Wins Quebec Court Battle*, OPENCORPORATES BLOG (Sep. 23, 2019), https://blog.opencorporates.com/2019/09/23/opencorporates-wins-quebec-court-battle.

[30] Mary A. Jacobson, *Nonprofit Corporations: Conversion to For-Profit Corporate Status and Nonprofit Corporation Members' Rights*—Farahpour v. DCX, Inc., 20 DEL. J. CORP. L. 635, 639 (1995).

[31] Most people are familiar with partnership, limited partnership, limited liability company, and corporation. But how about a Fish Marketing Cooperative? *See* the Fish Marketing Act, CAL. CORP. CODE §§ 13200–13356.

[32] Where characterization was challenging, we sometimes contacted states for guidance. E-mail from Tharini Prakash (on behalf of Professor Andrew Verstein) to Texas Secretary of State, Corporations Information Office (July 18, 2024) (on file with the author). Texas Secretary of State, Corporations Information Office confirmed that "31" is not an entity type. Reply E-mail from Texas Secretary of State, Corporations Information Office to Tharini Prakash (on behalf of Professor Andrew Verstein) (Jul 18, 2024) (on file with the author).

- Removed "foreign" registrations and entries with ambiguous home jurisdiction (e.g., "DE" = Delaware or Germany).
- Collapsed the cleaned data into a panel with one observation per state-year-entity type.

We trained law students to conduct a three-round random audit (918 entities across all states plus 180 Delaware oversample). To evaluate intercoder reliability, each run for a given RA included an additional twenty entities drawn from another RA's list. Overall, we found exact type agreement in 94 % of cases and general agreement in 98%; the main residual errors involved missing dissolution dates or entities with no external web footprint.[33] The Delaware-only additional sample showed more unfindable entities. We would note the popularity of DE among shell corporations that have no need for a public-facing web presence.

C. Limits on Data

Two caveats matter most. First, dissolutions are underreported. Many jurisdictions remove entities for nonpayment of franchise taxes without an affirmative filing, and dissolution dates are often blank. As a result, the dataset is better at gross formations than net active counts. It is possible, consistent with our data, that a state increases its share of incorporations while simultaneously increasing its share of terminations. If so, that state would appear to be winning the incorporation game, when in fact fewer corporations are subject to its law than ever. This stock-versus-flow issue is the most important for historical leaders like California, New Jersey, and Delaware. Having had a large number of entities, one might still have lots of entities even if net incorporations dropped to zero. Still, this problem is not greater than all others in the literature have faced. In accordance with the literature, none of the results account for dissolution.

Second, coverage in earlier periods is spotty and uneven across states. Early-century analyses should therefore be treated cautiously. Even the early 20th century data should be triangulated against other primary sources. For example, between 1900 and 1910, OpenCorporates reports far fewer formations than does a source derived from primary materials Yablon.[34]

Figure 1: Annual Incorporations

	NJ	DE	NY	ME
OpenCorporates	350.0	45.0	274.5	45.1
Yablon	1974.0	792.7	5662.0	935.7
Relative size	5.64	17.61	20.62	20.74

As Figure 1 indicates, OpenCorporates reports different numbers than does Yablon, and the difference is not consistent across states. Relative underreporting by OpenCorporates persists into the 1940s, when the alternative resources cease to be available. When historical data differ, we can attempt to determine which is closer to the truth; we can draw inferences as consistent with

[33] As for the 76 entities that could not be found by the research assistants, there are several possible explanations. They may be shell corporations, small businesses that have not established a web presence, or ventures that never made it off the ground long enough to leave a trail. While 86% of entities in the overall sample were incorporated in 2001 or later, the data does contain records of entities that may have run their entire course well before the internet era.

[34] Charles M. Yablon, *The Historical Race Competition for Corporate Charters and the Rise and Decline of New Jersey: 1880-1910*, 32 J. CORP. L. 323, 377 (2007).

one set of data (or both), and we can be somewhat more cautious overall.[35] Our sense is that the quality of OpenCorporates data increases substantially after World War II. This matters for our first application of the data, in the next Part. We begin there, with Delaware's rise, because it is intuitive to begin this project with the chronologically earliest application, but it is important to note that the data are less dependable for that Part than for the subsequent Parts.

II. Delaware's Rise

The origins of charter competition date to the 19th century.[36] For much of that era, states could—and did—discriminate against out-of-state corporations,[37] encouraging local firms to incorporate at home. State laws were often restrictive, forbidding mergers and other forms of vertical integration.[38]

As legal barriers fell,[39] corporations were permitted to operate across state lines without facing discriminatory treatment. In the late 19th century, New Jersey made early and successful moves to attract out-of-state incorporations—liberalizing its entity laws to allow mergers and other activities prohibited elsewhere. According to Grandy, these reforms were motivated by a desire to generate revenue from chartering fees, and they worked: incorporation revenues rose sharply,[40] and New Jersey became the legal home of many large mergers and "industrial trusts."[41]

That lead is now remembered as fragile. Spurred by Progressive Era concerns, New Jersey imposed significant new restrictions on corporate conduct between 1913 and 1917, including limits on mergers and price discrimination.[42] Although the state later repealed those provisions, the episode is often cited as a turning point: the beginning of New Jersey's decline and Delaware's ascent.[43] The conventional story is that New Jersey dominated the market from incorporations from 1875 until 1913, at which time Delaware took its mantle.

The evidence of New Jersey's decline is less definitive than often assumed. Grandy reports a "drastic" drop in franchise tax revenue for the four years New Jersey attempted progressive corporate law, though he does not actually report how much of a drop there was. He reports that New Jersey subsequently earned "less than 20% of the state budget" from corporation fees, as

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[35] The data is still consistent with Delaware trailing New Jersey for all relevant periods. Yablon shows New Jersey with more incorporations than Delaware by a wider gross margin than does OpenCorporates. *Id.* There are reasons to think Yablon's figure could be more accurate: OpenCorporates only has data that states now possess. If records were misplaced or destroyed in the intervening 100+ years, the Corporate Census may not observe them. By contrast, Yablon's source material dates to 1948. It may reflect accurate records that were subsequently lost. On the other hand, Yablon's numbers are not obviously reliable either. Yablon's 1948 source is his only source: GEORGE HEBERTON EVANS, BUSINESS INCORPORATIONS IN THE UNITED STATES: 1800-1943 (1948). The underlying Evans text does not provide entity-by-entity filings, nor did Evans observe any. Rather, Evans summarizes data he found in state corporation office reports and from other secondary sources. Those official sources may be accurate, or they may reflect errors (say, characterizing new businesses as new entities) or intentional bias by offices trying to brag about their success. In any case, the quality of Open Corporates data becomes obvious after World War II, such that we can be confident New Jersey led Delaware at that time. Either it led all along or else there was an even more impressive story of New Jersey's overcoming Delaware.

[36] Yablon, *supra* note 33, at 326.

[37] Bank of Augusta v. Earle, 38 U.S. 519, 520 (1839).

[38] Christopher Grandy, *New Jersey Corporate Chartermongering, 1875-1929*, 49 J. ECON. HIST. 677, 684–85 (1989).

[39] *See* Paul v. Virginia, 75 U.S. 168, 182 (1868) (recognizing that the Commerce Clause protects corporations).

[40] Grandy, *supra* note 37, at 679–84.

[41] *Id.* at 679 (citing JOHN MOODY, THE TRUTH ABOUT TRUSTS 453–69 (1904)).

[42] These laws were supported by Governor and later-President Woodrow Wilson. *Id.* at 687.

[43] *Id.* at 689–91.

evidence that New Jersey had lost its "place as the mecca of corporations."[44] Yet, this benchmark is not obviously dispositive. Romano reports that Delaware made only 15.8% of its revenue from incorporations during the period in which Grandy was writing.[45] It would seem that a 20% share is consistent with continued success.

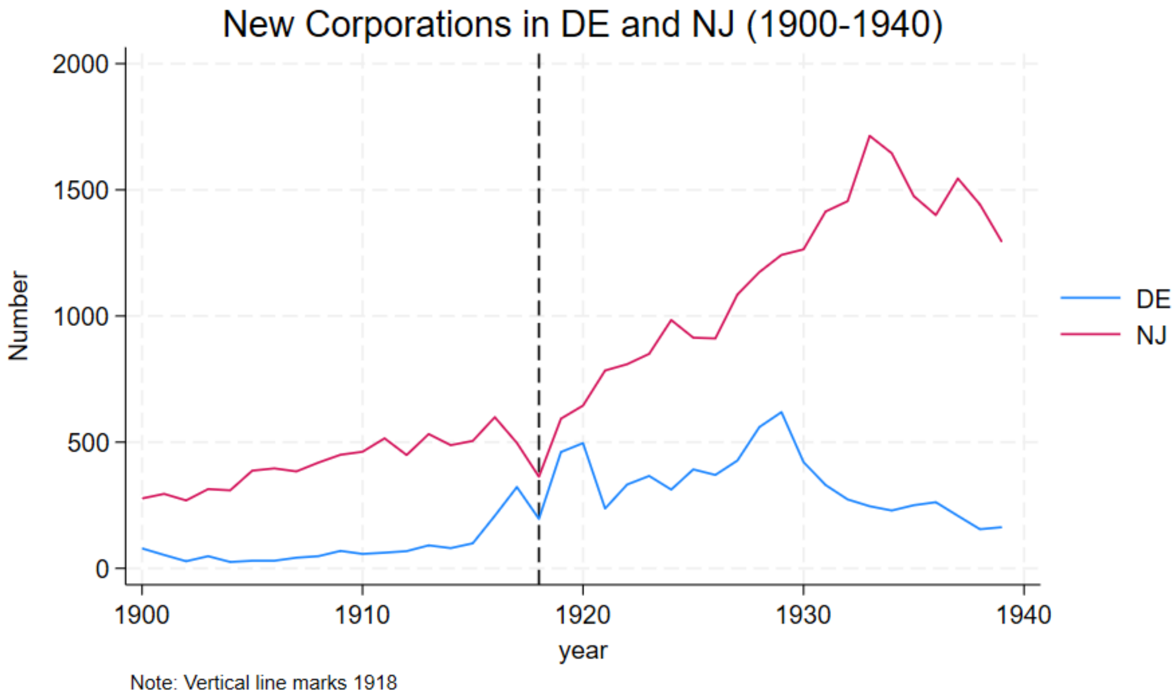
Other scholars have suggested that New Jersey's decline began earlier. Yablon traces a relative drop in incorporations to 1899, when rival states began copying New Jersey's liberal laws and competing on price.[46] He nonetheless maintains that New Jersey's "relational contract with big business was shattered irrevocably in 1913."[47] His conclusions rely on a 1948 compilation of legislative records for eight states.[48]

Sanga, drawing on data from over 21,000 railroad and mining firms, also identifies a decline in New Jersey's dominance well before 1913.[49] He explains, "New Jersey's share of corporate charters reached its maximum in 1903 and then began a secular decline."[50] Sanga also agrees with the literature that New Jersey's prompt attempt in 1917 to reverse course and recover its share of incorporations failed. It was "too little, too late."

The Corporate Census offers a more complex story. Delaware indeed saw a spike in incorporations in the early 20th century, just as New Jersey declined. But New Jersey seems to have fully recovered as a result of its 1917 reversal. It was not too little too late, nor was there secular decline. Indeed, there is only a brief moment for which New Jersey declined to nearly Delaware's level. But it never falls below Delaware's level. And after that brief moment, New Jersey takes off to a much greater lead than ever before! In other words, New Jersey's reversal of course was not too little or too late.

[44] *Id*. at 689.
[45] Roberta Romano, *The State Competition Debate in Corporate Law*, 8 CARDOZO L. REV. 709, 710 (1986).
[46] Yablon, *supra* note 33, at 354.
[47] *Id*. at 328. Yablon's account is nuanced in differentiating charter competition by business size. *Id.* He notes that New Jersey did not dominate the market for mid-level companies. *Id*. at 329–30.
[48] GEORGE HEBERTON EVANS, JR., BUSINESS INCORPORATIONS IN THE UNITED STATES, 1800–1943 (1948).
[49] Sarath Sanga, *Origins of the Market for Corporate Law*, 24 AM. L. & ECON. REV. 369, 373 (2022).
[50] *Id.* at 391.

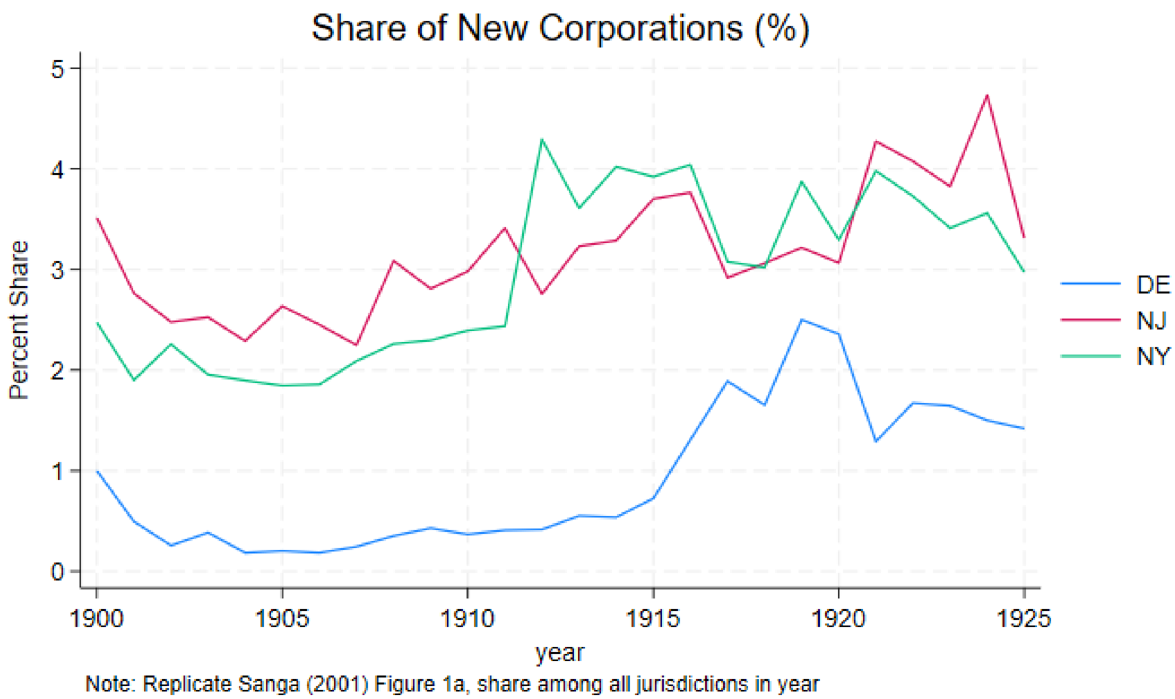
Figure 2



Insofar as other states did enjoy a brief rise as a result of New Jersey's 1913 stumble, it was not Delaware that best seized the opportunity. New York essentially doubled its share of the market for corporations, even as Delaware bided its time.[51]

[51] California also substantially increased its share of incorporations during this period. Other leading states (Pennsylvania, Ohio) roughly maintained their positions, rather than growing, during this period.

Figure 3



The Corporate Census tells a different story than the conventional wisdom.[52] Can it be trusted? It is worth noting that the OpenCorporates data underlying the Corporate Census is much weaker in the early years of the 20th century. There are many sources of data loss, such that the quantity of corporations in the database surely understands the true incorporation rate in all states.[53] And among corporate filings, our audits find a much higher rate of erroneous or blank entries in this period. These problems should give us less confidence in the early years, especially prior to 1945.

Still, these trends are clearly visible even in the middle parts of the twentieth century, when no other data source contradicts OpenCorporates and our audits cease to find erroneous filings. While it is possible that New Jersey fell below Delaware in the early period, no broad data source indicates it. And it would still have recovered its relative position by mid-century, when OpenCorporates becomes more fully dependable. In other words, *either* New Jersey retained strong its position for most of the 20th century, *or* else it lost it and then regained it by mid-century. Either claim is an interesting amendment to the received wisdom.

If the prevailing story of Delaware's 1913 ascent is false, when did New Jersey actually lose its crown to Delaware?[54] Much later, as we shall see.

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[52] Of course, aspects of the conventional story are consistent with the Corporate Census. Insofar as New Jersey is thought to have lost prominent firms to Delaware, or that Delaware took on the distinctive role of hosting out-of-state corporations, those possibilities are compatible with the findings of the Corporate Census. New Jersey could have recovered its position despite losing prominent firms or simply by growing its base of domestic corporations sufficiently.

[53] For a discussion of limitations pertinent to the early period, see *supra* Part I.C.

[54] Here, as elsewhere, we are referring to total incorporations. New Jersey may well have lost its crown with respect to large or public entities as in the literature.

III. Delaware's Dominance

Having seen how Delaware competed with New Jersey in the early 20th century, we next ask when—and how firmly—it took the lead. In prior work, Sanga examined public companies in the mid-20th century, identifying a sharp increase in Delaware incorporations around 1986—likely driven by Delaware's adoption of director exculpation provisions.[55] Other studies confirm Delaware's late-century ascendancy: it became the legal home of two-thirds of the S&P 500 and won roughly 85% of out-of-state incorporations among public firms.[56] Scholars have also documented Delaware's appeal to IPO-stage companies[57] and to large private firms.[58]

The prevailing story identifies Delaware's growth beginning in 1913,[59] but supercharged after the 1986 statutory change permitting exculpation of directors.[60] Sanga observes a sharp uptick in Delaware's popularity, from about one third of publicly traded companies in the preceding decades, to an upward trend toward three-quarters of public companies.[61] Sanga explains this jump by reference to two forces. First, Delaware adopted a statutory provision in 1986, permitting the exculpation of directors from liability for breaches of the duty of care.[62] This proved popular. Second, Delaware's new dominance compounded itself through network effects.[63]

We have seen that the early 20th century story lacks a firm basis in the Corporate Census. Interestingly, the Census lends greater credence to the latter claim about 102(b)(7). Delaware did indeed jumpstart its market dominance in and after 1986. But the achievement is even bigger than Sanga realizes. The Corporate Census marks that moment as the first in which Delaware overtook New Jersey.

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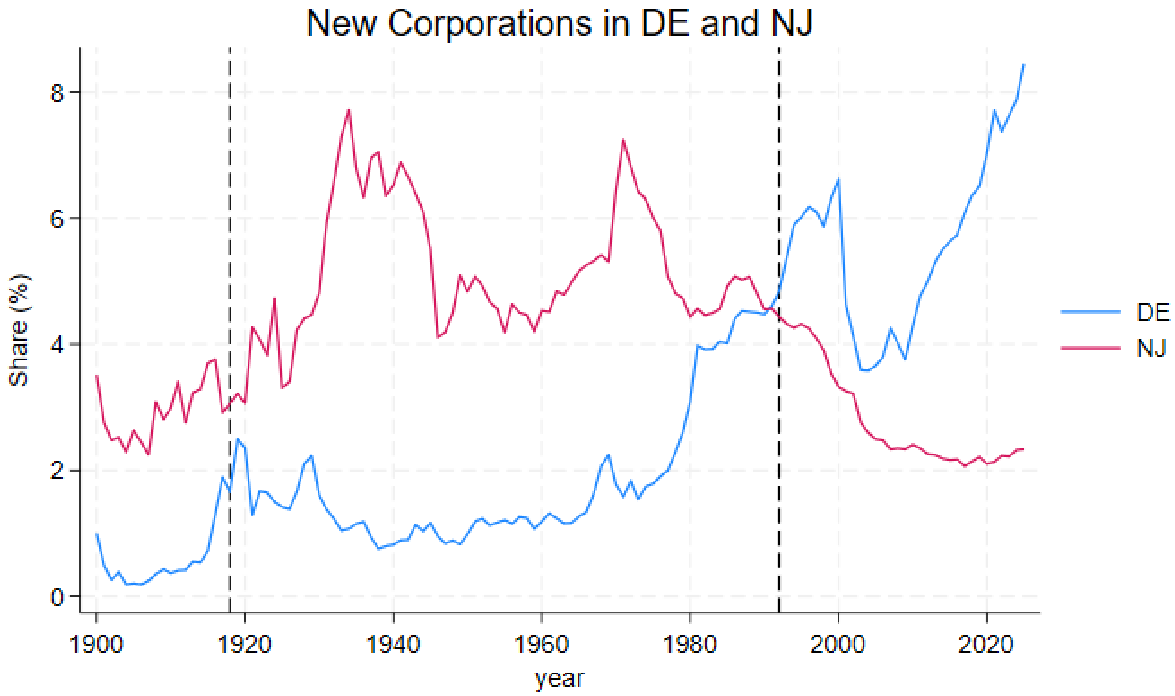
[55] Sarath Sanga, *Network Effects in Corporate Governance*, 63 J.L. & ECON. 1, 5 (2020).
[56] Lucian Bebchuk & Alma Cohen, *Firms' Decisions Where to Incorporate*, 46 J.L. & ECON. 383, 386 n.9 (2003); Sanga, *supra* note 54, at 5–8.
[57] *See* Stephen M. Bainbridge, *DExit Drivers: Is Delaware's Dominance Threatened?* 50 IOWA J. CORP. L. 823, 834–35 (2025); Anat Alon-Beck, *Incorporating Unicorns: An Empirical Analysis*, 62 HOUSTON L. REV. 891 (2025); Dael A. Norwood, *The Data Does Not Support the Narrative*, DAEL A. NORWOOD (Feb. 23, 2025), https://daelnorwood.com/2025/02/23/the-data-does-not-support-the-narrative.
[58] Anderson looks at 20,000 financing filings to determine that 94.3% of private companies are located in Delaware or their home state. Robert Anderson IV, *The Delaware Trap: An Empirical Analysis of Incorporation Decisions*, 91 S. CAL. L. REV. 657, 674 (2018).
[59] *See* Frederick Tung, *Before Competition: Origins of the Internal Affairs Doctrine*, 32 J. CORP. L. 33, 42 n.32 (2006) ("New Jersey lost its dominant position to Delaware when it voluntarily bowed out of the 'charter-mongering' game in 1913.").
[60] Sanga, *supra* note 54.
[61] *Id.* at 5.
[62] *Id.* at 4.
[63] *Id.* at 18–29.

Figure 4



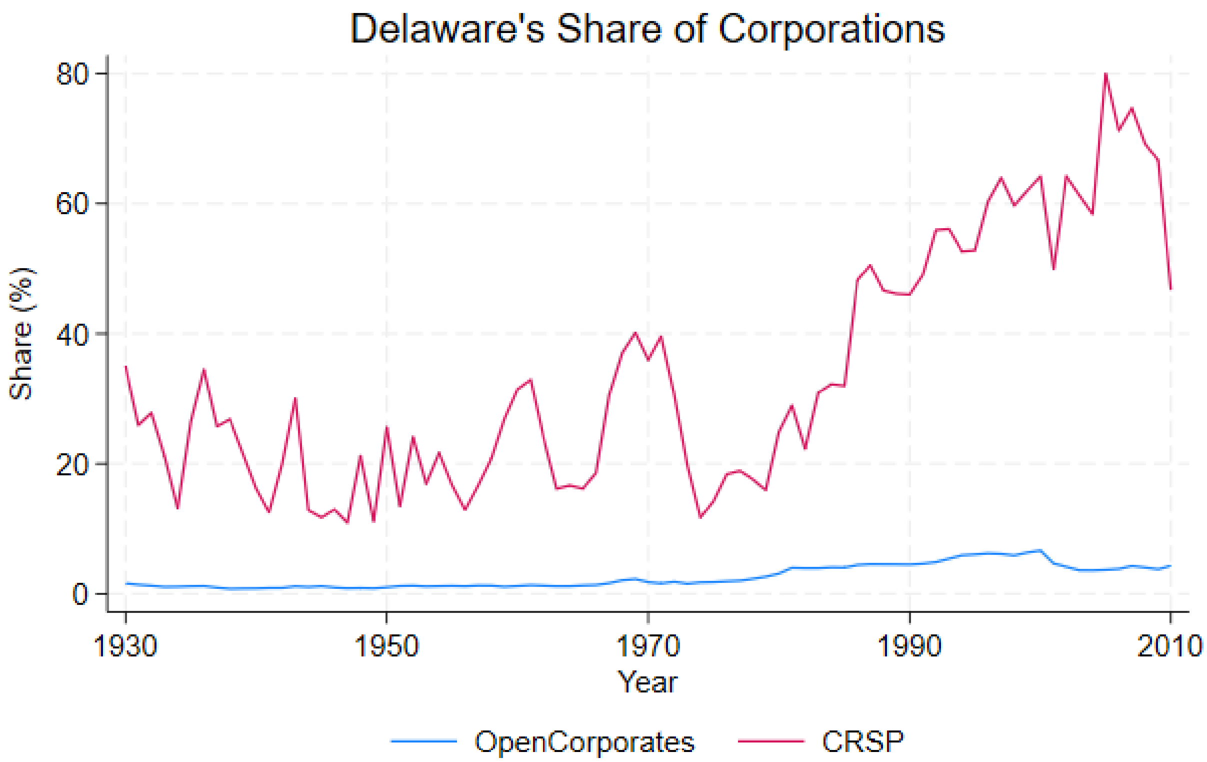
Despite confirming and amplifying the literature's focus on the late 1980s as central to Delaware's dominance, the Corporate Census does not fully accord with the received wisdom.

While the Corporate Census confirms the literature's focus on 1986 as a pivotal year, it does so only in a manner that demands further revision. It is conventional to think that Delaware's dominance was secure after 1986 (at least until the recent threat of DExit).[64] Network effects and other forces cause Delaware's dominance to solidify and grow after 1986.

While that may be true for large public corporations, that triumph plays out differently for private companies. Overall, Delaware's share of incorporations mostly stagnates in the post-1986-period. The following figure shows Delaware's share of public companies (CRSP) and corporations, generally (OpenCorporates).

[64] Mingson Lau, *Texas, Oklahoma and Nevada Make Changes to Lure Business Amid Delaware's 'Dexit' Concern*, AP NEWS (June 23, 2025, 20:34 PT), https://apnews.com/article/business-incorporation-delaware-texas-nevada-dexit-oklahoma-7aa1f738096dec9498f0e8139e6fc7aa.

Figure 5



It seems that events in the late 1980s appealed to incorporators of all types, but what followed was a divergence between Delaware's might in public and private companies. Delaware comes to dominate public company incorporations, while its share of private corporate formations begins to stagnate. Still, as the next part shows, 2025 marks a year of potential resurgence for the Delaware corporation.

IV. Interstate Competition

Dominance is never guaranteed. The possibility that Delaware may lose its position (as New Jersey once did) has generated different hypotheses over time. A decade or so ago, scholars asked whether jurisdictions like Nevada might lure corporations by promising their *managers* greater protection and latitude. Studies focused on Nevada as a site for public company reincorporation.[65] Section IV.A examines new evidence concerning Delaware's position vis-à-vis Nevada and other competitors. It shows that Delaware has faced stiff competition for decades, but not from the states most commonly identified.

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[65] *E.g.*, Anderson IV, *supra* note 57, at 674; Michel Barzuza, *Market Segmentation: The Rise of Nevada as a Liability Free Jurisdiction*, 98 VA. L. REV. 935 (2012).

More recently, the focus has been on solicitude not to managers but to controlling shareholders. Such shareholders suffered defeats in a series of recent Delaware judicial decisions.[66] They also endured critical or derisive language.[67] A number of large companies, such as Tesla and TripAdvisor, made a point of moving their legal home to Nevada or Texas.[68] Scholars have accordingly looked for evidence whether a reincorporation trend exists. So far, no such trend has been discovered,[69] but the Delaware legislature nevertheless acted quickly to create safe harbors for transactions between a corporation and its controlling shareholder.[70] Section B. considers new evidence that Delaware's position may have changed in recent days – for the better.

A. A Century of Competition

To ask about Delaware's contemporary and future decline, one must ask who has recently gained prevalence, and who may continue to do so. It is common to fear Nevada and Texas may prevail if Delaware stumbles.[71] And there is some possibility of that occurring. But the surprising upstarts in the years where Delaware has remained stable are not the ones familiar to the corporate federalism debate. Figure 6 demonstrates that Delaware's 21st century weakness has coincided with substantial growth in California and Florida charters.

[66] West Palm Beach Firefighters' Pension Fund v. Moelis & Comp., 311 A.3d 809 (Del. Ch. 2024); Tornetta v. Musk, 326 A.3d 1203 (Del. Ch. 2024).

[67] For a discussion, see Jonathan R. Macey, *Delaware Law Mid-Century: Far From Perfect but Probably Not Leaving for Las Vegas* (Jan. 30, 2025) (Yale Law & Economics Research Paper), https://ssrn.com/abstract=5043887.

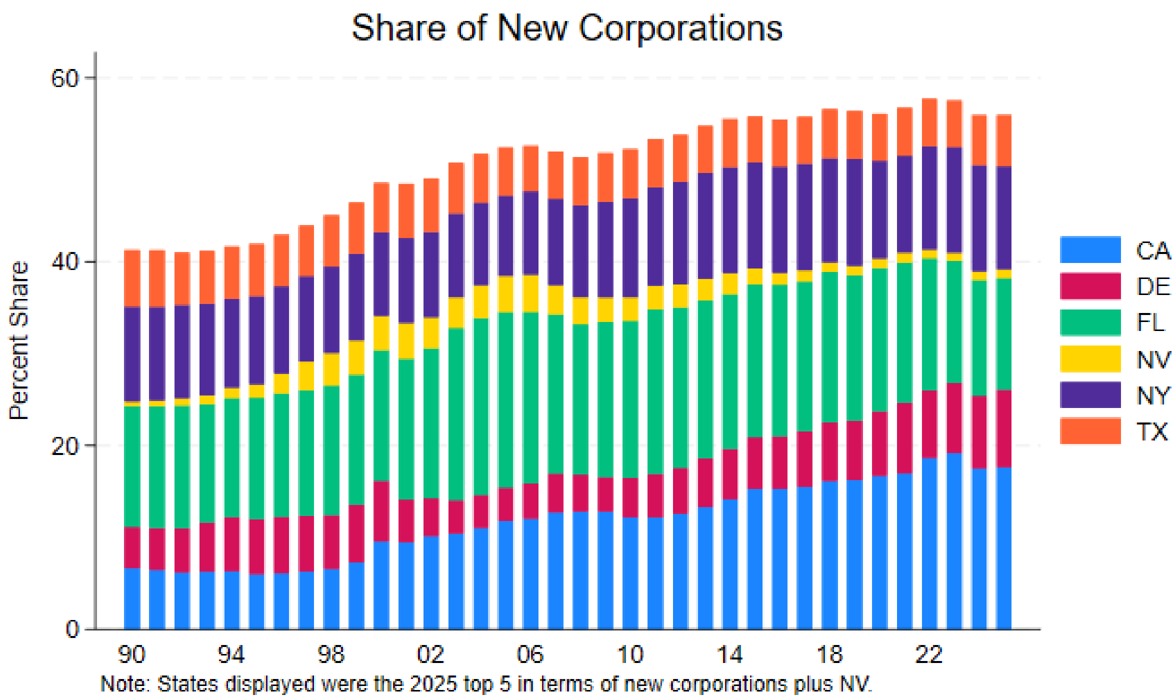
[68] *See* J. David Goodman, *As Elon Musk Moved Right, His Business Moved to Texas*, N.Y. TIMES (Nov. 23, 2024) https://www.nytimes.com/2024/11/19/us/texas-elon-musk.html; Mike Leonard & Jennifer Kay, *Tripadvisor's Move to Nevada Validated by Delaware Top Court*, BLOOMBERG L. (Feb. 4, 2025), https://news.bloomberglaw.com/litigation/tripadvisors-nevada-relocation-validated-by-delaware-high-court.

[69] Bainbridge has examined reincorporation trends among public firms departing Delaware between 2012 and 2024 to assess whether a broader shift is underway. *See* Bainbridge, *supra* note 56. Bainbridge also looks at Delaware's overall incorporation rate, counting non-public firms. *Id*. at 833–84. He observes a dip in 2022, which he considers to be possibly the result of general economic downturn. *Id*. He does not compare Delaware's dip to other states, nor Delaware's prospects in other entity types. His more granular examinations of sixty-seven individual reincorporation decisions (2012-2024) are limited to public companies. *Id*. at 837. He found that forty-nine selected Nevada and six went to Texas. *Id*. at 839.

[70] S.B. 21, 153rd Gen. Assemb., Reg. Sess. (Del. 2025).; *see also* S.B. 313, 152nd Gen. Assemb., Reg. Sess. (Del. 2024) (validating shareholder agreements).

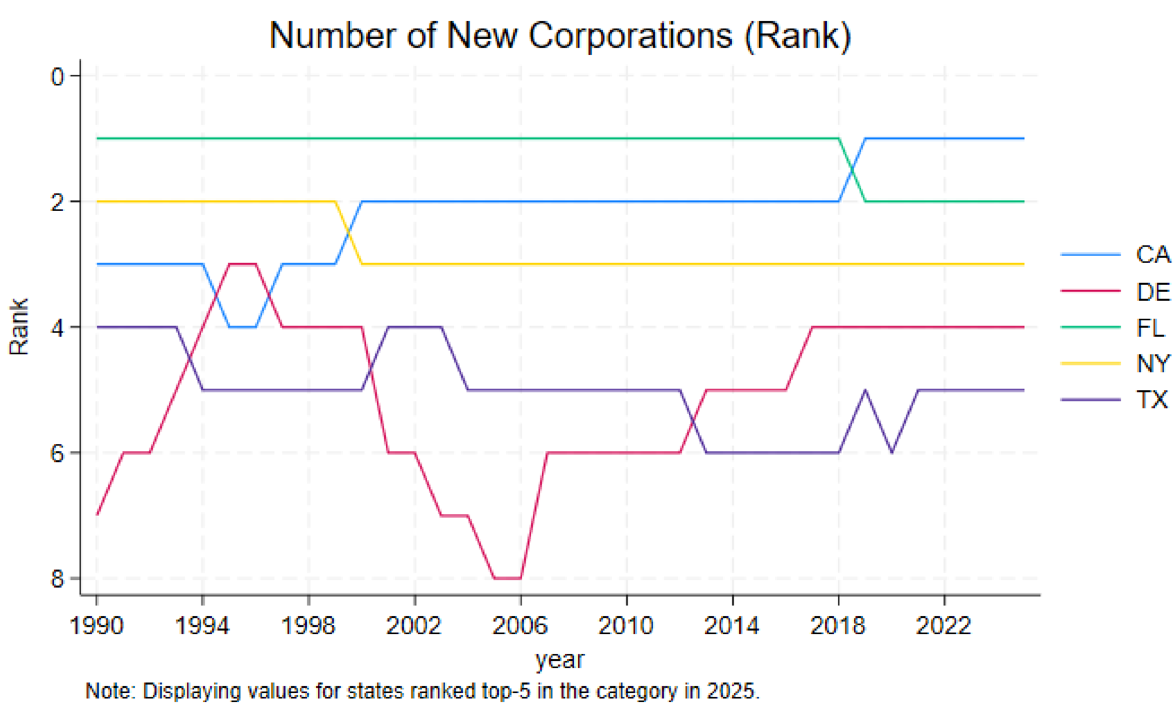
[71] *See* Bailey Swartz, *Shifting Landscapes in Corporate Law: The View From Delaware, Texas, Nevada, and Wyoming*, 30 FORDHAM J. CORP. FIN. L. 267 (2025).

Figure 6



Most notably, Florida is the dark horse champion. Rarely do corporate law scholars discuss the rise of Florida as the leading jurisdiction for incorporations for almost all of the last 40 years.

Figure 7



Interestingly, California charters have been substantial and only grown (as a proportion of new corporations) in recent years, becoming the leading state for incorporation. This is deeply at odds with the prevailing mood.[72] The typical assumption is that California law is hostile to commerce and, thus, unpopular as a chartering location. California courts turn contract disputes into soap operas, with their "soft" parol evidence rule and their refusal to enforce covenants not to compete.[73] Within corporate law, California's mandatory cumulative voting (and other mandatory rules) are thought to be undesirable to contractarian business people. When California law arises in a Business Associations class, the main issue is often how California seeks to impose its law on entities despite their incorporating elsewhere.[74] Articles refer to California as "the biggest loser"[75] in the market for corporate charters. Some studies find a substantial number of California incorporations even among important and sophisticated firms, but the suggestion is that this is just a temporary phase before they transition to Delaware.[76] The implication is that California is like Hotel California – for those who are there, it's only because they cannot leave. Yet, California has recently grown from a strong player to the very top state for corporate formations.

No doubt, some of the prominence of Florida and California reflects large and growing populations and economies. States are usually expected to capture the great majority of their locally headquartered corporations.[77] Consistent with this intuition, Delaware leads in corporations per new business established within the state, showing that it provides charters to a great many businesses headquartered out-of-state.

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[72] LoPucki, *supra* note 4, at 2115 (asserting that "tiny Delaware is the incorporation state for . . . nearly as many as . . . California.").

[73] Geoffrey P. Miller, *Bargains Bicoastal: New Light on Contract Theory*, 31 CARDOZO L. REV. 1475, 1482, 1507–08 (2010).

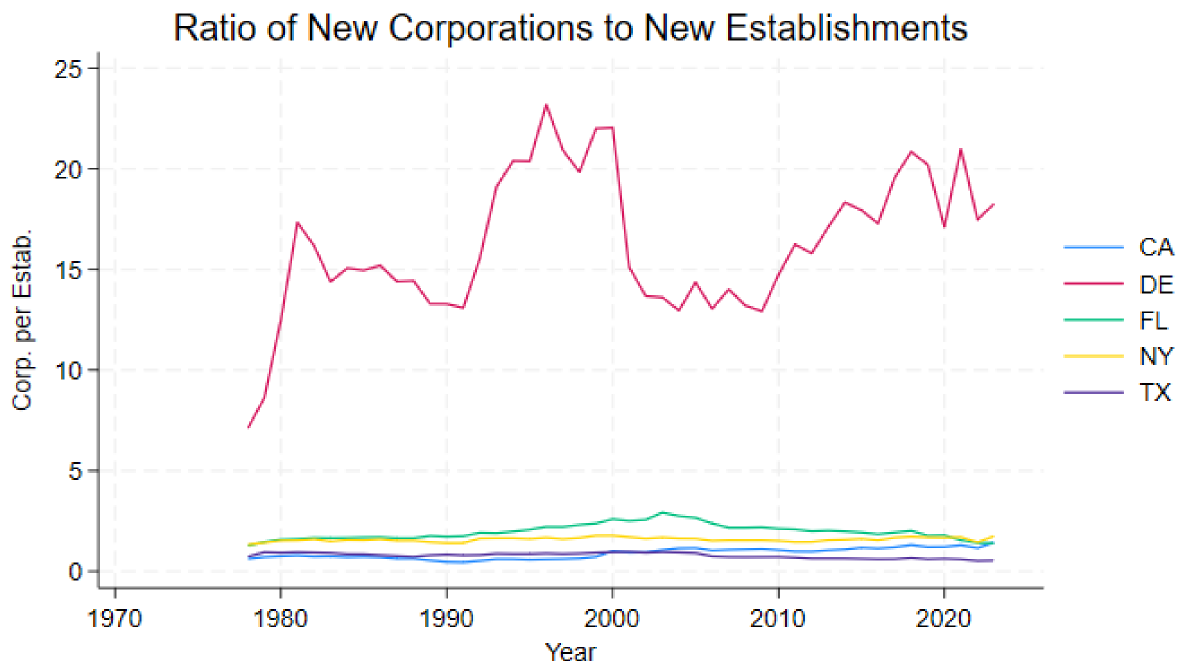
[74] This discussion concerns the pseudo-foreign corporation doctrine, CAL. CORP. CODE § 2115, and also the diversity mandates for boards headquartered in the state, CAL. CORP. CODE §§ 301.3, 301.4. The diversity mandates have since been ruled to be unconstitutional. *See* Crest v. Padilla, No. 20 STCV 37513, 2022 WL 1073294 (Cal. Super. Ct. Apr. 1, 2022) (overruling § 301.3); Crest v. Padilla, No. 19STCV27561, 2022 WL 1565613 (Cal. Super. Ct. May 13, 2022) (overruling § 301.4).

[75] LoPucki, *supra* note 4, at 2112.

[76] *E.g.*, Mitchell A. Kane & Edward B. Rock, *Corporate Taxation and International Charter Competition*, 106 MICH. L. REV. 1229, 1282 (2008); *accord* Jens Dammann & Matthias Schündeln, *Where Are Limited Liability Companies Formed? An Empirical Analysis*, 55 J.L. & ECON. 741 (2012).

[77] Daines, *supra* note 3, at 1562.

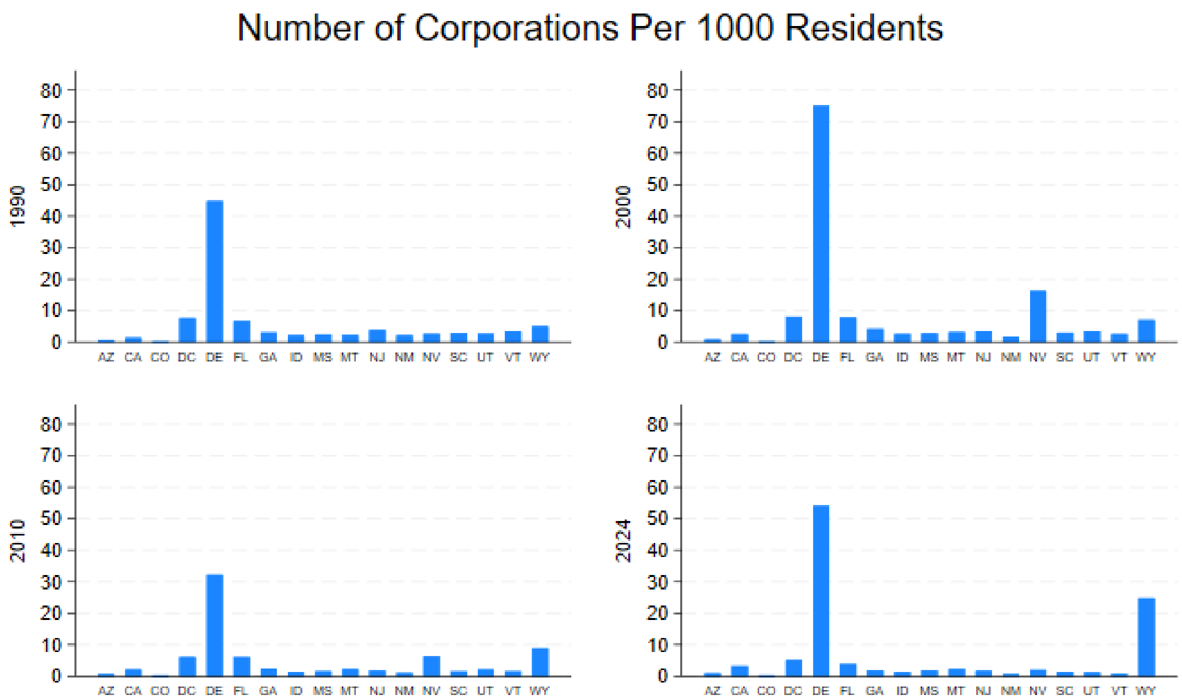
Figure 8



2023 US Census Business Dynamics Series data is the most recent available.

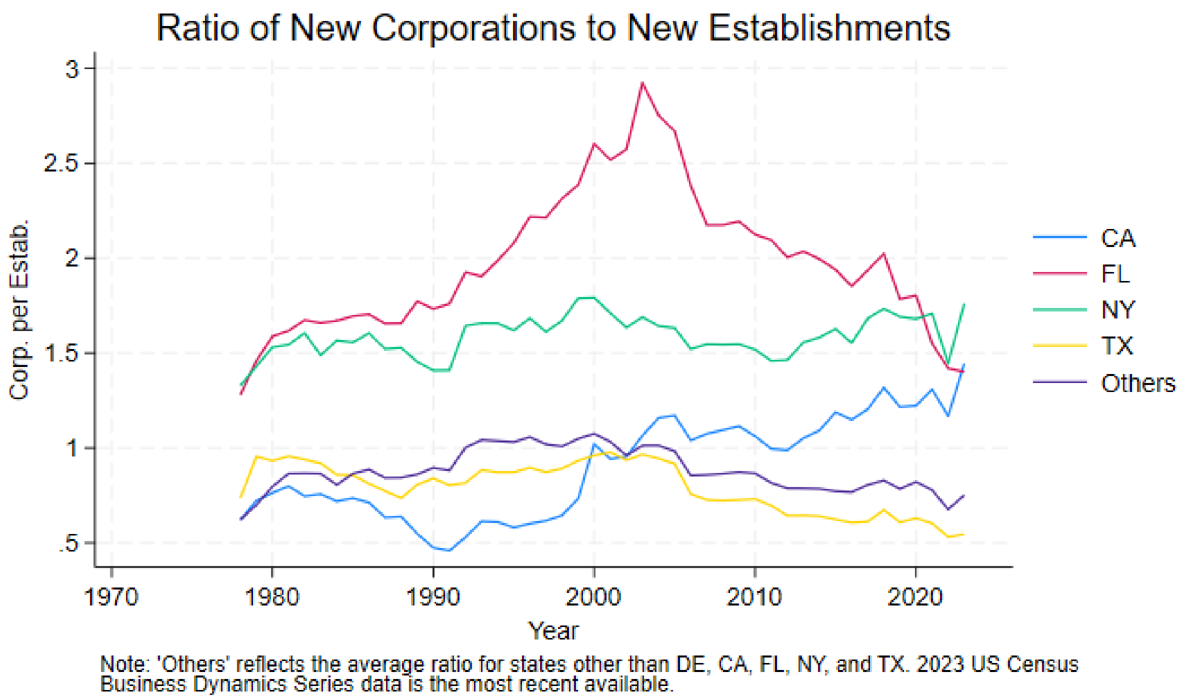
Delaware likewise leads in corporations per resident.

Figure 9



Still, Florida and California outperform their population, ranking among the leading states even on a population-adjusted basis. California has more than doubled its population adjusted rate of corporate formation over the last thirty years. It would appear that both are successful both in encouraging business formation and in discouraging those businesses from chartering in Delaware.

Figure 10



California and Florida are large and growing states, for which corporate charters provide only a small percentage of the state's revenue. It may be surprising that they should do so well in the charter race, given the hostage theory.[78] A simplistic version of hostage theory predicts that small states will compete most vigorously and credibly for entity charters, because small states cannot afford to lose their franchise revenues.[79] A large state with diversified governmental revenues may alienate corporate patrons because it can afford to do so. Yet somehow California and Florida have reassured incorporators enough that they continue to patronize those states. This is particularly surprising if one thinks, as with Grandy, that growing population should undermine a state's ability to serve as a hostage. Grandy explains that Delaware triumphed over New Jersey in part because New Jersey's population doubled over a thirty-year period, making its dependence on charters increasingly dubious.[80] But Florida's population has likewise doubled during the last

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[78] *See* Roberta Romano, *Law as a Product: Some Pieces of the Incorporation Puzzle*, 1 J.L. ECON. & ORG. 225, 278 (1985) ("[A] rival state cannot simply offer corporations a lower price and instantaneously attract the marginal incorporation business because a switch increases operating costs, the cost of legal advice, and comes with no credible commitment of better service. For by starting from a low franchise tax revenue ratio, the competitor cannot offer itself as a hostage.").

[79] I call this version simplistic because it assumes that charter competition is potentially unlimited, with all states competing to maximize charters. In reality, most states "compete" only to keep the charters of corporations incorporated in state. *Id.* at 235–36. Romano's hostage theory does not predict that California will try to attract Texas and Delaware corporations, nor that its large size will discourage it from doing so. *See generally id.* Accordingly, this Article does not so much debunk the hostage theory as clarify its bounds.

[80] Grandy, *supra* note 37, at 689–91.

thirty years (and California's population growth rate of 25% has still outpaced the nation as a whole).[81]

A second theory for the rise of Delaware emphasized its political stability. Although the state is "blue," its corporate law is produced apolitically.[82] No such institutions exist in California and Florida. California corporate law is produced through the same institutions as the rest of the single-party state. Florida has likewise demonstrated a pronounced willingness for partisan government to intervene in business affairs.[83] Yet Florida's popularity remains ascendant.

More likely, California's robust performance has to do with the Pseudo-foreign corporation doctrine. California does not fully embrace the internal affairs doctrine and subjects California-based businesses to much of California corporate law, even if the firm incorporates elsewhere. Under California Corporations Code Section 2115, only publicly traded corporations can depend on the internal affairs doctrine.[84] The choice to incorporate in California is often not an endorsement of California law so much as a resignation to it. This interpretation is strengthened by California's comparatively poor showing in LLC formation, where Section 2115 does not apply.[85]

However one considers the evidence on Florida and California, Nevada is plainly less numerically significant than its place in the discourse would suggest. Nevada has never been anywhere near the top five for incorporations.[86] To a great degree, Nevada's ascent is of symbolic significance: noteworthy firms reincorporate there to express public displeasure with Delaware.[87] And scholars ponder what it would mean if a low-accountability jurisdiction were to overtake Delaware,[88] but that possibility remains speculative. Interestingly, concerns about Nevada's growth were once well-founded. Nevada enjoyed substantial growth in the early 2000s, but its competitive position has largely eroded. (Figure 9 shows its rise and fall on a population-adjusted basis.)

Texas, for all of its attention in luring Tesla to reincorporate, has seen small decreases in corporate formations since the late 1990s, as Figure 6 demonstrated.

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[81] *California Population 1900-2024*, MACROTRENDS, https://www.macrotrends.net/global-metrics/states/california/population (last visited Feb. 18, 2025); *Florida Population 1900-2024*, MACROTRENDS, https://www.macrotrends.net/global-metrics/states/florida/population (last visited Feb. 18, 2025); *U.S. Population Growth Rate 1950-2025*, MACROTRENDS, https://www.macrotrends.net/global-metrics/countries/usa/united-states/population-growth-rate (last visited Feb. 18, 2025).

[82] Marcel Kahan & Edward Rock, *Symbiotic Federalism and the Structure of Corporate Law*, 58 VAND. L. REV. 1573, 1614 (2005).

[83] Arian Campo-Flores, *Florida Gov. Ron DeSantis Signs Bill Restricting Teaching About Sexual Orientation*, WALL ST. J. (updated Mar. 28, 2022), https://www.wsj.com/articles/florida-gov-ron-desantis-signs-bill-restricting-teaching-about-sexual-orientation-11648498840 (reporting on Florida's "Don't Say Gay" bill); Erich Schwartzel, *Disney CEO Tried to Avoid Politics, Now Finds Himself in Middle of Partisan Spat*, WALL ST. J. (updated Mar. 11, 2022), https://www.wsj.com/articles/disney-to-pause-political-donations-in-florida-11647028301 (reporting on Disney's pausing of political giving in Florida as a result of the "Don't Say Gay" bill, as well as the ensuing battle between the state and the corporation).

[84] CAL. CORP. CODE § 2115.

[85] *Infra* Part IV.B.1., Figure 20 and accompanying text.

[86] It is perhaps surprising that Nevada should perform so poorly on private corporations, relative to public ones, because scholars have long argued that its relative emphasis has been precisely on closely held firms that are unlikely to be public. *See, e.g.*, Kahan & Kamar, *supra* note 1, at 717.

[87] *See supra* note 67 and accompanying text.

[88] Barzuza, *supra* note 64, at 994–1000.

B. DExit

Is Delaware now in decline? This question became urgent with *Tornetta v. Musk*, a case upsetting the pay package of Tesla's founder and influential shareholder, Elon Musk.[89] Three weeks later came Vice Chancellor Laster's *Moelis* opinion constraining the power of shareholder agreements.[90] This latter opinion was criticized by some influential law firms and their clients as potentially undermining accepted market practices.[91] The Counsel of the Corporate Law Section of Delaware bar association promptly proposed overturning *Moelis* by statute, which the legislature promptly did.[92] The legislature later substantially overturned the controlling shareholder jurisprudence undergirding *Tornetta*.[93] These opinions and legislative responses have been controversial, and on both sides of the controversy is a worry that firms may flee Delaware if it mishandles this pivotal moment. Can the Corporate Census tell us whether the judiciary was triggering a flight from Delaware or, instead, whether the legislative backlash threatens to cause what it hopes to prevent?

The *Moelis* opinion was decided on February 23, 2024, setting in motion a trend of cases and judicial responses. The current version of the Corporate Census ends in October of 2025. This gives us at least a glimpse of what might have occurred at first. This gives almost two years post-*Moelis* to analyze changes in this period.

Figure 11 shows week-by-week incorporation numbers for Delaware, with a line indicating *Moelis*.[94] Amid fears of decline, 2025 was a period of monumental growth for Delaware.

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[89] 310 A.3d 430 (2024).

[90] West Palm Beach Firefighters' Pension Fund v. Moelis & Co., 311 A.3d 809 (Del. Ch. 2024).

[91] *See* Erin Mulvaney & Theo Francis, *Battle Over Shareholder Pact Strains Delaware's Business Courts*, WALL ST. J. (July 15, 2024), https://www.wsj.com/business/shareholder-agreements-delaware-corporate-law-b083e768?st=HXEFub&reflink=desktopwebshare_permalink.

[92] S.B. 313, 152nd Gen. Assemb. (Del. 2024).

[93] S.B. 21, 153rd Gen. Assemb. (Del. 2025).

[94] Choosing *Moelis* is not to suggest that it is the most important event in the chain, nor that it is the cause of what follows. Instead it is a salient marker for the beginning of the recent period of tumult.

Figure 11

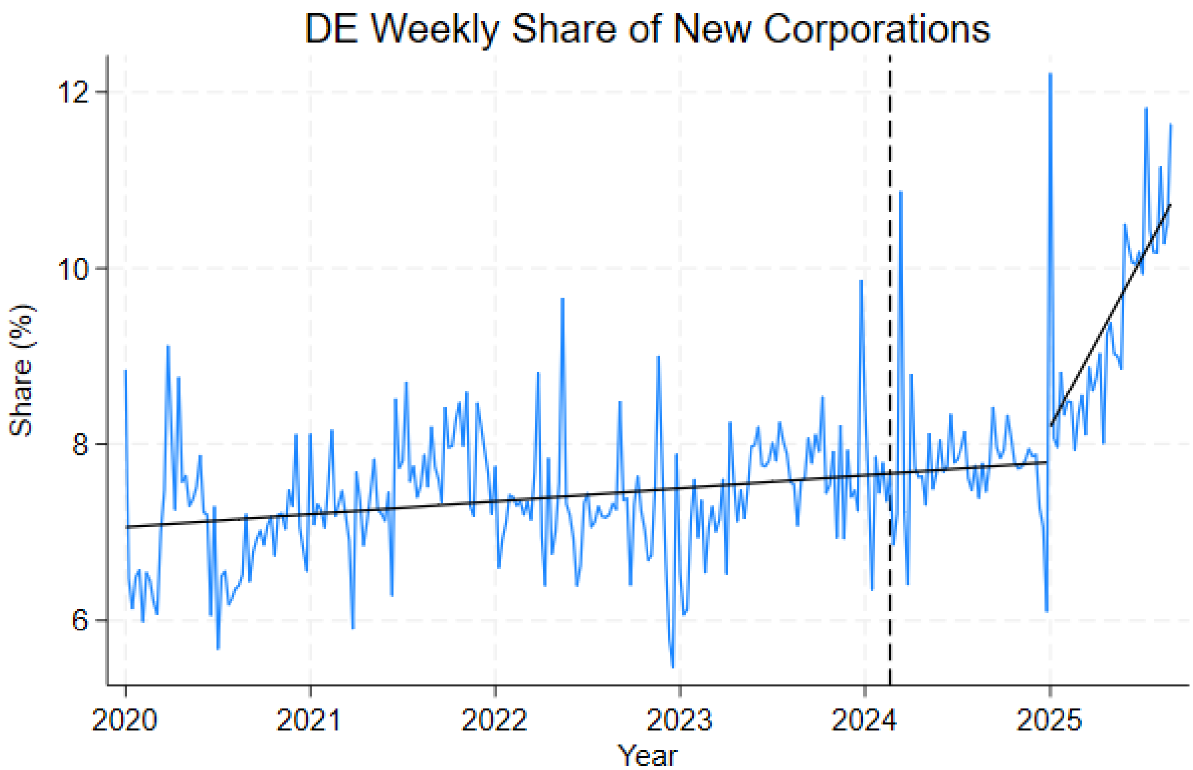


Figure 11 shows a sharp increase in Delaware's share of corporate formations. Figure 12 shows that this is an absolute increase, not driven by a decline in formation in other states. Instead, there is a clear increase in Delaware's relative popularity beginning in 2025, making it a singular leader in a period otherwise lacking corporate growth. About 30% more Delaware corporations formed in 2025 than in 2024, greatly exceeding the prior trendline. This, while national incorporation levels remained flat.

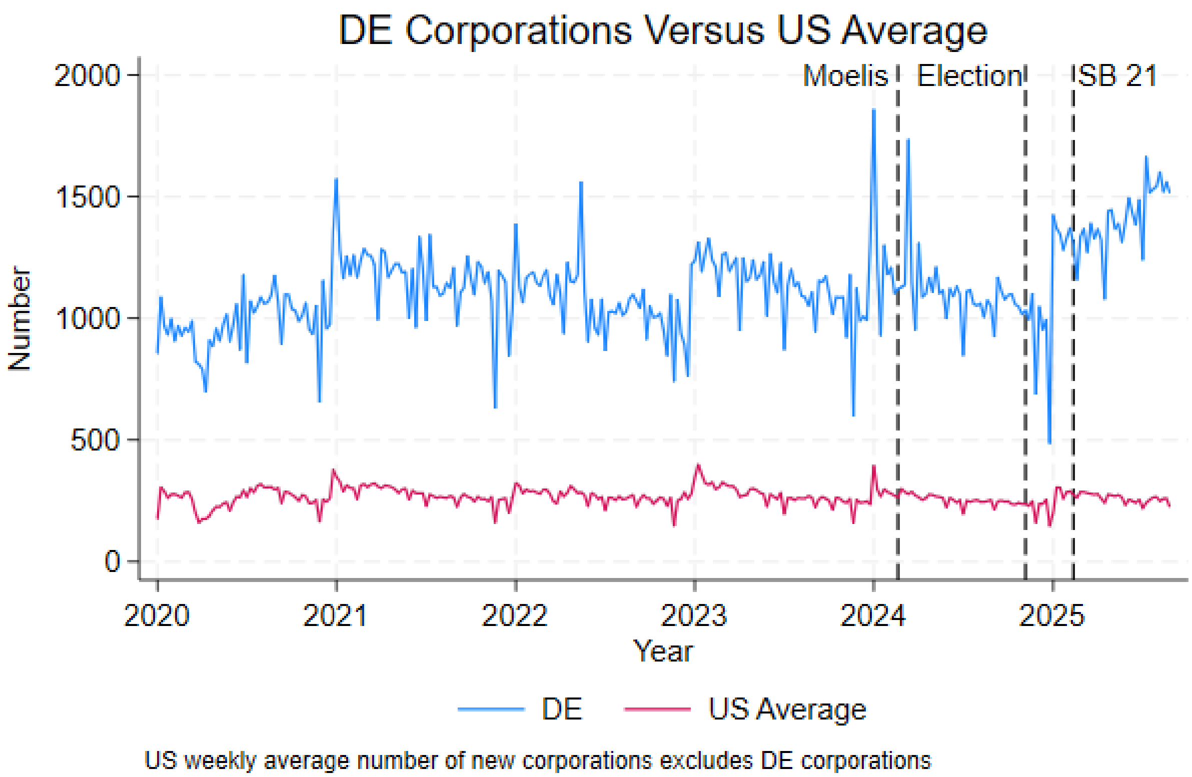
Figure 12

This was an absolute increase, not driven by a decline in formation in other states. While Delaware's averaged about 1090 new corporations per week in 2020–24, that number increased by 309 in 2025. [95] The rest of the nation as a whole enjoyed no statistically significant increase in corporate formation, nor did any other state individually. Plainly, something happened in 2024 or early 2025 that rendered Delaware more attractive as a site of formation.

What explains the jump? One interpretation is that would-be incorporators approved of SB21 and SB313. These laws were intended to restore confidence in Delaware law after several 2024 judicial opinions arguably upset market expectations. Yet the jump in incorporations begins *prior* to the late February 2025 announcement of SB 21. And it begins substantially *after* the March

[95] This effect is significant at the 99.9% level.

2024 passage of SB 313. While it is certainly possible that the increase reflects a lagged response to SB 313, or perhaps a preemptive response to the legislative currents that led to SB21, the timing does not immediately commend itself to that explanation.



Another possibility is that events external to Delaware law drove a run-up in Delaware corporate formations. For example, President Donald J. Trump won the general election on November 5, 2024 and took office on January 20, 2025. Perhaps Delaware corporations were expected to be especially useful under his administration. Further research is required to disaggregate causation.[96] Week-by-week variation in corporate formations includes a lot of noise, and no theory currently predicts how quickly entity formations will respond to shocks.

Even with causation unclear, the data are plainly incompatible with the most alarmist theories of DExit. The new statutes are either welcomed by incorporators or else not so bad as to offset whatever other forces are now increasing incorporation. When the great mass of corporate formations is considered, Delaware has substantially increased both its absolute and relative number of incorporations in the last year.

* * *

This story about Delaware's rise and fall has focused on comparing one state (Delaware) to others (e.g. New Jersey, Nevada) for corporations. But states are not the only locations of entity law, nor are corporations the only entities. In a sense, Delaware's biggest competitor is itself.

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[96] In a separate project, I examine the relationship between presidential administrations and corporate formation. Consistent with this hypothesis, I find that republican administrations do indeed lead to increases in chartering – though there is more to say on this subject than can be addressed here.

Delaware corporations are making room for Delaware LLCs. We turn now to alternative entities. Later, we look to Delaware's main competitor for formations generally: uniform and model laws.

V. Inter-Entity Competition

Entities other than general corporations have become more important in recent decades. Some scholars have attempted to study trends in these entities,[97] but the efforts have been few, and none have attempted a comprehensive look at formations of alternative entities, such as the LLC. This Part demonstrates new findings based upon the Corporate Census.

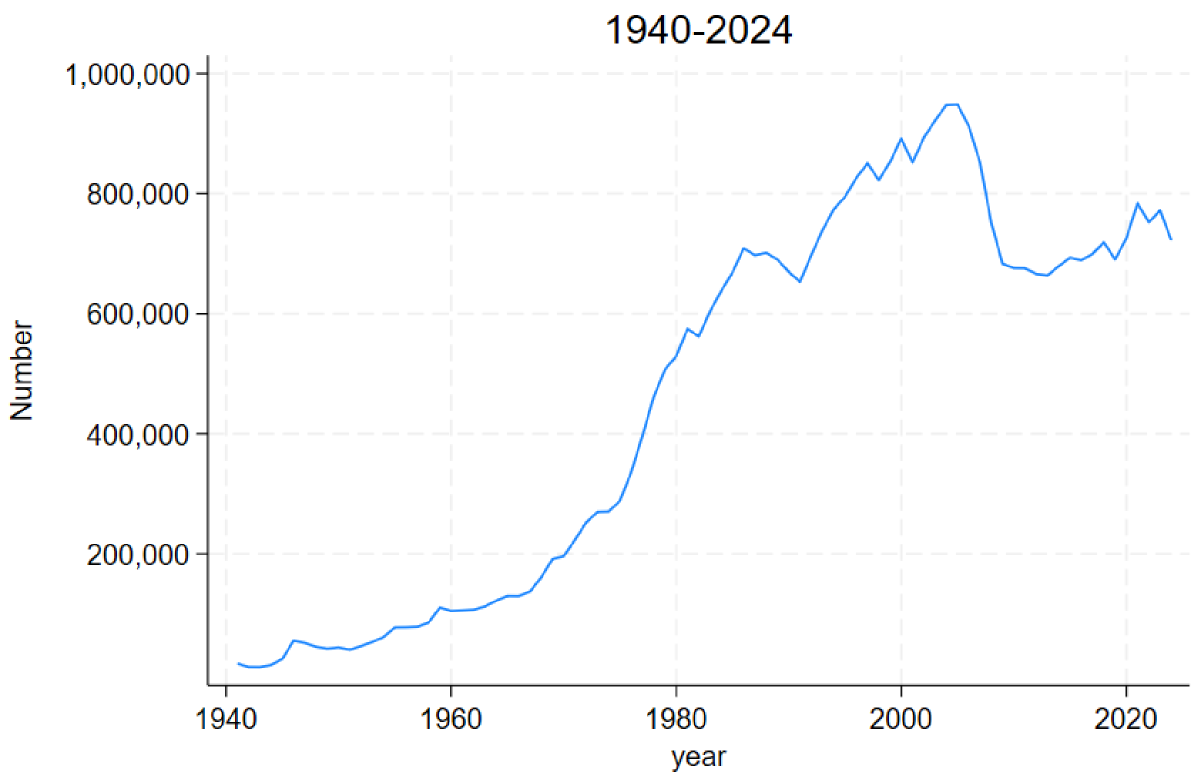
A. Corporate and Unincorporated Entities

The rise of alternative entities has come at the expense of the corporation. The peak number for overall new formations seems to have come and gone around 2008. After that point, corporations mostly declined.[98]

[97] For example, Molk's work on nonprofit formations finds that Delaware performs well on a per capita basis, but that New York and California attract more formations in absolute terms, even when adjusted for population. Peter Molk, *Where Nonprofits Incorporate and Why It Matters*, 108 IOWA L. REV. 1781 (2023). While some scholars assert that "Delaware enjoys similar dominance with respect to alternative entities," *e.g.* Mohsen Manesh, *Contractual Freedom Under Delaware Alternative Entity Law: Evidence from Publicly Traded LPs and LLCs*, 37 J. CORP. L. 555, 559–74 (2012), Molk presents evidence for Delaware's relative weakness in chartering the fast-growing segment of limited liability companies (LLCs). Peter Molk, *Delaware's Dominance and the Future of Organizational Law*, 55 GA. L. REV. 1111, 1156–68 (2021). *See also* Dammann & Schündeln, *supra* note 75.

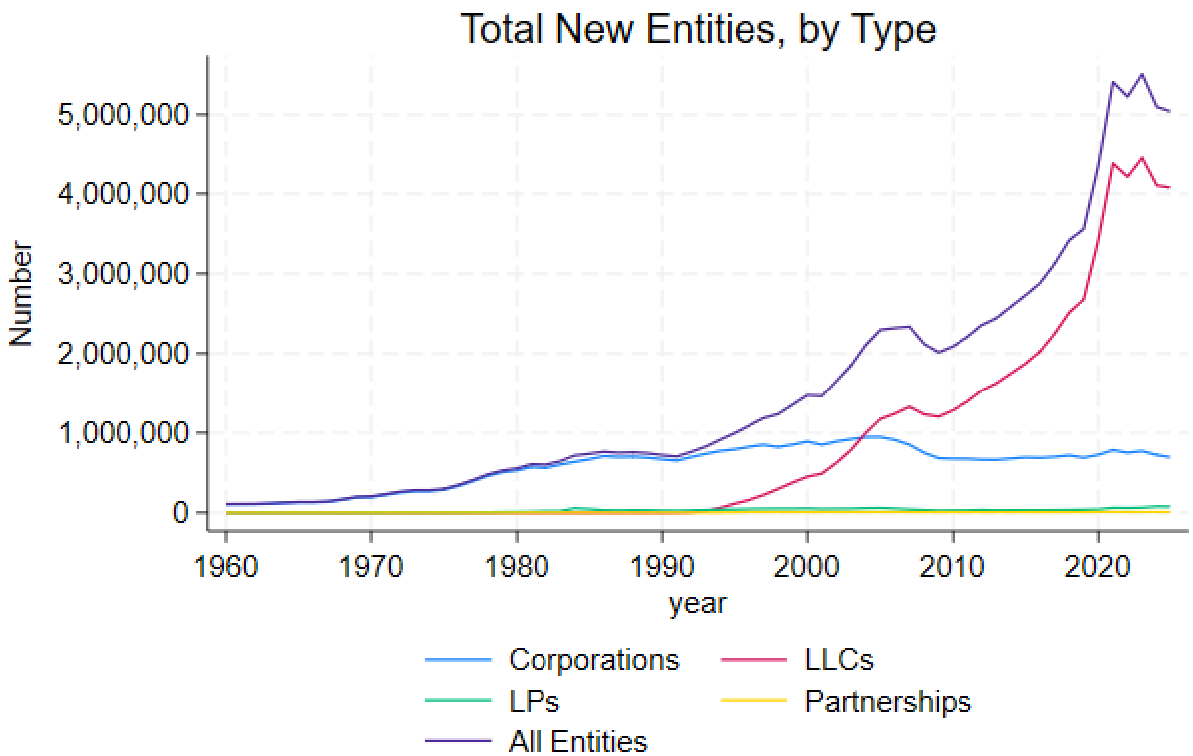
[98] Delaware began its decline earlier (perhaps in 2001), but has enjoyed a resurgent in recent years.

Figure 13: New Corporations (all states)



The decline in corporate formations does not reflect a general decline in entity formation. At the same time incorporation declined, new entities chartered in increasing numbers. Figure *14* shows the rising number of non-corporate formations. It also shows the total number of formations.

Figure 14

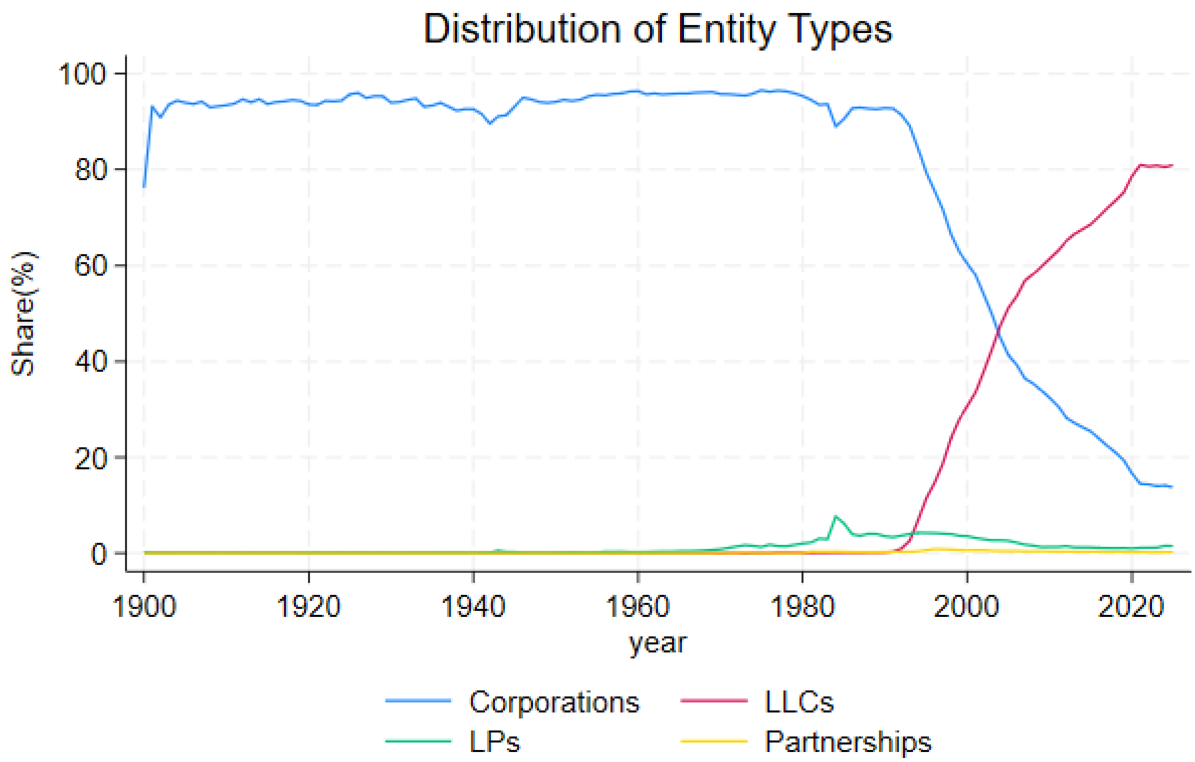


The result is that alternative entities became the majority of new formations at some point around April 2004. This change is not driven by partnerships. Limited partnerships have always been a niche product. The low level of general partnership chartering surely undercounts the number of general partnerships, because general partnerships can form without a corporate filing.[99] But there is no reason to expect an unobserved jump in the number of general partnerships. Obviously, LLCs are the major change.

Figure *15* shows formation rates as a percentage of all registered formations. The overall impression is that LLCs have only recently achieved the level of dominance occupied by corporations for most of the 20th century.

[99] General partnerships may even be formed "whether or not the [partners] intend to form a partnership." CAL. CORP. CODE § 16202(a); *see In re Marriage of Geraci*, 51 Cal. Rptr. 3d 234, 245 (Cal. Ct. App. 2006) ("[P]ersons may unintentionally create a partnership where their actions and behavior demonstrate an intent to engage in business together.").

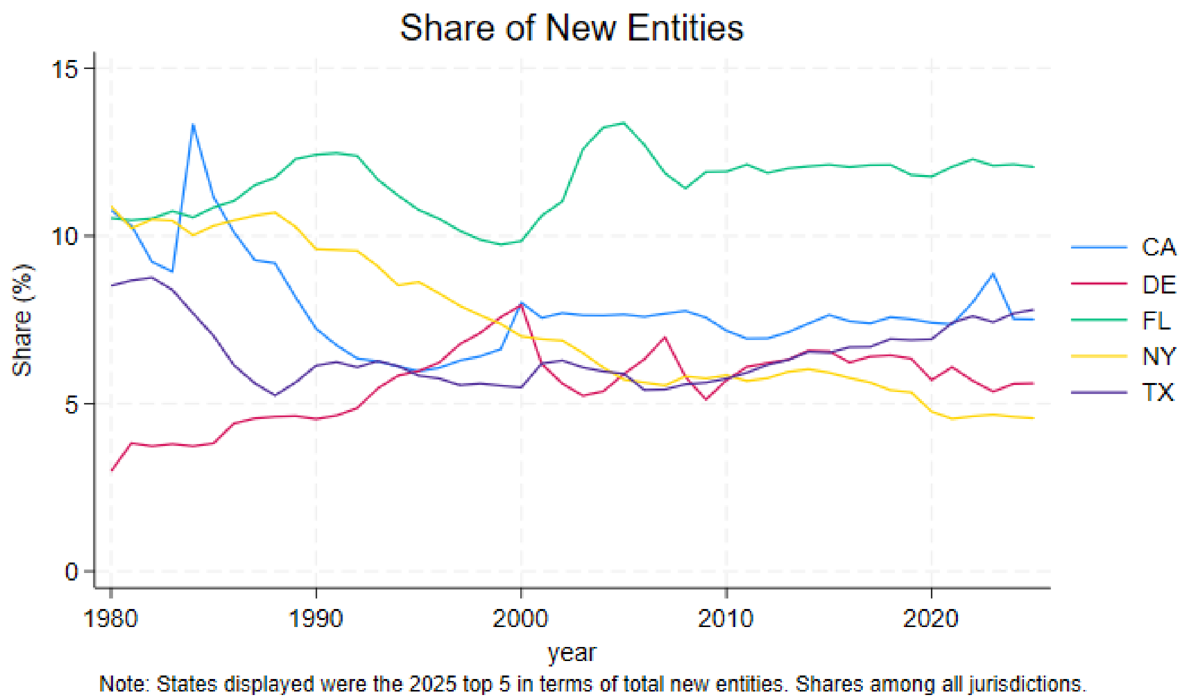
Figure 15



To be clear, the forgoing discusses flow of new entities, rather than the stock of existing entities. New LLCs begin to outnumber new corporations in 2004, but that does not tell us whether active LLCs outnumber active corporations. However, there are good reasons to think that LLCs do now outnumber corporations. The total number of LLCs formed, cumulatively, overtook corporations in December of 2021. As of October 2025, 35% more LLCs have been formed than corporations. That means that if all entities lasted forever, LLCs would substantially outnumber corporations. However, entities do not last forever. Assuming shorter average entity lifetimes will tend to indicate greater LLC dominance, earlier in time. For example, assuming an average entity life of 10 years would put the stock of LLCs above the stock of corporations sometime around 2015.

We have observed that Delaware's importance as a site of corporate formation required reexamination in light of Florida, Texas, California, and New York continuing to charter substantially. A similar story can be told about non-corporate entities. Delaware performs extremely well in entity formations when non-corporate entities are factored in, but it is not the leader in any period. Instead, Florida and California both grow and lead.

Figure 16



Let us examine the growth of these different entitles.

B. Limited Liability Company

The major driver of non-corporate formations is, of course, the LLC. Insofar as the literature has observed LLC formation states, it has found that most LLCs incorporate locally. Among those LLCs observed to incorporate out of state, 54% were observed to select in Delaware.[100] However this prior research considered only 20,000 moderately sized LLCs, rather than a comprehensive set covering millions of smaller LLCs.[101] The Corporate Census complements this research by testing how the broader pool of LLCs forms. The results are somewhat surprising.

Delaware does well in forming LLCs, but other states also perform strongly.[102] Professor Mohsen argues that Delaware is at a structural disadvantage in competing for LLC charters, because these new entities are highly contractable, limiting the expertise and body of precedent that Delaware can generate and market.[103]

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[100] Dammann & Schündeln, *supra* note 75, at 746.
[101] *Id.*
[102] This accords with Mohsen Manesh, *Delaware and the Market for LLC Law: A Theory of Contractibility and Legal Indeterminacy*, 52 B.C. L. REV. 189, 192 (2011).
[103] *Id.*

Figure 17

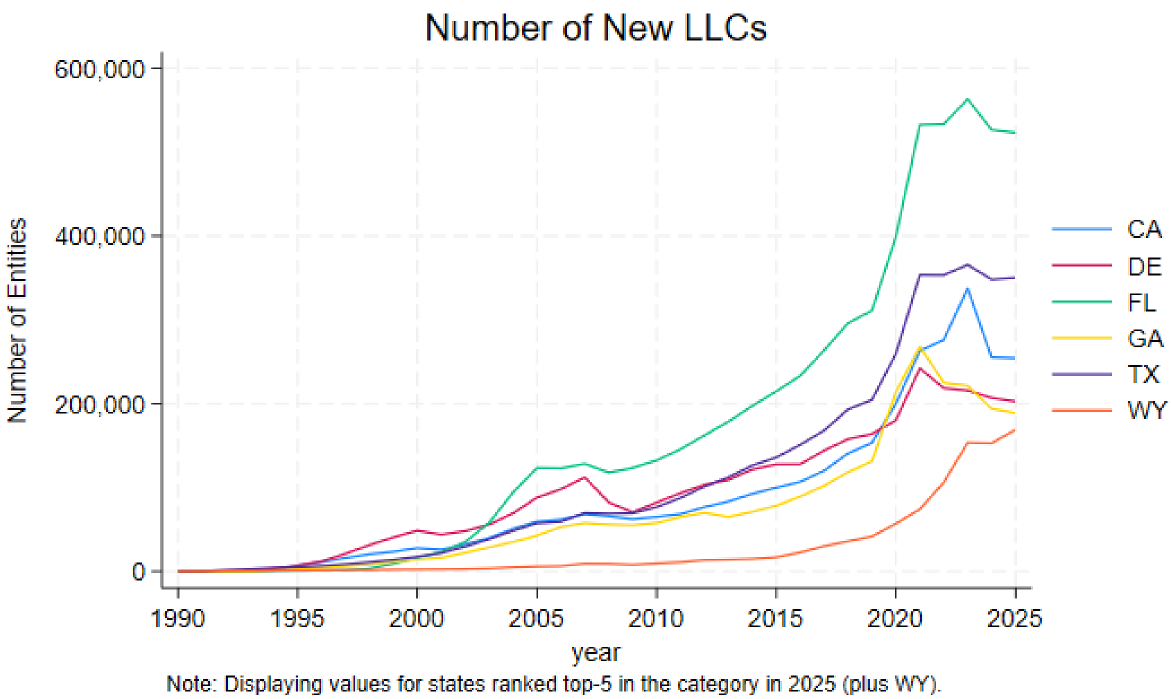
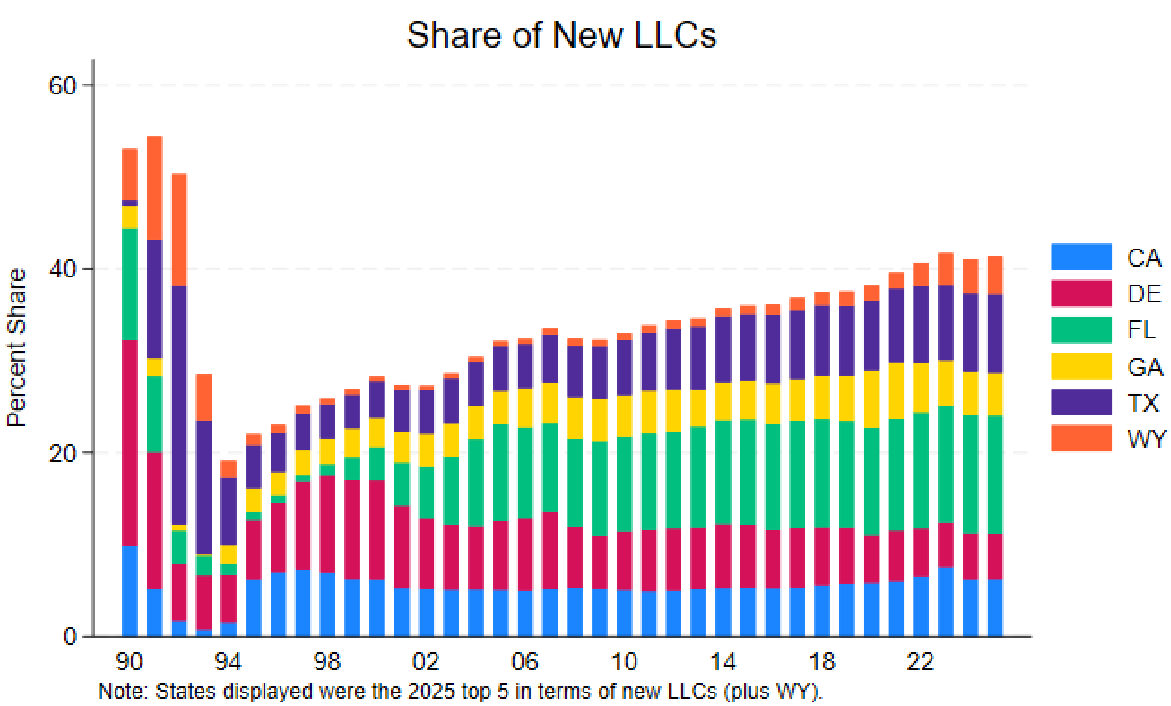
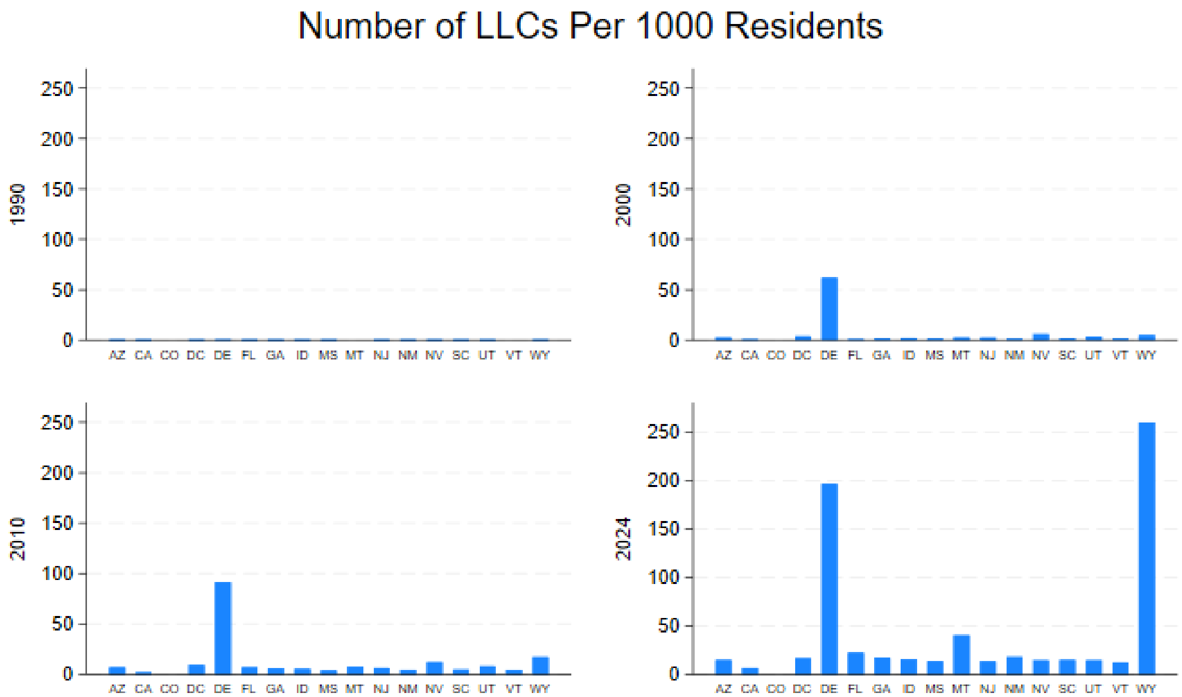


Figure 18



The leadership of California, Delaware, Texas, and Florida should no longer be surprising. The large number of Georgia entities may strike some as unexpected,[104] though Atlanta's vibrant economy may be enough to explain things. Also, perhaps surprising, Wyoming is now a leading state for LLC formation. It beats Delaware on a population-adjusted measure.

Figure 19



It is not entirely clear why Wyoming has performed so well. One candidate answer is that Wyoming invented the LLC.[105] There is some stickiness to early entity production. But it is not just an early lead that explains Wyoming's impressive performance. Plainly, Wyoming lost its early lead to Delaware 20 years ago. Something has happened in the last 15 years for Wyoming to regain substantial LLC formations.

The answer may have to do with the fracking boom that has powered the state in recent years.[106] New business activity will lead to more entity formation. But Wyoming's LLC growth has greatly outpaced its rate of business formation.

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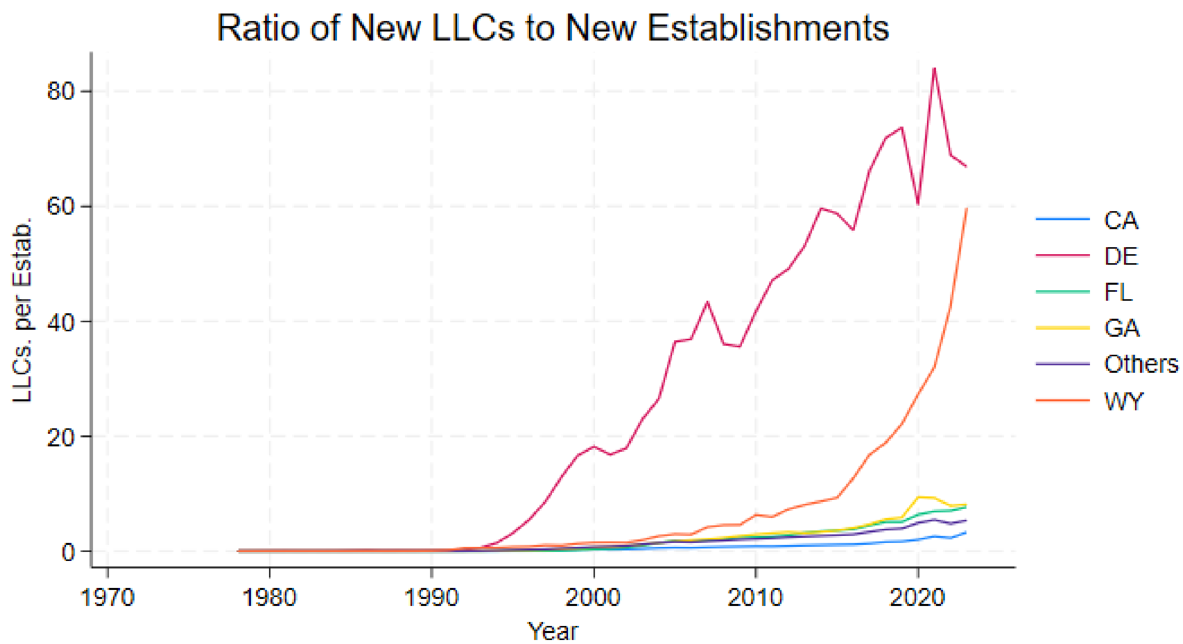
[104] Georgia is not in the top five states for GDP. *GDP by State*, BUREAU OF ECON. ANALYSIS (June 25, 2025) https://www.bea.gov/data/gdp/gdp-state. *But see* Kahan & Kamar, *supra* note 1, at 689 (studying state finance and finding that only Georgia would have a meaningful incentive to compete for charters with Delaware).
[105] Susan P. Hamill, *The Origins Behind the Limited Liability Company*, 59 OHIO ST. L.J. 1459, 1460 (1998).
[106] *See* Eric Lipton & Hiroko Tabuchi, *Driven by Trump Policy Changes, Fracking Booms on Public Lands*, N.Y. TIMES (Oct. 27, 2018), https://www.nytimes.com/2018/10/27/climate/trump-fracking-drilling-oil-gas.html.

Figure 20



Note: 'Others' reflects the average ratio for states other than CA, FL, NY, TX, and WY. 2023 US Census Business Dynamics Series data is the most recent available.

It is possible that Wyoming's growth industries are more entity intensive than those of other states; perhaps every well gets a few LLCs (one for title, one to employ personnel, etc). But that would still not explain why *Wyoming* LLCs are chosen. Presumably, entity-intensive mineral extraction companies could opt for Delaware LLCs, as do the sophisticated entity structures of many other states.[107] The best answer should explain why Wyoming LLCs are so often preferable to Delaware LLCs – and only recently. Relatedly, Wyoming did create an LLC variant designed to attract entities related to a distinctive industry – crypto – but it is hard to attribute many entities to this project.[108]

The correct answer probably relates to Wyoming's recent efforts to offer asset-protection and privacy services to out-of-state.[109] It has marketed itself as the best home to the "cowboy cocktail" entity structure, in which a Wyoming LLC is owned by an Asset Protection Trust.[110] This

[107] *Infra* Part V.C.
[108] H.R. 74, 65th Leg., Gen. Sess. (Wyo. 2019); WYO. STAT. ANN. §§ 13-12-103, 17-31-104 (2025). *See* Gail Weinstein et al., *A Primer on DAOs*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Sept. 17, 2022), https://corpgov.law.harvard.edu/2022/09/17/a-primer-on-daos/; Renée Jean, *Already No. 1 For LLCs, Can Wyoming Attract The Huge Companies Leaving Delaware?*, COWBOY STATE DAILY (Feb. 11, 2025), https://cowboystatedaily.com/2025/02/11/already-no-1-for-llcs-can-wyoming-attract-the-huge-companies-leaving-delaware/ ("[Secretary of State] Gray has told Cowboy State Daily it's impossible to track how many digital asset companies are here, given that not all of them have any obvious words like 'crypto' or 'DAO' in their names.").
[109] *See* B.V. Reomie Automateriaal v. IDE Invest & Real Estate, LLC, No. 22-CV-00091-SWS, 2022 U.S. Dist. LEXIS 205616, at *14 n.10 (D. Wyo. Nov. 11, 2022) (citing articles about the Cowboy Cocktail and the lack of oversight of registered agents).
[110] Allison Tait, *Trusting Marriage*, 10 U.C. IRVINE L. REV. 199, 238–39 (2019). *See also* Ana Muñoz Padrós, *An Explosion Of LLCs: The Wyoming Angle Cont'd*, OPENCORPORATES (Dec. 18, 2024),

structure permits an individual to benefit from and control assets without exposing those assets to judgment by creditors. The Cowboy Cocktail was rendered feasible by 2010 and 2011 changes to Wyoming LLC and trust law, respectively.[111]

Wyoming LLC law is now distinctive in ways that compare favorably to Delaware.[112] Its formation and annual fees are lower.[113] It appears to have tolerated low levels of professionalism among its registration agents, [114] leading to a proliferation of LLCs associated with crime.[115] Wyoming adopted a stricter standard for veil piercing than Delaware.[116] It has also encouraged crypto ventures to form a special type of LLC. [117] Much of Wyoming's growth occurred when it had even more advantages over Delaware: in 2010, the state adopted laws inhibiting creditor recovery against LP investors, [118] which Delaware followed later.[119]

California, of course, scores quite poorly in LLC formation once controlling for the overall rate of business establishment. The difference from corporate formations is striking. California *corporate* chartering outperforms its business formations, while LLC formation underperforms. This difference lends support to the theory that California's robust corporate chartering is a result of the California Corporations Code section 2115, commonly called the pseudo-foreign

https://blog.opencorporates.com/2024/12/18/an-explosion-of-llcs-the-wyoming-angle-contd; Debbie Cenziper & Will Fitzgibbon, *The 'Cowboy Cocktail': How Wyoming Became One of the World's Top Tax Havens*, WASH. POST (Dec. 20, 2021), https://www.washingtonpost.com/business/interactive/2021/wyoming-trusts-finance-pandora-papers/.

[111] Christopher M. Reimer, *The Undiscovered Country: Wyoming's Emergence as a Leading Trust Situs Jurisdiction*, 11 WYO. L. REV. 165, 168, 174 n.51 (2011); Dale W. Cottam et al., *The 2010 Wyoming Limited Liability Company Act: A Uniform Recipe With Wyoming "Home Cooking*", 11 WYO. L. REV. 49, 52–53, 95 (2011).

[112] Other aspects of its law are akin to Delaware's. It departs from the ULLCA by permitting only charging orders as a remedy against creditors who hold interests in an LLC.

[113] *Delaware vs Wyoming LLC: Which State to Choose*, USFORMATION (July 23, 2025), https://usformation.com/articles/delaware-vs-wyoming-llc-which-state-to-choose.

[114] Will Fitzgibbon et al., *The Gatekeepers who Help Open America to Oligarchs and Scammers*, ICIJ (Apr. 5, 2022), https://www.icij.org/investigations/pandora-papers/the-gatekeepers-who-help-open-america-to-oligarchs-and-scammers/ ("Delaware began requiring that registered agents scrutinize potential customers and check their names against the U.S. Treasury Department's list of people under sanction"); 20 DEL. ADMIN. CODE §101 (2025).

[115] *See* Padrós, *supra* note 109; Spencer Woodman, *Millions in Covid Relief Funds went to Shadowy Companies Registered at a Wyoming Storefront that Hundreds of Thousands of Firms Used as an Address,* ICIJ (Mar. 4, 2025) (emphasis added), https://www.icij.org/investigations/pandora-papers/millions-in-covid-relief-funds-went-to-shadowy-companies-at-a-wyoming-storefront-that-hundreds-of-thousands-of-firms-used-as-an-address/.

[116] WYO. STAT. ANN. § 17-29-304(c), (d) (2025). *See* Amy M. Staehr, *The Discovered Country: Wyoming's Primacy as a Trust Situs Jurisdiction*, 18 WYO. L. REV. 283, 318–19 (2018) (recognizing the distinction in formalities which are required by law versus non-legal formalities as identified in Wyoming's amendments). Wyoming adopted this strict approach to repudiate a pro-piercing decision, *GreenHunter Energy, Inc. v. W. Ecosystems Tech., Inc.*, 337 P.3d 454, 464–69 (Wyo. 2014). *Will your Veil be Pierced? How Strong is your Entity's Liability Shield? — Piercing the Veil, Alter Ego, and Other Bases for Holding an Owner Liable for Debts of an Entity*, 12 HASTINGS BUS. L.J. 349, 431 n.408 (2016) ("The legislative fact sheet accompanying the amendment indicates that the changes were in response to *GreenHunter Energy, Inc. v. Western Ecosystems Technology, Inc.*, 337 P.3d 454 (Wyo. 2014).").

[117] *See* Caitlin Long, *What Do Wyoming's 13 New Blockchain Laws Mean?*, FORBES (June 29, 2021, 4:51 AM), https://www.forbes.com/sites/caitlinlong/2019/03/04/what-do-wyomings-new-blockchain-laws-mean/.

[118] *See* Dale W. Cottam et al., *The 2010 Wyoming Limited Liability Company Act: A Uniform Recipe With Wyoming "Home Cooking*", 11 WYO. L. REV. 49, 52–53, 95 (2011) (citing WYO. STAT. ANN. §§ 17-29-401, 17-29-503 (2025)).

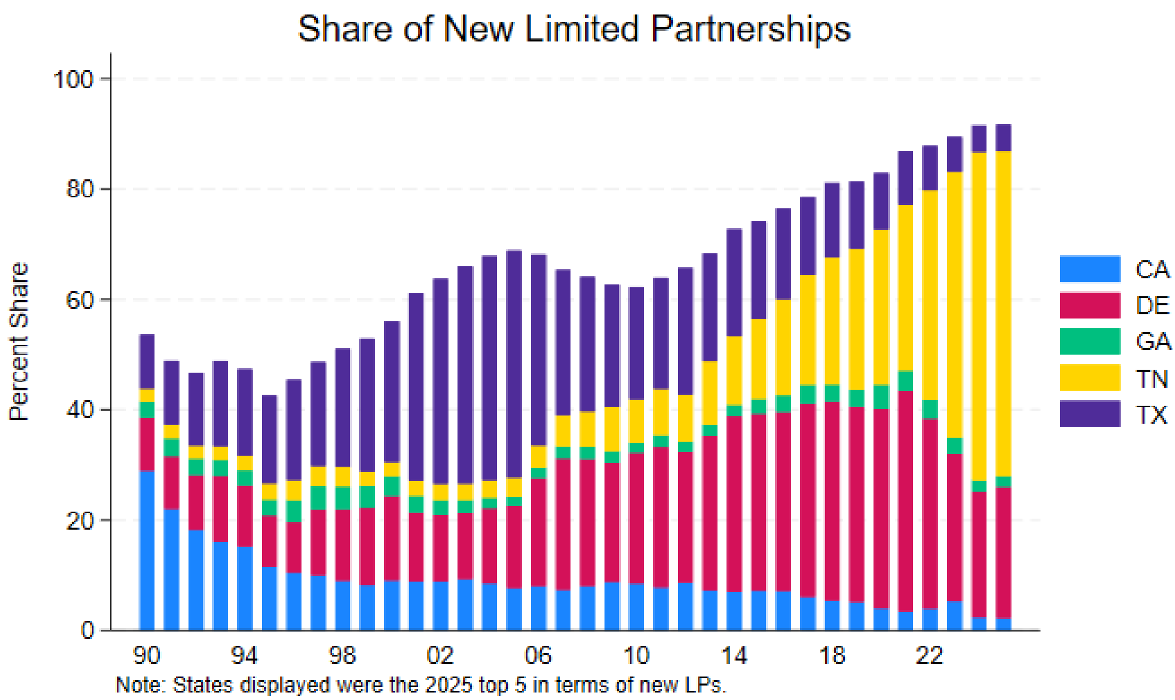
[119] RICHARDS, LAYTON & FINGER, P.A., *Delaware LLC & Partnership Law Update*, (July 1, 2013), https://www.rlf.com/delaware-llc-partnership-law-update/ (noting Delaware "confirmed" more clearly the sole charging order remedy in 2013, as well as its applicability to sole member LLCs).

corporation doctrine.[120] That section applies key sections of California corporate law to locally-operating corporations, regardless of where they incorporate. It reduces the effect of incorporating elsewhere, and therefore encourages local (California) incorporation. Section 2115 does not apply to LLCs, so California businesses are free to form LLC in other states. It appears that they often do so.

C. Limited Partnership

When we turn to the limited partnership, we may be unsurprised to see two states leading historically: Texas and Delaware. This may be because we associate Limited Partnerships with Oil & Gas (a Texas specialty) and financial and real estate firms (Delaware favorites).

Figure 21



Still, the rise of Delaware relative to Texas may be suggestive of deeper trends. Have oil & gas declined in their importance as the energy economy shifts? Has that sector found greater comfort with the LLC? Or have formerly Texas-incorporated oil and gas businesses turned to Delaware? And why have Delaware's users grown more excited to use the limited partnership, rather than shifting over to LLCs? Questions likewise abound regarding the biggest surprise in the data: Tennessee's meteoric growth to become the producer of about half of all limited partnerships – more than 46,000 in 2024 alone. Has Tennessee pursued a strategy of aggressive competition to dominate the limited partnership market, or perhaps subsidized sectors associated with limited partnerships? The Corporate Census raises these questions, but further research will be needed to answer them.

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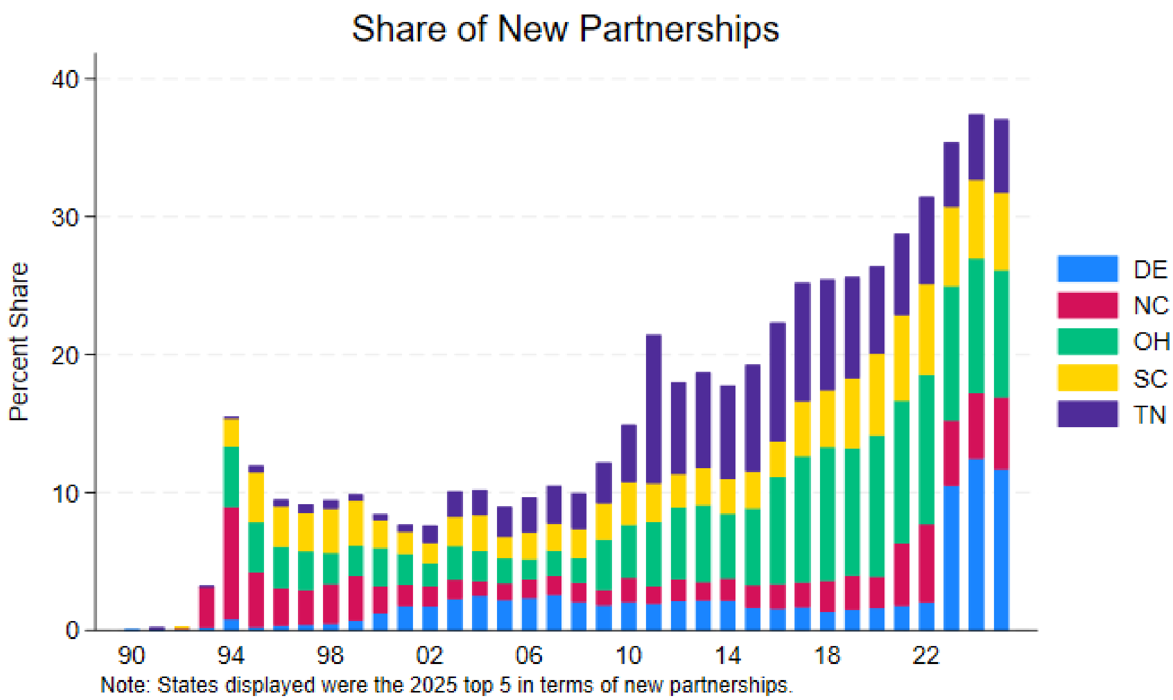
[120] CAL. CORP. CODE § 2115.

D. Partnership

We can likewise track the relative prevalence of states in recognizing partnership formation. However, this enterprise is challenging because partnerships may be formed without a state filing. Therefore, most partnerships are unlikely to be registered. Those in this dataset are the few partnerships that opted to register.

Partnerships typically register because doing so is a precondition for obtaining limited liability (becoming an LLP). Limited liability partnerships simply did not exist prior to 1992.[121] So our figures on partnership formation are essentially zero prior to that point. Early on, the prevalence of particular states is partially a result of the order in which limited liability was authorized. Texas is not now a prominent partnership chartering state, but its early willingness to allow limited liability made it quite potent in the early 1990s, before most other states caught up.

Figure 22



VI. Uniform and Model Acts

Corporate federalism is often considered on a state-by-state basis: scholars ask which state is winning the race for incorporation and why. Individual states update their law to please constituencies. But there are other planes of competition. Mark Roe famously argued that Delaware's dominance is not threatened by Nevada or Texas, but by the federal government.[122]

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[121] Lynn Bai & Sarah Harden, *Limited Liability Partnerships: An (Overlooked) Hole in the Shield*, 23 U. PA. L. REV. 862, 863–63 (2021).

[122] Roe, *supra* note 5, at 644; *see also* William J. Moon, *Delaware's New Competition*, 114 NW. U. L. REV. 1403 (2020); Omari Scott Simmons, *Delaware's Global Threat*, 41 J. CORP. L. 217 (2015).

This part considers whether no particular state constitutes Delaware's greatest threat, nor the federal government either.

Coalitional competition also exists. Many states can have the same law. Model acts have been drafted promulgated across multiple jurisdictions. These model acts are designed by different institutions, pursuant to different incentives, from the sui generis law of a given state. To the degree uniform or modal acts are popular, it changes the character of the marketplace for charters.

Considering uniform acts as a phenomenon, above and beyond the law of any given state, also gives us a different sense of what is popular and what is important. If a given state leads the market for charters, we might think it important to teach that state's law. We might want to research how that law operates. And we might also assume the best of that law—it must be good enough to attract lots of companies. States that lack incorporation are downgraded for teaching, research, and normative assessment.

But if laws are uniform, then it may be a mistake to evaluate law on a state-by-state basis. If many states use the same law, a law student may want to learn that law, because it permits her to understand the law of many entities. A change in that law may be consequential and worthy of study, as it ripples from state to state. And we may think that the right evaluation of the law is not a given state's incorporations, but instead the incorporations in set of all states subject to the law.

This Section groups states with similar laws to evaluate them as a set. When a state adopts a given model law, we score its incorporations as incorporations for that model law beginning in that year. When we do, we find surprising importance for model and uniform laws.

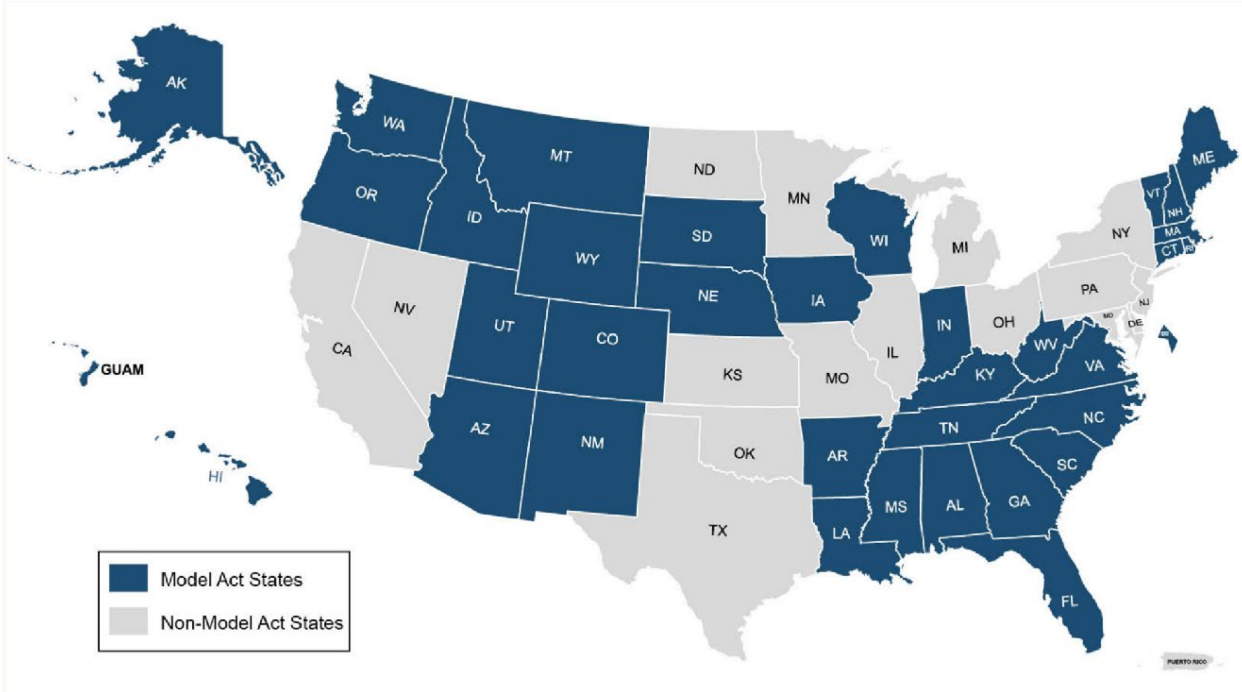
A. MBCA

First, we can look to the Model Business Corporation Act.[123] This model law is promulgated by the Business Law Section of the American Bar Association. It was first published in 1950, but reached substantially its current form in 1984, which is also the year in which widespread adoption followed.[124]

[123] MODEL BUS. CORP. ACT, (AM. BAR. ASS'N 2024), https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/mbca-202404.pdf.

[124] *Model Business Corporation Act Resource Center*, AM. BAR. ASS'N, https://www.americanbar.org/groups/business_law/resources/model-business-corporation-act (last visited Jan. 6, 2026).

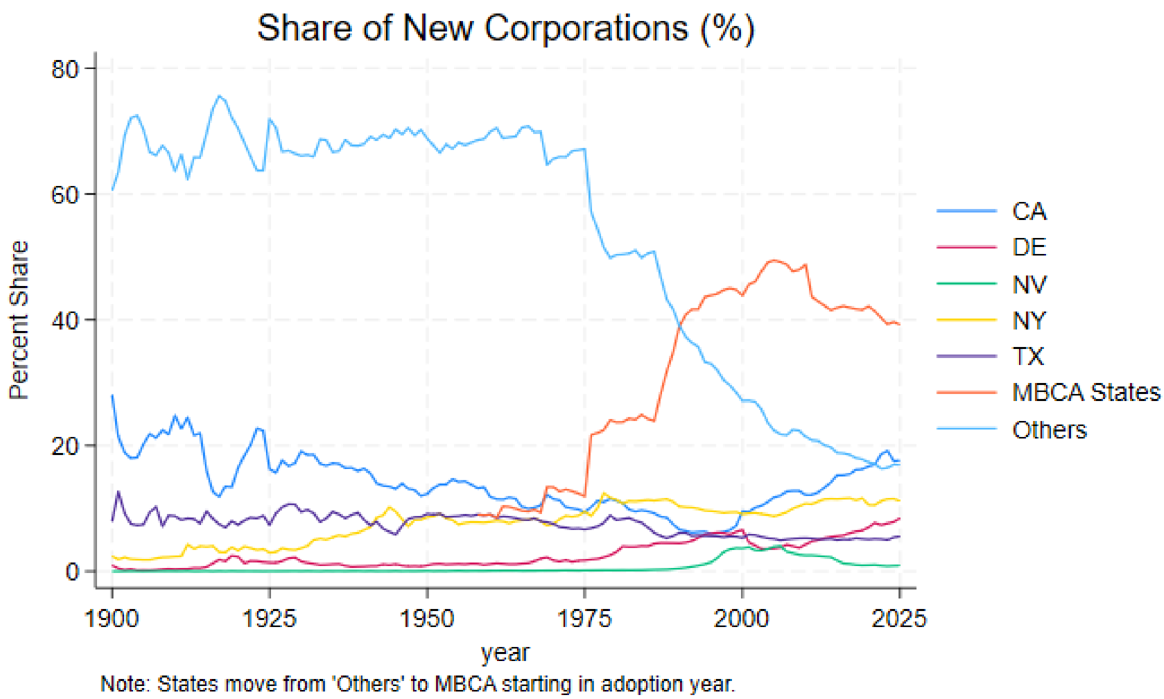
Figure 23



The MBCA is now the law of most states,[125] but those states are usually thought to be marginal players in the market for charters, so little attention is given to the MBCA. Leading textbooks discuss this statute only sparingly. Likewise, it rarely warrants mention in scholarly articles. The following figure shows the growth of the MBCA as a percentage of all corporations formed, compared to Delaware.

[125] *Id.* The MBCA is not currently in effect in Nevada or Texas, but the former tracks the MBCA in many provisions. And Texas was governed by the MBCA from 1955 to 2010. Alan R. Bromberg et al., *The Role of the Business Law Section and the Texas Business Law Foundation in the Development of Texas Business Law*, 41 TEX. J. BUS. L. 41, 45 (2005); *Information on the Texas Business Organizations Code*, TEX. SEC'Y OF STATE, https://www.sos.state.tx.us/corp/boc.shtml. Among the states listed as Model Act adoptees, there is some non-uniformity among provisions. *See, e.g.,* Itai Fiegenbaum, Caremark's *Fractured State*, 80 BUS. LAW 59, 75–76 (2025) (discussing sixteen states, some of which are Model Act states, that have non-conforming exculpation provisions).

Figure 24



Several facts are significant here. First, the MBCA, considered as a single body of law, is the largest body of American corporate law. It covers nearly half of all American corporations, and vastly more than the law of Delaware. It has grown almost continuously, and it grew faster than Delaware law even during the periods in which Delaware is thought to have secured dominance.

In many ways, the story of American corporate federalism is not about Delaware's dominance: it has been about the rise of super-brands. The MBCA rolled up most states' local corporate law. Delaware stands as a holdout, buoyed by niche customers willing to pay for a premium product. Likewise, a few other large states have substantial clienteles, perhaps mostly in state firms.

Seeing the MBCA's marvelous growth naturally provokes the question: did its share rise because more states adopted it, or because those that adopted it subsequently enjoyed superior growth in their chartering operations? This question may matter because it would help us better understand how firms feel about the MBCA. A corporation that selected a state because it had the MBCA is endorsing it. A state that retained its charter, after the state switched to the MBCA, may make no such endorsement.

To test this, we compare rates of incorporation before and after adoption for states that adopted the MBCA, relative to states that did not adopt. We find that the MBCA's rise is attributable both to new state adoption and also increasing popularity of those states after adoption.

Table 1: Effect of MBCA Adoption on Number of New Corporations Per Year in Jurisdiction

VARIABLES	(1) first num_corp	(2) second num_corp	(3) third num_corp	(4) fourth num_corp	(5) fifth num_corp	(6) sixth num_corp
MBCA_1984	-10,858***	200.5***				
	(561.0)	(67.70)				
L.num_corp		1.000***		0.999***		0.999***
		(0.00149)		(0.00145)		(0.00145)
MBCA_2013			-9,280***	2.514		
			(3,389)	(385.7)		
MBCA_2016					5,526***	-841.8***
					(1,976)	(224.6)
Constant	154.5	54.81	154.5	54.98	154.5	54.94
	(1,447)	(169.2)	(1,489)	(169.3)	(1,489)	(169.1)
Observations	6,426	6,375	6,426	6,375	6,426	6,375
R-squared	0.322	0.991	0.282	0.991	0.282	0.991
Number of state_num	51	51	51	51	51	51

Ordinary Least Squares regression with unit and time fixed effects. Standard errors in parentheses. *** $p<0.01$, ** $p<0.05$, * $p<0.1$

This regression is simple in that it does not take account of many state-specific factors, such as changes to population over time. It merely asks whether the adoption of the MBCA coincides with a change in the state's incorporation trend. Model one finds that states that adopted the 1984 version of the MBCA saw substantially fewer incorporations in the following year, suggesting that the MBCA diminishes incorporation — but that does not yet account for the preexisting trend. States that were already losing charters might have been more likely to adopt the MBCA. Model two takes account of the state's pre-adoption incorporation level. Here, we find a statistically significant increase in post-adoption incorporations. It is consistent with the 1984 MBCA pushing the state's incorporation trajectory upward.

It makes sense to consider the effect of the 1984 version of the MBCA, since that was the defining version of the statute. The 2013 version represented essentially a cosmetic change, so it is unsurprising that it had a little effect, as seen in models three and four. The 2016 version seems to negatively affect the trend line, as seen in model six, though that result is based on a limited sample: only five states have adopted the 2016 version, most within the last five years. Where the data is strongest, and where the MBCA's adoption was most consequential, it appears as though the MBCA increased the state's popularity with incorporators.

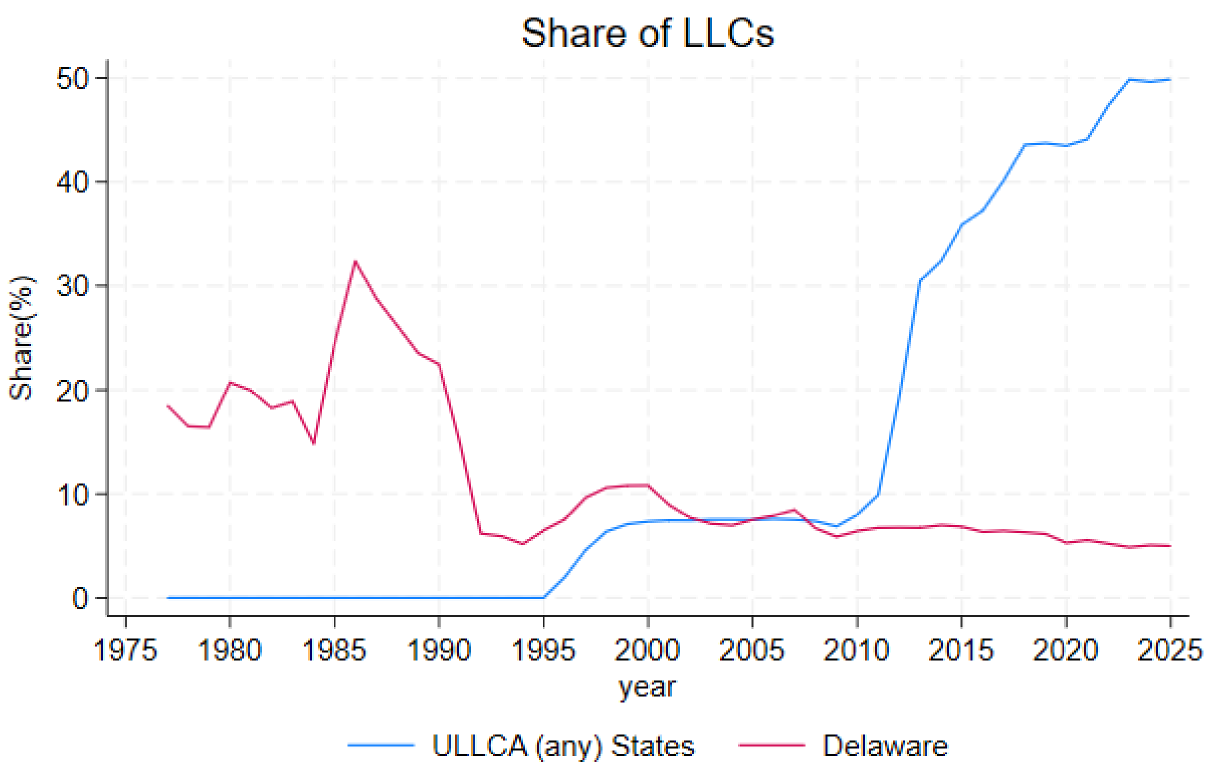
B. Uniform Acts

We can ask similar questions about the uniform laws governing other entities. The Uniform Laws Commission promulgates uniform acts for LLCs, Limited Partnerships, and Partnerships. Each uniform act has changed over time, but scholars are most interested in the differences between the 1917 Uniform Partnership Act and the 1997 Revised Uniform Partnership Act.[126] We can evaluate the popularity of each of these four laws (UPA, RUPA, ULLCA, and ULPA). As a threshold matter, we might be pessimistic about the prospects for the uniform acts. Ribstein argued that the political economy of their drafting rendered them structurally drawn toward inefficient rules.[127]

1. Limited Liability Company

First, let us consider LLCs. Delaware shows a moderate rise in its number of LLCs over time, but the explosive growth of LLCs is located outside of Delaware law. The Uniform LLC Act now governs the great majority of LLCs. A teacher who wished to familiarize students with LLC law would have been unsure how to proceed in 2009, but now the popularity of the Uniform Act is clear. Nearly half of all LLCs are governed by the ULLCA.

Figure 25



Some amount of the increased importance of the ULLCA is merely the result of increased adoption of the statute, which is consistent with the prior literature's skepticism: states adopt the ULLCA even though it is not efficient or popular with incorporators. Moreover, we find that the 1996 version of the ULLCA really was not effective in driving new incorporations (though states with low LLC formations were more likely to adopt it, in a bid to get or keep formations).

[126] *E.g.*, Clay B. Wortham, *Revised Uniform Partnership Act: Anomalies of a Simplified, Modernized Partnership Law*, 92 KY. L.J. 1083 (2004); Larry E. Ribstein, *The Revised Uniform Partnership Act: Not Ready for Prime Time*, 49 BUS. LAW. 45 (1993).
[127] *Id.* at 79–82.

However, we find that the 2006 version of the ULLCA was popular with states that already had high levels of LLC formation and that it spurred increased formations.[128]

[128] Dammann & Schündeln include data from 2006 and 2007, so they are not at fault for observing the effect of the new 2006 version, which did not enjoy widespread adoption until after their study. Dammann & Schündeln, *supra* note 75, at 753.

Table 2: Effect of ULLCA Adoption on Number of New LLCs Per Year in Jurisdiction

VARIABLES	(1) first num_llc	(2) second num_llc	(3) third num_llc	(4) fourth num_llc
ULLCA_1996	-22,912***	-442.3		
	(1,817)	(288.6)		
L.num_llc		1.049***		1.049***
		(0.00211)		(0.00208)
ULLCA_2006			11,764***	1,336***
			(1,910)	(296.9)
Constant	-0	1.22e-10	-0	7.09e-11
	(3,115)	(488.2)	(3,145)	(487.5)
Observations	6,426	6,375	6,426	6,375
R-squared	0.453	0.987	0.442	0.987
Number of state_num	51	51	51	51

Ordinary Least Squares regression with unit and time fixed effects. Standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1

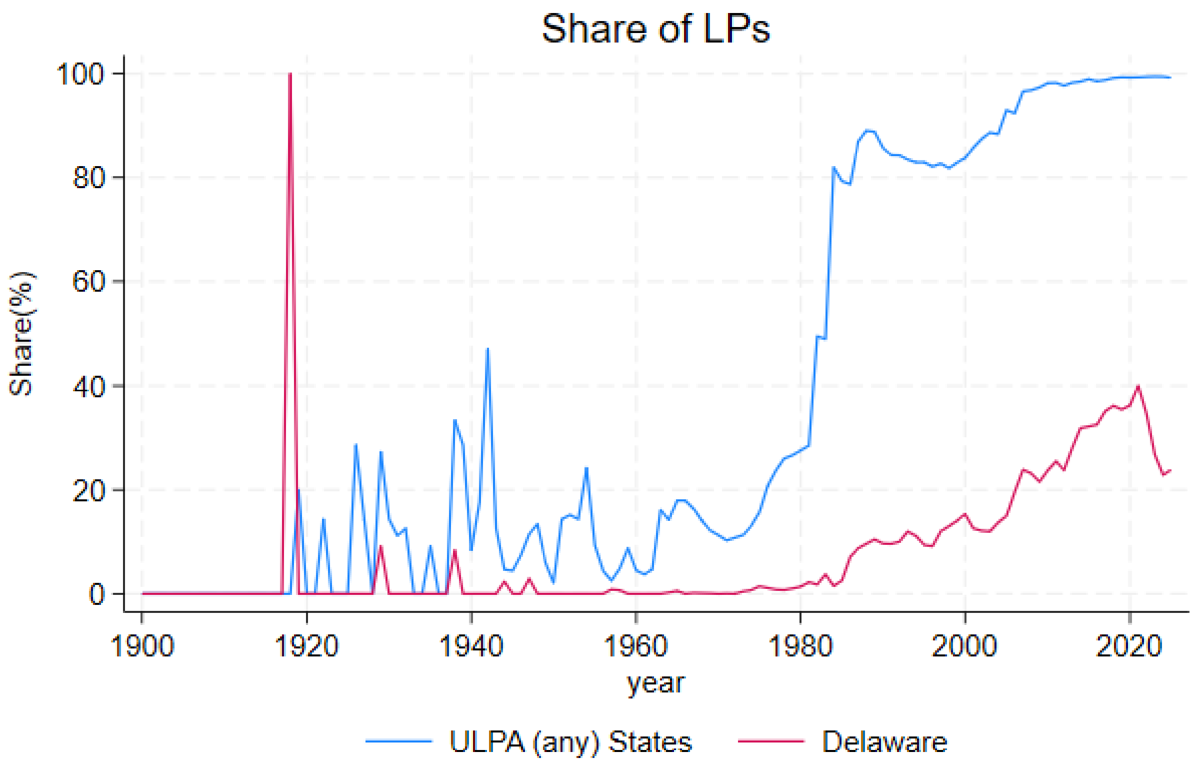
Table 2's third model shows that ULLCA adoption is followed by a large increase in LLC formations. That effect remains, albeit much smaller, once the prior trend in LLC formations is accounted for (model 4). The states that adopted the ULLCA were on an upward trend, but it becomes even steeper once the ULLCA is adopted.

As with the MBCA regression in Table 1, Table 2 is not the final word on the ULLCA. Whole papers have been devoted to evaluating the causal role of new adoption of entity legislation; this is only a preliminary look. But the look is intriguing. It appears that under the right conditions, ULLCA is not just popular with legislators but also with businesses.

2. Limited Partnership

Next, let us consider the limited partnership. Here, the total exceeds 100% because Delaware is a major site of incorporation and it is also a Uniform Act adopter. We can see that essentially all limited partnerships are adopted under some version of the Uniform Limited Partnership Act. This is in part because Delaware has adopted ULPA, and Delaware performs extremely well on its own.

Figure 26



3. Partnership

Partnerships are also subject to uniform acts and ample debate. Several important states retain the early 20th century version of the Uniform Partnership Act, while most other states have shifted to the modern Revised Uniform Partnership Act. Most scholars probably teach a bit of both laws, if only to contrast them. But it may be useful to ask how many partnerships are subject to either—and how many are subject to none at all. The next figure shows the answer.

Figure 27

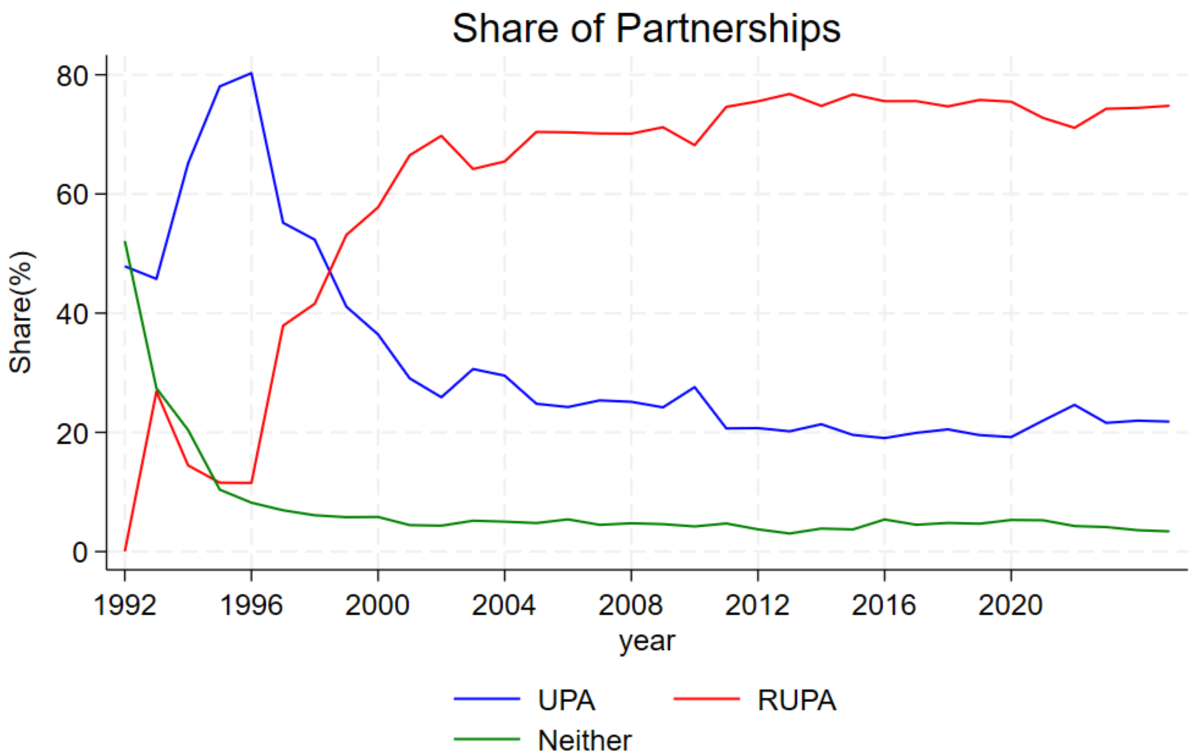


Figure *27* requires some significant interpretative caution. Partnerships can be formed without registration. It is only when a partnership registers—typically in order to secure limited liability—that an entity filing would exist and enter the entity database. Thus, this figure is mostly a demonstration of the popularity of a given law for LLPs rather than GPs. And general partnerships are probably more numerous than limited liability partnerships. This fact also explains why we've begun the figure in 1992. There was little reason to register a partnership in 1990, when limited liability partnerships were unavailable. The first state offered limited liability in only 1991,[129] followed soon by Delaware in 1993.[130] Early changes in the popularity of RUPA or UPA may be driven by the order in which states permitted limited liability.[131] Another point of caution is that the versions of RUPA available in 1992 and 1993 were preliminary versions. RUPA as we know it arrived in 1994.[132]

RUPA is dominant and that lead increases over time, largely as a result of more states adopting it. UPA remains robust, though. These entity-level results are consistent with scholarly

[129] Texas introduced limited liability partnerships with the passing of Texas House Bill 278. Robert W. Hamilton, *Registered Limited Liability Partnerships: Present at the Birth (Nearly)*, 66 U. COLO. L. REV. 1065, 1065 (1995); 1991 Tex. Gen. Laws 3161, 3234–35, ch. 901, § 84 (codified at TEX. REV. CIV. STAT. ANN. ART. 6132b, § 15).

[130] 69 Del. Laws 37 (1993), available at https://1.next.westlaw.com/Document/I78261F5BBBAE4D67822178706F8B628F/View/FullText.html.

[131] Delaware, for example, adopted RUPA in 1999. UNIF. L. COMM'N, *Partnership Act,* https://www.uniformlaws.org/committees/community-home?communitykey=52456941-7883-47a5-91b6-d2f086d0bb44 (last visited Jan. 7, 2026).

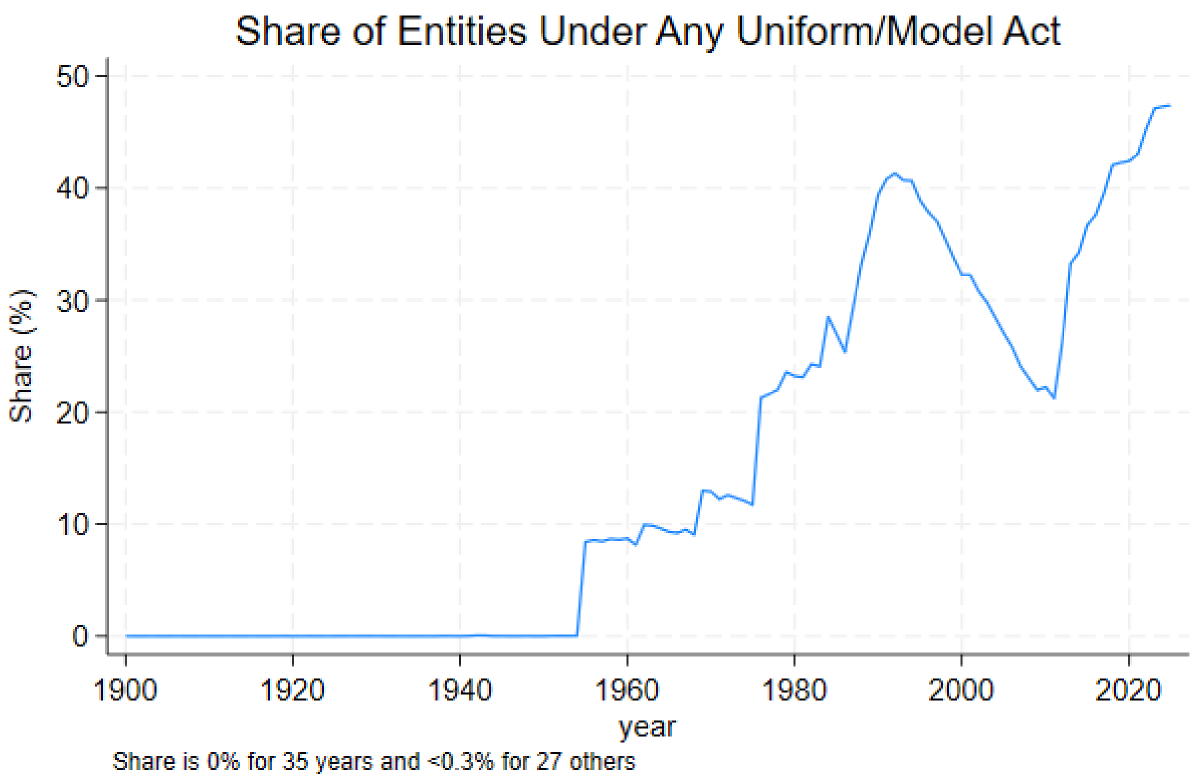
[132] J. Dennis Hynes, *Foreword*, 58 LAW & CONTEMP. PROBS. 1 (1995).

expectations. The literature has long understood RUPA to operate in large and growing majority of states,[133] while UPA remains relevant in a few important holdouts.[134] The Corporate Census contributes by providing entity-volume results that basically accord with state-level adoption results. This similarity is greater than we observed for corporations, where 2/3 of states had adopted a version of the act but less than half of corporations were subject to it.

C. Uniformity

Finally, we can look at the set of all uniform laws, relative to the set of all entities, to see whether uniform laws as a set are themselves popular. For any given entity, can we say what chance it is that it is formed under *some* model or uniform law, rather than the sui generis law of some state or another?

Figure 28



What we see is that almost half of all entities are governed by the MBCA or one of the uniform acts. Indeed, a student who learned just two laws—the MBCA and ULLCA would learn the law of almost the exact same percent of all business entities.[135]

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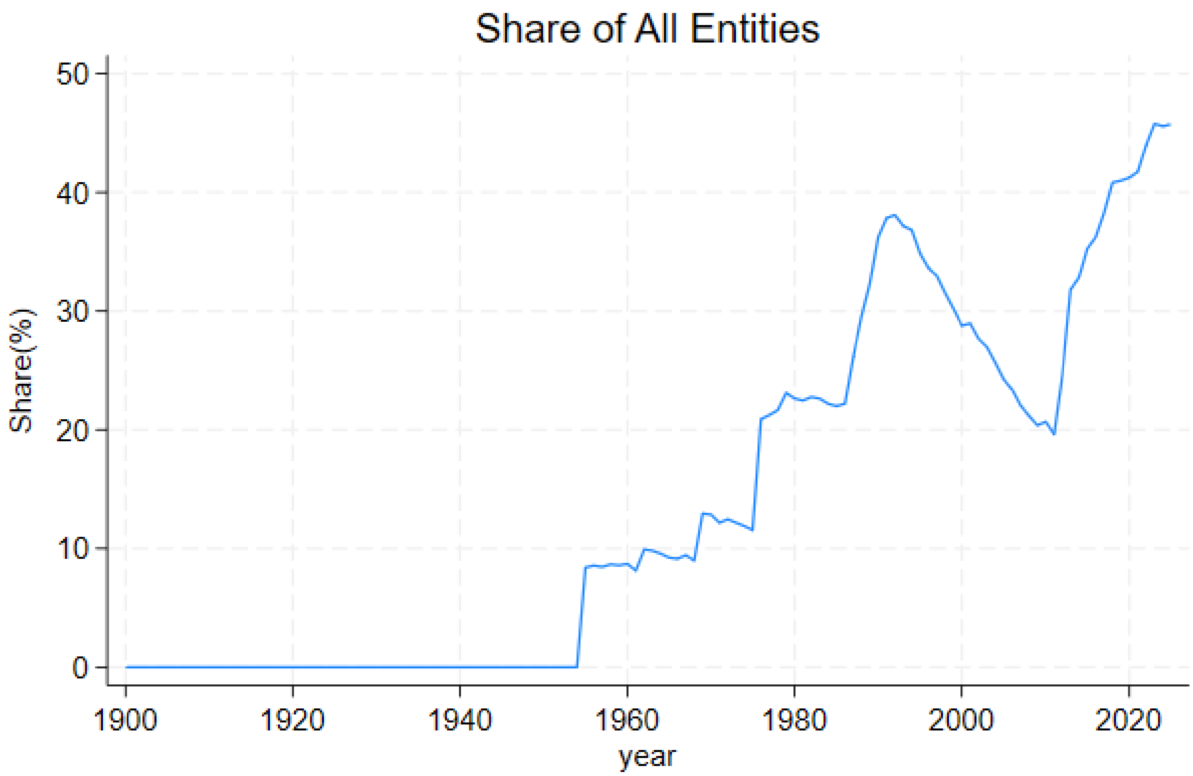
[133] Douglas K. Moll, *Contracting Out of Partnership*, 47 J. CORP. L. 753, 757 (2022).

[134] Sarath Sanga, *A Theory of Corporate Joint Ventures*, 106 CALIF. L. REV. 1437, 1467 n.99 (2018). New York and Massachusetts are the most prominent UPA states.

[135] Figure 29: ULLCA + MBCA entities as a share of all entities takes as its denominator all entities. Thus, it includes not just corporations and LLCs (the uniform or model laws which we evaluate) but also all limited partnerships, general partnerships, trusts, coops, etc. All these other entities are numerically few, so the results are almost identical when those other entities are excluded.

Figure 29: ULLCA + MBCA entities as a share of all entities



These patterns set the stage for the broader lessons we draw in Part VII.

VII. Implications

The foregoing parts detailed the construction of a new dataset and then deployed the data to observe trends in entity formation. While some analysis has taken place, to explain or contextualize the findings, larger reflections have been largely reserved for this section. Here, we pause to consider some of the big ideas latent in the Parts above: corporate law has moved from a period in which Delaware dominated over a fragmented field of states that had no serious change of competition, to a field that is shared by several large players; uniform and modal acts seem to have a more important and effective role to play than commonly thought; private companies come into focus as a topic of greater interest and importance; and teachers may require thoughtful engagement with a field that is wider and less unified than it once was.

A. From Hegemony to Multi-Polarity

We used to think of Delaware as the strong brand selected in competition against potential 50 competitors. Now we should think of Delaware as the strong dissenting option for those who opt out of the strong Model Act default. Texas, California, and New York also stand out with their sui generis laws and strong local networks.

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This structure marks a stark change in corporate law patterns. As Figure *24* showed, the corporate law of 50 years ago was massively fragmented. 75% of corporations were formed under the idiosyncratic law of one smallish state or another. Now, less then 20% of corporations fit that bill. As Figure *24* also showed, 80% of corporations are formed under the MBCA, Delaware, or one of their three serious competitors

This transformation has not been fully appreciated, nor all of its implications acknowledged. Consider the controversy surrounding the American Law Institute's Restatement of Corporate Governance.[136] Restatements often contribute when many different approaches exist and overlap in myriad American jurisdictions. For example, the Restatement of Contracts arguably contributed so much because dozens of American states had developed their own common law, using different and ambiguous terminology, coming to decisions that weren't just different—they were confusing.[137] That was probably the state of American corporate governance in 1975. It was likewise the shape of things in the early 1980s when the American Law Institute began to work on the Restatement of Corporate Governance (later reconceived as a Principles). It is not the state of American corporate law today.

This change in circumstances does not fully address the appropriateness of a Restatement of Corporate Governance. The project may be wise or unwise for other reasons entirely. But it is possible that partisans clash in part because of their sense of how much diversity there is to organize and restate. Until now, that sense was only tacit. Now, we can ask fine how best to organize doctrinal consolidation in a world of finite multi-polarity.

What we observe in the overall trend is the rise of megabrands in entity law. Most businesses prefer an LLC, and almost half select the same law (the ULLCA). Some businesses prefer corporations, and nearly half select the same law (MBCA). Some businesses have special goals for their business entity, and they may select Delaware for their LLC or corporation (or sometimes limited partnership). Opting into Delaware's products makes sense when Delaware's niche products are valuable. For LLCs, that is about contractual freedom (greater in Delaware than elsewhere). For corporations, that includes robust law on M&A and fiduciary duties. But MBCA, Texas, California, New York law all plainly stand as self-sufficient bodies of law, attracting or keeping their own corporate clientele. Scholars used to treating Delaware as a hegemon should continue to recognize Delaware's dominance in the market for large-public charters, but they should also see its overall position in entity law as one of a half-dozen powerful participants.

B. Patterns of Competition

Seeing the diversity of successful chartering jurisdictions may lead to new perspectives on how and why states compete for charters. For years, Delaware's success with large, public companies led to questions of why it prevailed over other states. Explanations begin with the product offered. Delaware's law is widely thought to be extensive, predictable,[138] flexible,[139] well-

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[136] Stephen M. Bainbridge, *Do We Need A Restatement of Corporate Governance?*, 78 BUS. LAW. 439 (2023); Edward B. Rock, *The ALI's Restatement of Corporate Governance: A Reply to Professor Bainbridge*, 78 BUS. LAW. 451 (2023).
[137] *See* Joseph R. Taylor, *The Restatement of Contracts*, 18 A.B.A. J. 796 (1932).
[138] Melvin Aron Eisenberg, *The Structure of Corporation Law*, 89 COLUM. L. REV. 1461, 1508 (1989) (acknowledging the predictability of Delaware law).
[139] Manti Holdings, LLC v. Authentix Acquisition Co., Inc., 261 A.3d 1199, 1217 (Del. 2021) ("Delaware's corporate statute is widely regarded as the most flexible in the nation . . .").

balanced among the relevant constituents,[140] buttressed by powerful network effects,[141] and an able judiciary.[142] Other states were thought to compete mainly to keep corporations from incorporating away to Delaware, largely in order to preserve local legal jobs.

One notion implicit in that discussion was that Delaware's advantages helped it *generally*, in attracting all types of corporations. Who doesn't want flexible, predictable law? True, small private firms may be reluctant to form out of state, but when they consider doing so, Delaware's best features should draw them.

Yet we observed in Figure 5 that Delaware's dominance in public firms grew even as its share of private firms shrank. This suggests that Delaware's interest and ability to attract corporations can sometimes force choices about which corporations to attract.

In some sense, this is unsurprising. Small companies pay lower franchise fees. Delaware has calibrated its growth to maximize its share of high-fee payers.[143] It may also follow naturally from economies of specialization. The institutions supportive of public companies may not equally support private companies. It may pay to just focus on one thing and do it right. For example, big companies may value prompt judicial decisions by business experts. They may need that credibility to assuage concerns of dispersed shareholders. Small private companies may not value prompt information from litigation, since the litigants already know a great deal about the company's situation. They just need a resolution of the issues. Large companies also occupy wide enough geographic regions that regional expertise will be unimportant; disputes will center on business matters of general nature, so a generalist business judge may know the relevant business environment better than many individual litigants. Insofar as company specific-information is pertinent, it is already public as a result of the securities disclosure regime. The relevant issues for small private companies may be more thoroughly related to local knowledge, where the business operates, so that Delaware's faraway chancellors are at a disadvantage.

Interestingly, the substantive law itself may also be an institution that does not scale well. Consider Delaware Supreme Court's 1993 decision to eliminate the cause of action for oppression in a closely held corporation.[144] The court expressly reasoned that the corporate form should have the same rules, regardless of whether the corporation is big and public or small and close. Fine. But oppression doctrines are widely considered valuable for close corporations.[145] By deciding that all Delaware law should be the same, and having already decided to focus on large public companies, Delaware arguably made itself less attractive to private companies. And the subsequent outflows are consistent with that, though of course further research is required to test such hypotheses.

We can also think about the structures that make states successful in growing their chartering operations. One strand of the literature emphasizes state size. Small states, it is argued, have stronger incentives to attract incorporations because they depend more heavily on franchise

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[140] Jill E. Fisch, *The Peculiar Role of the Delaware Courts in the Competition for Corporate Charters*, 68 U. CIN. L. REV. 1061 (1999).
[141] *See* Sarath Sanga, *Network Effects in Corporate Governance*, 63 J.L. & ECON. 1 (2020).
[142] Fisch, *supra* note 133.
[143] *See* Marcel Kahan & Ehud Kamar, *Price Discrimination in the Market for Corporate Law*, 86 CORN. L. REV. 1205 (2001).
[144] Nixon v. Blackwell, 626 A.2d 1366 (Del. Sup. 1993).
[145] *See* Douglas K. Moll, *Shareholder Oppression in Close Corporations: The Unanswered Question of Perspective*, 53 VAND. L. REV. 749, 756–77 (2000).

tax revenue.[146] Larger states, with more diversified tax bases, can afford to be less accommodating. Delaware fits this model: it is small and increasingly reliant on entity-related revenue to support robust public spending and low local taxes.[147] Another line of reasoning highlights institutional stability.[148] Despite one-party dominance, Delaware has insulated its corporate lawmaking and judiciary from overt political pressure, reducing the risk of partisan capture.

California's high level of entity formation appears to contradict those theories. It is a large, prosperous, and partisan state—precisely the sort of state one would expect to neglect or abuse its chartering opportunities. And yet it has grown to be among the top two chartering states.

The trick is of course, that California applies its laws to locally-operating firms, regardless of where they incorporate.[149] Therefore, California-based corporations are more likely to form at home, even when Delaware might offer benefits. California demonstrates that one way to succeed in the race for charters is to opt out of the race. Still, why did California care enough to insist upon this exception to the Internal Affairs doctrine. One might have thought that a state too large and prosperous to care about maximizing chartering (for revenue purposes) would not have cared about maximizing chartering (for regulatory purposes). Small beer is small beer. One would have been wrong. Large states can be drawn into charter competition when their regulatory appetite is great enough. And this leads to further questions: why hasn't California's regulatory appetite been limited to corporations alone? California does honor the Internal Affairs Doctrine for LLCs, and for LLCs it suffers a large exodus of charters. It is difficult to explain what dampens California's regulatory instincts there.

C. Evaluating Model and Uniform Acts

Some scholars have argued that model and uniform acts are inherently suspect products. Unlike states, which have an incentive to optimize their entity laws to gain or keep charters, the drafters of model and uniform acts do not directly monetize their product. Instead, they enjoy the prestige of having had their handiwork widely adopted, or they may gain lucrative practice opportunities, as experts in a statute that is— perhaps deliberately—prone to litigation.[150] And some empirical scholarship has found that medium-sized LLCs are less likely to form under the ULLCA.[151]

However, our findings are more optimistic about the uniform acts. Preliminary analysis of the entire LLC universe suggests that the most popular entity in America thrives under the Uniform Act. This suggests that the political economy arguments against the uniform acts may have been

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[146] Roberta Romano, *Law as Product: Some Pieces of the Incorporation Puzzle*, 1 J.L. ECON. & ORG. 225, 235 (1985); Oliver Williamson, *Credible Commitments: Using Hostages to Support Exchange*, 73 AM. ECON. REV. 519 (1983).

[147] John C. Carney, *Financial Overview Fiscal Year 2024*, DEL. OFF. OF THE GOVERNOR (Jan. 26, 2023), https://web.archive.org/web/20250416081828/https://governor.delaware.gov/wp-content/uploads/sites/24/2023/01/FY-24-Budget-Presentation-Governor-Carney_Online.pdf.

[148] Ofer Eldar & Gabriel Rauterberg, *Is Corporate Law Nonpartisan?*, 2023 WIS. L. REV. 177 (2023).

[149] CAL. CORP. CODE § 2115.

[150] Larry E. Ribstein & Bruce H. Kobayashi, *An Economic Analysis of Uniform State Laws*, 25 J. LEGAL STUD. 131, 132 (1996).

[151] Dammann & Schündeln, *supra* note 75. Damman and Schündeln worked from Bureau van Dijk, ICARUS: Instant Company Analysis and Reports for the U.S. and Canada. *See ICARUS: Company Information and Business Intelligence for the US and Canada*, BUREAU VAN DIJK, available at https://web.archive.org/web/20121207103015/http://www.bvdinfo.com/Products/Company-Information/National/Icarus.aspx (last visited Nov. 18, 2025). This dataset is now operated by Moody's Orbis. *Orbis*, MOODY'S, https://www.moodys.com/web/en/us/capabilities/company-reference-data/orbis.html (last visited July 11, 2025). Dammann excludes LLCs with fewer than 20 employees. Dammann & Schündeln, *supra* note 75, at 744. And, of course, there is no assurance that ICARUS is comprehensive.

overstated. Whatever problems the ULLCA has are not sufficient to overcome the popularity that comes from network effects or other benefits accrued with time.

The Uniform Limited Partnership Act's palatability is hard to establish; since nearly all LPs are formed under it, it is hard to compare businesses' relative levels of interest in differing laws. But the fact that even Delaware has adopted this Act, and few businesses opt out of it, suggests that it too has adequately achieved its goals.

Further research is required to fully establish these conclusions, testing them with more comprehensive methods, but the Corporate Census should serve as impetus for doing so.

D. A Focus on Private Corporations

The empirical and normative literature on corporate law and federalism is almost exclusively focused on the largest publicly traded corporations. Only a few scholars have studied entities other than Delaware public corporations. Lately, a growing literature studies the declining number of public companies.[152] The Corporate Census contributes to that latter literature because it examines the many entities outside of that important subset. By making them visible, and showing what surprises they may hold, the project seeks to move the field's focus.

This is important because there are a great many corporations that are not publicly traded. There are a great many entities that are not corporations. And there are a great many entities (corporate or not, public or not) formed outside of Delaware. These entities get less attention, which reflects a tacit normative judgment about the importance of attending to them.

Public companies have always been few in number. There are perhaps 4300 U.S.-headquartered public companies, down from 7300 in 1996.[153] Yet with 33 million businesses in the US, more than 99.99% are not part of a publicly traded.[154] Publicly traded firms employ about 28.3 million people, compared to 96.7 million private company employees. Thus, 77.4% of employees work in the vast sea of private companies.[155] Even when focused on corporations alone, about as many people work for private corporations as public corporations.[156]

Naturally, there are also good reasons to study large publicly traded corporations, particularly those incorporated in Delaware. Delaware corporate law governs some of the most important transactions, the focus of elite law graduate work. And public corporations are large businesses with an outsized contribution to GDP and R&D. The corporations in the S&P 500 employ tens of thousands of people each.

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[152] *E.g.*, Kahle & Stulz, s*upra* note 12.

[153] Nicole Goodkind, *The Stock Market is Shrinking and Jamie Dimon is Worried*, CNN (Apr. 9, 2024), https://edition.cnn.com/2024/04/09/investing/premarket-stocks-trading/index.html.

[154] Hal Weitzman, *Is the US Economy 'Going Dark'?*, CHI. BOOTH REV. (May 30, 2023), https://www.chicagobooth.edu/review/is-us-economy-going-dark.

[155] *Distribution of Private and Public Company Employment Across the United States*, ERNST & YOUNG (2021), https://s-corp.org/wp-content/uploads/2021/09/S-Corp-Association-Slide-deck-Public-Employment-Analysis_.pdf.

[156] *See New EY Employment Numbers and Main Street Resources*, S-CORP (Nov. 1, 2021) https://s-corp.org/2021/11/new-ey-employment-numbers-and-main-street-resources/ (explaining that 80% of people work for private companies, of which 62% are passthrough). That leaves 18% for private C corporations. Many passthrough companies are private S Corps, so 18% is a floor, not a ceiling on the number of employees at private corporations. *See Pass-through entity: Overview and FAQs*, THOMSON REUTERS (updated Oct. 10, 2025), https://tax.thomsonreuters.com/en/glossary/pass-through-entity#:~:text=There%20are%20four%20types%20of,taxation%20on%20the%20corporate%20income (explaining that S corporations may be used as often pass-through entities because S corporations pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes, enabling the entity to avoid double taxation on the corporate income) (internal quotations omitted).

While many private businesses are small, a great many are large enough to be economically significant.[157] Although large, public firms lead in R&D spending,[158] their smaller private peers contribute more than is commonly assumed.[159] Private companies account for about half of aggregate sales and profits from US businesses.[160]

Public companies are naturally salient in the chartering debate because Delaware charges its largest, publicly traded firms franchise fees that can reach $250,000 per year—far higher than any other state imposes on any class of entity.[161] But Delaware has only about 2,451 publicly traded corporations.[162] Even if each paid the statutory maximum, they would generate roughly $613 million. Delaware's total annual franchise-tax revenue is $1.817 billion.[163] Private companies must therefore supply the remaining $1.2 billion—about 66% of the state's franchise-tax take.

The same pattern is even more pronounced elsewhere. California, for example, raises roughly $2 billion annually in franchise fees despite having relatively few public companies and without imposing a Delaware-style surcharge on them.[164] These are large fiscal stakes. Debates about state incentives are impoverished if they overlook the fact that most "franchise-tax treasure" comes not from public companies but from the vast private-company base.

Those data about the economic significance of privately held businesses have been available for years, though they do not seem to be front-of-mind in the debate on corporate federalism. More importantly, other data about entities has not been available. We have not explored just how many private entities there are, nor where they form, nor what type they are. Lacking this knowledge,

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[157] U.S. CHAMBER OF COM., LARGE PRIVATE COMPANIES IMPACT REPORT (2024), https://www.uschamber.com/assets/documents/Large-Private-Companies-Impact-Report.pdf.

[158] The S&P 500 firms spend about $478.8 billion on R&D. *See* Stephen Vannelli, *S&P 500 Innovation Leaders vs. Followers*, VETTAFI ADVISORS PERSPS. (Oct. 19, 2022), https://www.advisorperspectives.com/commentaries/2022/10/19/s-p-500-innovation-leaders-vs-followers. That constitutes about 78% of private sector R&D. *See The State of U.S. Science and Engineering 2024*, NAT'L SCI. BD. (Mar. 2024), https://ncses.nsf.gov/pubs/nsb20243/ (attributing $608.6 billion to business sector R&D).

[159] John Asker et al., *Comparing the Investment Behavior of Public and Private Firms* (Nat'l Bureau of Econ. Rsch., Working Paper No. 17394, 2011) (available at https://www.nber.org/papers/w17394) (finding that private firms are 3.5 times more responsive to changes in investment opportunities than are public firms). *But see* Naomi Feldman, et al., *Investment Differences Between Public and Private Firms: Evidence from U.S. Tax Returns*, 196 J. PUB. ECON. 1 (2021) (finding that private firms make lower R&D expenditures).

[160] Richard Cole Campbell & Jacob A. Robbins, *The Value of Private Business in the United States*, 249 J. PUB. ECON. 1 (2025). There is also ample discussion of the trendline. *Compare* Mark J. Roe & Charles C.Y. Wang, *Half the Firms, Double the Profits: Public Firms' Transformation,* 8 J.L. FIN. & ACCT. 221 (2025) (arguing that public firms have maintained a relatively constant share of the economy), *with* Frederik P. Schlingemann & René M. Stulz*, Have Exchange-listed Firms Become Less Important for the Economy?*, 143 J. FIN. ECON. 927 (2022) (finding that public firms contribute less to the economy and to employment now than they did in the 1970s).

[161] *Franchise Taxes*, DEL. DIV. OF REVENUE, https://revenue.delaware.gov/business-tax-forms/franchise-taxes/ (last visited Nov. 18, 2025) (listing franchise fees owed by Delaware corporations). For a comparison of other states' maximum franchise fees for large publicly traded companies, *see Drake Tax – 1120: States with Franchise Tax*, DRAKE SOFTWARE (Dec. 5, 2024), https://kb.drakesoftware.com/kb/Drake-Tax/14929.htm.

[162] *Delaware Tells Companies: 'Let's Stay Together'*, HARV. L. SCH. FORUM ON CORP. GOVERNANCE (May 23, 2025) https://corpgov.law.harvard.edu/2025/05/23/delaware-tells-companies-lets-stay-together/) (reposting Edward B. Micheletti & Jenness E. Parker, *Delaware Tells Companies: 'Let's Stay Together'*, SKADDEN (Nov. 15, 2025), https://www.skadden.com/insights/publications/2025/05/the-informed-board/delaware-tells-companies).

[163] DEL. DIV. OF CORPS., ANNUAL REPORT STATISTICS (2024), https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2024-Annual-Report.pdf.

[164] Every business incorporated in California must pay a $800 franchise fee each year. *Corporations*, STATE OF CAL. FRANCHISE TAX BD., https://www.ftb.ca.gov/file/business/types/corporations/index.html#:~:text=Every%20corporation%20that%20is%20incorporated,Extensions (last visited Nov. 15, 2025).

we are unable to update our research and teaching priorities. And perhaps we have lacked this knowledge because our priorities were not sufficiently focused on those entities. Our failure to notice is in part circular: because smaller private entities were deemed unimportant, little research was directed to examining them—research that could have discovered their importance. Regardless, data is now available, and it may update our priorities accordingly.

One response to this renewed focus on private companies may be to say that the Corporate Census brings us too far. After all, many of the entities in the dataset are not just smaller than public companies—they may be economically inconsequential. The Corporate Census includes entities that have no employees and no assets. It includes shells that do not yet have a business and holding companies that do not have a business of their own. It includes companies formed only as a step in a triangular merger, as well as many LLCs that own only a single real estate parcel. This Article makes no attempt to strip out the entities that are not employing half of Americans or doing lots of R&D.

To the contrary, economic insignificance can also be a reason for study. Shell companies and companies within a holding company structure may lack assets, employees, or practical independence. They may lack a decent name. But they may also be the proper study of a business law professor. They are used in money laundering, asset securitization, securitization, judgment proofing, asset partitioning, fiduciary duty modification, and a variety of other strategic operations. Ideally, someone would take the study of these entities seriously.

Doing so might uncover a hidden secret in the operation of the field of business associations. Most law professors think of their work as downstream of the economic theory of the firm. That is, they think of businesses as organizations of people aligned to perform economic functions, and they think of entity law as a kind of skin into which that firm is placed. But there are two "theories of the firm:" one economic and legal. The economic theory of the firm investigates the pattern of economic organization, asking why some production occurs within hierarchical bureaucracies and other production emerges from market contracts.[165] The legal theory of the firm asks why some production occurs within a single legal person and why other production crosses entity boundaries.[166] Both are legitimate domains of study, and the latter cannot proceed without visibility into entities that have limited stand-alone economic activity, but which might be part of a larger structure of production.

The legal theory of the firm recognizes that legal entities and economic firms need not be coextensive, studying what these legal partitions achieve. Some of the most creative work in this field reimagines entity law as a law of creditors' rights, akin to mortgages and Article 9 security interests.[167] One wouldn't see that by studying a few thousand large conglomerates. But one might see that by studying millions of entities born to hold a single asset and then expire. To decide whether tiny LLCs are peripheral or central is to decide what the field is about. That is a normative interpretation, rather than a factual matter. To perform a census is to see the social construction of the domain enumerated.

[165] E.g. Ronald M. Coase, *The Nature of the Firm*, 4 ECONOMETRICA, 386 (1937); Oliver Williamson, *Transaction-Cost Economics: The Governance of Contractual Relations*, 22 J.L & ECON. 233 (1979); Sanford Grossman & Oliver Hart, *The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration*, 94 J. POL. ECON. 691 (1986).
[166] Edward M. Iacobucci & George G. Triantis, *Economic & Legal Boundaries of Firms*, 93 VA. L. REV. 515, 517–18 (2007); George G. Triantis, *Organizations as Internal Capital Markets: The Legal Boundaries of Firms, Collateral, and Trusts in Commercial and Charitable Enterprises*, 117 HARV. L. REV. 1102, 1138 (2004).
[167] Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L.J. 387 (2000); Ofer Eldar & Andrew Verstein, *The Enduring Distinction Between Business Entities and Security Interests,* 92 S. CAL. L. REV. 213 (2019); Robert Anderson, *The Sea Corporation*, 108 CORN. L. REV. 1569 (2024).

E. Pedagogy

Most business associations textbooks were written at a time that most newly registered entities were corporations.[168] Their coverage and structure accordingly focuses on corporations. Likewise, they were written at a time that Delaware was of large and rising importance in that market. Both facts have since changed.

Do these findings require changes in pedagogical focus? In part, it depends on what one thinks warrants attention. If one's students overwhelmingly litigate Delaware corporate law topics, including public company M&A, then it makes perfect sense to place Delaware fiduciary duty cases at the center of the course. If one is interested in the political implications of highly paid CEOs and controlling shareholders, it makes sense for class discussion to focus on large public and private companies.

However, a teacher might also want to prepare students to form entities and advise directors. The great majority of entities are LLCs formed outside of Delaware. The great plurality of boards are non-Delaware boards. A teacher concerned with those numerical realities would probably give some attention to the ULLCA and MBCA, which together amount to about half of all entities. The ULLCA is also written to "harmonize" with the other uniform acts, such that the structure and prose is identical except where concrete differences in the law are meant to be emphasized. So, someone who learned the MBCA and ULLCA would have an easier time learning partnership and limited partnership law, too.

Of course, even teachers whose students will mostly counsel MBCA and ULLCA entities should not disregard Delaware law. Delaware cases are often clear and well-reasoned, which makes them pedagogically useful.[169] They are a major source of persuasive authority in the MBCA states.[170] To teach the MBCA is in part to teach how it freerides on Delaware. The DGCL has often inspired provisions in other states, including numerous aspects of the MBCA.[171] And Delaware

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[168] *E.g.*, LARRY E. RIBSTEIN, BUSINESS ASSOCIATIONS (1st ed. 1983); WILLIAM A. KLEIN & J. MARK RAMSEYER, BUSINESS ASSOCIATIONS (1st ed. 1991); WILLIAM ALLEN & REINIER KRAAKMAN, COMMENTARIES AND CASES ON THE LAW OF BUSINESS ORGANIZATIONS (1st. ed. 2003).

[169] Relatedly, there are simply more Delaware cases on many topics. The MBCA's greater specificity on many key issues prevents some cases from being litigated. Indeed, one of its virtues is that it allows clear determinations even in jurisdictions without a large stock of precedents.

[170] *See, e.g.*, Georgia (MBCA state): F.D.I.C. *ex rel.* Community Bank & Tr. Cornelia, Ga. v. Miller, No. 2:12-CV-42-WCO, 2012 WL 9494095, at *5 n.8 (N.D. Ga. Dec. 26, 2012) ("Georgia courts have looked to Delaware corporate law court decisions for guidance on matters of corporate governance and director and officer liability."); Arkansas (MBCA state): Weinberger v. Am. Composting, Inc., 4:11CV00848 JLH, 2012 WL 1190970, at *5 (E.D. Ark. Apr. 9, 2012) (observing that "state courts often rely heavily upon Delaware law" when interpreting derivative suit statutes); *cf*. California (non-MBCA): Kanter v. Reed, 309 Cal. Rptr. 3d 375, 388 (Cal. Ct. App. 2023) ("Having found that Delaware corporation law provides useful guidance to the issues presented here . . . ."); Russell Powell, *Spirit of the Corporation*, 45 SEATTLE U. L. REV. 241, 257 (2021) ("When I moved to the state of Washington, an MBCA jurisdiction, I was very surprised when a prominent corporate litigator explained to me that some rules for derivative suits in Washington relied on Delaware case law rules even when they were in apparent tension with the local statute. Even if this assertion does not actually constitute a trumping of local law, it illuminates the nearly universal influence of and bias toward Delaware law."); Ann M. Scarlett, *Imitation or Improvement? The Evolution of Shareholder Derivative Litigation in the United States, United Kingdom, Canada, and Australia*, 28 ARIZ. J. INT'L & COMP. L. 569, 575 (2011) ("Because courts in MBCA states often look to Delaware case law when applying the MBCA's liability standards, the legal results tend not to differ between these states.").

[171] *See* Roberta Romano, *The States as a Laboratory: Legal Innovation and State Competition for Corporate Charters*, 23 YALE J. REG. 209, 237 (2006) ("The Model Act is a source of statutory innovation, but the degree of

law is often selected for the transactions most likely to require sophisticated legal work. However, many ULLCA and MBCA corporations there are, they probably generate comparatively few hostile takeovers. To teach some practice-relevant topics is to teach Delaware corporate law (among other laws). Yet no one needs help identifying the importance of Delaware corporate law, while the MBCA and ULLCA are easy to shortchange (especially as one runs behind on a crowded syllabus).

Nor are Delaware and the MBCA the only corporate laws worthy of attention. Local law schools in Texas, California, and New York probably teach plenty of their own state's corporate law, but national law schools in those states may wish to consider the same. Increasingly, teachers may want to contrast Texas, California, New York, Delaware, and the MBCA on a given topic—perhaps with some Nevada for contrast.

To be sure, there is only so much time in an introductory corporate law class. Teaching a single state's law, for a single entity type, can be enough to fill four credit hours. There is a strong case for teaching mostly Delaware corporate law and leaving the other states and other entities for an advanced entity law course. On the other hand, we have witnessed great changes in the composition of entity formation: multipolarity, uniform laws, and the rise of the LLC. At some points these trends will be prominent enough that they should be reflected in the architecture of most business associations books and courses.

Conclusion

The defining feature of American corporate federalism is that entities may be formed in any state, and thereby select their governing law. It is easy to imagine downstream implications. Perhaps one state will dominate all entity formation, leading other states to question the democratic legitimacy of this system. Or perhaps all states will compete vigorously to provide whatever corporate managers want. Or perhaps entity formation is unresponsive to competition and entities just form wherever they do business.

The empirical reality was not self-evident, nor was it easy to check. State-by-state incorporation means state-by-state data recordation.

A generation of legal scholars picked at this question where the data was available. Most notably, scholars looked at incorporation patterns of large private and public companies. On this basis they concluded that most entities either incorporate where they do business or in Delaware. Most scholarly and pedagogical energy has therefore been directed to Delaware—and its public corporations in particular. But these firms always represented a tiny minority of entity formations, but by quantity and economic significance. The samples are also inherently biased in favor of certain kinds of firms. No shell company would ever appear in such data.

This Article exists to greatly expand our sightlines into those unobserved private companies. With some qualifications, it provides a comprehensive look at all entity formations. This data will be used by other scholars to explore the topics that interest them. This Article deploys it to address some of the literature's pressing questions, as a proof of concept:

Delaware grew its charter mongering at New Jersey's expense while the latter state enacted progressive corporate laws, but Delaware's position shrank again when New Jersey returned to its old enabling laws. It turns out that most incorporators were willing to forgive New Jersey, despite

originality of Model Act provisions varies considerably. Sometimes the Model Act drafters copy Delaware's innovations . . . .").

showing itself vulnerable to political instability and despite its growing access to non-corporate revenues. It would appear that corporations were not singly focused on political neutrality, nor did they require a willing hostage. This may be why states with less political neutrality and economic dependence on franchise fees—California, New York, Florida, and Texas – all remained above New Jersey and Delaware for essentially the entire century.

Delaware did overtake New Jersey, but only much later. In the 1980s, Delaware's enactment of 102(b)(7) led it to leap forward in all incorporations. But its success with public corporations was not matched in private corporations, which began to decline in the 1990s. Delaware lost ground to Florida and California, the latter seemingly driven by the state's rejection of the internal affairs doctrine as to local firms. Delaware *corporations* in particular lost ground to LLCs. Delaware itself netted some of those new LLCs, but Florida again seems to have galloped ahead. Nowhere in this competition does one find much interest in Nevada. Nor do preliminary examinations suggest that recent legal turmoil and change (beginning with judicial decisions like *Moelis* or leading to legislation such as SB 21) led to a great decline in Delaware's popularity. 2025 is shaping up to be a *prolific* year for Delaware entity formation.

Along the way, some states enacted the Model Business Corporation Act for corporations and the uniform acts for the non-corporate entities. The MBCA is now the plurality law for corporate formations, governing more corporations than the five largest states (considered singly) combined. That means that Delaware law is, in a sense, not in the top five for corporate charters. Likewise, almost half all LLCs are subject to the Uniform LLC Act. For both the ULLCA and MBCA, we can say that the adoption itself appears to increase post-adoption chartering. Incorporators like the uniform acts.

Do these findings constitute a surprise? It depends on what one thought before. My own sense is that most people have an ill-defined sense of entity formation patterns, including that Delaware is "the leader" and that they effortlessly update their definition of what that leadership must entail. Once the facts are in evidence, it will turn out that *everyone knows* Delaware does not lead by charter count, but rather that it leads in the largest public company charters. In that sense, scholars are surprise-proof. Readers can track their own mental state to see if the forgoing was true, as an exercise in legal sociology and scholarly psychology.

There is no doubt that large companies are interesting and important, particularly for some sectors. But half of the economy is located in small firms. Scholars have increasingly turned their attention to these firms, but they have been hampered by poor access to data. The Corporate Census marks an important contribution to the data and, thus, to the field we study and teach.

The Corporate Census also offers insights for those who are most focused on Delaware's prospects. Delaware occupies a distinctive place in American corporate federalism. Recent changes in Delaware law – both judicial and statutory – raised questions about Delaware's attractiveness going forward. Many onlookers have predicted a decline in Delaware's prominence. Such pessimistic predictions currently lack foundation. Indeed, 2025 appears to have been one of Delaware's best incorporation years. The data plainly falsify the most pessimistic predictions. The reasons for this rise remain debatable, as do the prospects for continued growth. The Corporate Census provides an empirical foundation for evaluating DExit—and for grounding future debates about state competition in corporate law.