

Forum Protection

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Draft Abstract

What are the limits, if any, to what a jurisdiction can do to attract and keep cases? What steps may a state take through its legislature and courts to protect its exclusive jurisdiction, both in intervention in parties' ex ante choices and during litigation? Could, for instance, a state link choice of its law to mandatory choice of its forum? Even when its own law is not involved, does anything stop it from ignoring norms such as first-in-time or forum non conveniens standards to keep cases in its courts? This article identifies how federal limits, both constitutional limits and the threat of federal intervention because of perceived state overreaching, have shaped existing state forum protections. It also examines state mechanisms that achieve some of the goals of state forum protection while avoiding federal response, in part by encouraging private, ex ante, forum decisions and, more rarely, by avoiding state-to-state conflict through gestures of reciprocity.