 Printed in U.S.A.
Vol. 119, No. 5

THE MARKET VALUE OF PARTISAN BALANCE

Brian D. Feinstein & Daniel J. Hemel

ABSTRACT—For the past century, Delaware's constitution has provided that no more than a bare majority of judges on the state's courts may hail from the same political party. Some scholars and jurists theorize that Delaware's commitment to a politically balanced judiciary increases the state's attractiveness to out-of-state corporations and adds value to Delaware-chartered firms. These claims echo a larger literature in law and the social sciences positing that ideological diversity improves decisional quality. Recently, a series of federal court decisions in the case of *Adams v. Carney* put these claims to the test. In December 2017, a federal district court held that Delaware's partisan-balance regime violates the First Amendment's freedom-of-association guarantee because it discriminates among judicial candidates based on party affiliation. In December 2020, the U.S. Supreme Court vacated the lower court decision and restored Delaware's scheme. The *Adams* litigation—which generated a series of exogenous shocks to Delaware's legal regime—enables assessment of the value of partisan balance. If a politically balanced judiciary adds value to Delaware-chartered corporations, then the share prices of Delaware firms should have declined in the wake of the December 2017 district court decision and risen in response to the December 2020 Supreme Court ruling.

This study examines how equity markets responded to key decisions in the *Adams* litigation. Applying a range of model specifications, we find that Delaware firms experienced negative abnormal returns on the district court decision date and positive abnormal returns on the Supreme Court ruling date, with these abnormal returns concentrated among small- and mid-sized firms. These findings—supplemented by results from other key dates in the *Adams* litigation—are broadly consistent with the theory that a politically balanced judiciary generally adds value to Delaware-chartered companies. Notably, though, we do not detect discernible stock price reactions to the *Adams* litigation among the largest publicly traded firms.

We conclude by considering the implications of our results for two larger debates in legal scholarship: the debate over partisan-balance requirements for federal courts and the debate over Delaware's dominance in the interstate market for corporate charters. As for the former, our results provide the first revealed-preference evidence for the claim that relevant stakeholders assign positive value to partisan-balance requirements for

adjudicative bodies—a finding that potentially bolsters the arguments of scholars and politicians who want to extend similar requirements to U.S. Supreme Court Justices. As for the latter, our results suggest that Delaware's commitment to a politically balanced judiciary accounts for a nontrivial component of the so-called "Delaware effect"—the share price boost observed in some studies for firms that reincorporate in the state. In the interjurisdictional market for corporate charters, Delaware's judicial partisan-balance requirements may provide the state with a competitive advantage over states that lack similar provisions.

AUTHORS—Brian Feinstein is an Assistant Professor of Legal Studies & Business Ethics at the Wharton School of the University of Pennsylvania. Daniel Hemel is a Professor of Law at the New York University School of Law. Hemel served as an expert consultant to counsel for the Governor of Delaware in January 2023, before work on this research project began. The authors have received no outside funding for this project, and all views and any errors are their own. For helpful comments and conversations, we thank Robert Bird, Vince Buccola, Jens Dammann, Lisa Fairfax, Jill Fisch, Merritt Fox, Joel Friedlander, Stavros Gadinis, Farshad Ghodoosi, Michael Gupta, Sarah Haan, Henry Hu, Alisher Juzgenbayev, Marcel Kahan, Kobi Kastiel, Martin Lessner, Minor Myers, Anshika Niraj, Michael Ohlrogge, Elizabeth Pollman, Adam Pritchard, Lauren Pringle, Adriana Robertson, Usha Rodrigues, Roberta Romano, Leo Strine, Eric Talley, Samuel Thompson, participants at the Penn Law School Institute for Law & Economics Corporate Roundtable and the Law and Economics Workshop at Tel Aviv University Buchmann Faculty of Law, and *Northwestern University Law Review*'s anonymous reviewers.

INTRODUCTION 1203
I. BACKGROUND 1208
A. Partisan-Balance Requirements 1208
B. Delaware's Dominance in the Market for Corporate Charters 1216
C. The Adams *Litigation* 1222
II. RESEARCH DESIGN 1227
A. Hypotheses 1227
B. Data 1232
C. Methods 1234
III. ANALYSIS 1238
A. *Event-Study Analysis* 1238
B. Event-Day Regression Models 1244
C. Pooled Multi-Day Regression Models 1246
IV. IMPLICATIONS 1249
A. Interpreting the Results 1249
B. Implications for Partisan-Balance Requirements 1252
C. Implications for Delaware's Dominance 1256
CONCLUSION 1261
APPENDICES 1262

INTRODUCTION

Partisan-balance requirements are embedded into the design of many institutions of American public law. Dozens of federal agencies—including the Federal Trade Commission and the Securities and Exchange Commission—are subject to a bare-majority limitation, a partisan-balance requirement that permits no more than a simple majority of members from the same political party.[1] Similar bare-majority limitations apply to one Article III court (the U.S. Court of International Trade) and one other federal court (the Court of Appeals for Veterans Claims).[2]

Partisan-balance requirements are less prevalent at the state level, where effective one-party control over all branches of government is more common. However, New Jersey has followed an informal norm of partisan balance in appointments to its supreme court since the court's founding in

[1] Brian D. Feinstein & Daniel J. Hemel, *Partisan Balance with Bite*, 118 COLUM. L. REV. 9, 11 (2018).

[2] 28 U.S.C. § 251(a); 38 U.S.C. § 7253.

1947.[3] Indiana's most populous county elected its superior court judges according to a statutory scheme that virtually assured partisan balance from 1975 until 2015.[4] And Delaware—alone among U.S. states—has enshrined a judicial partisan-balance regime into its constitution.[5]

For nearly seventy-five years, Delaware courts have been subject to two different partisan-balance requirements: a bare-majority limitation and an other-major-party reservation. The bare-majority limitation—like the bare-majority limitations for many federal agencies and two federal courts—capped the number of judges from any one party at a simple majority of the court's membership.[6] The other-major-party reservation required that all remaining members hail from the "other major political party" (i.e., from the Republican Party when a bare majority are Democrats).[7] In December 2017, however, a federal district court ruled in *Adams v. Carney* that Delaware's bare-majority limitation and its other-major-party reservation violate the federal Constitution's freedom-of-association guarantee.[8] Three years later, the U.S. Supreme Court effectively erased the district court's decision when it held that the plaintiff in the case lacked standing to challenge the state's partisan-balance regime.[9] The long-running litigation ended in January 2023 with a consent judgment that allowed the state to maintain its bare-majority limitation but compelled it to drop the other-major-party reservation.[10]

Importantly, Delaware is an outlier not only insofar as it has imposed formal partisan-balance requirements on its judiciary but also insofar as it dominates the market for corporate charters. In fact, several scholars have argued that Delaware's success in attracting incorporations stems at least partly from its constitutional commitment to a politically balanced

[3] Alex Ebert, *Partisanship Roils State Supreme Courts. Not in New Jersey*, BLOOMBERG L. (Oct. 29, 2024, 4:05 AM), https://news.bloomberglaw.com/litigation/partisanship-roils-state-supreme-courts-not-in-new-jersey [https://perma.cc/58P9-6J7U].

[4] Cale Addison Bradford, Note, *Judicial Slating in Marion County, Indiana: Defending Its Constitutionality While Advocating Reform*, 49 IND. L. REV. 505, 505–06 (2016); Press Release, ACLU of Indiana, Seventh Circuit Court of Appeals Affirms Win in Challenge to Marion County's Judicial Election System (Sept. 9, 2015, 12:45 PM), https://www.aclu.org/press-releases/seventh-circuit-court-appeals-affirms-win-challenge-marion-countys-judicial-election [https://perma.cc/L3RF-MDEP].

[5] Luke Seeley, *Breaking Down Partisanship on the Delaware Supreme Court*, BALLOTPEDIA NEWS (Feb. 17, 2021, 11:39 AM), https://news.ballotpedia.org/2021/02/17/breaking-down-partisanship-on-the-delaware-supreme-court/ [https://perma.cc/34VS-H6PQ].

[6] DEL. CONST. art. IV, § 3.

[7] *Id.*

[8] No. 17-181-MPT, 2017 WL 6033650, at *6 (D. Del. Dec. 6, 2017).

[9] Carney v. Adams, 592 U.S. 53, 66 (2020).

[10] Stipulated Consent Judgment and Order, Adams v. Carney, No. 20-01680-MN, 2022 WL 4448196 (D. Del. Jan. 30, 2023).

judiciary.[11] If these scholars are correct—and part of a Delaware charter's value is attributable to the state's constitutional partisan-balance regime—then we might expect the share prices of Delaware-incorporated firms to fall after the initial invalidation of the state's partisan-balance rules and to rise after the U.S. Supreme Court restored those rules.

This study examines stock market responses to the sequence of rulings in *Adams*. Market movements during the *Adams* litigation can yield insights regarding two scholarly debates. First, market reactions to the invalidation and partial restoration of Delaware's partisan-balance requirements can inform the debate in U.S. public law regarding the desirability of partisan balance for courts and other institutions. Professors Daniel Epps and Ganesh Sitaraman suggest that Congress should extend partisan-balance requirements to the selection of Supreme Court Justices[12]—an idea that then-candidate Pete Buttigieg embraced during his bid for the 2020 Democratic presidential nomination.[13] Other scholars have questioned the value of a high-court partisan-balance regime.[14] Stock price responses to *Adams* can shed light on the value that one constituency—shareholders of public companies—may assign to partisan-balance requirements in a judicial context.

Second, stock price responses to *Adams* bear potentially important implications for a central question in corporate law: why does Delaware dominate the market for corporate charters? Besides the state's constitutional commitment to a politically balanced judiciary, other explanations emphasize Delaware's small size, its constitutional supermajority requirement for legislative changes to state corporate law, its rich body of precedent, and the "network effects" that arise once a critical mass of firms

---

[11] *See generally* Ofer Eldar & Gabriel Rauterberg, *Is Corporate Law Nonpartisan?*, 2023 WIS. L. REV. 177 (arguing Delaware's nonpartisanship requirements give it a competitive edge in appealing to the interests of corporate decision-makers); Randy J. Holland, *Delaware's Business Courts: Litigation Leadership*, 34 J. CORP. L. 771, 771–72 (2009) ("Delaware's court system provides a model that largely addresses modern corporate worries about courtroom litigation. . . . [M]aintaining a balance of power between political parties . . . has yielded dividends in both the expertise and independence of its judiciary."); E. Norman Veasey & Christine T. Di Guglielmo, *What Happened in Delaware Corporate Law and Governance from 1992–2004? A Retrospective on Some Key Developments*, 153 U. PA. L. REV. 1399, 1402 (2005).

[12] Daniel Epps & Ganesh Sitaraman, *How to Save the Supreme Court*, 129 YALE L.J. 148, 193 (2019).

[13] Josh Lederman, *Inside Pete Buttigieg's Plan to Overhaul the Supreme Court*, NBC NEWS (June 3, 2019, 5:03 AM), https://www.nbcnews.com/politics/2020-election/inside-pete-buttigieg-s-plan-overhaul-supreme-court-n1012491 [https://perma.cc/CE5Z-DAB6].

[14] *See* Ryan D. Doerfler & Samuel Moyn, *Democratizing the Supreme Court*, 109 CALIF. L. REV. 1703, 1724 (2021); Stephen E. Sachs, *Supreme Court as Superweapon: A Response to Epps & Sitaraman*, 129 YALE L.J.F. 93, 95 (2019).

has flocked to a single jurisdiction.[15] If we see a significant drop in the share prices of Delaware-incorporated firms following the district court decision striking down the state's partisan-balance requirements and a significant rebound after the Supreme Court brought the state's partisan-balance regime back to life, then we might conclude that partisan-balance requirements play a meaningful role in the story of Delaware's dominance. If, by contrast, the market reactions to those decisions are muted, then we might ascribe more weight to alternative explanations for Delaware's success.

We focus our study on public companies listed on the New York Stock Exchange (NYSE) and NASDAQ, comparing the performance of Delaware-incorporated firms and firms incorporated elsewhere in the United States. Our main analysis zeroes in on the one-day window following the two discrete changes to the legal status of Delaware's partisan-balance requirements during the *Adams* litigation: the December 2017 district court decision that invalidated the state's partisan-balance regime in toto,[16] and the December 2020 Supreme Court ruling that effectively wiped the district court's decision from the books.[17] We also examine market reactions to several other events in the *Adams* litigation, including the U.S. Court of Appeals for the Third Circuit's affirmation of the district court's ruling,[18] the Third Circuit's denial of rehearing en banc, the U.S. Supreme Court's decision to hear the case,[19] the Supreme Court oral arguments,[20] and the ultimate consent judgment that preserved Delaware's bare-majority limitation but set aside the other-major-party reservation.[21]

Our results offer qualified support for the view that Delaware's constitutional commitment to a politically balanced judiciary adds value to Delaware-incorporated firms. Across various model specifications, we find that average abnormal returns to Delaware firms were negative following the initial district court decision invalidating the state's partisan-balance

---

[15] *See* Sarath Sanga, *Network Effects in Corporate Governance*, 63 J.L. & ECON. 1, 2 (2020); Roberta Romano, *Market for Corporate Law Redux*, *in* 2 THE OXFORD HANDBOOK OF LAW AND ECONOMICS: PRIVATE AND COMMERCIAL LAW 358, 388 (Francesco Parisi ed., 2017); Michael Klausner, *Corporations, Corporate Law, and Networks of Contracts*, 81 VA. L. REV. 757, 842 (1995); ROBERTA ROMANO, THE GENIUS OF AMERICAN CORPORATE LAW 41 (1993); FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 212–18 (paperback ed. 1996); Roberta Romano, *Law as a Product: Some Pieces of the Incorporation Puzzle*, 1 J.L. ECON. & ORG. 225, 277 (1985) [hereinafter Romano, *Law as a Product*].

[16] Adams v. Carney, No. 17-181-MPT, 2017 WL 6033650 (D. Del. Dec. 6, 2017).

[17] Carney v. Adams, 592 U.S. 53 (2020).

[18] Adams v. Governor of Del., 914 F.3d 827, 829 (3d Cir. 2019).

[19] Carney v. Adams, 140 S. Ct. 602 (2019).

[20] Oral Argument, *Carney*, 592 U.S. 53 (No. 19-309), https://argument2.oyez.org/2020/carney-v-adams-2/ [https://perma.cc/7WLD-JQK9].

[21] Stipulated Consent Judgment and Order, *supra* note 10.

requirements and positive after the Supreme Court ruling that restored the state's regime. Our estimates are statistically significant in all but one model specification, though effect sizes are relatively modest. For example, employing the widely used Fama–French three-factor model, we estimate a negative abnormal return for Delaware firms of approximately 0.3 percentage points following the district court's invalidation of the state's partisan-balance regime and a positive abnormal return of approximately 0.3 percentage points after the Supreme Court's ruling. These abnormal returns, however, are concentrated among small- and mid-cap firms; regression analyses in which firm-level observations are weighted by market capitalization yield null results. When we extend our analysis to other key dates in the *Adams* litigation, we find a pattern of abnormal returns that is broadly—though not entirely—consistent with the theory that investors value the partisan-balance requirements embedded in Delaware law.

Our results thus contribute to the twin debates over partisan-balance requirements and Delaware's dominance. First, these findings supply the first evidentiary basis for the claim that relevant stakeholders perceive a benefit from a politically balanced judiciary—though our conclusions are necessarily limited to only one set of stakeholders (investors) and only one jurisdiction's courts. Second, our findings provide qualified support for the theory, first developed by Professor Roberta Romano, that unique features of Delaware's legal landscape increase the market value of Delaware-incorporated firms.[22] Previous event studies have found that publicly traded firms experience positive abnormal returns immediately after announcing their decision to reincorporate in Delaware. Since reincorporation choices are endogenous to other aspects of corporate strategy, however, those studies cannot distinguish the causal effect of Delaware corporate law from other confounding factors. Our analysis overcomes this endogeneity problem by identifying a series of exogenous shocks to Delaware's legal system—shocks not attributable to any change in corporate strategy. This approach further allows us to isolate the effect of one specific feature of Delaware law—the state's constitutional commitment to a politically balanced judiciary—on the market value of Delaware firms. Our results are especially timely in the wake of a June 2024 vote by shareholders of the electric carmaker Tesla to change that company's state of incorporation from Delaware to Texas, which recently enacted legislation ambitiously aimed at matching Delaware's judicial expertise in commercial matters. Our findings suggest that, notwithstanding Tesla's exit, investors in other firms do value Delaware charters in part because they value Delaware's constitutional

[22] Romano, *Law as a Product*, *supra* note 15, at 280.

commitment to a politically balanced judiciary, a feature of Delaware law that no other state has yet replicated.

This Article proceeds in four Parts. Part I situates Delaware courts in a larger landscape of government institutions with partisan-balance requirements, introduces theoretical and empirical scholarship concerning the effects of these provisions, and explains how these requirements may contribute to Delaware's preeminent position in the market for corporate charters. The Part then introduces *Adams v. Carney*, a winding case in which federal courts delivered several plausibly exogenous shocks to the status of Delaware courts' partisan-balance requirements, which investors presumably did not fully anticipate (and thus price in) ex ante. Part II explains how we leverage these events in *Adams* to assess the market value of Delaware's partisan-balance requirements. Part III presents our results. In brief, we find that the federal district court's invalidation of these requirements is associated with declines in the value of Delaware-incorporated firms in most equal-weighted models and that the Supreme Court's vacatur of this decision is associated with increases in value. Finally, Part IV considers implications of these results for partisan-balance requirements and Delaware's dominance in the market for corporate charters.

I. BACKGROUND

A. Partisan-Balance Requirements

1. The Evolution of Partisan-Balance Provisions at the Federal and State Levels

The long history of partisan-balance requirements in the United States stretches at least as far back as 1882, when Congress created the five-member Utah Commission to supervise elections in the Utah Territory and mandated that no more than three of the commissioners could be members of the same political party.[23] Since then, Congress has established more than fifty multimember bodies subject to statutory partisan-balance requirements, including one Article III court (the Court of International Trade), one other court (the Court of Appeals for Veterans Claims), and dozens of agencies with adjudicative functions.[24] These requirements typically take the form of a bare-majority limitation, which states that no more than a bare majority of

[23] Ronald J. Krotoszynski Jr., Johnjerica Hodge & Wesley W. Wintermyer, *Partisan Balance Requirements in the Age of New Formalism*, 90 NOTRE DAME L. REV. 941, 964 (2015).

[24] Brief of Amici Curiae Professors Brian D. Feinstein & Daniel J. Hemel in Support of Petitioner at 2, *Carney*, 592 U.S. 53 (No. 19-309).

commissioners or judges may be members of the same party.[25] For bodies with an even number of members, such as the six-member Federal Election Commission, the statutory partisan-balance requirement provides that no more than half of the members may share a party affiliation.[26]

Partisan-balance requirements for Delaware's judiciary date back to the state's 1897 constitution, which provided for five "law judges"—one chief justice and four associate judges—and a chancellor who heard cases arising in equity.[27] The 1897 constitution further required that "no more than three of the said five law judges, in office at the same time, shall have been appointed from the same political party."[28] Delegates to the convention that produced the 1897 constitution anticipated that political diversity among state law judges would "bring about a fuller and freer discussion" of matters before the judiciary and boost public confidence in the state's courts.[29]

In 1951, Delaware amended its state constitution to establish a new three-justice supreme court—reportedly in response to concerns that the lack of a separate supreme court could undermine its attractiveness to out-of-state corporations.[30] The 1951 amendments continued forward the requirement applicable to law judges under the 1897 constitution that no more than a bare majority could be members of the same political party.[31] The 1951 amendments further provided that the remaining justice must be a member of the "other major political party"—possibly the first example of an other-major-party reservation in American public law.[32] According to one account, lawmakers added the other-major-party reservation to assuage concerns among Republicans in the closely divided legislature that the Democratic governor would otherwise fill the remaining seat on the state supreme court with a nominal independent.[33] Delaware also extended both the bare-majority limitation and the other-major-party reservation to members of its chancery court and superior court, and it preserved these provisions when it changed other features of the state judiciary (such as expanding the size of the supreme court from three to five in 1978).[34]

---

[25] *Id.* at 4.

[26] *See* Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 101, 90 Stat. 475, 475 (codified as amended at 52 U.S.C. § 30106(a)(1)).

[27] DEL. CONST. of 1897 art. IV, § 2.

[28] *Id.* art. IV, § 3.

[29] Joint Appendix at 110–11, 116, *Carney*, 592 U.S. 53 (No. 19-309).

[30] Joel Edan Friedlander, *Is Delaware's "Other Major Political Party" Really Entitled to Half of Delaware's Judiciary?*, 58 ARIZ. L. REV. 1139, 1149, 1150 n.55 (2016).

[31] *Id.* at 1149–50.

[32] *Id.*

[33] *Id.* at 1150.

[34] *Id.* at 1141–42, 1149.

Delaware's constitutional partisan-balance regime appears to be one-of-a-kind among U.S. state courts. For four decades, Indiana maintained a statutory scheme for judicial elections to the Superior Court in Marion County—the state's most populous county and home of its capital city, Indianapolis—that effectively guaranteed an even split between Republicans and Democrats by preventing either party from nominating candidates for more than half of the available seats.[35] However, the U.S. Court of Appeals for the Seventh Circuit held in 2015 that the scheme was an unconstitutional burden on the right of voters to cast ballots for the judges of their choice.[36] As part of that decision, the Seventh Circuit observed that the Marion County approach "appears to be unique within the United States, as neither the parties nor the court have been able to find an election system quite like it."[37] New Jersey has long followed a norm that no more than four of its seven supreme court justices may be members of one party—with the remaining three seats reserved for members of the other major party—but the New Jersey norm is an unwritten rule rather than a constitutional command.[38]

2. Potential Benefits and Costs of Partisan Balance

Proponents of partisan-balance requirements offer three main arguments in favor of those provisions. First, partisan balance typically exerts a moderating effect on policy outcomes. In the U.S. context, where Democrats are generally more liberal than Republicans, the median voter on a multimember body subject to a partisan-balance requirement tends to be either the most conservative Democrat or the most liberal Republican—a narrower range of ideological variation than when partisan presidents and governors can appoint an unlimited number of co-partisans to commissions and courts. Furthermore, several empirical studies of judicial behavior find that partisan diversity exerts a depolarizing effect on individual judges' votes. Professors Thomas Miles and Cass Sunstein focus on the federal circuit courts—where judges typically hear cases on three-member panels—and use the party of the appointing president as a proxy for a judge's partisan

[35] Common Cause Ind. v. Individual Members of the Ind. Election Comm'n, 800 F.3d 913, 914–16 (7th Cir. 2015).

[36] *Id.* at 928.

[37] *Id.*

[38] Statement, Robert L. Clifford, James H. Coleman Jr., Marie L. Garibaldi, Alan B. Handler, Stewart G. Pollock, Deborah T. Poritz, Gary S. Stein & James R. Zazzali, Retired Justices of the New Jersey Supreme Court, at 2 (May 13, 2010), https://pdfserver.amlaw.com/nj/Retired_%20Justices_on_Wallace.pdf [https://perma.cc/3VKA-4XXH]; John B. Wefing, *The New Jersey Supreme Court 1948-1998: Fifty Years of Independence and Activism*, 29 RUTGERS L.J. 701, 715–16 (1998).

affiliation.[39] They find that individual judges tend to cast fewer ideologically stereotypical votes on mixed panels than on single-party panels.[40] For example, a Democratic-appointed judge is less likely to side with labor in a labor–management dispute when they sit on a panel with at least one Republican-appointed judge than when they sit on a panel with two other Democratic appointees.[41] Several other studies document similar "panel effects" across various issue areas; having a diverse group of judges on a three-judge panel appears to make individual judges less ideological in their voting patterns.[42]

Assuming that partisan balance moderates policy outcomes, proponents of partisan-balance requirements still must explain why moderation is a benefit. One possible answer is that moderation promotes policy stability.[43] Several studies find that firms are less likely to make long-term investments when the policy environment is unstable.[44] However, the effect of partisan balance on policy stability hinges on context. The pro-stability argument for partisan-balance requirements is strongest at the federal level, where control of the presidency and Congress routinely change hands. By contrast, in Delaware—which was once a closely divided state along party lines, but where Democrats have won every gubernatorial election since 1992 and now hold every statewide office[45]—the elimination of judicial partisan-balance requirements might result in more liberal but still quite stable outcomes. Indeed, for cases before the Delaware Court of Chancery (which assigns one judge to each case), partisan balance arguably leads to *greater* uncertainty

---

[39] Thomas J. Miles & Cass R. Sunstein, *Do Judges Make Regulatory Policy? An Empirical Investigation of* Chevron, 73 U. CHI. L. REV. 823, 848, 851 (2006).

[40] *Id.* at 851–52.

[41] *Id.* at 854.

[42] *See, e.g.*, Adam B. Cox & Thomas J. Miles, *Judging the Voting Rights Act*, 108 COLUM. L. REV. 1, 25–27 (2008) (examining panel effects of judicial ideology in the adjudication of Voting Rights Act cases); CASS R. SUNSTEIN, DAVID SCHKADE, LISA M. ELLMAN & ANDRES SAWICKI, ARE JUDGES POLITICAL? AN EMPIRICAL INVESTIGATION OF THE FEDERAL JUDICIARY (2006) (analyzing the effects of variations in political ideology among appellate judges on panel voting patterns).

[43] Indiana sought to justify its partisan-balance regime for the Marion Superior Court on similar grounds; according to the state, the limit on the number of judges from any party "ensures stability on the court by removing the possibility that one party could sweep the election." Common Cause Ind. v. Individual Members of the Ind. Election Comm'n, 800 F.3d 913, 927 (7th Cir. 2015).

[44] *See* Huseyin Gulen & Mihai Ion, *Policy Uncertainty and Corporate Investment*, 29 REV. FIN. STUD. 523, 561 (2016); Kira R. Fabrizio, *The Effect of Regulatory Uncertainty on Investment: Evidence from Renewable Energy Generation*, 29 J.L. ECON. & ORG. 765, 765 (2013); Brandon Julio & Youngsuk Yook, *Political Uncertainty and Corporate Investment Cycles*, 67 J. FIN. 45, 47 (2012).

[45] *See Former Governors - Delaware*, NAT'L GOVERNORS ASS'N, https://www.nga.org/former-governors/delaware [https://perma.cc/UTQ4-JZP2] (identifying former Delaware governors by party); Cris Barrish, *Complete List of Winners and Losers in Delaware's General Election*, WHYY (Nov. 6, 2024), https://whyy.org/articles/democrats-win-statewide-races-elections-2024 ("Democrats still hold all nine statewide elective offices — as they have since 2018 . . . .") [https://perma.cc/WDU4-YKG4].

and instability because it results in wider judge-to-judge ideological variation. If, instead, all members of the Delaware chancery court were uniformly liberal Democrats, then case-specific uncertainty might be lower than it is today.

Moderation also may be advantageous from the perspective of interest groups that disfavor particular extremes. For example, in the Delaware context, moderation may benefit corporate managers who understand that the alternative to partisan-balance requirements—given the Democratic Party's dominance in Delaware politics—is a much more liberal judiciary. From corporate management's perspective, partisan balance is plausibly beneficial because it pushes outcomes to the right of where they would otherwise fall. Put another way, partisan balance is not ideologically neutral, and some interest groups may value partisan balance not because they view moderation or stability as an intrinsic good but because partisan balance redounds to their advantage in a specific setting.

A second argument advanced by supporters of partisan-balance requirements is that ideological diversity improves decision quality. For example, Professor Frank Cross suggests that judges may arrive at a "best understanding of the law" when exposed to colleagues with different ideological priors.[46] Similarly, Professor Sunstein draws from the social psychology literature to posit that members of ideologically homogeneous groups may encounter "limited argument pools" and thus may not be forced to confront or respond to strong arguments that cut against their own ideological preferences.[47] The decision-quality effect is difficult to distinguish observationally from the moderation effect: do liberals and conservatives on multimember bodies move to the middle because they come to understand the centrist position as "better," or because they want to avoid conflict with colleagues and therefore seek to strike a compromise? Yet, conceptually, the two effects are distinct insofar as the "better" decision—along whatever dimensions such decisions are judged—may not always correspond to the more moderate position.

A third and final argument in favor of partisan-balance requirements highlights the monitoring role of minority members on commissions and courts.[48] According to this "whistleblower theory," a key function of

---

[46] FRANK B. CROSS, DECISION MAKING IN THE U.S. COURTS OF APPEALS 155 (2007).

[47] Cass R. Sunstein, *Deliberative Trouble? Why Groups Go to Extremes*, 110 YALE L.J. 71, 89–90, 118 (2000).

[48] *See* Morgan Hazelton, Kristin Hickman & Emerson H. Tiller, *Panel Effects in Administrative Law: A Study of Rules, Standards, and Judicial Whistleblowing*, 71 SMU L. REV. 445, 446 & n.1 (2018); Sharon B. Jacobs, *Administrative Dissents*, 59 WM. & MARY L. REV. 541, 578–79 (2017); Rachel E.

minority members is to sound a "fire alarm" when members of the majority party issue an egregiously ideological decision.[49] By writing a dissenting opinion or otherwise voicing disapproval, minority members attract the attention of higher level courts, legislators, or others who can evaluate whether the majority has strayed too extreme and take corrective action. Installing one or more ideological minorities on a commission or court thus reduces monitoring costs: instead of scrutinizing every commission action and court decision, lawmakers and voters can focus their limited attention on cases in which minority members have blown their whistles.

Although most scholarship emphasizes potential benefits, partisan-balance requirements are not without their costs. For one, these requirements limit the pool of candidates for each opening on a commission or court. This limitation may be particularly problematic in a small state such as Delaware in which one political party dominates—especially if the partisan-balance regime includes an other-major-party reservation. As of this writing, only 27% of Delaware voters were registered Republicans,[50] and the small pool of Republicans may make it difficult for governors to find qualified nominees when a Republican seat on a state court opens up.

Another concern is that partisan balance may have the unintended consequence of deepening party divisions, resulting in hyper-partisanship rather than bipartisanship. Responding to a proposed partisan-balance regime for the U.S. Supreme Court, Professor Stephen Sachs writes: "Permanently labeling certain Justices as Democrats or Republicans—making their party membership the very condition of their holding their seats—raises rather than lowers the salience of partisanship" and "undermines, rather than supports, the . . . ['idea of law itself, as an enterprise separate from politics.'"[51] Defenders of Delaware's judicial-selection system contest that claim. For example, longtime Delaware jurist Leo Strine argues that the state's constitutional partisan-balance regime has "result[ed] in a centrist group of jurists committed to the sound and faithful application of the law."[52] However, Sachs's hyper-partisanship hypothesis

Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 TEX. L. REV. 15, 41 (2010); Emerson H. Tiller & Frank B. Cross, *A Modest Proposal for Improving American Justice*, 99 COLUM. L. REV. 215, 229–30 (1999); Frank B. Cross & Emerson H. Tiller, *Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals*, 107 YALE L.J. 2155, 2159 (1998).

[49] *See* Jacobs, *supra* note 48, at 579.

[50] DEL. DEP'T ELECTIONS, VOTER REGISTRATION TOTALS BY POLITICAL PARTY (Apr. 1, 2024), https://elections.delaware.gov/voter/registrationtotals/pdfs/vrt_PP20240401.pdf [https://perma.cc/JFN7-W7AS].

[51] Sachs, *supra* note 14, at 98 (emphasis omitted) (quoting Epps & Sitaraman, *supra* note 12, at 151).

[52] Leo E. Strine Jr., *The Delaware Way: How We Do Corporate Law and Some of the New Challenges We (and Europe) Face*, 30 DEL. J. CORP. L. 673, 683 (2005).

illustrates that the effects of partisan-balance requirements are theoretically ambiguous, further underscoring the need for empirical evaluation of these regimes.

3. Empirical Literature on Partisan-Balance Requirements

To date, the empirical literature on partisan-balance requirements has focused entirely on federal agencies. These studies aim to evaluate whether partisan-balance requirements meaningfully affect the ideological composition of multimember bodies. In theory, a Democratic president might appoint the most liberal Republican they can find when a partisan-balance requirement prevents her from naming another Democrat to an open seat on a commission (and likewise, a Republican president might seek out a conservative Democrat). The risk of circumvention is even higher when—as has long been true at the federal level—the partisan-balance regime includes only a bare-majority limitation without an other-major-party reservation. For example, Democratic presidents would comply with the letter (though not the spirit) of the federal partisan-balance statutes if they were to appoint Green Party members or liberal independents to open seats on commissions with a bare majority of Democrats.

To assess whether partisan-balance requirements meaningfully constrain federal agency appointments, Professors Stuart Nagel and Martin Lubin examine voting patterns across seven federal commissions subject to partisan-balance requirements.[53] The authors calculate the percentage of "liberal" votes cast by each member in nonunanimous adjudications.[54] The authors find—to their surprise—that "Democratic commissioners appointed across party lines" (i.e., Democratic commissioners appointed by Republican presidents who are compelled by partisan-balance requirements to name a non-Republican to an open seat) "seemed to be even more liberal than Democratic commissioners appointed within party lines."[55] The authors further find that Republican commissioners appointed by Democratic presidents are less liberal than Democrats appointed by Democratic presidents, though still markedly more liberal than Republicans appointed

[53] Stuart Nagel & Martin Lubin, *Regulatory Commissioners and Party Politics*, 17 ADMIN. L. REV. 39, 39 (1964).

[54] The authors interpreted "liberal" votes as including, for instance, a vote by a National Labor Relations Board (NLRB) member in favor of labor in a labor–management controversy. *Id.* at 40. Although the NLRB is often classified as an agency subject to a partisan-balance requirement, there is no statutory limit on the number of board members from a single party. James J. Brudney, *Isolated and Politicized: The NLRB's Uncertain Future*, 26 COMPAR. LAB. L. & POL'Y J. 221, 244 (2005). Nonetheless, every president since John F. Kennedy has honored an informal norm of naming no more than three members of his own party to the five-member board. Feinstein & Hemel, *supra* note 1, at 54 n.131.

[55] Nagel & Lubin, *supra* note 53, at 44.

by Republican presidents.[56] Consistent with the notion that partisan-balance requirements really do affect the ideological composition of multimember bodies, these results suggest that when partisan-balance requirements prevent presidents from placing co-partisans in open seats, presidents respond by appointing opposite-party members whose views diverge significantly from the president's own.

Several other studies center solely on the Federal Communications Commission (FCC) and the effects of partisan-balance requirements on that body. Professor William Gormley examines nonunanimous FCC votes from mid-1974 to mid-1976—a period in which all seven commission members had been appointed or reappointed by President Richard Nixon—and concludes that Republican commissioners were much more likely than Democratic commissioners to vote in favor of industry.[57] According to Professor Gormley, these results suggest that "regulatory agencies could change dramatically if presidents were permitted to appoint an unlimited number of members of their own party to regulatory agencies."[58] By contrast, Professor Jeffrey Cohen examines all nonunanimous FCC decisions from 1955 through 1974 and finds that, controlling for the party of the appointing president, a commissioner's partisan affiliation has no statistically significant effect on the probability of casting a pro-industry vote.[59] Professor Cohen explains this null result by noting that the parties "are not always ideologically cohesive" and that the Democratic Party included a substantial number of conservatives during the period of his study.[60] In the most comprehensive analysis of FCC voting, Professor Daniel Ho examines all published adjudications and rulemakings by the FCC from 1965 to 2006 and uses a Bayesian model to map votes onto a liberal–conservative spectrum.[61] Consistent with Gormley and *contra* Cohen, Professor Ho finds "resounding evidence" that "partisanship requirements constrain": presidents do not simply seek out cross-party appointees in "sheep's clothing" when partisan-balance requirements bar them from appointing a member of their own party.[62]

---

[56] *Id.*

[57] William T. Gormley Jr., *A Test of the Revolving Door Hypothesis at the FCC*, 23 AM. J. POL. SCI. 665, 675 (1979).

[58] *Id.* at 681.

[59] Jeffrey E. Cohen, *The Dynamics of the "Revolving Door" on the FCC*, 30 AM. J. POL. SCI. 689, 698 (1986).

[60] *Id.*

[61] Daniel E. Ho, *Congressional Agency Control: The Impact of Statutory Partisan Requirements on Regulation* 18–31 (Am. L. & Econ. Ass'n, Working Paper No. 73, 2007).

[62] *Id.* at 24–25.

One limitation of these studies is that they all estimate commissioner ideology based on voting patterns, which are endogenous to commission composition. In past work, we adopted a different approach, using data on individual commission members' campaign contributions to place appointees on an ideological spectrum.[63] Our analysis—which covers twenty-three agencies from the Carter to Obama Administrations—finds robust support for the view that partisan-balance requirements constrain presidential appointments.[64] Moreover, the effect of partisan-balance requirements appears to have grown over time. President Jimmy Carter's Republican appointees to agencies with partisan-balance requirements were only modestly more conservative than his Democratic appointees.[65] By the 1990s, however, the ideological gap between coparty and cross-party appointees had widened significantly.[66]

Notably, the extant literature does not meaningfully address whether partisan-balance requirements affect the perceived quality of those bodies' decisional outputs. One reason for this scholarly lacuna is that, at least at the federal level, partisan-balance regimes rarely change: partisan-balance requirements are usually written into an agency's organic statute at inception, thus precluding a before-and-after comparison. Another reason is that, for most agencies, there is no revealed-preference measure of the value that regulated parties and other affected interest groups assign to the agency's institutional features. As we explain below, the *Adams* litigation—which threw Delaware's judicial partisan-balance requirements into flux—offers an unusual and possibly unique natural experiment in which a partisan-balance regime underwent a series of exogenous shocks that generated measurable responses from a key set of stakeholders.

B. Delaware's Dominance in the Market for Corporate Charters

Market reactions to the *Adams* litigation merit careful empirical examination not only because they can shed light on the effects of partisan-balance requirements but also because they can inform the debate over Delaware's dominance in corporate charter competition. More than 60% of publicly traded companies in the United States are incorporated in

---

[63] Feinstein & Hemel, *supra* note 1, at 36–38.

[64] *Id.*

[65] *Id.* at 43.

[66] *Id.* at 81. We attribute this finding primarily to the phenomenon of "partisan sort": since the late 1970s, liberal Republicans have largely migrated to the Democratic Party, while conservative Democrats have mostly moved to the Republican side. One consequence of "partisan sort" is that even a president who wants to appoint a cross-party appointee "in sheep's clothing" (i.e., a Democratic president who wants to appoint a liberal Republican or a Republican president who wants to appoint a conservative Democrat) may struggle to find a qualified nominee who fits the ideological bill. *Id.* at 12.

Delaware.[67] Scholars have long sought to understand why so many firms flock to America's sixth least populous state. One group of scholars argues that firms choose to incorporate in Delaware because of desirable features of Delaware law that increase shareholder wealth.[68] Others argue that the "Delaware effect" on firm value is illusory and that companies choose to incorporate or reincorporate in Delaware for reasons other than shareholder wealth maximization.[69] The natural experiment created by the *Adams* litigation can contribute to this debate by revealing the extent to which investors value one important feature of Delaware's legal landscape.

Studies of the "Delaware effect" on firm value typically follow either of two methodological approaches. One set of studies tests for this effect by comparing Delaware and non-Delaware firms based on the ratio between their market value and their book value, a measure labeled "Tobin's *q*." These studies operate on the assumption that the market value of a firm's securities relative to the book value of its assets reflects the quality of its corporate governance. Empirical evidence concerning whether Delaware-incorporated firms have higher Tobin's *q* values is mixed, producing differing results depending on the period studied and whether a controlling shareholder exists.[70] Others challenge the reliability of Tobin's *q* as a measure of the effect of corporate law and governance on firm value.[71]

A second set of studies examines short-term stock price reactions to firms' announcements of their intention to reincorporate in Delaware.

---

[67] DAVID LARCKER & BRIAN TAYAN, CORPORATE GOVERNANCE MATTERS: A CLOSER LOOK AT ORGANIZATIONAL CHOICES AND THEIR CONSEQUENCES 330 (2d ed. 2016).

[68] *See, e.g.*, Romano, *Law as a Product*, *supra* note 15, at 280 (identifying Delaware's comprehensive body of corporate law and experienced judges as attractive features to firms).

[69] *See, e.g.*, Robert Anderson IV & Jeffery Manns, *The Delaware Delusion*, 93 N.C. L. REV. 1049, 1052 (2015) ("Whatever Delaware's past advantages may have been, faith and path dependence, rather than actual value added, supports its current hegemony.").

[70] *See* Edward Fox, *Is There a Delaware Effect for Controlled Firms?*, 23 U. PA. J. BUS. L. 1, 40 (2020); Guhan Subramanian, *The Disappearing Delaware Effect*, 20 J.L. ECON. & ORG. 32, 57 (2004); Robert Daines, *Does Delaware Law Improve Firm Value?*, 62 J. FIN. ECON. 525, 527 (2001).

[71] For instance, one study observes that a shareholder wealth-maximizing firm will invest in new projects up to the point that an additional $1 of investment adds $1 to its market value. Philip H. Dybvig & Mitch Warachka, Tobin's *q* Does Not Measure Firm Performance: Theory, Empirics, and Alternatives 1–2 (Mar. 6, 2015) (unpublished manuscript), https://ssrn.com/abstract=1562444 [https://perma.cc/R686-4Z4J]. Thus, a Tobin's *q* significantly higher than 1 may reflect inefficient underinvestment rather than good governance. Two studies list a range of other flaws with the use of Tobin's *q* as a measure of corporate performance. *See* Emiliano Catan & Marcel Kahan, Corporate Governance and Firm Value (Jan. 31, 2025) (unpublished manuscript), https://ssrn.com/abstract=5127297 [https://perma.cc/PE57-PCWW]; Robert Bartlett & Frank Partnoy, *The Misuse of Tobin's q*, 73 VAND. L. REV. 353, 356 (2020). For example, imagine that a firm with a Tobin's *q* of 1 invests $1 in an advertising campaign that increases the net present value of its future cash flows by only $0.99. The advertising campaign will increase the firm's Tobin's *q*—even though it reduces shareholder wealth—because the investment decreases the book-value denominator by more than it depresses the market-value numerator.

Professors Lucian Bebchuk, Alma Cohen, and Allen Ferrell identify six such event studies with reliable methodologies.[72] The average abnormal return across those six studies, weighted by sample size, is approximately 1.2%.[73] The authors therefore argue that "even if the positive abnormal stock price reaction is entirely due to the benefits of Delaware incorporation, these benefits appear to be rather modest."[74] Professors Sanjai Bhagat and Roberta Romano respond that "an investment project that generates positive abnormal returns of even 1% is, in fact, considerable in competitive capital markets."[75] Both sets of authors accept 1% as a reasonable, approximate estimate of the positive abnormal return associated with reincorporation into Delaware.

Securities event studies that focus on reincorporation decisions suffer from important limitations. Since firms often reincorporate in Delaware in conjunction with other changes to their business strategy or governance structure—such as the consummation of a merger or the adoption of a takeover defense—event studies may not be able to distinguish the effects of Delaware law from other factors associated with reincorporation. And apart from any concerns about confounding factors, short-term event studies measure only the effect of reincorporation on investors' *expectations* regarding a firm's future profitability.[76] As Professors Emiliano Catan and Marcel Kahan caution, "[t]he market's expectations, however, may be wrong."[77] Still, the same authors conclude that even with these shortcomings, event studies are "greatly superior" to Tobin's *q* regressions in measuring

---

[72] Lucian Bebchuk, Alma Cohen & Allen Ferrell, *Does the Evidence Favor State Competition in Corporate Law?*, 90 CALIF. L. REV. 1775, 1790–92 (2002).

[73] *Id*. at 1792. "Average abnormal return" refers to the average difference between the actual returns of a portfolio and the expected returns over a specific period surrounding an event. For more detail, see *infra* Section II.C. We have verified that five of the six studies included in Bebchuk, Cohen, and Ferrell's meta-analysis rely on equal-weighted—not market capitalization-weighted—models. *See* Romano, *Law as a Product*, *supra* note 15, at 266–67, 271 tbl.12; Pamela P. Peterson, *Reincorporation: Motives and Shareholder Wealth*, 23 FIN. REV. 151, 156 (1988); Michael Bradley & Cindy A. Schipani, *The Relevance of the Duty of Care Standard in Corporate Governance*, 75 IOWA L. REV. 1, 57, 67 tbl.9 (1989); Jeffry Netter & Annette Poulsen, *State Corporation Laws and Shareholders: The Recent Experience*, FIN. MGMT., Autumn 1989, at 29, 35, 36 exhibit 1; Randall A. Heron & Wilbur G. Lewellen, *An Empirical Analysis of the Reincorporation Decision*, 33 J. FIN. & QUANT. ANALYSIS 549, 556, 557 tbl.5 (1998). We have not been able to locate the sixth study, Jianghong Wang, Performance of Reincorporating Firms (1995) (unpublished manuscript), and the author himself no longer has a copy. E-mail from Roberta Romano to Daniel Hemel (Oct. 23, 2024) (on file with authors).

[74] Bebchuk et al., *supra* note 72, at 1792.

[75] Sanjai Bhagat & Roberta Romano, *Event Studies and the Law: Part II: Empirical Studies of Corporate Law*, 4 AM. L. & ECON. REV. 380, 384 (2002).

[76] *See* Jill E. Fisch, Jonah B. Gelbach & Jonathan Klick, *The Logic and Limits of Event Studies in Securities Fraud Litigation*, 96 TEX. L. REV. 553, 556 (2018) (observing that event studies "do not speak to the rationality of . . . price changes").

[77] Catan & Kahan, *supra* note 71, at 4.

the effect of corporate law and governance changes on firm value.[78] And again, most—though not all—of these event studies find a positive price effect immediately after firms reincorporate in Delaware.[79]

To the extent that a Delaware charter confers an advantage on firms incorporating there, what features of the state's legal landscape might account for this "Delaware effect"? The two leading accounts are sometimes described as the "credible commitment theory" and the "network theory."[80] Professor Romano's credible commitment theory starts from the premise that corporate law is a "product" sold by states to firms.[81] According to this theory, firms incur nontrivial costs when they switch "products" (i.e., when they change their state of incorporation).[82] To avoid further costly switches, firms seek out states that precommit to being responsive to the needs and desires of their corporate "customers."[83]

Proponents of the credible commitment theory argue that Delaware enjoys several advantages that allow it to precommit to a high-quality corporate law regime. The state's small size—and the correspondingly outsized impact of corporate franchise tax revenues on its budget—render Delaware "hostage" to the interests of its corporate customers.[84] Furthermore, Delaware has invested in a number of "real assets"—including "a comprehensive body of case law, judicial expertise in corporation law, and administrative expertise in the rapid processing of corporate filings"—that "have no use outside the chartering business."[85] The sunk costs of these investments would be lost if Delaware ever abandoned its position as a go-to destination for corporate charters. For all these reasons, firms that choose to incorporate or reincorporate in Delaware can be confident that the state will maintain the quality of its most profitable product.

---

[78] *Id.* at 2.

[79] Professors Robert Anderson and Jeffery Manns add to this event-study literature by examining stock price reactions to mergers between Delaware and non-Delaware firms. Anderson & Manns, *supra* note 69, at 1083–84. Specifically, they focus on the effect of mergers on the combined values of targets and acquirers. They find that there is no statistically significant difference in the combined price effect based on whether the post-merger firm is incorporated inside or outside Delaware.

[80] Pierluigi Matera, *Delaware's Dominance, Wyoming's Dare: New Challenge, Same Outcome?*, 27 FORDHAM J. CORP. & FIN. L. 73, 77 (2022); Peter Molk, *Delaware's Dominance and the Future of Organizational Law*, 55 GA. L. REV. 1111, 1117 (2021).

[81] ROMANO, *supra* note 15, at 32–37; Romano, *Law as a Product*, *supra* note 15, at 278.

[82] Romano, *Law as a Product*, *supra* note 15, at 279–80.

[83] *Id.*

[84] As of 2021, corporate license fees accounted for 12.1% of Delaware's state and local general revenue, as compared to a national average of 0.2%. *State Fiscal Briefs: Delaware*, URB. INST. (Oct. 2024), https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-fiscal-briefs/delaware [https://perma.cc/QJ2H-N6T9].

[85] ROMANO, *supra* note 15, at 39.

Although Professor Romano does not note Delaware's constitutional partisan-balance requirements in her trailblazing account of Delaware's dominance,[86] several other scholars and jurists highlight the state's partisan-balance regime in explaining Delaware's corporate chartering success. Former Justice Norman Veasey, who served for twelve years as chief justice of the Delaware Supreme Court, writes that "[t]he constitutional requirement of a bipartisan judiciary"—because of its depoliticizing effect—"has led, in my opinion, to Delaware's international attractiveness as the incorporation domicile of choice."[87] Justice Randy Holland, who served on the Delaware Supreme Court for thirty-one years, adds that "Delaware's continued preeminence in corporate law is contingent on not only the perception but the reality that the Delaware judiciary is engaged in principled decisionmaking"—a perception and reality that he attributes to the state's "practice of appointing judges and maintaining a balance of power between the political parties on its high court."[88]

Professors Ofer Eldar and Gabriel Rauterberg provide the most developed account of the relationship between Delaware's partisan-balance regime and the state's dominant position in the market for corporate charters.[89] They frame their account as an extension of Professor Romano's credible commitment theory: in their view, Delaware bolstered the credibility of its commitment to a high-quality corporate law product by taking "deliberate steps to restrict the influence of political partisanship on the creation of its corporate law."[90] The authors place particular emphasis on the bare-majority limitation in the state's 1897 constitution, which was adopted just as the state was preparing to mount a challenge to New Jersey's then-preeminent position in the market for corporate charters. "When Delaware made a firm commitment in 1897 to a bipartisan judiciary—and thus, nonpartisan adjudication—other states competing for incorporations failed to do so," they observe.[91] "This enduring commitment likely facilitated the evolution of judicial expertise in corporate law that forms part of Delaware's alluring product for corporations today."[92]

Alongside the credible commitment theory, the network theory—first developed by Professor Michael Klausner—offers the other most prominent

---

[86] Instead, she emphasizes another feature of the state's constitution: a supermajority provision that requires a two-thirds vote of the state's house and senate for any legislative change to Delaware corporate law. *See id.* at 41–42; Romano, *Law as a Product*, *supra* note 15, at 241–42.

[87] Veasey & Guglielmo, *supra* note 11, at 1402.

[88] Holland, *supra* note 11, at 771–72.

[89] Eldar & Rauterberg, *supra* note 11.

[90] *Id.* at 207.

[91] *Id.* at 221.

[92] *Id.*

explanation for Delaware's dominance in corporate chartering.[93] Professor Klausner argues that Delaware's success in the market for corporate charters is "self-reinforcing": when firms incorporate in Delaware, they gain access to the "network benefits" of Delaware corporate law, and these benefits increase as the network grows larger.[94] Professor Klausner identifies three potential sources of network benefits. First, Delaware firms may face less legal uncertainty than non-Delaware firms because of the steady stream of Delaware judicial precedents interpreting common terms in corporate contracts.[95] Second, Delaware firms may pay less for legal services than firms incorporated in other states because attorneys are more familiar with Delaware corporate law than other states' corporate law.[96] And third, Delaware courts may develop greater expertise in corporate law matters than courts in other states because Delaware courts adjudicate such a high volume of corporate cases.[97]

Professor Sarath Sanga presents a creative empirical test of the network theory by examining the effect of new Delaware incorporations on the value of existing Delaware firms.[98] Professor Sanga focuses on the four-year period starting in June 1986, when Delaware's adoption of a liability-limiting provision for corporate directors set off a surge of Delaware reincorporation.[99] Professor Sanga finds that Delaware firms significantly outperformed non-Delaware firms during this period of rapid network expansion: a zero-investment portfolio that was long on Delaware firms and short on non-Delaware firms would have earned abnormal returns of more than 3% per year during the forty-eight-month stretch.[100] Professor Sanga goes on to provide suggestive evidence that the success of Delaware firms over that interval was due to the increase in the size of the Delaware network rather than the liability-limiting provision itself.[101]

The credible commitment and network theories are potentially complementary—not necessarily competing—accounts of the Delaware effect on shareholder wealth. It is possible that unique features of Delaware

---

[93] Klausner, *supra* note 15. Romano's 1985 article anticipates several of these arguments. *See* Romano, *Law as a Product*, *supra* note 15, at 274–75 (noting that "Delaware's well-developed case law . . . provides a pool of handy precedents," and that lawyers "realize cost savings when all their transactions can be governed by one state code").

[94] Klausner, *supra* note 15, at 844.

[95] *Id.* at 845.

[96] *Id.* at 846.

[97] *Id.*

[98] Sanga, *supra* note 15.

[99] *Id.* at 25.

[100] *Id.* at 25–27.

[101] *Id.*

law—including its credible commitment to the corporate law "product" and its constitutional commitment to a bipartisan judiciary—attract firms to the state and add to shareholder wealth, while network effects augment the benefits of legal quality. As explained below, our empirical strategy allows us to distinguish the effect of partisan balance from other elements of credible commitment theory; but nothing in our analysis rules out the coexistence of positive network externalities.

C. The Adams *Litigation*

Our ability to estimate the shareholder wealth effects of Delaware's partisan-balance regime arises from the long-running litigation in *Adams v. Carney*. The plaintiff in that case, James Adams, is a retired prosecutor and longtime Democrat who changed his voter registration to "unaffiliated" shortly before filing his lawsuit in February 2017.[102] Adams, who described himself in a deposition as "more of a Bernie [Sanders] independent," said he decided to challenge Delaware's partisan-balance regime after reading a law review article arguing that Delaware's other-major-party reservation is unconstitutional.[103] Borrowing arguments from that article, Adams alleged in his federal court complaint that Delaware's partisan-balance regime violates the First Amendment freedom of association because it discriminates on the basis of party affiliation, thus depriving lawyers like him who are neither Democrats nor Republicans of opportunities for judicial appointments.[104] Adams asked the federal district court to enjoin the use of party affiliation as a criterion for appointing Delaware state judges.[105]

Adams's lawsuit drew little notice from the business press, however, until Magistrate Judge Mary Pat Thynge granted Adams's motion for summary judgment on December 6, 2017.[106] In her decision, Magistrate Judge Thynge ruled that the state's partisan-balance regime "violates the First Amendment by placing a restriction on governmental employment based on political affiliation."[107] Although acknowledging that governmental employers may consider party affiliation when vetting candidates for "policymaking positions," Magistrate Judge Thynge held that the "narrow exception" for policymaking posts "does not apply because the role of the

---

[102] Complaint at 10, Adams v. Carney, No. 17-181-MPT, 2018 WL 3105113 (D. Del. June 25, 2018).

[103] Joint Appendix, *supra* note 29, at 38 (noting that Friedlander's article helped spur Adams to file suit); *id*. at 42 (describing Adams's political leanings). *See generally* Friedlander, *supra* note 30 (article referenced by Adams).

[104] Complaint, *supra* note 102, at 10.

[105] *Id.*

[106] Adams v. Carney, No. 17-181-MPT, 2017 WL 6033650, at *14 (D. Del. Dec. 6, 2017), *aff'd in part and rev'd in part*, 2018 WL 3105113.

[107] *Id.* at *13.

judiciary is to interpret statutory intent and not to enact or amend it."[108] Contrary to the claims of scholars and jurists who argue that a bipartisan judiciary underlies Delaware's corporate law preeminence, she concluded that "[p]olitical affiliation is not important to the effective performance of a Delaware judge's duties."[109]

The defendant in the case, Delaware Governor John Carney, initially responded with a motion urging the district court to reconsider its decision, which Magistrate Judge Thynge denied on May 23, 2018.[110] The Governor then appealed to the U.S. Court of Appeals for the Third Circuit, which unanimously affirmed the district court's decision on April 10, 2019.[111] The three-judge panel held—consistent with the district court's analysis—that the other-major-party reservation for Delaware judges flunked First Amendment scrutiny because it unnecessarily infringed on judicial candidates' associational rights.[112] While the panel did not directly address the constitutionality of the bare-majority limitation, it held that this limitation is not severable from the other-major-party reservation because they "do not think the two components were intended to operate separately."[113] This was a striking conclusion given that the Delaware constitution had included a bare-majority limitation without an other-major-party reservation from 1897 to 1951; and it was even more surprising given that Congress routinely applies bare-majority limitations to federal agencies without other-major-party reservations.

The Governor petitioned for rehearing en banc (i.e., rehearing by the full Third Circuit). Rehearing en banc is an exceedingly rare event—a "judicial hole in one"[114]—and federal appellate courts grant rehearing en banc in less than 1% of cases.[115] Perhaps not unexpectedly then, the Third Circuit denied rehearing en banc on May 7, 2019.[116] Notably, though, four of the court's fourteen then-active judges voted to grant rehearing en banc and chose to make their votes public.[117] These four dissenters included several

---

[108] *Id.* at *9, *13 (quoting Elrod v. Burns, 427 U.S. 347, 367 (1976)).

[109] *Id.*

[110] Adams v. Carney, No. 17-181-MPT, 2018 WL 11247847 (D. Del. May 23, 2018).

[111] Adams v. Governor of Del., 922 F.3d 166, 185 (3d Cir. 2019).

[112] *Id.* at 184–85.

[113] *Id.* at 183.

[114] Ronald Rauchberg, *A Judicial Hole in One*, LAW.COM: NAT'L L.J. (May 23, 2005, 12:00 AM), https://www.law.com/nationallawjournal/almID/900005429451 [https://perma.cc/4ENZ-KVMU].

[115] Aaron L. Nielson & Paul Stancil, *Gaming Certiorari*, 170 U. PA. L. REV. 1129, 1181 (2022).

[116] Order Denying Petition En Banc and Panel Rehearing, *Adams*, No. 18-01045, at 2 (3d Cir. 2019).

[117] *Id.* at 1.

of the court's most prominent judges.[118] The dissenters included appointees of Democratic and Republican presidents, indicating that their dissatisfaction with the panel's decision was more than an ideological gripe. Thus, although the immediate outcome of the en banc rehearing petition was negative from the Governor's perspective, the high-profile and bipartisan dissents arguably indicated that the case was ripe for Supreme Court review.

Governor Carney then filed a petition for certiorari. His petition argued that the state courts' partisan-balance requirements contribute to Delaware's ability to credibly commit to a high-quality corporate law product. "Delaware's well-earned reputation for impartiality and expertise is one reason that companies choose to charter there," Carney asserted.[119] "Delaware judges have concluded that the greater objectivity and consensus within the Delaware judiciary is due at least in part to its political balance provisions."[120]

On December 6, 2019, the Supreme Court announced that it would add the case, re-captioned *Carney v. Adams*, to its merits docket.[121] Since the petitioning party ultimately wins in more than two-thirds of merits cases at the Supreme Court, the grant of certiorari was a strong positive signal that Delaware's partisan-balance regime would survive in at least some form.[122]

The merits briefing also emphasized the importance of high-quality courts to businesses' decisions to incorporate in Delaware and the key role that partisan-balance requirements play in enhancing that reputation. Writing as amici, a bipartisan group of five former Delaware governors asserted that "Delaware's status as the center of United States corporate law [is] anchored by a specialized, nonpartisan judiciary."[123] The loss of that status, they

---

[118] Two of the four—Judges Thomas Hardiman and Stephanos Bibas—have acquired reputations as "feeder judges" whose clerks routinely go on to clerk for Supreme Court Justices. *See* Avalon Zoppo, *These Judges Feed the Most Law Clerks to the U.S. Supreme Court*, LAW.COM: NAT'L L.J. (July 19, 2023), https://www.law.com/nationallawjournal/2023/07/19/katsas-sutton-top-list-of-judges-who-feed-most-law-clerks-to-supreme-court/?slreturn=20240317232702 [https://perma.cc/6KQ3-UZ45]. Judge Hardiman also had been a finalist for the Supreme Court nomination that ultimately went to now-Justice Neil Gorsuch, with the *New York Times* noting afterwards that the Judge "might be considered for future Supreme Court appointments." Glenn Thrush & Maggie Haberman, *Runner-Up Didn't Make It to Supreme Court, but He Did Get to Altoona*, N.Y. TIMES (Feb. 1, 2017), https://www.nyt.com/2017/02/01/us/supreme-court-runner-up-thomas-hardiman.html [https://perma.cc/57FZ-BECR].

[119] Petition for Writ of Certiorari at 32, Carney v. Adams, 592 U.S. 53 (2020) (No. 19-309).

[120] *Id.* at 33.

[121] 140 S. Ct. 602 (2019).

[122] Oliver Roeder, *How to Read the Mind of a Supreme Court Justice*, FIVETHIRTYEIGHT (Apr. 28, 2015, 8:46 AM), https://fivethirtyeight.com/features/how-to-read-the-mind-of-a-supreme-court-justice/ [https://perma.cc/SK5H-PH7K].

[123] Brief for Former Governors of the State of Delaware as Amici Curiae in Support of Petitioner at 10, *Carney*, 592 U.S. 53 (No. 19-309).

claimed, "would harm Delaware-incorporated businesses nationwide."[124] In its amicus brief, the U.S. Chamber of Commerce asserted that the quality of Delaware courts—"a crown jewel of the state court system"—attracts firms to incorporate in the state.[125] The Chamber argued that invalidating these courts' partisan-balance requirements would threaten that preeminence "by dismantling the protections that have helped insulate [Delaware courts] from partisan influence and entrenchment."[126]

The Court held oral argument on October 5, 2020 and livestreamed the proceedings online to the public.[127] The Justices led off with tough questions for the Governor's lawyer, who had argued that Adams lacked constitutional standing to challenge the partisan-balance regime because Adams had not actually applied for a judgeship or shown concrete plans to do so in the near future.[128] Several Justices seemed skeptical of the Delaware Governor's standing argument, while others expressed concerns about the state's exclusion of independents from its judiciary.[129] The Justices also asked probing questions to Adams's attorney, particularly on the issue of standing.[130]

Court watchers came away from the argument with mixed predictions about the outcome. "[M]y prognosis is that a majority is likely to hold that Adams does have standing," and after that, "all bets are off," wrote Professor Rodney Smolla in the legal publication *Law360*.[131] *New York Times* Supreme Court correspondent Adam Liptak wrote that it was "possible" that the Court would rule that the plaintiff lacked standing, though also possible that it "would strike down only the provision limiting appointments to candidates affiliated with the major parties."[132]

---

[124] *Id.*

[125] Brief for the Chamber of Commerce of the United States of America as Amicus Curiae in Support of Petitioner at 1, *Carney*, 592 U.S. 53 (No. 19-309).

[126] *Id.*

[127] *See* Lysette Romero Córdova, *Will SCOTUS Continue to Livestream Oral Arguments and Are Cameras Next? Let's Hope So*, ABA: APP. ISSUES (Aug. 24, 2021), https://www.americanbar.org/groups/judicial/publications/appellate_issues/2021/summer/will-scotus-continue-to-livestream-oral-arguments-and-are-cameras-next/ [https://perma.cc/L5NY-9XH2] (noting that the Supreme Court livestreamed oral argument throughout most of 2020).

[128] Transcript of Oral Argument at 4–29, *Carney*, 592 U.S. 53 (No. 19-309).

[129] *Id.*

[130] *Id.* at 29–57.

[131] Rodney Smolla, Carney v. Adams *Threatens Delaware's Balanced Judiciary*, LAW360 (Oct. 7, 2020, 6:10 PM), https://www.law360.com/pulse/articles/1316944/carney-v-adams-threatens-delaware-s-balanced-judiciary [https://perma.cc/WX5Z-U9ZV].

[132] Adam Liptak, *Supreme Court Starts Term with Case on the Politics of Judging*, N.Y. TIMES (Oct. 5, 2020), https://www.nytimes.com/2020/10/05/us/politics/supreme-court-judges-ideology.html

The Supreme Court issued its decision on December 10, 2020—an unusually quick turnaround. Writing for a unanimous court, Justice Stephen Breyer concluded that Adams did indeed lack constitutional standing to challenge Delaware's judicial selection system. "[T]he record evidence fails to show that, at the time he commenced the lawsuit, Adams was 'able and ready' to apply for a judgeship in the reasonably foreseeable future," Justice Breyer wrote.[133] The Court therefore vacated the Third Circuit's judgment and remanded with instructions to dismiss Adams's case.[134] Without addressing any of the arguments for or against the constitutionality of Delaware's scheme, the Justices effectively breathed new life into both the bare-majority limitation and the other-major-party reservation.

Just hours after the Justices handed down their decision, Adams was back in federal district court to renew his constitutional challenge—this time with evidence that he had applied for three state judicial vacancies since 2017 and been rejected on all three occasions.[135] The Governor asked the court to dismiss the case again for lack of standing, but Judge Maryellen Noreika ruled on September 23, 2022 that Adams had met the standing requirement through his new judicial applications.[136] The parties soon entered settlement negotiations. On January 30, 2023, they jointly submitted a proposed consent judgment to the court that preserved the Delaware constitution's bare-majority limitation but declared the other-major-party reservation to be unenforceable.[137] Judge Noreika approved the consent order the same day.[138]

Both sides declared victory. "Mr. Adams is happy to have reached a positive result," his attorney told *Law360*.[139] "It's been a long slog, but definitely worth the effort," the lawyer added. The governor's office struck a similarly upbeat tone. "This settlement protects Delaware's long-standing

[https://perma.cc/KUK2-EHTQ]. Court reporter Amy Howe's description of the oral argument also gives reason to believe that the case could go either way (despite her article's headline). *See* Amy Howe, *Argument Analysis: Justices Skeptical of Challenge to Delaware Rules on Bipartisanship in Judiciary*, SCOTUSBLOG (Oct. 5, 2020, 5:52 PM), https://www.scotusblog.com/2020/10/argument-analysis-justices-skeptical-of-challenge-to-delaware-rules-on-bipartisanship-in-judiciary/ [http://perma.cc/BT2T-XYE3].

[133] *Carney*, 592 U.S. at 63.

[134] *Id.* at 66.

[135] Complaint at 6–7, Adams v. Carney, No. 20-01680-MN, 2022 WL 4448196 (D. Del. Sept. 23, 2022).

[136] *Adams*, 2022 WL 4448196, at *10.

[137] Proposed Order, *Adams*, No. 20-01680-MN (D. Del. Jan. 30, 2023).

[138] Stipulated Consent Judgment and Order, *Adams*, No. 20-01680-MN (D. Del. Jan. 30, 2023).

[139] Jeff Montgomery, *Del. Drops Major-Party-Only Mandate for State's Top Benches*, LAW360 (Jan. 30, 2023, 7:49 PM), https://www.law360.com/articles/1570912/del-drops-major-party-only-mandate-for-state-s-top-benches [https://perma.cc/36MA-2M8Q] (quoting David L. Finger of Finger & Slanina LLC).

and vital interest in avoiding partisan domination of the courts by preserving the 'bare majority' provisions in our constitution," Governor Carney's communications director said.[140] "That will help ensure that Delaware's courts continue to be recognized as the preeminent court system in the country."[141]

The upshot is that Delaware's constitution no longer requires that the governor appoint a Republican to an open seat on the state supreme, chancery, or superior court when a bare majority of members are Democrats. But, so far, Governor Carney—a Democrat—has not used his newfound discretion to name left-leaning independents or Green Party members to the bench. Since January 2023, the governor has had one opportunity to name a new judge to a historically Republican seat: a superior court judgeship in New Castle County. Carney nominated Sean Lugg, a longtime state prosecutor and registered Republican.[142]

II. RESEARCH DESIGN

The *Adams* litigation offers a unique opportunity to examine investors' perceptions of the underlying Delaware constitutional balance provisions. In this Part, we first develop hypotheses regarding how key events of the litigation would likely affect market expectations. We then describe the stock market data used to test these hypotheses. Finally, we provide model specifications for estimating the effects of the key events on investors' valuations of Delaware-incorporated firms.

A. Hypotheses

1. Major Events

In light of the myriad claims that Delaware courts' partisan-balance provisions improve decisional quality—a key feature of the corporate law "product" that Delaware offers to firms—we theorize that investors value partisan balance on Delaware's courts. Events in *Adams* offer a means of testing this theory. Although no single event in that litigation presented a final, durable settlement of the constitutionality of the state's partisan-balance requirements, we focus on two key judicial decisions that materially altered the probability that the requirements would survive.

---

[140] *Id.* (quoting David L. Finger of Finger & Slanina LLC).

[141] *Id.* (quoting Director of Communications Emily Hershman of the Office of Governor John Carney).

[142] Rose Krebs, *Del. Gov. Picks State DOJ Atty for Superior Court Judgeship*, LAW360 (Mar. 17, 2023, 3:20 PM), https://www.law360.com/pulse/articles/1587015/del-gov-picks-state-doj-atty-for-superior-court-judgeship [https://perma.cc/CL2V-88KV].

First, the district court's grant of summary judgment to Adams on December 6, 2017 marked the first time any court held that the state's partisan-balance regime violates the First Amendment.[143] We hypothesize that investors reacted negatively to this development. If the district court's decision were to stand, the invalidation of Delaware courts' partisan-balance requirements would eliminate a suggested source of the state judiciary's perceived quality and a component of the celebrated "Delaware effect."

Of course, the district court presumably was not expected to have the final word on the question. Nonetheless, we posit that the district court's decision shifted observers' priors downward regarding whether Delaware's partisan-balance requirements would survive. That reasoning motivates our first testable hypothesis:

> Hypothesis 1: Delaware-incorporated public companies exhibit abnormal negative returns on the date on which the district court invalidated the state judiciary's partisan-balance requirements.

Second, the U.S. Supreme Court's decision on December 10, 2020 effectively wiped the district court's ruling from the books.[144] Like the district court's decision, the Supreme Court's judgment did not purport to be the final word on the matter. In holding that Adams lacked standing, the Court did not reach the merits and thus left the door open to another lawsuit. Nonetheless, the Court's decision presumably shifted observers' expectations yet again. Before the decision, the status quo ante was that Delaware's partisan-balance requirements are unconstitutional and must be interred. After December 10, their future looked brighter. For Delaware, the worst-case eventual outcome would be that a proper plaintiff files suit and, after the case winds its way through the federal courts, succeeds in invalidating both the bare-majority limitation and the other-major-party reservation. That process would take years.[145] In the interim, partisan balance on Delaware's courts would endure.

Furthermore, the Supreme Court's decision preserved the prospect that a later suit by a proper plaintiff would yield a more favorable outcome for Delaware—which, it turns out, is what actually happened. As noted, Adams and Delaware ultimately entered into a settlement that allowed the bare-majority limitation to survive but scrapped the other-major-party reservation. Relative to the district court and Third Circuit decisions in the first lawsuit,

---

[143] Adams v. Carney, No. 17-181-MPT, 2017 WL 6033650, at *6 (D. Del. Dec. 6, 2017).

[144] Technically, the Court vacated the lower court's judgment and remanded the case with instructions to dismiss it. *See* Carney v. Adams, 592 U.S. 53, 55, 63 (2020).

[145] Indeed, nearly four years elapsed between Adams filing his complaint in February 2017 and the Supreme Court's December 2020 decision.

where Delaware lost on both issues, the settlement constitutes a major improvement for the state. Similar bare-majority provisions for federal multimember agencies have generally resulted in roughly equal representation for Democrats and Republicans, even without an other-major-party rule.[146] The federal experience suggests that of the two longstanding elements of Delaware's partisan-balance regime, the bare-majority limitation has the larger impact on the composition of the state's judiciary.

Accordingly, Hypothesis 2 reflects our expectation that investors would interpret the Supreme Court's vacatur as good news for Delaware firms:

> Hypothesis 2: Delaware-incorporated companies experience abnormal positive returns on the date on which the Supreme Court remands *Carney v. Adams* with instructions to dismiss the lawsuit.

Although these hypotheses are well-grounded, they also may be reversible. In other words, it is possible that market participants *disfavor* judicial partisan-balance requirements and thus react positively to the district court's decision and negatively to the Supreme Court's opinion. Most cases before the Delaware Supreme Court are decided by a subset of justices, who typically are selected via random assignment.[147] Random selection from a balanced pool of Democratic and Republican jurists may make case outcomes less predictable ex ante than they would be if Democrats dominated the bench—a likely scenario, given that Democrats have held Delaware's governorship for three decades.[148] Furthermore, market participants may believe that partisan-balance requirements reduce the quality of the Delaware judiciary by limiting the pool of candidates for open seats on the states' courts or that the explicit identification of judges with parties contributes to hyper-partisanship.[149]

We therefore are mindful of the possibility that events in *Adams* may have the opposite price effect from our hypotheses. Accordingly, we also offer an alternative hypothesis: important events in the *Adams* litigation are associated with abnormal *absolute* returns. This alternative hypothesis does not offer a position on the direction of the effects. Thus, we use two-sided tests of statistical significance[150]—which, incidentally, is the more conservative approach, requiring a stronger effect to achieve statistical significance at conventionally accepted levels.

---

[146] *See* Feinstein & Hemel, *supra* note 1, at 14.

[147] DEL. SUP. CT. INTERNAL OPERATING PROCS. R. IX(1)–(2) (West, Westlaw through July 15, 2024).

[148] *See supra* note 45.

[149] Sachs, *supra* note 14, at 98, 99.

[150] Whereas two-sided tests of statistical significance are often inappropriate in securities event studies, they are sensible here for this reason. *See* Fisch et al., *supra* note 76, at 589.

2. Other Events

The district court's summary judgment grant to Adams and the Supreme Court's remand with instructions to dismiss were not the only consequential decisions in this long-running litigation. Importantly, however, these were the only decisions that altered the legal status of Delaware's bare-majority limitation—the most significant element of the state's partisan-balance regime. By contrast, other rulings, such as the Third Circuit's affirmance of the district court's decision and the Supreme Court's choice to take up the case, left the legal status quo in place.

We do not expect status quo-preserving actions to affect markets as much as judicial decisions that alter the legal landscape. Therefore, we restrict our main hypotheses to the two actions that rupture the status quo. Nonetheless, even status quo-preserving actions along the path to a matter's ultimate resolution presumably shift observers' priors regarding the likelihood of a given outcome. For example, if an observer believes that partisan-balance requirements have an n percent likelihood of survival following an adverse district court decision, a later circuit court decision affirming the district court may reduce that perceived likelihood to $n - k$ percent.

Accordingly, we also analyze investors' responses to six other important decision points in the *Adams* litigation. These six other actions are:

(1) Denial of motion for reconsideration. On May 23, 2018, the district court denied Carney's motion for reconsideration.[151] By allowing its decision to stand, the court extinguished the first of several opportunities for judicial reversal. Consistent with the theory that investors value partisan-balance requirements, we hypothesize that Delaware firms witness abnormal negative returns on this date.

(2) Circuit court affirmance. On February 5, 2019, the Third Circuit issued a panel decision affirming the district court.[152] We expect abnormal negative returns on this date for a similar reason as above.

(3) Denial of petition for rehearing en banc. On May 7, 2019, the Third Circuit denied Carney's petition for rehearing en banc.[153] Ordinarily, one would expect abnormal negative returns following this decision, since en banc review presents an additional opportunity for judicial reversal. But as noted above,

[151] Adams v. Carney, No. 17-181-MPT, 2018 WL 2411219 (D. Del. May 23, 2018).

[152] Adams v. Governor of Del., 914 F.3d 827 (3d Cir. 2019).

[153] Order Denying Petition En Banc and Panel Rehearing, *supra* note 116, at 2.

the circumstances of the Third Circuit's denial of rehearing en banc—with four judges, including two top "feeder" judges, dissenting from the denial—complicates causal inference, as those dissents may have signaled an increased probability of Supreme Court review.[154] Given these cross-cutting considerations, we do not offer a hypothesis regarding abnormal returns on this date.

(4) Certiorari grant. On December 6, 2019, the Supreme Court granted Carney's petition for writ of certiorari.[155] Because the Supreme Court reverses the lower court judgments in most of the appeals that it hears,[156] we presume that this grant substantially increased the likelihood that Delaware's partisan-balance requirements would survive. Thus, we hypothesize that Delaware-incorporated firms will experience abnormal positive returns on this date.

(5) Oral argument. On October 5, 2020, the Supreme Court heard oral argument on the case.[157] The Court streamed the argument live on its website beginning at 10:04 AM, which enabled interested investors, early in the trading day, to listen for clues regarding how the Court might rule.[158]

Once again, we do not offer a firm hypothesis for the effect of oral argument on trading markets due to cross-cutting considerations. As noted, most Justices did not appear to clearly favor either side in their questioning in this case, and the argument generated mixed media reactions. Even if one received a strong signal of the Court's intentions from oral argument, however, the predictive power of this measure is relatively small; sophisticated models of oral argument content on case outcomes improve accuracy over the "petitioner always wins" baseline only by 2.02 to 4.5 percentage points.[159]

(6) Settlement. Following the Supreme Court's dismissal of the case for lack of standing, Adams took steps to cure this defect and filed

---

[154] *See* Zoppo, *supra* note 118.

[155] Carney v. Adams, 140 S. Ct. 602 (2019).

[156] Daniel Martin Katz, Michael J. Bommarito II & Josh Blackman, *A General Approach for Predicting the Behavior of the Supreme Court of the United States*, PLOS ONE, Apr. 12, 2017, at 1, 9.

[157] Transcript of Oral Argument at 4–29, *supra* note 128.

[158] *Id.* Research shows that the content and tone of Justices' questions during oral argument can be predictive of the Court's ultimate disposition. *See* Ryan C. Black, Sarah A. Treul, Timothy R. Johnson & Jerry Goldman, *Emotions, Oral Arguments, and Supreme Court Decision Making*, 73 J. POL. 572, 574 (2011) (finding that "unpleasant" language directed at an attorney is associated with a lower chance of prevailing).

[159] Aaron Russell Kaufman, Peter Kraft & Maya Sen, *Improving Supreme Court Forecasting Using Boosted Decision Trees*, 27 POL. ANALYSIS 381, 384 (2019).

a new suit.[160] The parties settled that litigation on January 30, 2023, when the district court entered a consent judgment at both parties' request.[161]

This settlement does not generate a straightforward prediction regarding market reactions. On one hand, Delaware's concession that the other-major-party restriction violates the U.S. Constitution arguably weakens the state's partisan-balance regime, even though the bare-majority limit survives. Further, Adams's acknowledgment that the bare-majority restriction remains enforceable does not prevent other Delawareans with standing from challenging that provision—or from using the same arguments that Adams successfully deployed at every stage at which a court reached the merits. These features suggest that Delaware-incorporated firms should experience abnormal negative returns on the settlement date.

On the other hand, the fact that Delaware agreed to the settlement suggests that the state preferred the deal's terms to rolling the dice in court. And again, evidence from federal multimember agencies indicates that the bare-majority requirement on its own could produce a judiciary with nearly equal numbers of Democrats and Republicans.[162] That Adams—thus far the only plaintiff willing to challenge the state's partisan-balance regime—agreed to drop his opposition to the bare-majority limitation therefore arguably qualifies as a win for the state. By this logic, Delaware-incorporated firms should experience abnormal positive returns on the settlement date. Given these competing theories, we do not offer a hypothesis regarding abnormal returns on the settlement date.

B. Data

Our research design requires data on the jurisdiction of incorporation for U.S. public companies, other features of these companies, and daily stock returns. We obtain most of these data from the Center for Research in Security Prices (CRSP).[163] For each event in our study, we identify all Delaware-incorporated companies in the CRSP data.

---

[160] Complaint for Declaratory and Injunctive Relief Under U.S.C. § 1983, Adams v. Carney, No. 20-01680-MN, 2022 WL 4448196 (D. Del. Sept. 23, 2022).

[161] Stipulated Consent Judgment and Order, *Adams*, No. 20-01680-MN (Jan. 30, 2023).

[162] Feinstein & Hemel, *supra* note 1, at 14.

[163] We obtained data on stock price momentum from Kenneth French's data library. *See* Kenneth R. French, *Momentum Factor*, DATA LIBR. (Aug. 31, 2024), http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/data_library.html [http://perma.cc/TE5E-JCXN] (sheet labeled "Momentum Factor (Mom)" under "Sorts Involving Prior Returns" heading).

The sample is restricted to public companies listed on the two largest U.S. stock exchanges, NYSE and NASDAQ. Exchange-traded funds and other publicly traded financial vehicles are excluded. The sample runs from June 13, 2017 to April 12, 2023, which corresponds to 120 trading days before the district court's grant of summary judgment through 50 trading days after the parties settled. In all, the sample consists of 3 million company-trading days. It includes 2,865 Delaware-incorporated companies and 1,424 companies incorporated elsewhere in the United States.[164]

Table 1 provides descriptive statistics concerning these companies. As the table shows, Delaware corporations tend to have substantially larger market capitalizations and greater liquidity than firms incorporated in other states.

TABLE 1: CHARACTERISTICS OF DELAWARE VS. OTHER CORPORATIONS

	Delaware Corps.				Other Corps.			
	Mean (SD)	25th	Median	75th	Mean (SD)	25th	Median	75th
Daily Returns[165]	0.0005 (0.047)	–0.015	0	0.014	0.0005 (0.038)	–0.012	0	0.012
Volume	1,643 (8,846)	95	331	1,109	1,062 (4,749)	34	184	733
Market Cap.	9,780 (44,200)	253	1,110	4,410	9,650 (71,000)	206	828	3,730

Note. Sample is comprised of NYSE- and NASDAQ-listed companies during the June 13, 2017–April 12, 2023 period, subject to the limitations described in note 163 and in the accompanying text. *Daily Returns* are defined as the change (%) in share price between consecutive trading days. Dividends are reinvested on the ex-date, i.e., the date the security starts trading without the value of its next dividend payment.[166] *Volume* is denoted in thousands of shares. *Market Cap.* is listed in millions of dollars.

[164] Not every company is included for each event study. Some companies were listed for only a portion of the 6/13/2017–12/10/2020 period, whereas others had insufficient trades during the estimation windows preceding some events. For companies that reincorporate, CRSP only reports their most recent state of incorporation. Accordingly, for some companies the reported state of incorporation may not accurately reflect the state of incorporation on the event date. The number of companies for which this error applies, however, is likely small. Consider that among the over 22,000 companies listed on a major U.S. stock exchange for some portion of the 1930–2010 period, only 6.9% changed their incorporation state either from or to Delaware at any point during this eighty-year period. Sanga, *supra* note 15, at 19 tbl.1. The proportion that changed their incorporation state between mid-2017 (when the estimation window for the first event in this analysis began) and 2024 (when we downloaded CRSP data on firms' states of incorporation) is presumably much lower.

[165] Daily returns are defined as the change in share price between consecutive trading days. Dividends are reinvested on the ex-date, i.e., the date the security starts trading without the value of its next dividend payment. CTR. FOR RSCH. IN SEC. PRICES, DATA DESCRIPTION GUIDE: CRSP US STOCK AND CRSP US INDICES DATABASES 122–23, https://wrds-www.wharton.upenn.edu/documents/399/Data_Descriptions_Guide.pdf [https://perma.cc/TFB7-H8FF].

[166] *See id.* at 77.

C. Methods

We test the above hypotheses in three ways. First, we employ conventional event-study methods to detect anomalous fluctuations in the prices of securities for Delaware-incorporated companies over time. These models aggregate across all treated firms—here, firms incorporated in Delaware on the event date—and utilize information regarding trends in these firms' securities prices during a pre-event estimation window.[167]

Second, to allow for the modeling of firm-level features that may influence share price, we examine the share price fluctuation of each individual firm in our sample—both those incorporated in Delaware and elsewhere—on the event date. Specifically, we regress event-day market returns on whether a firm is Delaware-incorporated (along with other firm-level covariates). This approach allows for the modeling of firm-level features, which are absent from the first approach. The disadvantage of this approach relative to conventional securities event studies is that it offers an event-day snapshot without accounting for trends in securities prices before the event.

Third, we model share price fluctuation across the 100 trading days surrounding the event date. This approach allows us to observe differences in the market behavior of Delaware firms on the event date relative to both non-Delaware firms on the event date and Delaware firms on other trading days. Like the conventional securities event-study methods of our first approach, this approach utilizes information on trading days other than the event date; like the event-day OLS regression models that we utilize in our second approach, this approach models firm-level features that are considered to influence share price.

This Section describes each of these three methods in turn.

1. Event-Study Analysis

As in conventional securities event studies, we first examine abnormal returns across all Delaware-incorporated firms. We start with a basic market model, also known as the capital asset pricing model. For each covered stock i on event date t, we calculate expected returns r_{it}:

$$\hat{r}_{it} = \alpha + \beta_i \cdot (Mkt_t - Rf_t) + \varepsilon_{it} \qquad (1)$$

where *Mkt* is the return of the market, *Rf* is the risk-free rate of return (based on a portfolio of short-term Treasury bills), and ε_{it} is an idiosyncratic

[167] Charles J. Corrado, *Event Studies: A Methodology Review*, 51 ACCT. & FIN. 207, 207–09 (2011) (discussing this common approach to securities event studies).

component that captures firm-specific factors. Each firm's loadings on *Mkt* are estimated during the period between 120 and 30 trading days prior to the event date. Abnormal return for stock *i* on date *t* is therefore:

$$AR_{it} = \hat{r}_{it} - [\alpha + \beta_i \cdot (Mkt_t - Rf_t)] \quad (2)$$

And the abnormal return across all Delaware firms on the event date is:

$$AAR = \frac{1}{N}\sum_{i=1}^{N} AR_{i,t} \quad (3)$$

We calculate *AAR* with a one-day event window.[168] Because the most relevant events in the *Adams* litigation occurred relatively early in the trading day,[169] we assume that market participants had sufficient time to acquire information and, if desired, react by trading on the highly active NYSE and NASDAQ exchanges. Further, it is exceedingly rare for the content of a judicial decision to become public before the decision is formally issued, lessening concerns about information leakage prior to the event date.[170]

Alongside the market model, we also employ the Fama–French three-factor model as an alternative specification. This specification adds to the market model two additional systematic risk factors that are thought to affect stock performance.[171] These factors are (1) the difference in returns between small- and large-cap stocks, which accounts for the tendency of the former to outperform the latter in the long term, and (2) the difference in returns between high book-to-market (or value) stocks and low book-to-market (or

[168] Given this one-day event window, cumulative average abnormal return (CAAR) is equivalent to AAR here.

[169] Specifically, the district court's summary judgment grant was issued at 11:49 AM on December 6, 2017, Docket for *Adams v. Carney*, No. 17-00181, PACERMONITOR, https://www.pacermonitor.com/case/20665714/Adams_v_Carney [https://perma.cc/F424-G555]; email correspondence between the authors and Carney's counsel confirms that the Third Circuit released its opinion before trading markets opened, E-mail from David McBride, Att'y, to author (Nov. 24, 2023, 12:54 PM) (on file with *Northwestern University Law Review*); the Supreme Court releases its certiorari grants at 9:30 AM, *Case Distribution Schedule*, SUP. CT. OF THE U.S., https://www.supremecourt.gov/casedistribution/casedistributionschedule.aspx [https://perma.cc/9UWQ-9WDD], and reads merits decisions starting at 10:00 AM, SUP. CT. OF THE U.S., GUIDE FOR COUNSEL IN CASES TO BE ARGUED BEFORE THE SUPREME COURT OF THE UNITED STATES 14 (2003), https://www.supremecourt.gov/casehand/Guide%20for%20Counsel%202023.pdf [https://perma.cc/9B24-PY3P]; and the district court entered the proposed consent judgment ending the *Adams* litigation at 11:27 AM on January 30, 2023, Docket for *Adams v. Carney*, No. 20-01680, PACERMONITOR, https://www.pacermonitor.com/case/37477493/Adams_v_Carney [https://perma.cc/L7JP-H595].

[170] Yehuda Davis, Suresh Govindaraj & Kate Suslava, *Does the Stock Market Anticipate Events and Supreme Court Decisions in Corporate Cases?*, GLOB. FIN. J., Feb. 9, 2024, at 1, 14.

[171] Eugene F. Fama & Kenneth R. French, *Common Risk Factors in the Returns on Stocks and Bonds*, 33 J. FIN. ECON. 3, 5 (1993).

growth) stocks, which again captures the long-term tendency for the former to outperform the latter.[172]

The market and Fama–French models are widely adopted approaches for securities event studies, each with relative advantages and disadvantages.[173] For instance, recent research has documented substantial and unexplained revisions in the data used for the Fama–French factors, especially the difference in returns between value and growth stocks.[174] By contrast, the market-returns factor appears to be least affected by these issues. In other words, these potential issues may affect the market model much less than the three-factor model.[175]

We also report results from a four-factor model, which adds stock market momentum to the Fama–French specification. Following the finding of a medium-term momentum effect in stock returns,[176] many securities event studies model this feature.[177] Finally, we report results from a raw returns model.

2. Event-Day Regression Models

For another window into these potential effects, we assess how the price effects of events relate to firm characteristics for a cross-section of firms. In other words, for all firms trading on the NYSE or NASDAQ on the event date—whether incorporated in Delaware or another state—we run ordinary least squares (OLS) regression of event-day returns on whether the firm was incorporated in Delaware plus a set of firm characteristics. This model takes the following form:

$$r_i = \alpha + \beta_1 Delaware_i + \beta_2 MktValue_i + \beta_3 BookMktRatio_i + \beta_4 Momentum_i + \gamma_{industry\_i} + \varepsilon_i \quad (4)$$

---

[172] *Id.* More precisely, this model modifies Equations (1) and (2) as follows:

$$\hat{r}_{it} = \alpha + \beta_{i,1} \cdot (Mkt_{it} - Rf_{it}) + \beta_{i,2} \cdot SMB_{it} + \beta_{i,3} \cdot MHL_{it} + \varepsilon_{it}$$

where r_{it} is the expected returns for stock i on date t, $Mkt - Rf$ is the return of the market portfolio minus the risk-free rate of return, *SMB* is the return on small- minus large-cap stocks, and *HML* is the return on value stocks (high book-to-market ratio) minus growth stocks (low book-to-market ratio). Abnormal return for stock i on date t is therefore:

$$AR_{it} = \hat{r}_{it} - [\alpha + \beta_{i,1} \cdot (Mkt_t - Rf_t) + \beta_{i,2} \cdot SMB_t + \beta_{i,3} \cdot HML_t]$$

[173] *See* JOHN Y. CAMPBELL, ANDREW W. LO & A. CRAIG MACKINLAY, THE ECONOMETRICS OF FINANCIAL MARKETS 156–57, 163 (1997).

[174] *See* Pat Akey, Adriana Z. Robertson & Mikhail Simutin, *Noisy Factors* 1–2 (Eur. Corp. Governance Inst., Fin. Working Paper No. 920, 2023).

[175] *See id.* at 8, 34 fig.1 (panel A).

[176] *See* Mark M. Carhart, *On Persistence in Mutual Fund Performance*, 52 J. FIN. 57, 61 (1997).

[177] *See, e.g.*, David F. Larcker, Gaizka Ormazabal & Daniel J. Taylor, *The Market Reaction to Corporate Governance Regulation*, 101 J. FIN. ECON. 431, 440 (2011) (modeling the momentum effect in analysis of the impact of corporate regulation).

where r_i is the change in firm i's closing price between trading day t-1 and t (the event date), measured as a percentage over/under the firm's closing price on t-1. *Delaware* is a dummy variable coded as a 1 if the firm is incorporated in that state on the event date. *MktValue* is the natural log of the firm's market value at the opening bell on the event date. *BookMktRatio* is the firm's book value divided by its market value, with both measured at the end of the fiscal year immediately preceding the event. *Momentum* is the change in the firm's share price in the six months preceding the event date. Finally, some models include $\gamma_{industry\_i}$, a set of 25 industry-group-level fixed effects, each corresponding to a Global Industry Classification Standard (GICS) industry group and coded as a 1 if Standard & Poor's classifies the firm as operating primarily in that industry.[178]

3. Pooled Regression Models

Finally, we run regression models pooling across firm-days during the period beginning 50 trading days before the event and ending 50 trading days after it. The first of these models takes the following form:

$$r_{it} = \alpha + \beta_1 Delaware_i * EventDay + \beta_2 Delaware_i + \beta_3 EventDate + \beta_4 MktValue_i + \beta_5 BookMktRatio_i + \beta_6 Momentum_i + \gamma_{industry\_i} + \varepsilon_i \quad (5)$$

This model builds on Equation (4), adding an *EventDay* dummy covariate coded as a 1 if the firm-trading day observation occurs on the date of the event and an interaction between this covariate and the *Delaware* covariate; this interaction term is coded as a 1 if the firm-trading day observation is a Delaware-incorporated firm on the event date. Thus, the coefficient estimate β_1 for this interaction term tests whether the relationship between Delaware incorporation and returns changes based on whether the observation occurred on the event date.[179] Additional models, reported in

[178] For other cross-sectional analyses of event-day returns using *MktValue*, *BookMktRatio*, and *Momentum* as control variables, see *id.* at 440. For discussion of advantages of using these four-digit GICS codes over their alternatives as fixed effects, see Yakov Amihud & Stoyan Stoyanov, *Do Staggered Boards Harm Shareholders?*, 123 J. FIN. ECON. 432, 435 (2017). Industry-group-level fixed effects are terms in a regression model that capture unobserved variables that are assumed to be constant within a specific industry group. For instance, a (hypothetical) new banking regulation announced on the date of the district court's decision in *Adams* presumably will impact bank stocks—but not the share prices of firms in other sectors—on that date. The inclusion of fixed effects measured at the industry-group level accounts for countless similar unobserved changes at the industry-group level.

[179] Essentially, β_1 in both models is akin to a difference-in-difference estimate. Salman Arif, John D. Kepler, Joseph Schroeder & Daniel Taylor, *Audit Process, Private Information, and Insider Trading*, 27 REV. ACCT. STUD. 1125, 1138 (2022). Given that these pooled regression models employ panel data, including firm fixed effects and clustering standard errors at the firm level would be the ideal specification. Because firm identity is perfectly correlated with Delaware incorporation, unfortunately this specification is unworkable.

Table 6 below, replace industry-group fixed effects with firm-level fixed effects, add trading-day fixed effects, or both.

III. ANALYSIS

This Part reports our results. In brief, we find negative abnormal returns accompanying the district court's decision in most models, supporting Hypothesis 1, and positive abnormal returns across all models on the date that the Supreme Court issued its opinion, supporting Hypothesis 2.

A. *Event-Study Analysis*

1. District Court Decision

Table 2 reports the results of the aggregate-level event studies for the date on which the district court granted summary judgment to Adams. Recall that we expect the market to react negatively to the court's invalidation of partisan-balance requirements for the Delaware judiciary and thus hypothesize that shares of Delaware-incorporated firms will trade at a discount on the date on which the decision was issued.

TABLE 2: ABNORMAL RETURNS ON DATE OF DISTRICT COURT DECISION

Specification	Avg. Abn. Return (AAR)	*t*-statistic
Market Model	–0.0064 ***	–9.4531
Fama–French 3-Factor Model	–0.0032 ***	–4.7905
Fama–French + Momentum	–0.0030 ***	–4.4932
Raw Returns Model	–0.0077 ***	–11.0585

Note. Table presents estimates for the market reaction to district court's December 6, 2017 grant of summary judgment to plaintiff in *Carney v. Adams*, thus invalidating Delaware courts' partisan-balance requirements. Observations: 2,149 NYSE- or NASDAQ-traded firms incorporated in Delaware on the event date. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$.

As the table shows, the average abnormal returns (AAR) to Delaware firms are negative and statistically significant across all model specifications. For instance, the market model reports AAR of –0.64 percentage points across Delaware-incorporated firms on the event date. The estimates from the multi-factor models are roughly half the size, but still not trivial,

considering that the median NYSE- or NASDAQ-traded security witnessed movement of 0.99 percentage points (in absolute value) that day.[180]

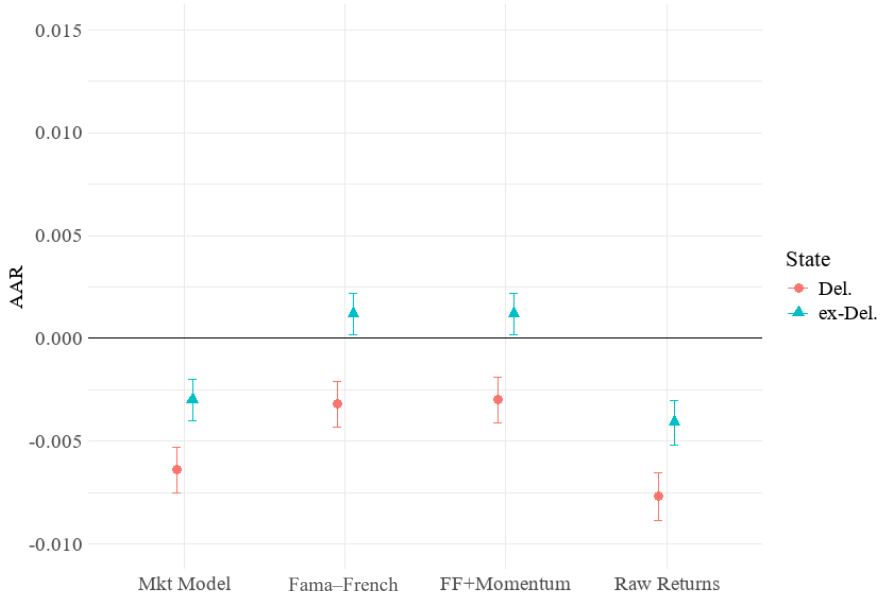
In unreported analyses, we rerun the models in Table 2 excluding stocks that trade at less than $1 per share and, separately, excluding firms with a market capitalization under $10 million. We exclude these penny stocks and, separately, micro-cap firms because research by Professors Yakov Amihud and Stoyan Stoyanov finds differential value effects of court rulings concerning corporate governance on firms with these characteristics versus other firms.[181] These models produce directionally consistent and statistically significant AAR estimates as well.

We also examine how Delaware firms' event-day performance compares to the same-day performance of firms incorporated elsewhere. Figure 1 reproduces the AAR estimates for Delaware firms in Table 2 alongside those for non-Delaware firms. As the negative estimates for the raw returns model show, NYSE- and NASDAQ-traded stocks performed poorly overall on the day of the district court's decision. Notably, however, Delaware firms performed worse than non-Delaware firms on that date, with these differences in abnormal returns achieving statistical significance at least at the $p < 0.05$ level across all model specifications. In addition, whereas the AAR estimates for Delaware firms are negatively signed across all models—i.e., these firms experienced abnormal declines in stock price on the event date—the estimated effect sizes for non-Delaware firms are slightly positive in both multi-factor models.

[180] Specifically, this figure is the median absolute value of the daily gain or loss of NYSE- or NASDAQ-traded securities on the event date. This figure was calculated by the authors based on trading data obtained from CTR. FOR RSCH. IN SEC. PRICES, https://www.crsp.org/ [https://perma.cc/56XK-JB3W].

[181] *See* Amihud & Stoyanov, *supra* note 178, at 433. *But see* Alma Cohen & Charles C.Y. Wang, *Reexamining Staggered Boards and Shareholder Value*, 125 J. FIN. ECON. 637, 641 (2017) (reporting that some of these differences are model-dependent).

FIGURE 1: ABNORMAL RETURNS FOR DELAWARE VS. OTHER FIRMS ON DISTRICT COURT DECISION DATE



Note. Figure presents estimates for the market reaction to district court's December 6, 2017 invalidation of Delaware courts' partisan-balance requirements. Circles denote AAR estimates for Delaware-incorporated firms (n = 2,149). Triangles denote estimates for firms incorporated in other states (n = 1,177). Bars signify 90% confidence intervals.

Finally, we examine abnormal returns by firm size. These results are reported in Appendix A.[182] In brief, the negative AAR estimates for Delaware firms are most pronounced for small- and mid-cap firms.[183] We reflect on the implications of these results by firm size in Part IV.

2. Supreme Court Decision

Turning to the other major event in the *Adams* litigation, Table 3 displays AAR estimates for Delaware firms on the date on which the Supreme Court vacated the lower courts' judgments. Here, recall that we

[182] *See infra* Appendix Figure A.1.

[183] That effect size gradually approaches zero—albeit not monotonically—as one moves from the lowest quintile of firms by market capitalization to the highest quintile. Further, for most quintiles, the 90% confidence intervals around the AAR estimates for Delaware versus non-Delaware firms overlap, thus limiting inferences; only for mid-cap firms does the difference in AAR estimates for Delaware versus non-Delaware firms achieve conventionally accepted levels of statistical significance.

expect Delaware firms to experience a positive price effect on the news, per Hypothesis 2.

TABLE 3: ABNORMAL RETURNS ON DATE OF SUPREME COURT DECISION

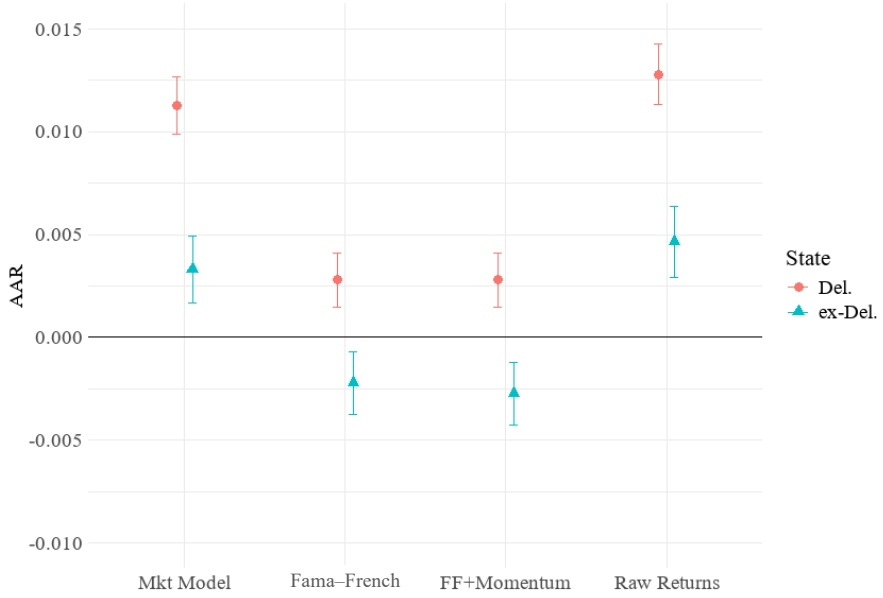
Specification	AAR	*t*-statistic
Market Model	0.0113 ***	13.3595
Fama–French 3-Factor Model	0.0028 ***	3.4805
Fama–French + Momentum	0.0028 ***	3.4973
Raw Returns Model	0.0128 ***	14.3737

Note. Table presents estimates for the market reaction to the U.S. Supreme Court's December 10, 2020 vacatur of the judgment in *Carney v. Adams*, thus preserving Delaware courts' partisan-balance requirements for the time. Observations: 2,310 NYSE- or NASDAQ-traded firms incorporated in Delaware on the event date. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$.

The positive, statistically significant AAR estimates across all model specifications in Table 3 support Hypothesis 2. For instance, the market model estimates a 1.13 percentage-point abnormal return for Delaware firms. This abnormal increase more than cancels out the abnormal decrease associated with the district court's decision. Similarly, the positive estimates in the multi-factor models nearly cancel out the negative abnormal returns on the date of the district court's decision. Once again, model specifications that exclude penny stocks and, in separate models, companies with market capitalizations below $10 million also produce estimates that are directionally consistent and statistically significant at $p < 0.01$.

Figure 2 compares Delaware firms' abnormal returns on the Supreme Court decision date to the abnormal returns on that date for firms incorporated in other states. Across all models, Delaware firms experienced higher abnormal returns than did companies incorporated in other states. Further, whereas the estimates are consistently positive for Delaware firms across all four model specifications at $p < 0.10$, the same cannot be said for non-Delaware firms. For these non-Delaware firms, the estimates are positive in two models and negative in the other two, with these estimates achieving statistical significance in all four models.

FIGURE 2: ABNORMAL RETURNS FOR DELAWARE VS. OTHER FIRMS ON SUPREME COURT DECISION DATE



Note. Figure presents estimates for the market reaction to Supreme Court's December 10, 2020 vacatur of the district court's judgment. Circles denote AAR estimates for Delaware-incorporated firms (n = 2,310). Triangles denote estimates for firms incorporated in other states (n = 1,225). Bars signify 90% confidence intervals.

As before, Appendix A reports abnormal returns by firm-size quintile.[184] Here, both principal models—the market model and Fama–French model—show that the positive abnormal returns that Delaware experienced on the date of the Supreme Court's decision were concentrated among smaller public firms.

3. Other Events

We also present results from event-study models for the six additional events discussed in Section II.A.2: (1) the district court's denial of Carney's motion for reconsideration; (2) the circuit court's affirmance; (3) the circuit court's denial of Carney's petition for rehearing en banc; (4) the Supreme Court's grant of Carney's certiorari petition; (5) oral argument in the Supreme Court; and (6) the parties' settlement of subsequent litigation. Table 4 reports average abnormal return estimates for these six events using

[184] *See infra* Appendix Figure A.2.

two common model specifications, the market model and the Fama–French three-factor model.

TABLE 4: ABNORMAL RETURNS ON DATES OF OTHER EVENTS IN THE *ADAMS* LITIGATION

Event	Prediction	Market Model		Fama–French Model	
		AAR	*t*-stat.	AAR	*t*-stat.
District court denial of reconsideration motion (5/23/2018)	negative	–0.0010	–1.4059	–0.0018 **	–2.5537
Circuit court affirmance (2/5/2019)	negative	–0.0005	–0.6770	–0.0001	0.8722
Circuit court's denial of petition for rehearing en banc (5/7/2019)	conflicting	0.0020 **	2.4978	0.0022 ***	2.7867
Supreme Court cert grant (12/6/2019)	positive	0.0024 ***	3.1623	0.0003	0.3675
Supreme Court oral argument (10/5/2020)	conflicting	–0.0015	–1.4629	–0.0030 ***	–3.1612
Settlement (1/30/2023)	conflicting	0.0011	1.3627	–0.0013	–1.6259

Note. Observations: NYSE- or NASDAQ-traded firms incorporated in Delaware on the event date *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$.

Concerning the denial of Carney's motion for reconsideration, both models yield negative AAR estimates, with the estimate reaching conventionally accepted levels of statistical significance in the Fama–French model. This result conforms to expectations because the denial reinforced the district court's earlier decision that was adverse to Delaware and closed the first of several options to reverse this decision. Notably, the estimates are much smaller for this event than they are for the district court's decision reported in Table 2. That result is sensible, as one could imagine that the court declining to reconsider its earlier decision would shift investors' priors less than the court's initial decision did.

By contrast, we find little evidence that the circuit court's affirmance moved markets. Recall that, because this appellate decision presumably provided greater certainty that the district court's judgment would stand, we expected this news to trigger a relative decline in share price for Delaware-incorporated firms vis-à-vis firms incorporated in other states. Although

the estimates in the table are negative, they do not approach statistical significance.

Due to potentially conflicting considerations, we do not offer a prediction regarding the denial of Carney's petition for rehearing en banc. As Table 4 shows, the AAR estimates are positive and statistically significant in both models. These results suggest that the Third Circuit's 10–4 split, with several prominent judges favoring rehearing, may have signaled to the Supreme Court, and therefore also to investors, that a strong certiorari petition was on the way.[185]

For the Supreme Court's grant of Carney's certiorari petition, one of the two models yields a positive and statistically significant estimate. The market model estimate supports the notion that investors interpreted the grant as increasing the likelihood that Delaware's judicial partisan-balance requirements would survive. That support, however, is qualified by the null result in the Fama–French specification. Similarly, one of the two models reports a statistically significant coefficient for oral argument, suggesting that investors may have (wrongly) interpreted oral argument as signaling that the Court would affirm. Once again, we offer this interpretation with caution considering the null result in the other model.

Finally, for the settlement date, the conflicting directionality and lack of significance in the models preclude any inferences.

B. Event-Day Regression Models

Turning to cross-sectional analysis, we first regress each public company's event-day returns on whether that company is incorporated in Delaware and a battery of control variables. Table 5 reports these results for the date of the district court decision (Models 1 and 2) and the Supreme Court decision (Models 3 and 4).[186]

---

[185] The denial of the petition for rehearing en banc also coincided with the *Wall Street Journal*'s publication of its first poll of Democratic primary voters after Joe Biden's entry into the 2020 presidential race. The poll showed Biden—a longtime U.S. senator from Delaware—with an early advantage over rivals such as Senators Bernie Sanders and Elizabeth Warren. *See* Aaron Zitner, *Joe Biden Has Early Advantage in Democratic Field, Poll Shows*, WALL ST. J. (May 6, 2019, 9:26 AM), https://www.wsj.com/articles/joe-biden-has-early-advantage-in-democratic-field-poll-shows-11557149191 [https://perma.cc/8VKH-HZSV]. Given Biden's long track record of defending Delaware interests against congressional efforts to federalize corporate charters, positive news regarding Biden's campaign may have contributed to the price increase for Delaware-incorporated firms on that date. *See* Paul Blumenthal, *Elizabeth Warren's Plan for 'Big Structural Change' Threatens Joe Biden's Delaware*, HUFFPOST (Sept. 11, 2019, 11:00 AM), https://www.huffpost.com/entry/joe-biden-elizabeth-warren-debate-delaware_n_5d76b4d7e4b07521023140e6 [https://perma.cc/JN6U-9XSR].

[186] Models 2 and 4 include 25 industry-group fixed effects (along with robust standard errors clustered at the industry level), corresponding to the 25 GICS industry groups. In alternative, unreported

TABLE 5: REGRESSING EVENT-DAY RETURNS ON DELAWARE INCORPORATION AND OTHER FIRM-LEVEL FEATURES

Event	District Court Decision		Supreme Court Decision	
	(1)	(2)	(3)	(4)
Delaware Incorporation	–0.0041 ** (0.0012)	–0.0025 (0.0017)	0.0084 *** (0.0015)	0.0030 ** (0.0014)
Market Value	Y	Y	Y	Y
Book-to-Market Ratio	Y	Y	Y	Y
Momentum	Y	Y	Y	Y
Fixed Effects	None	Industry Grp.	None	Industry Grp.
F	9.26 ***	9.01 ***	12.27 ***	11.41 ***
n	3,069	3,064	3,177	3,134

Note. Dependent variable: change in returns on the event date versus the prior trading date. Unit of analysis: each public corporation *i* whose stock trades daily on the NYSE or NASDAQ throughout the period beginning 120 trading days prior to the event date and ending on the event date *t*. Model: OLS. *Delaware*: coded as a 1 if *i* was incorporated in Delaware on *t*. *Market Value*: natural log of the *i*'s market capitalization at the beginning of trading day *t*, in millions of dollars. *Book-to-Market Ratio*: *i*'s book value divided by its market value at the end of the fiscal year prior to *t*. *Momentum*: ([*i*'s opening price on *t*] – [*i*'s opening price six months prior to *t*]) / (*i*'s opening price six months prior to *t*). *Industry group fixed effects* are a set of 25 dummy variables corresponding to GICS industry groups. Robust standard errors appear in parentheses and are clustered at the industry-group level in Models 2 and 4. F-statistics calculated via models without clustered standard errors. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$.

The table reports mixed results concerning the district court decision. Model 1, which does not include industry-group-level fixed effects, features a negative and statistically significant coefficient estimate for the price effect of Delaware incorporation (*Delaware*). This result supports Hypothesis 1. When we include industry-group fixed effects in Model 2, however, our coefficient estimate—though still directionally in line with Hypothesis 1—falls short of conventional statistical-significance thresholds.

The results concerning the Supreme Court decision are more consistent. Models 3 and 4 both report positive abnormal returns for Delaware firms on the date the Supreme Court vacated the lower courts' judgments. These results support Hypothesis 2.

model specifications, we instead use the 11 GICS sectors, 77 GICS industries, and 610 North American Industry Classification System classifications. These models yield results that are substantially similar to those reported in Table 5 in terms of direction, magnitude, and approximate level of statistical significance.

Notably, the observations in the models in Table 5 are equally weighted. In other words, event-day changes in the returns for the largest public companies "count" equally as the changes in the returns for the smallest cap stocks. When we weigh observations by market capitalization, however, we obtain null results. These null results for market-weighted models, which are reported in Appendix Table A.1, are consistent with the earlier finding from our event-study models that abnormal returns are most pronounced for small- and mid-cap firms.[187]

To further probe the strength of the findings concerning Hypothesis 2, Appendix B contains additional tests of this hypothesis. First, we rerun Model 4 in Table 5 for each of the ten trading days on either side of the event date. Plotting the coefficient estimates for *Delaware* across this [–10, +10] trading-day window reveals that the positive and statistically significant abnormal returns that Delaware firms experienced on the date on which the Supreme Court issued its opinion were unusual.[188] This plot also shows an absence of any pre-trend in the period leading up to this event date. We then calculate coefficient estimates and a measure of statistical significance for *Delaware* over the [–50, +50] trading day period. Plotting these figures confirms that Delaware firms' market behavior on this event date was unusual, albeit not dramatically so. Specifically, 7% of the *Delaware* coefficient estimates are larger in absolute value than the event-day coefficient estimate.[189]

C. Pooled Multi-Day Regression Models

Our next set of models pools across firm-trading days during the 100 trading days surrounding each event date. Specifically, for each firm-trading day in our sample, we regress daily returns on whether the firm is incorporated in Delaware, whether the day of the observation is the event date, an interaction of these two terms, and firm-level features introduced above.

Table 6 reports the results for the 50 trading days on either side of the district court's decision. Each model contains a different combination of industry-, firm-, and trading-day-level fixed effects and clustered standard

---

[187] *See supra* Section III.A.

[188] *See infra* Appendix Figure B.1. The coefficient estimate for the event date is unusual, but not unique. The figure reports a coefficient estimate for *Delaware* on date $t + 8$ that is similar in magnitude to the estimate on the event date t. This estimate on $t + 8$ falls short of conventionally accepted levels of statistical significance.

[189] In other words, this analysis yields a non-parametric p-value of 0.081. *See* JUSTIN WOLFERS & ERIC ZITZEWITZ, WHAT DO FINANCIAL MARKETS THINK OF THE 2016 ELECTION? 6–7 (Oct. 20, 2016), https://www.brookings.edu/wp-content/uploads/2016/10/what-do-financial-markets-think-of-the-2016-election_102016_wolferszitzewitz.pdf [https://perma.cc/NA9P-WZFS].

errors. Table 7 reports similar results for the 50 trading days on either side of the Supreme Court's decision.

TABLE 6: PRICE MOVEMENT FOR DELAWARE VS. OTHER FIRMS, ON DATE OF DISTRICT COURT DECISION VS. OTHER TRADING DAYS

	(1)	(2)	(3)	(4)
*Event Date * Delaware Incorporation*	–0.0039 ** (0.0019)	–0.0040 ** (0.0018)	–0.0036 *** (0.0012)	–0.0036 *** (0.0006)
Event Date	–0.0046 *** (0.0012)	–0.0034 ** (0.0014)	–0.0046 *** (0.0009)	–0.0042 *** (0.0005)
Delaware Incorporation	–0.0041 ** (0.0012)	–0.0025 (0.0017)	0.0084 *** (0.0015)	0.0030 ** (0.0014)
Market Value	Y	Y	Y	Y
Book-to-Market Ratio	Y	Y	Y	Y
Momentum	Y	Y	Y	Y
Fixed Effects	None	Industry Grp.	None	Industry Grp.
F	9.26 ***	9.01 ***	12.27 ***	11.41 ***
n	3,069	3,064	3,177	3,134

Note. Dependent variable: daily change in raw returns. Unit of analysis: measured at the firm-trading day level; includes all public corporations whose stock trades on the NYSE or NASDAQ on during the period beginning fifty trading days prior to the event and ending fifty trading days after it. Model: OLS. *Delaware*: coded as a 1 if *i* was incorporated in Delaware on the observation's date. *Event Date*: coded as a 1 if the observation occurred on the date of the event. *Market Value*: natural log of the *i*'s market capitalization at the beginning of trading day *t*, in millions of dollars. *Book-to-Market Ratio*: *i*'s book value at the end of the fiscal year prior to *t* divided by its market value. *Momentum*: ([*i*'s opening price on *t*] – [*i*'s opening price six months prior to *t*]) / (*i*'s opening price six months prior to *t*). Firm fixed effects are a set of dummy variables corresponding to each stock that appears in our sample on at least one trading day during the [–50, +50] trading day period around the relevant event. Industry-group fixed effects refer to the GISC industry-group classifications. Standard errors (in parentheses) are clustered at the industry-group level in Model 1, industry-group and trading-day levels in Model 2, firm level in Model 3, and firm and trading-day level in Model 4. Standard errors in Models 1 and 3 are robust. F-statistics calculated via models without clustered standard errors. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$.

TABLE 7: PRICE MOVEMENT FOR DELAWARE VS. OTHER FIRMS, ON DATE OF SUPREME COURT DECISION VS. OTHER TRADING DAYS (CONT.)

	(5)	(6)	(7)	(8)
*Event Date * Delaware Incorporation*	0.0078 *** (0.0027)	0.0078 *** (0.0002)	0.0078 *** (0.0013)	0.0078 *** (0.0009)
Event Date	0.0005 (0.0018)	0.0044 * (0.0024)	0.0001 (0.0009)	–0.0008 (0.0013)
Delaware Incorporation	–0.00006 (0.0002)	–0.00002 (0.0003)	–0.0098 (0.0068)	–0.1176*** (0.0254)
Market Value	Y	Y	Y	Y
Book-to-Market Ratio	Y	Y	Y	Y
Momentum	Y	Y	Y	Y
Fixed Effects	Ind. Grp.	Ind. Grp. & Date	Firm	Firm & Date
F	16.09 ***	267.74 ***	2.19 ***	10.98 ***
n	292,143	292,143	298,440	298,440

Note. Dependent variable: daily change in raw returns. Unit of analysis: measured at the firm-trading day level; includes all public corporations whose stock trades on the NYSE or NASDAQ on during the period beginning fifty trading days prior to the event and ending fifty trading days after it. Model: OLS. *Delaware*: coded as a 1 if *i* was incorporated in Delaware on the observation's date. *Event Date*: coded as a 1 if the observation occurred on the date of the event. *Market Value*: natural log of the *i*'s market capitalization at the beginning of trading day *t*, in millions of dollars. *Book-to-Market Ratio*: *i*'s book value at the end of the fiscal year prior to *t* divided by its market value. *Momentum*: (*i*'s opening price on *t* – *i*'s opening price six months prior to *t*) / (*i*'s opening price six months prior to *t*). Firm fixed effects are a set of dummy variables corresponding to each stock that appears in our sample on at least one trading day during the [–50, +50] trading day period around the relevant event. Industry-group fixed effects refer to the GISC industry-group classifications. Standard errors (in parentheses) are clustered at the industry-group level in Model 5, industry-group and trading-day levels in Model 6, firm level in Model 7, and firm and trading-day level in Model 8. Standard errors in Models 5 and 7 are robust. F-statistics calculated via models without clustered standard errors. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$.

Once again, the results in Tables 6 and 7 support our hypotheses. For the district court decision, the estimates for the *Event Date * Delaware* interaction term are negative and statistically significant across all model specifications. With respect to the Supreme Court's decision, the positive and statistically significant estimates for the *Event Date * Delaware* interaction terms in all models indicate that Delaware firms received a boost on the day that the high court vacated the judgment for Adams, relative to non-Delaware firms on that date and to Delaware firms on other dates.

It bears mentioning that rerunning these models with firm-trading day observations that are weighted by each firm's market capitalization yields null results (although the coefficient estimates are directionally consistent with our hypotheses). These null results, reported in Appendix Tables A.2 and A.3, are consistent with the event-study results by firm-size quintile, which find that the abnormal returns are concentrated among smaller firms.[190] They also are consistent with the null results from the event-day regression models weighted by firm market cap.[191]

IV. IMPLICATIONS

A. Interpreting the Results

Our results are broadly consistent with the claim that Delaware's constitutional commitment to a politically balanced judiciary adds value to Delaware-incorporated firms. In all, six of the seven equal-weighted model specifications yield a negative and statistically significant abnormal return for Delaware firms on the date of the district court's decision striking down Delaware's partisan-balance regime. On the date that the Supreme Court restored Delaware's partisan-balance regime, all seven models produce a positive and statistically significant abnormal return.[192]

The effect sizes of these events are not trivial. Table 2 reports that Delaware firms experienced a negative abnormal return of approximately 0.3 to 0.6 percentage points on the date of the district court's decision; Table 3 reports a positive abnormal return of 0.3 to 1.1 percentage points corresponding to the Supreme Court's decision. In our view, differences of this approximate size are meaningful, particularly over a short time horizon.

Moreover, these figures may even underestimate the value of Delaware's partisan-balance requirements. To some extent, courts in other states follow Delaware courts' precedent.[193] For instance, in Nevada—arguably the closest near-competitor to Delaware in the market for corporate charters—state courts sometimes apply Delaware precedent as more than merely persuasive authority. Remarkably, Nevada courts do so even on matters where the state's legislature has sought to differentiate Nevada's

---

[190] *See infra* Appendix Figures A.1, A.2.

[191] *See infra* Appendix Table A.1.

[192] The seven models are the four in Tables 2 and 3, the two event-day regression specifications in Table 5, and the pooled multi-day regression specification in Table 6.

[193] *See* Stephen M. Bainbridge, *DExit Drivers: Is Delaware's Dominance Threatened?* (UCLA Sch. of L., L. & Econ. Rsch. Paper No. 24-04, Dec. 2024); Marcel Kahan & Ehud Kamar, *The Myth of State Competition in Corporate Law*, 55 STAN L. REV. 679, 708 n.94 (2002).

corporate law product from Delaware's.[194] To the extent that judicial opinions from Delaware's courts influence other state courts' corporate law decisions, developments affecting Delaware's courts—including the invalidation or restoration of partisan-balance requirements—may affect firm value for corporations chartered in those other states.

Notably, however, the one equal-weighted model for the district court event that does not yield statistically significant results is the event-day model that includes industry-group fixed effects (Model 2 in Table 5). That is an important limitation that compels us to interpret our results cautiously with respect to the district court's opinion. Consider that the sectoral composition of Delaware corporations differs from that of the other states in several respects.[195] It follows that an industry-specific event occurring on the same day as an event in the *Adams* litigation could bias our results. At the same time, precisely because Delaware incorporation is much more common in some industries than in others, industry-group fixed effects potentially swamp much of the firm-level variation that makes our empirical analysis possible.

The results are even clearer on the date of the Supreme Court's decision. Every equal-weighted model indicates that investors reacted positively to the Supreme Court's ruling, which restored Delaware's partisan-balance regime. The results in Appendix B, comparing securities returns on the event date to those on nearby trading days, confirm that the positive and statistically significant abnormal returns on that event date are outliers.

Unsurprisingly, the Supreme Court's message to trading markets was stronger than the message from the district court. Investors are more likely to focus their attention on a much-anticipated Supreme Court ruling than a district court decision in a case that had generated little prior press coverage. Moreover, if some market participants viewed the lower courts' decisions as mere placeholders until the Supreme Court weighs in, those investors should be expected to react more decisively to the Supreme Court's decision than to placeholder decisions along the way. To be sure, the Supreme Court did not offer a final resolution; its vacatur for lack of standing did not reach the merits of Adams's complaint. Still, the Supreme Court's decision signaled that Delaware's partisan-balance regime would remain substantially intact

---

[194] *See* Bainbridge, *supra* note 193, at 56; Adam Chodorow & James Lawrence, *The Pull of Delaware: How Judges Have Undermined Nevada's Efforts to Develop Its Own Corporate Law*, 20 NEV. L.J. 401, 425 (2020).

[195] For example, energy, health care, financial services, and information technology are overrepresented, while real estate and utilities are underrepresented among Delaware charters. Data on the sectoral composition comes from CTR. FOR RSCH. IN SEC. PRICES, *supra* note 180.

for at least as long as it would take for a proper plaintiff to establish standing and obtain a second injunction.

We also offer a word on other events in the *Adams* litigation, apart from the status quo-disrupting district court and Supreme Court decisions. The results for these other dates tend to be smaller in magnitude and not always statistically significant. The null results for the Third Circuit's affirmance in particular demand a note of caution; because the Supreme Court's intervention is far from guaranteed even for a decision of this magnitude, the Third Circuit's decision was certainly consequential even though it did not change the status quo. Thus, the lack of statistical significance for our results concerning the Third Circuit's decision tempers our conclusions. Nonetheless, on the dates for which we can derive clear predictions regarding the *Adams* litigation's impact, our equal-weighted estimates are all directionally consistent with the hypothesis that positive developments for the defendant–governor in *Adams* generated positive effects on the share prices of Delaware-incorporated firms.

Finally, we emphasize that our main results do not hold in models that weight observations by a firm's market capitalization. Although these null results qualify our conclusions, we believe that our equal-weighted model results are nonetheless meaningful for two reasons. First, the original studies finding a positive stock price effect of reincorporating into Delaware—including the studies in Bebchuk, Cohen, and Ferrell's meta-analysis—all involved equal-weighted models.[196] We are aware of no event study involving a market cap-weighted model that replicates the Delaware effect finding. Insofar as we are seeking to explain what portion of the observed Delaware effect is attributable to partisan-balance requirements in the state's constitution, we believe it is appropriate to focus on equal-weighted models, because the observed Delaware effect is itself a phenomenon of equal-weighted models. Second, because of rising stock market concentration in the United States, market cap-weighted models accord extraordinary weight to a very small set of firms. As of 2023, the top ten firms accounted for 27% of the total market capitalization of the three largest U.S. stock exchanges.[197] Thus, in market cap-weighted models, a handful of firms disproportionately influence results. Although market cap-weighted models may be most appropriate for some research questions, those models—by design—do not

[196] *See* Bebchuk et al., *supra* note 72, at 1791 n.37.

[197] *See* MICHAEL J. MAUBOUSSIN & DAN CALLAHAN, MORGAN STANLEY, COUNTERPOINT GLOB., STOCK MARKET CONCENTRATION: HOW MUCH IS TOO MUCH? 3 exhibit 1 (June 4, 2024), https://www.morganstanley.com/im/publication/insights/articles/article_stockmarketconcentration.pdf [https://perma.cc/QY2Y-Z8ZQ].

tell us how changes in the background legal regime affect shareholder value at the typical U.S. publicly traded firm.

B. Implications for Partisan-Balance Requirements

Our results shed new light on the value of partisan-balance requirements. The negative abnormal returns for Delaware firms on the day the partisan-balance regime was struck down and the positive abnormal returns for Delaware firms on the day it was restored both suggest that investors may believe that partisan balance on the state judiciary benefits Delaware corporations. To be sure, studies such as ours that examine abnormal returns in securities markets over a short window reflect only market expectations, not long-term outcomes. Moreover, these studies cannot distinguish between investors' rational versus irrational responses to new information.[198] Still, our results indicate that investors—who have strong financial incentives to trade on their informed views—believe that partisan balance on Delaware's courts is a boon to Delaware companies.

Importantly, stock market prices reflect only the view of one corporate constituency: shareholders. What we call "the market value of partisan balance" does not include any value—positive or negative—that employees, customers, creditors, or other stakeholders assign to a politically balanced judiciary. Although this is no doubt a limitation of our approach, the limitation is potentially less serious in the present context because of the particular mix of cases that Delaware state courts hear. Employment-related claims and consumer class actions against Delaware-chartered firms are typically litigated elsewhere—either in federal court or in other state courts. And while a Delaware charter would enable a firm to file a bankruptcy petition in Delaware,[199] bankruptcy petitions go to federal bankruptcy court, not state court. Delaware courts, by contrast, are more likely to hear cases that pit shareholders against management or targets against acquirers. Although these cases still may affect nonshareholder constituencies (e.g., workers who might be laid off if a merger goes through), our concern about our failure to measure the reactions of nonshareholders is less acute than if the Delaware courts had wider jurisdiction over Delaware-incorporated firms that conduct much of their business elsewhere.

Why do investors value Delaware's partisan-balance regime? First, as noted above, partisan-balance requirements may exert a moderating effect on the judiciary in what is otherwise a single party-dominated state.[200]

---

[198] *See* Fisch et al., *supra* note 76, at 612 n.231.

[199] *See* 28 U.S.C. § 1408.

[200] Democrats have prevailed in every gubernatorial election in the state since 1992, and Democrats have controlled the state senate since 1973. *See supra* note 45.

Second, Delaware's partisan-balance regime may enhance the quality of judicial decision-making by ensuring that the state's five-member supreme court represents a wider range of perspectives. Third, partisan balance may increase the likelihood of one or more justices "blowing the whistle" if the state supreme court majority issues a decision that threatens corporate interests. Perhaps the most famous example of this phenomenon in Delaware history is the 1985 case of *Smith v. Van Gorkom*—issued over two dissents—which held that directors of the company TransUnion had breached their duty of care by approving a merger without adequately informing themselves as to the company's intrinsic value.[201] Following those whistleblowing dissents, the Delaware General Assembly responded by enacting liability-shield legislation that substantially limited the fallout from *Van Gorkom*.[202] As Professor David Skeel notes, dissents such as those in *Van Gorkom* have a particularly "powerful signaling effect" given the "norm of unanimity" that generally governs Delaware Supreme Court decision-making.[203] Note, though, that these last two rationales—panel diversity and whistleblowing—apply primarily to the Delaware Supreme Court, not the Delaware Court of Chancery, where the chancellor and vice chancellors hear cases individually rather than on panels.

Furthermore, our results suggest that partisan-balance regimes can advance their intended objectives even without an other-major-party reservation to backstop a bare-majority limitation. Our estimates for the final event date in *Adams*—the settlement that preserved the bare-majority limitation but eliminated the other-major-party reservation—are inconsistently signed and do not achieve conventionally accepted levels of statistical significance (Table 4). Whereas investors responded negatively to the district court's invalidation of the entire partisan-balance regime, we cannot reject the null hypothesis that investors were unbothered by the settlement agreement eliminating only the other-major-party reservation. This nonplussed reaction is consistent with the evidence in the extant literature indicating that bare-majority limitations meaningfully affect the ideological composition of multimember bodies even in the absence of other-major-party reservations.[204] It also suggests that investors disagree with the claim by the Third Circuit panel in *Adams* that Delaware's bare-majority

[201] 488 A.2d 858, 893 (Del. 1985).

[202] DEL. CODE ANN. tit. 8, § 102(b)(7) (2024).

[203] David A Skeel Jr., *The Unanimity Norm in Delaware Corporate Law*, 83 VA. L. REV. 127, 170 n.132 (1997).

[204] *See* Feinstein & Hemel, *supra* note 1, at 81; Gormley, *supra* note 57, at 681. *See generally* Ho, *supra* note 61 (providing empirical evidence on the impact of partisan-balance requirements in regulatory agencies); Nagel & Lubin, *supra* note 53 (analyzing the degree of correlation between party affiliation and decision-making in regulatory agencies).

limitation and other-major-party reservation are "equally integral" to the state's partisan-balance regime.[205] At least from the perspective of equity market investors, the presence or absence of a bare-majority limitation appears to be much more important than that of an other-major-party reservation.

Concededly, the external validity of our findings is potentially circumscribed by the particular features of Delaware politics. Because Delaware is a solidly blue state, partisan-balance requirements as a functional matter produce courts on which Republicans are overrepresented relative to their influence in state politics. That statement suggests an alternative interpretation of our results: that investor reaction to events in the *Adams* litigation evinces a preference not for balanced courts per se, but for Republican judges. If accurate, this interpretation calls into question the generalizability of our results to other courts or agencies.

We acknowledge that this alternative explanation may limit our ability to generalize from our findings. Nonetheless, there are reasons to be skeptical of the claim that investors value Delaware's partisan-balance requirements simply because these requirements place Republicans in judgeships they would not otherwise hold. For one, while the Republican Party has a reputation for being friendlier to corporate interests than the Democratic Party, that proclivity does not have obvious implications for corporate law disputes that pit one set of corporate interests against another (i.e., shareholders vs. management). For example, Democratic-controlled state legislatures are more likely to adopt anti-takeover statutes, while Republican control is associated with limitations on shareholder suits for violations of managers' fiduciary duties.[206] A study of firms' incorporation decisions shows that firms tend to disfavor incorporation in states with either of these arguably anti-shareholder laws.[207] Accordingly, an approach to corporate law that is Republican or Democratic in its orientation is "likely to be inconsistent with promoting the long-term interests of nationally diffuse shareholders."[208]

Second, at least in the Delaware context, it does not appear that Democratic or Republican judges are systematically more or less receptive to shareholder interests. For example, Democratic and Republican judges are

---

[205] Adams v. Governor of Del., 922 F.3d 166, 184 (3d Cir. 2019).

[206] Eldar & Rauterberg, *supra* note 11, at 197.

[207] Ofer Eldar & Lorenzo Magnolfi, *Regulatory Competition and the Market for Corporate Law*, AM. ECON. J.: MICROECON., May 2020, at 60, 61–62.

[208] Eldar & Rauterberg, *supra* note 11, at 187.

almost equally likely to side with shareholders in *Caremark* claims.[209] On the Delaware Chancery Court, the judges most and least likely to deny a motion to dismiss a shareholder derivative suit since 2000 are both Republicans.[210] While Democratic and Republican judges may differ in their worldviews, we see little evidence of a clear-cut relationship between partisanship and judicial decisions that raise or reduce firm value in corporate law cases. As a result, we believe that our results are more consistent with a preference among investors for partisan balance than for Republican judges, though the setting of our natural experiment prevents us from ruling out the alternative party-specific explanation.

---

[209] Plaintiffs bringing *Caremark* claims in shareholder derivative suits aver that corporate directors acting in bad faith essentially failed to implement or monitor internal oversight protocols. *See generally In re* Caremark Int'l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996) (articulating the test for violation of a director's duty of oversight). To evaluate how Democratic and Republican judges on the Delaware Supreme Court and Chancery Court respond to *Caremark* claims, we identified a list of high-profile *Caremark* cases from the following sources: Sarah Runnells Martin & Dakota Eckenrode, Caremark *Developments: Business Risk Versus* Massey *Claims*, INSIGHTS: THE DEL. EDITION (Skadden, Arps, Slate, Meagher & Flom LLP, New York, N.Y.), June 2024; Angela N. Aneiros & Karen E. Woody, Caremark*'s Butterfly Effect*, 72 AM. U. L. REV. 719 (2022); Roy Shapira, *A New* Caremark *Era: Causes and Consequences*, 98 WASH U. L. REV. 1857, 1861 (2021); Robert C. Bird, Caremark *Compliance for the Next Twenty-Five Years*, 58 AM. BUS. L.J. 63 (2021); and E. Norman Veasey & Randy J. Holland, Caremark *at the Quarter-Century Watershed: Modern-Day Compliance Realities Frame Corporate Directors' Duty of Good Faith Oversight, Providing New Dynamics for Respecting Chancellor Allen's 1996* Caremark *Landmark*, 76 BUS. LAW. 1 (2020).

In these cases, Democratic judges sided with shareholders in 8 of 11 votes (73%), while Republican judges sided with shareholders in 9 of 12 votes (75%): *Lebanon Cnty. Emps.' Ret. Fund v. Collis*, 311 A.3d 773 (Del. 2023) (en banc); *Marchand II v. Barnhill*, 212 A.3d 805, 807 (Del. 2019) (en banc); *In re LendingClub Corp. Derivative Litig.*, No. 12984-VCM, 2019 WL 5678578 (Del. Ch. Oct. 31, 2019); *In re Qualcomm Inc. FCPA S'holder Derivative Litig.*, No. 11152-VCMR, 2017 WL 2608723, at *2 (Del. Ch. June 16, 2017); *City of Detroit Police & Fire Ret. Sys. ex rel. NiSource, Inc. v. Hamrock*, No. 2021-0370-KSJM, 2022 WL 2387653, at *2 (Del. Ch. June 30, 2022); *Clem ex rel. Walgreens Boots All. v. Skinner*, No. 2021-0240-LWW, 2024 WL 668523 (Del. Ch. Feb. 19, 2024); *Segway Inc. v. Cai*, No. 2022-1110-LWW, 2023 WL 8643017 (Del. Ch. Dec. 14, 2023); *In re ProAssurance Corp. S'holder Derivative Litig.*, No. 2022-0034-LWW, 2023 WL 6426294 (Del. Ch. Oct. 2, 2023); *In re Clovis Oncology, Inc. Derivative Litig.*, No. 2017-0222-JRS, 2019 WL 4850188 (Del. Ch. Oct. 1, 2019); *Hughes v. Xiaoming Hu*, No. 2019-0112-JTL, 2020 WL 1987029 (Del. Ch. Apr. 27, 2020); *Teamsters Loc. 443 Health Servs. & Ins. Plan v. Chou*, No. 2019-0816-SG, 2020 WL 5028065 (Del. Ch. Aug. 24, 2020); *In re Boeing Co. Derivative Litig.*, No. 2019-0907-MTZ, 2021 WL 4059934 (Del. Ch. Sept. 7, 2021); *Inter-Mktg. Grp. USA, Inc. ex rel. Plains All Am. Pipeline, L.P. v. Armstrong*, No. 2017-0030-TMR, 2020 WL 756965 (Del. Ch. Jan. 31, 2020); *In re Facebook, Inc. Derivative Litig.*, No. 2018-0307-JTL, 2023 WL 3431604 (Del. Ch. May 11, 2023); and *Ont. Provincial Council of Carpenters' Pension Tr. Fund ex rel. Walmart Inc. v. Walton*, No. 2021-0827-JTL, 2023 WL 3093500 (Del. Ch. Apr. 26, 2023).

[210] We thank Professor Kobi Kastiel for sharing this data. Kastiel's data covers motions to dismiss in shareholder derivate suits adjudicated by the Delaware Chancery Court from 2000 through 2022. Excluding judges who decided fewer than ten cases, the judge most likely to deny a motion to dismiss was Vice Chancellor Travis Laster, and the judge least likely to deny a motion to dismiss was Vice Chancellor Sam Glasscock III. This data is on file with the authors.

C. Implications for Delaware's Dominance

In addition to their implications for the debate over partisan-balance requirements, our results inform scholarship on the Delaware effect in corporate law. First, our findings support the view that unique features of the state's legal landscape add value to Delaware-incorporated firms. Second, our results suggest that one particular feature of that landscape—the state's constitutional commitment to a politically balanced judiciary—accounts for a nontrivial component of the value of a Delaware charter.

As noted, scholars have sought to estimate the effect of a Delaware charter on shareholder wealth by measuring market responses to reincorporation choices. Because reincorporation choices are endogenous to corporate strategy, however, these studies struggle to distinguish between causation and noncausal correlation. To our knowledge, our study is the first to explore how an exogenous change to a structural feature of Delaware law affects shareholder wealth. Other important state-level attributes, e.g., Delaware's small size, are unlikely to change on a dime. By contrast, the December 2017 district court decision striking down Delaware's partisan-balance regime was a sudden and significant shock to the Delaware legal system.

The fact that markets responded in the predicted directions to both the district court's December 2017 decision and the Supreme Court's December 2020 restoration of Delaware's partisan-balance regime suggests that investors assign positive value to at least one structural feature of Delaware law. These results challenge claims by Delaware effect skeptics that market actors are indifferent to a firm's state of incorporation. For example, Professor Robert Rhee argues that "[m]arket actors do not behave as if Delaware law matters to firm value."[211] Our results indicate that at least one feature of the Delaware legal landscape does matter to equity-market investors.

Of course, Delaware governors may choose to maintain partisan balance on the state courts in the absence of partisan-balance requirements. After all, New Jersey governors adhere to a partisan-balance norm for that state's supreme court.[212] Suppose the presence or absence of partisan-balance requirements in Delaware's constitution would not necessarily spur a change in the composition of the state's judiciary. Why do investors appear to favor retaining these requirements in the state's constitution? The most obvious response is that norms do not provide nearly the same credible commitment as constitutional requirements. Thus, our findings support the credible

[211] Robert J. Rhee, *The Irrelevance of Delaware Corporate Law*, 48 J. CORP. L. 295, 300 (2023).

[212] *See* Wefing, *supra* note 38, at 715; Clifford et al., *supra* note 38, at 2.

commitment theory of Delaware's dominance in the market for corporate charters.

Going further, the concentration of abnormal returns among smaller firms on the two major event dates provides additional support for this theory. Recall that the theory posits that firms seek to incorporate in states that precommit to being responsive to those firms' needs.[213] A constitutional requirement of partisan balance on state courts is one mechanism by which Delaware can precommit to stable and bipartisan corporate law doctrine.[214] According to the credible commitment theory, investors value durable measures because firms' switching costs into a new state of incorporation are nontrivial.[215] If it were costless for firms to reincorporate, investors would not value measures like partisan-balance requirements because firms could easily decamp for a friendlier jurisdiction should Delaware law take a turn that they oppose. In reality, however, switching costs can be substantial.[216] For instance, a firm desiring to reincorporate in another state must undertake a proxy campaign to convince shareholders to approve the reincorporation and educate its corporate officers and directors on their responsibilities under a different body of corporate law. With larger firms benefiting from economies of scale, switching costs are a relatively greater burden on smaller firms.[217] It follows that smaller firms will value precommitment mechanisms like partisan-balance requirements more than larger firms, at least in proportion to their market capitalizations. Thus, the concentration of event-day abnormal returns among smaller firms is consistent with the credible commitment theory of Delaware's dominance, as these firms are more sensitive to switching costs and thus place greater value on precommitment devices like partisan-balance requirements.[218]

Our results regarding the relationship between firm size and the market value of partisan balance take on particular relevance in the wake of the high-profile decision by the electric carmaker Tesla to relinquish its Delaware charter in 2024. Tesla was, at the end of 2023, the seventh largest corporation

---

[213] Romano, *Law as a Product*, *supra* note 15.

[214] Eldar & Rauterberg, *supra* note 11, at 217.

[215] *See* Romano, *Law as a Product*, *supra* note 15, at 229.

[216] *See* Sanga, *supra* note 15, at 11.

[217] *See* Bebchuk et al., *supra* note 72, at 1789.

[218] Importantly, our findings do not necessarily imply that the market value of partisan balance is higher *in absolute terms* for small- and mid-cap firms than for large-cap firms. *Cf.* Marcel Kahan & Ehud Kamar, *Price Discrimination in the Market for Corporate Law*, 86 CORNELL L. REV. 1205, 1227 (2001) ("[T]he value of incorporation in Delaware increases with the size of the company."). Rather, our results by firm-size quintile suggest that the market value of partisan balance is smaller *as a percentage of total firm value* for large-cap firms than for their small- and mid-sized counterparts.

by market capitalization traded on a U.S. securities exchange.[219] For a firm of Tesla's size, the transaction costs of reincorporation were small relative to a total equity value of approximately $800 billion. Thus, the credible commitment theory would suggest that the value of a Delaware charter is smaller—at least as a percentage of firm value—for Tesla than for most other publicly traded companies. Notably, Texas—where Tesla is now chartered—has tried to replicate the corporate law expertise of the Delaware judiciary by creating its own business court to hear complex commercial cases.[220] Texas has not, however, adopted partisan-balance requirements for its business court or for other arms of its state judiciary. Our results suggest that smaller firms—for whom the switching costs of reincorporation amount to a larger percentage of equity value—may be reluctant to follow Tesla's move to a state that lacks a constitutional commitment to partisan balance on its courts.

Our results also shed light on the *composition* of the Delaware effect—and, specifically, how much of the Delaware effect can be attributed to the state's constitutional commitment to a politically balanced judiciary. As we reported, Delaware firms experienced a decline in value of approximately 0.3 to 0.6 percentage points, depending on the model, on the date of the district court's invalidation of the state's partisan-balance requirements (Table 2). The Supreme Court's vacatur of that decision sparked roughly the reverse effect: a 0.3 to 1.1 percentage point increase in firm value, again depending on the model (Table 3). By comparison, the weighted average of the six studies highlighted in Bebchuk, Cohen, and Ferrell's research indicated an abnormal return associated with reincorporation in Delaware of approximately 1.2 percentage points.[221] Viewed against that comparator, the value of partisan balance appears to be substantial. Even taking the low end of the range of estimates for our two key event dates, Delaware's partisan-balance regime, to a first approximation, accounts for roughly one-quarter of the value of a Delaware charter.

In addition to the implications for scholarship, quantifying this effect size may be particularly informative for three audiences: Delaware voters, federal policymakers, and federal courts. Concerning voters, consider that partisan-balance requirements limit Delawareans' democratic control over their judiciary to an extent unseen elsewhere in the United States. Whereas

---

[219] Tesla, Inc., Definitive Proxy Statement 74 (Schedule 14A) (Apr. 29, 2024).

[220] Gareth Vipers, Ryan Felton & Ginger Adams Otis, *Elon Musk Wants to Move Tesla's Incorporation from Delaware to Texas*, WALL ST. J. (last updated Feb. 1, 2024, 4:12 PM), https://www.wsj.com/business/tesla-to-hold-shareholder-vote-to-incorporate-in-texas-elon-musk-says-8eb78eef [https://perma.cc/NP2Q-BPNH].

[221] Bebchuk et al., *supra* note 72, at 1791.

voters in other states may influence and hold accountable their courts either directly through judicial elections or indirectly by electing the governors who appoint judges, Delawareans have tied their governor's hands, limiting the governor's choice set. Partisan-balance requirements presumably also pull Delaware courts to the right of Delaware's Democratic-leaning electorate.

In light of those accountability-diminishing and rightward-tilting effects, Delawareans may ask whether partisan-balance requirements are worth it. One response might be that firms value these requirements, that therefore the provisions contribute to Delaware's dominance in the market for corporate charters, and that this dominance, in turn, fills state coffers. This response—pure conjecture before—now has a quantitative foundation, albeit with some limitations and qualifiers.[222]

The second audience is federal policymakers. Over the past two decades, landmark federal statutes such as the Sarbanes–Oxley Act of 2002 and Dodd–Frank Act of 2010 have intruded on the historically state-level regulation of corporate governance.[223] Today, some political leaders propose federalizing corporate law to an even greater extent.[224] In some instances, the federalization of corporate governance shifts authority from states to the SEC.[225] Although the SEC is itself subject to a partisan-balance requirement, this requirement does not encumber the President's selection of which of the five SEC commissioners serves as chair. Given the chair's agenda-setting power and control over Commission staff, to whom the Commission

[222] If one accepts our claim that investors value balanced courts—and not merely the presence of Republican judges in Democratic-leaning Delaware—then our results also potentially inform efforts by other states to lure corporate charters away from Delaware. Along with the Texas example discussed above, Wyoming—which has a population roughly half the size of Delaware's—launched a campaign in 2019 to become the "Delaware of the West," establishing a new business-focused court designed to emulate the Delaware Chancery Court. *See* Lydia Beyoud, *Wyoming Wants to Be "Delaware of the West" with Business Court*, BLOOMBERG L. (Jan. 9, 2019, 5:30 AM), https://news.bloomberglaw.com/banking-law/wyoming-wants-to-be-delaware-of-the-west-with-business-court [https://perma.cc/8U5X-R27S]; Pierluigi Matera, *Delaware's Dominance, Wyoming's Dare: New Challenge, Same Outcome?*, 27 FORDHAM J. CORP. & FIN. L. 73, 124–37 (2022). Our findings suggest that unless another state adopts a constitutional partisan-balance regime, it will not be able to match all the structural features of the Delaware judiciary that market actors find attractive. Although Delaware's sustained ability to dominate the market for corporate charters is likely multicausal, judicial partisan-balance requirements in its state constitution appear to be a part of the mix.

[223] *See* Charles M. Elson, *Why Delaware Must Retain Its Corporate Dominance and Why It May Not*, *in* CAN DELAWARE BE DETHRONED? ch. 1, at 225 (Stephen M. Bainbridge, Iman Anabtawi, Sung Hui Kim & James Park eds., 2018).

[224] *See, e.g.*, Michael Sainato, *Elizabeth Warren Introduces Senate Bill to Hold Capitalism 'Accountable*,*'* GUARDIAN (Dec. 11, 2024, 7:00 AM), https://www.theguardian.com/us-news/2024/dec/11/elizabeth-warren-capitalism-accountable-senate-bill [https://perma.cc/EV6E-FND2].

[225] *See* MARC I. STEINBERG, THE FEDERALIZATION OF CORPORATE LAW 20–24 (2018) (highlighting ways in which the growth of federal corporate law has expanded the SEC's powers).

subdelegates substantial authority,[226] partisan-balance requirements are arguably less consequential at the SEC than for the Delaware judiciary. Further, Senator Bernie Sanders proposes that all publicly traded companies be required to obtain a federal charter with a new bureau in the Commerce Department; this federal charter would oblige boards to account for the interests of all corporate stakeholders, among other requirements.[227] The Sanders proposal does not include any partisan-balance mandate. Our results suggest that investors prefer corporate governance matters to be resolved by a politically balanced body.

To be sure, the impact of a proposal on corporate valuations certainly is not the only factor at issue in evaluating proposed legislation, and investors are not the only relevant corporate constituency. Further, that we cannot definitively rule out the alternative explanation that investors favor these requirements in Democrat-leaning Delaware because they place Republicans on the bench limits our ability to extrapolate from these results to other bodies. Nonetheless, the fact that investors, by their revealed preferences, appear to value the partisan-balance requirements of Delaware courts may be a factor worth considering.

Finally, these results could be useful to federal courts in the future. A future litigant could conceivably challenge the constitutionality of Delaware's bare-majority provision, which remains in effect following the parties' settlement. After all, once a bare majority of seats on a given Delaware court has been filled by members of one political party, other members of that party cannot be considered for vacancies on that court. In effect, that requirement compels prospective judges who are members of the majority party to leave that organization while not requiring the same of prospective judges who are members of other parties.

That effect arguably burdens these prospective judges' freedom of association under the First Amendment. In evaluating whether a state actor can condition public employment on party affiliation, the Supreme Court held in the 1980 case *Branti v. Finkel* that "the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved."[228] Delaware might argue that one element of "effective performance" by its judges is sustaining the state's corporate law "product," and partisan balance is an important feature of that product. Whether that argument ultimately carries

[226] Brian D. Feinstein & David Zaring, *Disappearing Commissioners*, 109 IOWA L. REV. 1041, 1046–47 (2024).

[227] *See* Marcel Kahan, *Delaware's Peril*, 80 MD. L. REV. 59, 70–71 (2020).

[228] 445 U.S. 507, 518 (1980).

the day in court remains to be seen. Still, our results suggest that the argument—successful or not—rests on a solid evidentiary foundation.

CONCLUSION

Promoters of partisan-balance requirements argue that these provisions exert a moderating influence on decision-makers, improve the quality of outcomes, and enable dissenting members to "blow the whistle" when their colleagues stray from the legislature's wishes. In Delaware, the state's political leaders consider judicial partisan-balance requirements to contribute to their courts' reputation in corporate law. That reputation, they contend, provides the state with a substantial competitive advantage in the market for corporate charters.

This study put those claims to the test. Its identification strategy leveraged a years-long legal challenge to the constitutionality of Delaware courts' partisan-balance requirements. We examined whether events in the *Adams* litigation that increased the likelihood that the provisions would be struck down (upheld) were associated with abnormal negative (positive) returns to the stock of Delaware-incorporated public companies. Essentially, the theory is that abnormal market fluctuations around these events reveal investors' views of the value of partisan balance on Delaware courts. We found that the events in the litigation that most disrupted the status quo—i.e., a district court decision invalidating the provisions and a Supreme Court opinion restoring the state's partisan-balance regime—moved markets in the expected directions. Abnormal returns around these events are nontrivial and achieve conventionally accepted levels of statistical significance in a wide variety of model specifications, though not in all. While our findings are amenable to multiple interpretations, our results suggest that—at least for investors in small- and mid-cap firms—partisan-balance requirements on Delaware courts appear to be an important element of "the Delaware way."

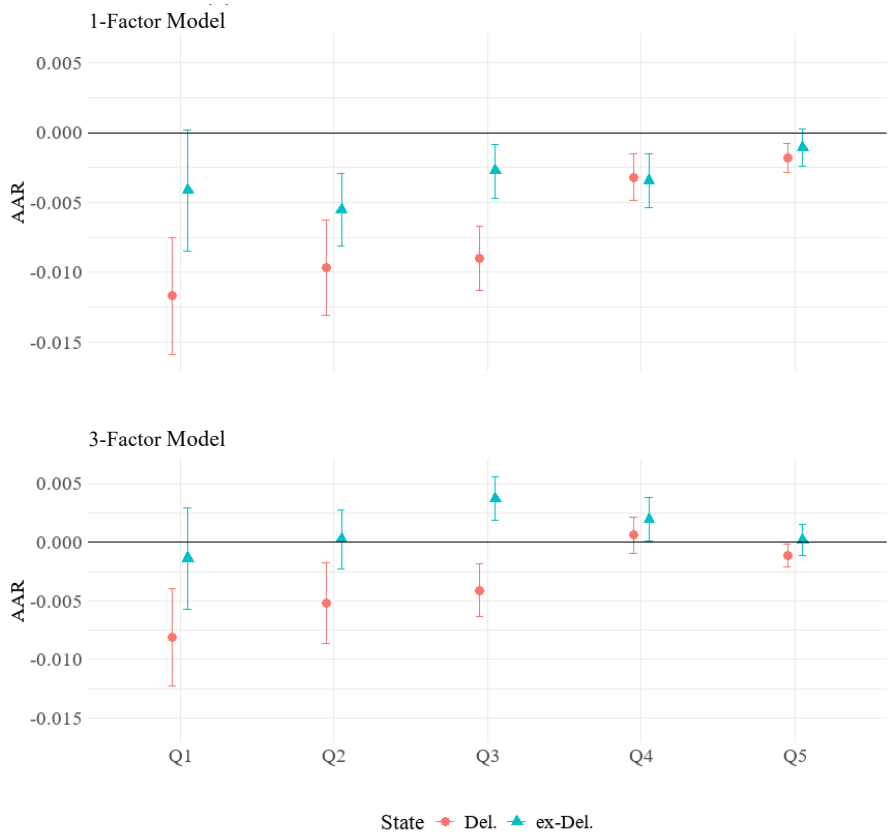
APPENDICES

This Part contains two sets of additional analyses. Appendix A reports results from event-study models run separately based on firm size. Appendix B reports the results of additional tests to further assess the strongest result uncovered in this Article: that Delaware firms experienced abnormal returns on the date of the Supreme Court's decision.

Appendix A: Returns by Firm Size

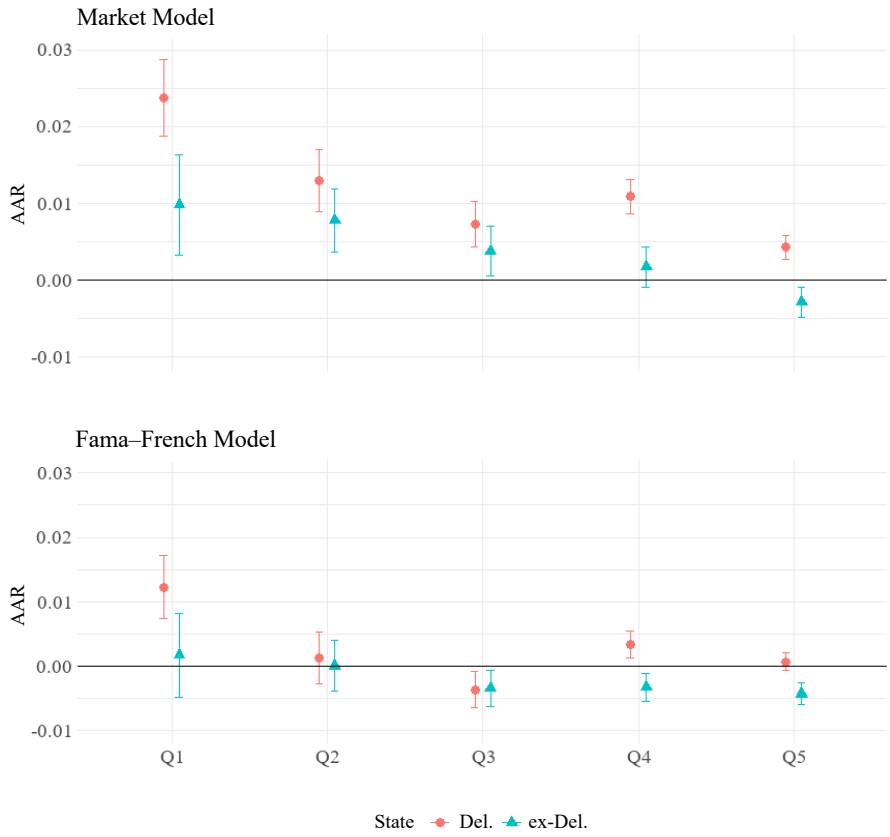
Figures A.1 and A.2 report AAR estimates for companies incorporated in Delaware versus those incorporated in other states, broken out by firm size. Figure A.1 reports these estimates on the date of the district court decision. Recall that Hypothesis 1 predicts negative abnormal returns for Delaware firms on that date. Figure A.2 conveys similar information on the date of the Supreme Court's decision. Per Hypothesis 2, we expect positive abnormal returns for Delaware firms here.

FIGURE A.1: ABNORMAL RETURNS FOR DELAWARE VS. OTHER FIRMS ON DISTRICT COURT DECISION DATE, BY FIRM-SIZE QUINTILE



Note. Figure presents estimates for the market reaction to district court's December 6, 2017 invalidation of Delaware courts' partisan-balance requirements. Circles denote AAR estimates for Delaware-incorporated firms. Triangles denote estimates for firms incorporated in other states. Q1 through Q5 categorize firms by market-capitalization quintile, with market cap measured at the beginning of the trading day on the event date. Bars signify 90% confidence intervals.

FIGURE A.2: ABNORMAL RETURNS FOR DELAWARE VS. OTHER FIRMS ON SUPREME COURT DECISION DATE, BY FIRM-SIZE QUINTILE



Note. Figure presents estimates for the market reaction to Supreme Court's December 10, 2020 vacatur of the district court's judgment. Circles denote AAR estimates for Delaware-incorporated firms. Triangles denote estimates for firms incorporated in other states. Q1 through Q5 categorize firms by market-capitalization quintile, with market cap measured at the beginning of the trading day on the event date. Bars signify 90% confidence intervals.

As discussed in Section III.B, we also rerun the event-day regression models in Table 5 with firm-level observations weighted by the firm's market capitalization. Table A.1 reports the results of these alternative model specifications, which yield null results across the board.

TABLE A.1: MARKET CAP-WEIGHTED REGRESSION OF EVENT-DAY RETURNS ON DELAWARE INCORPORATION AND OTHER FIRM-LEVEL FEATURES

Event	District Court Decision		Supreme Court Decision	
	(1)	(2)	(3)	(4)
Delaware Incorporation	–0.0001 (0.0017)	0.0014 (0.0016)	0.0027 (0.0025)	0.0024 (0.0016)
Market Value	Y	Y	Y	Y
Book-to-Market Ratio	Y	Y	Y	Y
Momentum	Y	Y	Y	Y
Fixed Effects	None	Industry Grp.	None	Industry Grp.
F	7.72 ***	11.90 ***	4.32 ***	13.19 ***
n	3,069	3,064	3,177	3,134

Note. Unit of analysis: each public corporation *i* whose stock trades daily on the NYSE or NASDAQ throughout the period beginning 120 trading days prior to the event date and ending on the event date *t*. Dependent variable: change in *i*'s returns on the event date versus the prior trading date, where returns are weighted by *i*'s market capitalization at the opening of the trading day. Model: OLS. *Delaware*: coded as a 1 if *i* was incorporated in Delaware on *t*. *Market Value*: natural log of the *i*'s market capitalization at the beginning of trading day *t*, in millions of dollars. *Book-to-Market Ratio*: *i*'s book value divided by its market value at the end of the fiscal year prior to *t*. *Momentum*: (*i*'s opening price on *t* – *i*'s opening price six months prior to *t*) / (*i*'s opening price six months prior to *t*). *Industry group fixed effects* are a set of 25 dummy variables corresponding to GICS industry group. Robust standard errors appear in parentheses and are clustered at the industry-group level in Model 2 and 4. F-statistics calculated via models without clustered standard errors. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$.

Relatedly, we also rerun the pooled multi-day regression models in Tables 6 and 7, in Section III.B, with firm-trading-day-level observations weighted by the firm's market capitalization on the date in question. Tables A.2 and A.3 report null results in all of these market cap-weighted models.

TABLE A.2: REGRESSING MARKET CAP-WEIGHTED DAILY RETURNS ON DISTRICT COURT DECISION-DATE STATUS, DELAWARE INCORPORATION, AND OTHER FIRM-LEVEL FEATURES

	(1)	(2)	(3)	(4)
*Event Date * Delaware Incorporation*	–0.0004 (0.0018)	–0.0005 (0.0018)	–0.0002 (0.0018)	–0.0003 (0.0018)
Event Date	–0.0018 (0.0018)	–0.0017 (0.0016)	–0.0015 (0.0015)	–0.0023 (0.0016)
Delaware Incorporation	0.0005 *** (0.0002)	0.0006 *** (0.0002)	–0.0494 *** (0.0053)	–0.0300 *** (0.0042)
Market Value	Y	Y	Y	Y
Book-to-Market Ratio	Y	Y	Y	Y
Momentum	Y	Y	Y	Y
Fixed Effects	Ind. Grp.	Ind. Grp. & Date	Firm	Firm & Date
F	4.37 ***	62.44 ***	6.54 ***	3.384 ***
n	289,059	289,059	289,501	289,501

Note. Unit of analysis: measured at the firm-trading-day level; includes all public corporations whose stock trades on the NYSE or NASDAQ on during the period beginning 50 trading days prior to the event and ending 50 trading days after it. Dependent variable: daily change in raw returns, where returns are weighted by *i*'s market capitalization at the opening of the trading day. Model: OLS. *Delaware*: coded as a 1 if *i* was incorporated in Delaware on the observation's date. *Event Date*: coded as a 1 if the observation occurred on the date of the event. *Market Value*: natural log of the *i*'s market capitalization at the beginning of trading day *t*, in millions of dollars. *Book-to-Market Ratio*: *i*'s book value at the end of the fiscal year prior to *t* divided by its market value. *Momentum*: ([*i*'s opening price on *t*] – [*i*'s opening price six months prior to *t*]) / (*i*'s opening price six months prior to *t*). Firm fixed effects are a set of dummy variables corresponding to each stock that appears in our sample on at least one trading day during the [–50, +50] trading-day period around the relevant event. Industry-group fixed effects refer to the GISC industry-group classifications. Standard errors (in parentheses) are clustered at the industry-group level in Model 1, industry-group and trading-day levels in Model 2, firm level in Model 3, and firm and trading-day level in Model 4. Standard errors in Models 1 and 3 are robust. F-statistics calculated via models without clustered standard errors. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$.

TABLE A.3: REGRESSING MARKET CAP-WEIGHTED DAILY RETURNS ON SUPREME COURT DECISION-DATE STATUS, DELAWARE INCORPORATION, AND OTHER FIRM-LEVEL FEATURES

	(5)	(6)	(7)	(8)
*Event Date * Delaware Incorporation*	0.0029 (0.0030)	0.0029 (0.0027)	0.0028 (0.0027)	0.0028 (0.0027)
Event Date	-0.0017 (0.0025)	-0.0081 *** (0.0026)	-0.0017 (0.0024)	-0.0100 *** (0.0025)
Delaware Incorporation	-0.0002 (0.0002)	-0.0002 (0.0003)	-0.0690*** (0.0161)	-0.0802*** (0.0232)
Market Value	Y	Y	Y	Y
Book-to-Mkt Ratio	Y	Y	Y	Y
Momentum	Y	Y	Y	Y
Fixed Effects	Ind. Grp.	Ind. Grp. & Date	Firm	Firm & Date
F	7.11 ***	42.89	5.61 ***	20.93 ***
n	292,143	292,143	298,440	298,440

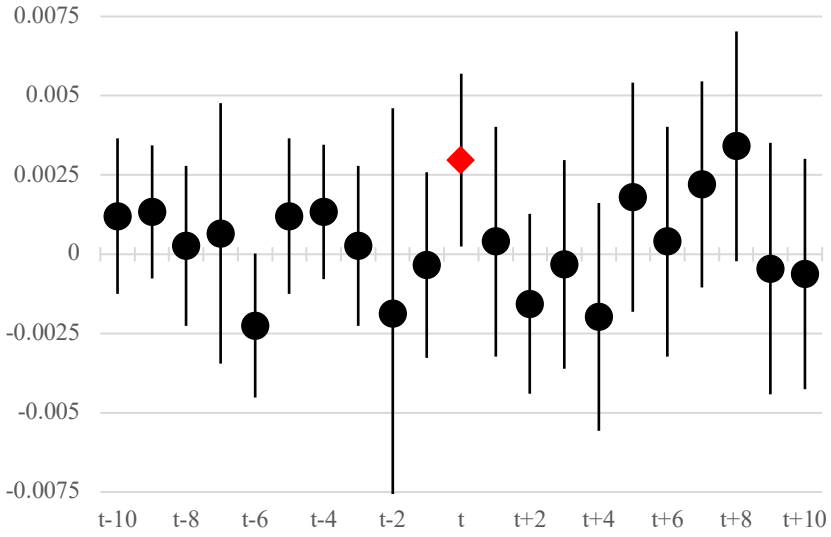
Note. Unit of analysis: measured at the firm-trading-day level; includes all public corporations whose stock trades on the NYSE or NASDAQ on during the period beginning 50 trading days prior to the event and ending 50 trading days after it. Dependent variable: daily change in raw returns, where returns are weighted by *i*'s market capitalization at the opening of the trading day. Model: OLS. *Delaware*: coded as a 1 if *i* was incorporated in Delaware on the observation's date. *Event Date*: coded as a 1 if the observation occurred on the date of the event. *Market Value*: natural log of the *i*'s market capitalization at the beginning of trading day *t*, in millions of dollars. *Book-to-Market Value*: *i*'s book value at the end of the fiscal year prior to *t* divided by its market value. *Momentum*: (*i*'s opening price on *t* – *i*'s opening price six months prior to *t*) / (*i*'s opening price six months prior to *t*). Firm fixed effects are a set of dummy variables corresponding to each stock that appears in our sample on at least one trading day during the [-50, +50] trading-day period around the relevant event. Industry-group fixed effects refer to the GISC industry-group classifications. Standard errors (in parentheses) are clustered at the industry-group level in Model 5, industry-group and trading-day levels in Model 6, firm level in Model 7, and firm and trading-day level in Model 8. Standard errors in Models 5 and 7 are robust. F-statistics calculated via models without clustered standard errors. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$.

Appendix B: Additional Tests

This Appendix assesses the strength of our principal findings concerning Hypothesis 2. We rerun Model 4 in Table 5 for each of the ten trading days on either side of the Supreme Court's issuance of its opinion on December 10, 2020. Because there do not appear to be any events that would differentially impact firms incorporated in Delaware versus other states in the lead-up to December 10, we do not expect to observe statistically significant abnormal returns in this period. Likewise, we should not observe pre-trends, i.e., increasingly large abnormal returns in the lead up to December 10, because our research design assumes that markets did not fully account for the prospect of the Court's decision before that date. Further, because we expect markets to rapidly integrate high-profile news concerning securities traded on the premier U.S. exchanges, we do not expect to observe statistically significant abnormal returns in the days and weeks after December 10. Essentially, a same-day spike in abnormal returns on December 10 without similar abnormalities on either side of that date would provide additional support for Hypothesis 2.

Figure B.1 reports the results. Each point in the figure shows a coefficient estimate for the Delaware incorporation dummy variable in a regression of firms' day-to-day change in market returns on this variable and the other firm- and industry-group-level covariates included in Model 4 in Table 5. Black dots denote these estimates for the *Delaware* covariate for each of the ten trading days on either side of the Supreme Court's decision on December 10, 2020. The diamond shows the estimate for the *Delaware* covariate when this regression model is run for December 10.

FIGURE B.1: DIFFERENTIAL PERFORMANCE OF DELAWARE CORPS. AROUND THE SUPREME COURT'S DECISION



Note. Diamonds signify estimates for *Delaware* covariate in Model 4, Table 5, which regresses firms' change in market returns on a given trading date [$t - 10$, $t + 10$] on Delaware incorporation, market value, book-to-market ratio, momentum, and industry-group fixed-effects. Event date t = 12/10/2020. Bars signify 90% confidence intervals.

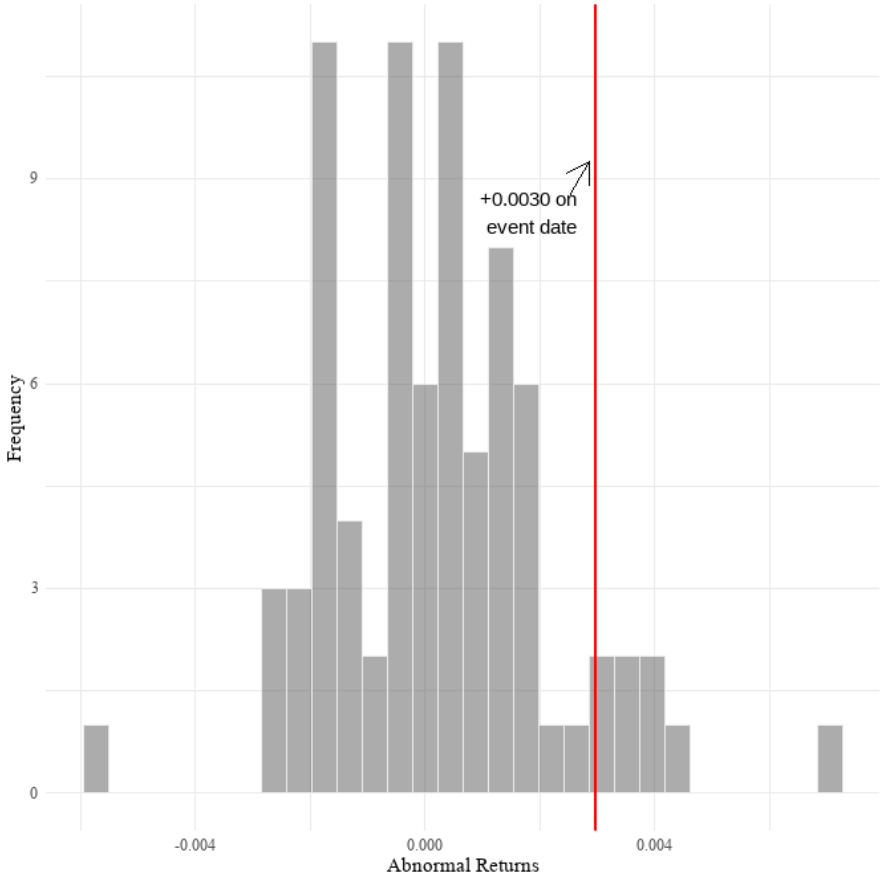
Overall, the figure shows that the positive and statistically significant abnormal returns that Delaware corporations experienced on the decision date in *Carney v. Adams* were unusual. For all ten trading days on either side of this event, we cannot reject the null hypothesis that Delaware securities behaved no differently than other stocks at the $p < 0.10$ level. Neither does there appear to be any trend in the returns of Delaware corporations in the leadup to the Court's decision.

For another perspective, Figure B.2 shows the distribution of estimates for the *Delaware* covariate across 100 regression models, one for each of the 50 trading days on either side of the event date. The thin vertical line marks the coefficient estimate for the event date. As the figure shows, the event-day estimate lies to the right of the mass of estimates, albeit not dramatically so: 7% of the estimates are larger.[229] Essentially, Figure B.2 shows that the *Delaware* coefficient estimate on the event date is a modest outlier, not an

[229] As discussed *supra* note 189, this analysis yields a non-parametric p-value of 0.081.

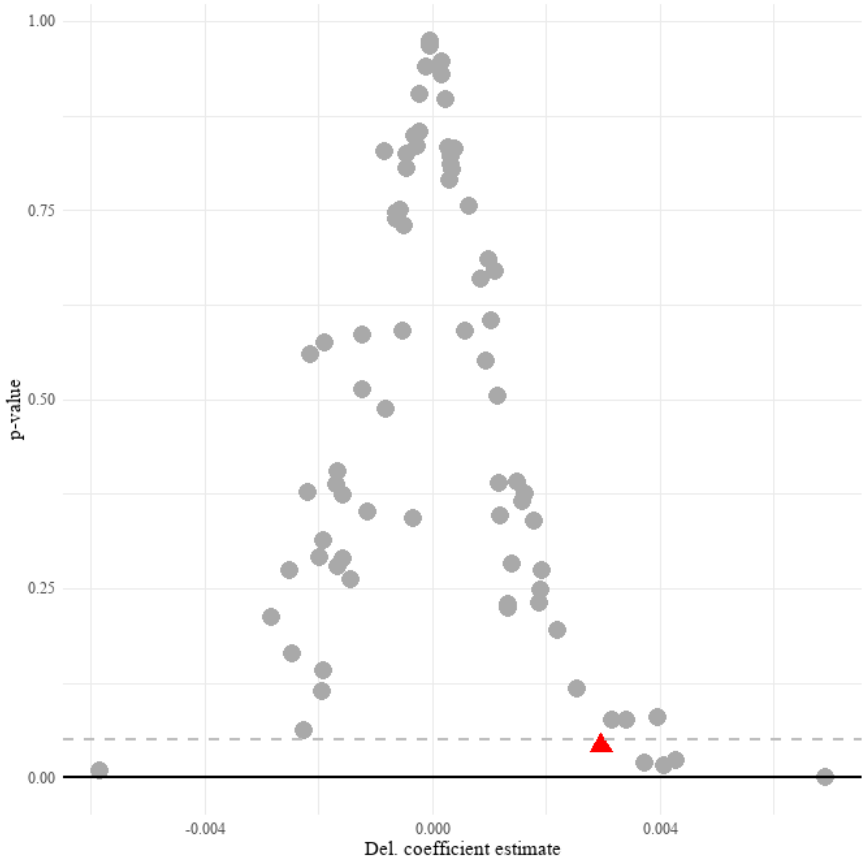
extreme one. That statement suggests that a degree of caution is appropriate in interpreting these results.

FIGURE B.2: DISTRIBUTION OF COEFFICIENT ESTIMATES FOR *DELAWARE* COVARIATE OVER 100 TRADING DAYS



Finally, Figure B.3 plots, on the x-axis, each of these 100 estimates for the *Delaware* covariate and, on the y-axis, the associated *p*-value. For comparison, the diamond near bottom-right marks the coefficient estimate and associated *p*-value for the event date. The conventional $p = 0.05$ level is marked with a dashed horizontal line for ease of reference.

FIGURE B.3: PLOT OF COEFFICIENT ESTIMATES & *P*-VALUES OVER 100 TRADING DAYS



As Figure B.3 shows, only four estimates are both larger than the event-day estimate and statistically significant at $p < 0.05$.[230] As in Figure B.2, Figure B.3 indicates that the event date is an outlier, but not an extreme one.

[230] These dates are January 19, 2021 ($\hat{\beta} = 0.0069$, SE = 0.0013, $p < 0.001$); November 4, 2020 ($\hat{\beta} = 0.0043$, SE = 0.0018, $p = 0.024$); October 14, 2020 ($\hat{\beta} = 0.0041$, SE = 0.0016, $p < 0.016$); and January 20, 2021 ($\hat{\beta} = 0.0037$, SE = 0.0015, $p < 0.020$). We cannot identify any events on those dates that would differentially affect Delaware corporations versus other firms. One would expect approximately 5 in 100 estimated relationships to be due to chance at $p < 0.05$, and the figure reports exactly 100 such estimates.