

# Do Judicial Assignments Matter? Evidence from Random Case Allocation

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Download at <https://ssrn.com/abstract=4693106>



# Forum Shopping

- Plaintiffs prefer some courts to others
- They will strategically select where to file suit to exploit heterogeneity across judges → **forum shopping** ...
- ...resulting in concentration of cases in a single court
- Examples:
  - chapter 11 bankruptcy filings
  - challenges to FCC regulation
  - immigration removal proceedings
  - **patent assertion**

## Patents: EDTX



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A judicious suggestion

How “judge-mandering” is eroding trust in America’s judiciary

The assignment of judges to cases should be random, not political

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Mar 12, 2024



**B** Bloomberg Law News

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**L** Law360

### BigLaw Attys Fight Sanctions Over Alleged Judge Shopping

Attorneys from Shook Hardy & Bacon LLP, Cooley LLP, Lightfoot Franklin & White LLC and prominent LGBTQ rights organizations did not engage...

1 hour ago

**R** The Iola Register

### US should abolish judge-shopping

When Matthew Kacsmaryk issued a ruling in April 2023 suspending the Food and Drug Administration's approval of mifepristone,...

2 hours ago



## Shopping for the Right Judge

- Judge shopping is when plaintiffs effectively **choose their judges**, not merely a court that collectively may lean in a certain direction
- For instance, plaintiffs have convinced Judge Kacsmaryk (NDTX) to
  - issue nationwide injunctions preserving Trump-era immigration policies
  - delay protection for transgender workers
  - suspend the approval of the “abortion pill” mifepristone
- Judge-mandering is “dangerous” (the share of Americans who say they trust judges is falling) and the question of how to stop it is contentious.
- Enter the Judicial Conference ...

## Conference Acts to Promote Random Case Assignment

*Published on March 12, 2024*

The Judicial Conference of the United States has strengthened the policy governing random case assignment, limiting the ability of litigants to effectively choose judges in certain cases by where they file a lawsuit.

The policy addresses all civil actions that seek to bar or mandate state or federal actions, "whether by declaratory judgment and/or any form of injunctive relief." In such cases, judges would be assigned through a district-wide random selection process.

- Just a recommendation, a non-binding guidance
- Judges in the NDTX and Fifth Circuit have already spoken out in opposition to the recommendation
- Judicial Conference of the United States ("policymaking body for the federal courts")
- Recommends that federal district courts **should select judges at random** for lawsuits seeking to impose or rescind national injunctions

## How Effective Could Random Case Allocation Be?

- We exploit a **local policy change** to random case allocation in the Western District of Texas in 2022
  - From one judge with certainty ...
  - ...to a random judge
- Results of our paper show the effects of judge shopping (and its end) on
  - case filings
  - decisions of plaintiffs to abandon the district
- Random case allocation also allows us to study causal effect of a judge on case proceedings and outcomes.



## Judge Albright (WDTX)



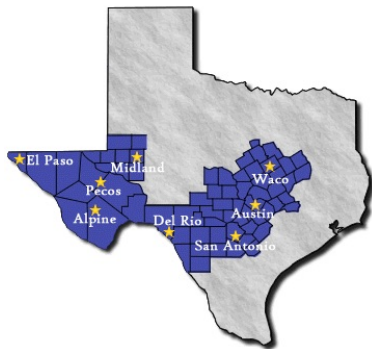
In 2021, Albright presided over **25%** of U.S. patent infringement cases

## Judge Albright in the WDTX

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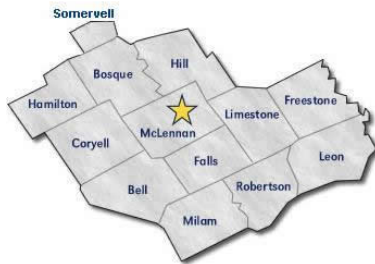
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**Sole district judge → Albright would preside over all civil cases filed in the courthouse**

**What can a single judge really do?**

## U.S. District Courts

- 600 federal judges in 94 districts that comprise the U.S. District Court system
  - Complaint alleging infringement by U.S. business entity must be filed in U.S. District Court located in that entity's state of formation
  - ... or in a district in which the entity maintains "regular and established place of business."
- New cases are typically allocated randomly within a division.
- Judges have discretion to control and decide many aspects of cases
  - bound by the Federal Rules of Civil Procedure
  - bound by a district's "local rules"
  - ... **nonetheless, judges add procedural norms of their own**
- **Idiosyncratic practices** (not necessarily a bias) can impact the speed or cost of litigation stages and influence case outcomes.



## A Patent-Friendly Courthouse

- Albright advertised his courtroom!

*Albright “let it be known in no uncertain terms that he would like his Waco courtroom to become a hub for IP cases.”*

- Introduced several practices favorable to patent owners:
  - Early claim construction hearings and trial set within a year thereafter → **cases reach trial within 18 months’ time**
  - Patent-owner friendly: USPTO commonly denies PTAB review of cases that reach trial before Board can complete review (takes about 18 months)
- Other factors raised by legal commentary: Albright is ...
  - unlikely to grant motions to stay litigation pending a PTAB review
  - reluctant to invalidate patents on subject matter eligibility grounds
  - not likely to grant motions to transfer cases to other courts



## Waco Becomes a Patent Hotspot

- Patent case filings increased dramatically
  - WDTX saw 17 filings per quarter (Waco Division: 3) in the year prior to Albright's arrival
  - ... to 140 new patent case filings per quarter in the three years that followed
- In 2020, more than **20%** of all patent cases filed in the U.S. were brought in Waco; increased to **25%** in 2021.
- Albright's availability induced the filing of hundreds of cases that otherwise would not have been filed (Helmers and Love, 2023).



## Garcia to the rescue!!

On July 25, 2022, WDTX Chief Judge Garcia revised district's case assignment rules: cases filed in the Waco Division would be **assigned randomly** among the district's twelve judges.



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**How does random case allocation affect patent case filings?**

**What are the causal effects of a specific judge on proceedings and outcomes?**

# Empirical Approach and Data

# Empirical Approach

1. Effect of random case allocation on cases filed in the WDTX relative to all other district courts
  - Difference-in-differences design
  - *Sample*: all cases
2. Effect of random case allocation on filings at the plaintiff level
  - *Sample*: all plaintiffs who have filed in the Waco Division
3. Effect of random case allocation on case proceedings and outcomes
  - *Sample*: all randomly assigned cases *after* July 25, 2022

## Data Construction (07:2017 – 10:2023; Outcomes → 07:2024)

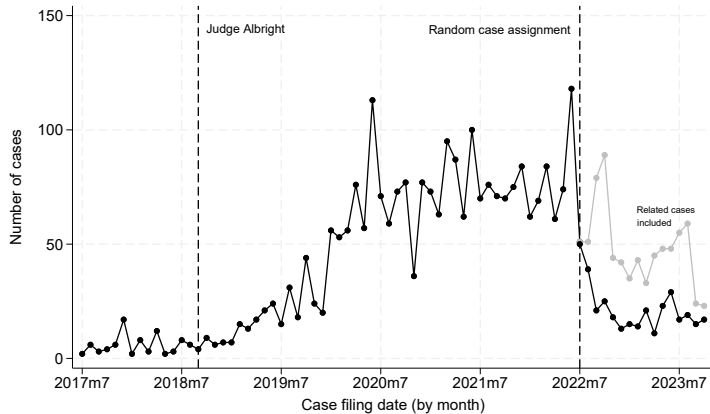
- *Maxval's Litigation Databank* for basic case-level data
- Firm characteristics from four sources
  - NPE status from Stanford Law School's *NPE Litigation Database*, *RPX Insight*, and *Unified Patents' Litigation Case List*.
  - Firm-level characteristics (incl. size and ownership type) from *Orbis*
- Patent-level characteristics from *Patstat* and *PatentsView* and *PatEx*
- Litigation events from *DocketNavigator*
  - Judge assignments and reassignments
  - Motions filed (transfers, stay pending outcome of PTAB challenge, invalidity, ...)
  - Earliest Markman hearing (claim construction or claim interpretation)
- *Case dockets* for assignment type (random assignment of new cases; related cases)



# Results

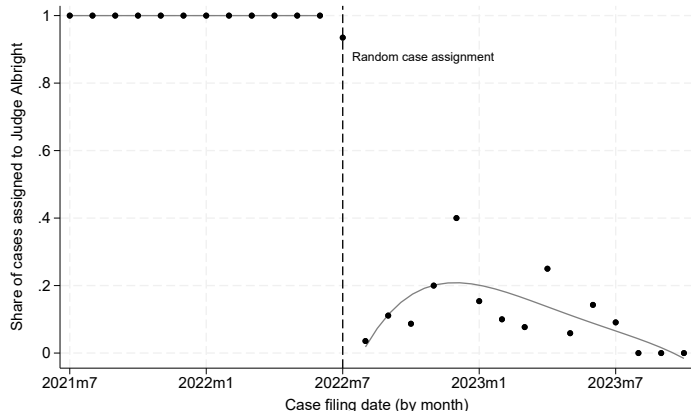
Effect on Case Counts

# Raw Data: Monthly Case Filings Drop After July 2022



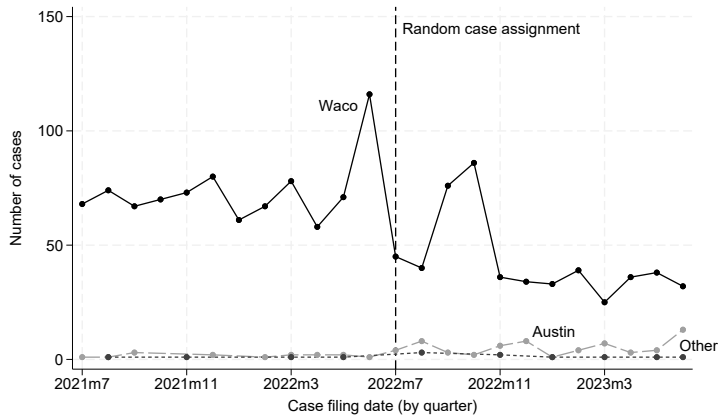
- Case counts increase after Albright takes the bench ...
- and drop after July 2022 ...
- when only random cases are considered (related cases “stay”)

## Raw Data: Waco Division Cases Assigned to Albright



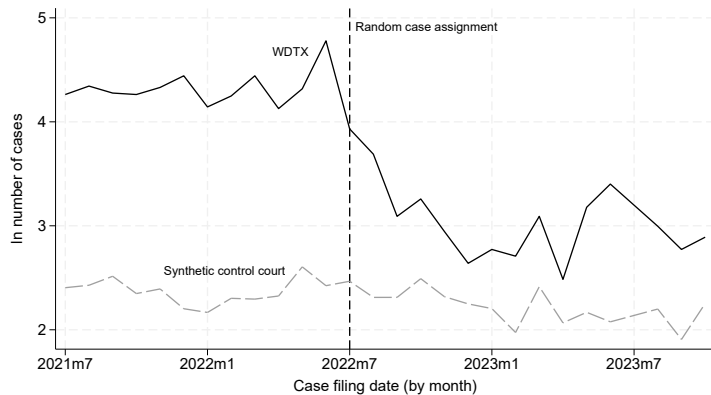
- Shares *exclude* related cases.
- Prior to the order: cases go to Albright with certainty
- After the order: just 11% of new (unrelated) cases

## Raw Data: Case Filings in Waco and Other Divisions



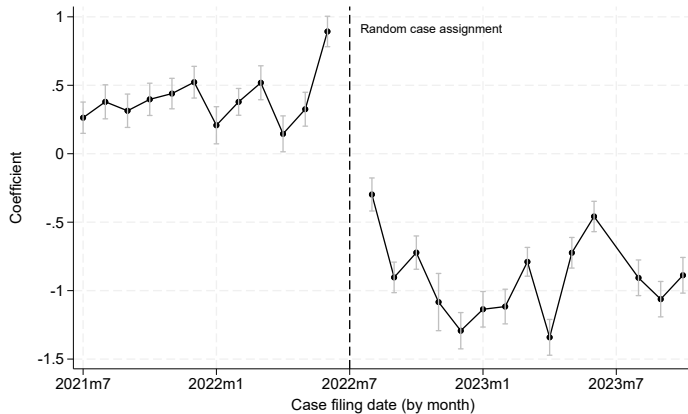
- Case counts across WDTX divisions (Waco, Austin, Others)
- Patent enforcers **did not shift cases** to Austin or other WDTX divisions

# WDTX vs. Synthetic Court



- “Synthetic court” in dashed gray: patent case filings in the next ten most popular districts for patent enforcers
- WDTX in solid black

## Event-Study Design (Court-Month Level Data)



- No evidence suggesting that plaintiffs were aware of the imminent changes before the announcement on July 25, 2022
- June 2022 is idiosyncratic NPE filing behavior (Edge IP; robust)

## Overall Impact on Case Filings (and Judge Shopping)

*Difference-in-differences approach at the court-month level:*

1. Did the number of cases filed in the WDTX change following the random case assignment relative to those in *all* other district courts?

$$\text{case}_{vt} = \alpha + \beta_1 \text{WDTX} + \beta_2 \text{WDTX} \times I(t \geq \text{Jul2022}) + \\ + \gamma I(t \geq \text{Sep2018}) + \delta X_{vt} + \sum_t \theta_t D_t + \theta_v + \epsilon_{vt}$$

2. Direct mechanism: Did lower case share assigned to Judge Albright reduce case filings in the WDTX?

$$\text{case}_{vt} = \alpha + \beta_1 \text{Case share assigned to Albright}_{vt} + \delta X_{vt} + \sum_t \theta_t D_t + \theta_v + \epsilon_{vt}$$

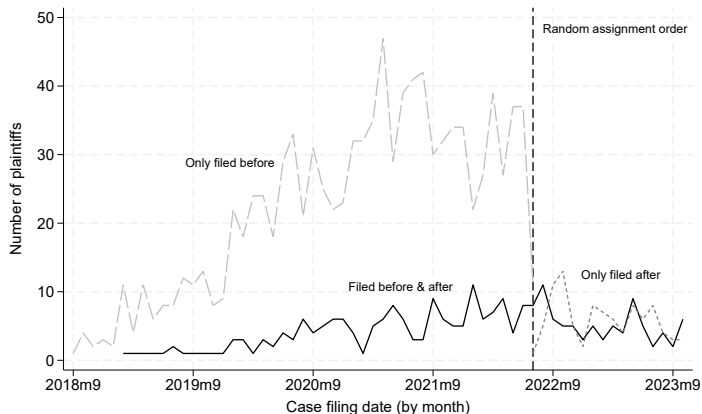
OLS results	All plaintiffs		Only NPEs	
	(1)	(2)	(3)	(4)
WDTX $\times I(t \geq Jul2022)$	-53.962*** (0.836)		-39.627*** (1.020)	
Case share Albright $\times I(t \geq Jul2022)$		-58.935*** (0.973)		-41.774*** (1.097)
Controls	Yes	Yes	Yes	Yes
Court FE	Yes	Yes	Yes	Yes
Case filing month FE	Yes	Yes	Yes	Yes
R <sup>2</sup>	0.903	0.900	0.855	0.848
Observations	2,187	2,187	1,512	1,512

**Random case assignment reduced monthly average case filings in the WDTX by 71% (by 72% for NPE plaintiffs).**



# Results

Extensive vs. Intensive Margin



- Three groups of plaintiffs filing in Waco
- Largest group: filing in the Waco division only before the random assignment order
- Similar pattern emerges when looking at case counts by plaintiff types.

## Where Did All the Cases Go?

- **Extensive margin?** Reduction in the number of patent enforcers willing to file suit in the WDTX after July 2022?
- **Intensive margin?** Reduction in the number of cases filed by (existing) patent enforcers?

$$\text{case}_{it} = \alpha + \beta \cdot I(t \geq \text{Jul}2022) + \sum_t \theta_t D_t + \theta_i + \epsilon_{it}$$

- For this, we restrict the sample to cases filed in the Waco Division of the WDTX (focus on changes in Albright's courtroom)

OLS results	Case 0/1 [Extensive]		ln # of cases [Intensive]	
	(1)	(2)	(3)	(4)
$I(t \geq Jul2022)$	-0.594*** (0.010)	-0.585*** (0.012)	-0.670*** (0.010)	-0.649*** (0.011)
$NPE \times I(t \geq Jul2022)$		-0.011 (0.010)		-0.029** (0.012)
Plaintiff FE	Yes	Yes	Yes	Yes
Case filing month FE	Yes	Yes	Yes	Yes
R <sup>2</sup>	0.059	0.059	0.040	0.039
Observations	17,409	17,409	15,383	15,383

### At both margins!!!

- Number of patent enforcers in Waco drops by 59%
- Number of cases per patent enforcer drops by 67%

# Results

The Judge's Effect

# The Judge's Effect

- Why is Albright preferred by patent enforcers?
- More favorable
  - motions practice?
  - scheduling?
  - case outcomes (settling!)?
- Simple comparison of Waco Division (Judge Albright) with other divisions (other judges)?
  - No, does not work!
  - Patent enforcers may strategically choose divisions.
  - Comparison results reflect the selection but not necessarily the judge effect

## The Causal Judge's Effect

- Why is Albright preferred by patent enforcers?
- We estimate causal effect on:
  1. motions practice [*Albright: grants fewer*]
  2. scheduling [*Albright: faster*]
  3. case outcomes (settlements!) [*Albright: more*]
- Sample: **randomly assigned cases** filed in Waco after July 25, 2022

$$\text{mechanism}_i = \alpha + \beta_1 \text{Albright}_i + \epsilon_i$$

- Results are relative to other judges in the WDTX.
- Caveat: **Small N!**

Dep. variable (0/1)	Motion to Transfer	Motion to Stay	PSM Motion	Settle
Albright	-0.021 (0.052)	-0.018* (0.010)	-0.024** (0.012)	-0.027 (0.076)
R <sup>2</sup>	0.001	0.001	0.004	0.0002
Observations	198	198	198	176

**Fewer motions to have patents invalidated on subject matter eligibility grounds.**



Dep. variable (Delay in days)	Time to ...		
	Markman Date	Trial Date	Settle
Albright	-100.180** (33.324)	-212.532*** (54.038)	70.393 (56.423)
Case filing month FE	Yes	Yes	Yes
R <sup>2</sup>	0.407	0.502	0.186
Observations	35	27	153

**Albright's patent case scheduling orders: litigation proceeds apprx. 26% faster than the average schedule adopted by all other WDTX judges.**

**Let's Wrap Up!**

## Summary

1. New patent **case filings dropped by an average of 71%** after random assignment order in the WDTX.
  - Ability to select patent-owner friendly judge was highly valued and primary motivation for filing suit in Waco.
2. Reduction in new patent suits is result of **both extensive and intensive margin**, particularly among NPEs.
  - Patentees enforcing patents of relatively high value and relatively low quality were disproportionately likely to abandon the WDTX.
3. Causal evidence that cases assigned to patent-owner friendly judge are both scheduled to proceed at a **relatively fast pace** and less likely to raise the issue of patentable subject matter.

## Judicial Conference, *quo vadis?*

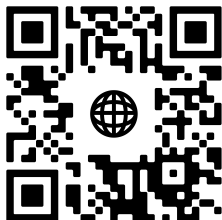
Redirecting case allocations away from judge-shopping targets ...

- is effective ...
- both in terms of plaintiffs flocking to popular venues/judges and the cases they file ...
- with many cases going missing




# Thank you!

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