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Lucian Bebchuk and Alma Cohen

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Harvard Law School
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FIRMS' DECISIONS WHERE TO INCORPORATE

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Abstract

This paper investigates empirically the decisions of publicly traded firms where to incorporate. We study the features of states that make them more and less attractive to incorporating firms and the characteristics of firms that determine whether they incorporate outside their state of location. We find that states that offer stronger antitakeover protections are significantly more successful both in retaining in-state companies and in attracting out-of-state incorporations. Indeed, the incorporations market has not even penalized the three states that passed severe antitakeover statutes that have been widely viewed as detrimental to shareholders. We also find that there is commonly a big difference between a state's ability to attract incorporations from firms located in it than from out-of-state firms, and we investigate several possible explanations for this home-state advantage. Finally, we find that Delaware's dominance is greater than has been recognized and that Delaware's market share can be expected to increase further in the future. Our findings have significant implications for the ongoing debates on regulatory competition, takeover law, and corporate governance.

Key words: Delaware, Incorporation, Corporate Governance, Regulatory Competition, Managers, Shareholders, Takeovers.
JEL classification: G30, G38, H70, K22.

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I. Introduction

A central feature of the US corporate environment is the presence of regulatory competition in corporate law. Corporations are free to choose their state of incorporation, and they are subject to the corporate law of the state in which they have chosen to incorporate. Whether and to what extent this regulatory competition works well has been for long one of the most hotly debated questions among corporate law scholars. As European corporations have recently become free to choose their country of incorporation among the EEC countries, this question has become important also in Europe. This paper uses data on firms' incorporation choices to study the operation and performance of the market for corporate law in the United States.

According to the view that appears to dominate the current thinking of corporate law academics, state competition produces a "race-toward-the-top" that benefits shareholders (see Winter (1977, 1989), Easterbrook and Fischel (1991), Fischel (1982) and Romano (1993a, 1993b, 1998)). On this view, the desire to attract incorporations induces states to develop and provide corporate arrangements that enhance shareholder value.

An alternative view is more skeptical with respect to the incentives provided by state competition (see Cary (1974), Bebchuk (1992), Bebchuk and Ferrell (1999), Bar-Gill, Barzuza, and Bebchuk (2001)). On this view, competition encourages states to provide rules that are too favorable to corporate managers and controllers with respect to an important set of corporate issues. In particular, it has been argued that competition does not work well with respect to rules, such as takeover rules, that have a major effect on the private benefits of managers and controllers.

The debate on the merits of state competition has stimulated a large body of empirical research. This research has largely focused on analyzing how shareholder wealth is affected by incorporating in (or reincorporating to) Delaware (see Bhagat and Romano (2001), Romano (2001), and Bebchuk, Cohen, and Ferrell (2002) for surveys of this work). Several studies have suggested that reincorporations to Delaware are associated with abnormal returns (see, e.g., Romano (1985), Heron and Lewellen (1998)). In addition, a recent, influential study by Daines (2001) suggested that incorporation in Delaware is correlated with a higher Tobin's Q. As Bebchuk, Cohen, and Ferrell (2002) show, however, the existing work on the wealth effects of Delaware incorporation does not establish that such incorporation is indeed associated with higher wealth and, furthermore, even if such association were to exist, it would not imply that state competition works well overall.[1]

In any event, the existing empirical work clearly does not address some important questions concerning the incorporations market, and this paper seeks to examine these questions. Whereas prior work has only examined how the market is divided between Delaware and non-Delaware firms, this paper studies the distribution of incorporations among all states and thus, in turn, how states other than Delaware differ in their performance in the market for incorporations. Furthermore, whereas prior work has taken incorporation decisions as given, we seek to investigate the determinants of these incorporation decisions. Incorporations choices are influenced by the corporate law systems offered by states, and we investigate which features of corporate law systems make them more and less successful in attracting incorporations; in particular, we resolve the long-standing debate on whether state competition rewards or discourages the adoption of substantial antitakeover protections. The incorporation choices of firms are also influenced by their location, and we investigate the extent of such influence and the reasons for its existence.

[1] Bar-Gill, Barzuza, and Bebchuk (2001) develop a formal model of a race-to-the-bottom equilibrium in which states are induced to provide rules that provide managers with excessive private benefits and in which incorporation in the dominant state is associated with a higher shareholder value due to the institutional advantages and network benefits offered by this state.

We start by providing a full account of the distribution of incorporations among states. Putting aside Delaware, states still differ greatly both in their ability to retain companies headquartered ("located") in them and in their ability to attract out-of-state incorporations. For example, whereas California retains only 23% of the companies located in it, Ohio and Washington retain more than 50%, and Minnesota and Indiana retain more than 70%. As to out-of-state incorporations, 32 states attract less than 10 out-of-state incorporations each, whereas six states attract more than 50 out-of-state incorporations each.

We turn to study the characteristics of companies that influence their decisions whether to seek out-of-state incorporation. Daines (1999) reported that the vast majority of companies incorporate either in their home state or in Delaware.[2] We find that about 1,200 publicly traded companies, 14% of all such companies, are incorporated neither in their home state nor in Delaware. There are some states with significant toeholds in the market for out-of-state incorporations, with Maryland and Nevada being the most significant players in recent years. Our results confirm, however, the importance of location for incorporation decisions. Firms display substantial "home-state bias" in favor of incorporating in the state in which they are located, and states thus enjoy a significant "home-state advantage" in competing for the firms located in them. States generally have much greater ability to attract incorporations from in-state firms than from out-of-state firms. Even states that are hardly able to attract out-of-state companies (i.e., whose corporate law system is rarely "purchased" by out-of-state "buyers") generally succeed in retaining a significant fraction of their in-state companies. Thus, on contrast to the conventional picture of state competition, states do not compete on equal footing for all publicly traded firms, and competition is much more imperfect than is conventionally assumed.

[2] In work-in-progress, Daines (2002) is conducting a study of firms' home preferences and incorporation choices.

We investigate why firms' location has such an influence on incorporation choices and the circumstances when home-state bias is strong. The home-state bias is weaker, though still significant, among large companies and among companies that went public more recently. We discuss four factors that can lead firms not to seek out-of-state incorporation, and we find evidence consistent with three stories – ones based on the higher costs of out-of-state incorporations, on the desire of firms to benefit from local favoritism, and on the influence of local lawyers. For example, we find that large firms are more likely to remain in-state when they are located in small states, where their clout enables them to obtain some benefits from local favoritism, than when they are located in large states. The evidence, however, is inconsistent with a story based on firms' findings no reason to leave states that have adopted the uniform Model Business Corporation Act; firms located in such states do not exhibit a greater tendency to remain in-state.

We then turn to examine how states' corporate law systems affect their performance in terms of both retaining in-state companies and attracting out-of-state incorporations. We find that the antitakeover protection that states provide plays an important role. Supporters of state competition believe that it is not responsible for, and does not encourage, the proliferation of state antitakeover statutes. In particular, such supporters believe that the adoption of such statutes makes states less attractive to incorporations, and that state competition rewards those states that resist pressure from local firms and display moderation in the adoption of antitakeover statutes. Our analysis shows that this belief of state competition supporters is inconsistent with the evidence.

We find that, at one end of the spectrum, states with no antitakeover statutes, such as California, do poorly and retain a relatively small fraction of the companies located in them. At the other end of the spectrum, states that amass most or all standard antitakeover statutes are the ones most successful both in retaining in-state firms and in attracting out-of-state firms.

More generally, the more protection from takeovers a state provides, the more successful it is in the market for incorporations. Overall, the migration of companies to out-of-state incorporations operates systematically to increase the level of antitakeover protection that publicly traded firms enjoy.

We pay special attention to two types of statutes – the "recapture" or "disgorgement" statute adopted by Pennsylvania and Ohio and the mandatory staggered boards statute adopted by Massachusetts. These statutes have been widely criticized as detrimental to shareholder value, and supporters of state competition have blacklisted them as extreme (see, e.g., Romano (1993), Daines (2001a)). However, we find that, in contrast to the beliefs of state competition supporters, the passage of these statutes has not hurt the states adopting them in the incorporations market.[3]

Thus, the level of antitakeover protections established by Pennsylvania, Ohio, and Massachusetts is below the level that would start reducing a state's attractiveness to incorporators. In contrast to the amassing standard antitakeover statutes, however, having the extreme statutes has not helped the adopting states either. Thus, it might be that the adoption of such statutes is close to the outer limits of how far a state can go in providing antitakeover protections without discouraging incorporations.

The dominant view among scholars of corporate law has been that (i) state antitakeover statutes do not serve shareholders, and (ii) state competition provides states with strong incentives to provide rules that are optimal for shareholders. The finding that states competition rewards the amassing of antitakeover statutes indicates that it is not possible to maintain fully both of these propositions. One or both of them need to be revised. Whatever position one

[3] In contemporaneous work, Subramanian (2001) also examines the effects of antitakeover statutes on the ability of states to retain their located companies. As will be discussed in Section IV, his conclusions are consistent with ours with respect to standard antitakeover statutes but differ from ours with respect to extreme statutes. He does not study the effect of states' antitakeover statutes on their success in attracting out-of-state incorporations and the overall effect that migration of companies to out-of-state incorporations has on the level of antitakeover protections.

ultimately adopts, the identified connection between antitakeover statutes and success in the incorporations marketplace has significant implications for the debates on state competition and takeover law.

We also find some other features of states that have an effect on how they fare in the incorporations marketplace. For example, states that have stronger "liberal" culture, which might be associated with judicial activism, are less successful in retaining in-state companies. States that have adopted the Revised Model Business Corporation Act (or its predecessor) are less successful in attracting out-of-state incorporations and are not more successful in retaining in-state firms. The approach that we put forward can be also used to identify other features of states that make them attractive for incorporators.

We end the empirical analysis by analyzing concentration and market structure in the market for corporate incorporations. Recent work by Kamar (1998) and by Kahan and Kamar (2001) highlighted the importance of understanding the sources and consequences of Delaware's dominance in the incorporations market. Studying Delaware's dominance in the market, we find that this dominance is stronger than has been recognized and that it is likely to keep growing. Given the presence of home-state bias, we argue, it is useful to evaluate Delaware's market dominance by looking not only at its share of all incorporations but also at its share of out-of-state incorporations. We find that Delaware's share of the out-of-state incorporations market is exceedingly high. We also find that both the fraction of firms that go out-of-state, and Delaware's fraction of out-of-state incorporations, has been steadily increasing. Thus, if Delaware just maintains its performance with respect to firms from recent cohorts, its share of total incorporations can be expected to continue climbing up from current levels.

Our analysis is organized as follows. Section II describes the data and provides summary statistics about the patterns of incorporations. Section III studies firms' home-state bias and the factors that pull firms in the direction of in-state incorporation. Section IV investigates how states' corporate law rules, and especially antitakeover statutes, affect their success in the market for corporate law. Section V analyzes the division and structure of the incorporation market and Delaware's dominance in this market. Section VI makes concluding remarks and suggests directions for subsequent empirical work on the subject.

II. DATA AND SUMMARY STATISTICS

The data set that we analyze includes all the publicly traded firms for which there was data in the Compustat database at the end of 1999 and which have both their headquarters and their incorporation in the United States.[4] There are 8,556 such firms at the end of 1999.

Table 1 displays how firms are distributed among states of location for all publicly traded firms, for all Fortune 500 firms, and for all firms that went public in the five-year period 1996-2000. By states of location we shall refer throughout to the state where the firm's headquarters are located (which is the only location data provided by Compustat). We shall refer throughout to the fifty-one jurisdictions in the US – the fifty states and the District of Columbia – as states.

Not surprisingly, states that have large populations and big economies have more firms located in them. California, with the biggest population and economy, is home to the headquarters of 17% of all firms. Its share is especially large (25%) among firms that went public in the period 1996-2000, presumably because of the large incidence of Silicon Valley firms going public in these years. New York comes second, with 11% of all firms. In

[4] This point in time was the most recent one for which there was data for the great majority of companies when we did our empirical analysis.

unreported regression, we find that the number of firms located in a state is highly correlated with the size of its population.

Table 2 displays the distribution of incorporations among states for all publicly traded firms, for all Fortune 500 firms, and for all firms going public in the five-year period 1996-2000, respectively. Comparing Table 2 with Table 1 indicates that the distribution of locations and the distribution of incorporations are quite different. As is well known, Delaware has by far the largest stake of incorporations: 51% of all firms, 58% of Fortune 500 firms, and even a higher percentage – 63% – of firms that went public in the period 1996-2000.

Although no state even comes close to Delaware in terms of the number of incorporations, some states do much better than others. Four states have more than 300 incorporations each, while the 26 states with the smallest number of incorporations have among themselves a total of about 350 firms.

These two tables do not indicate where the firms located in each state choose to incorporate, nor where the firms incorporated in each state are located. Table 3 therefore presents a matrix displaying the web of company migrations. The table indicates for each state how the firms located in it divide their incorporations between this state and all other states. A noticeable feature of Table 3 is the large numbers in the boxes along the diagonal, which contain the numbers of in-state incorporations for each and every state. The large concentration of firms along this diagonal suggests the possible presence of a significant home-state advantage. Another noticeable feature of Table 3 is the significant concentration of firms in certain vertical columns – those of Delaware, of course, but also of Maryland, Nevada and a few others.

Table 4 presents the total number and percentage of firms incorporated in their home state – among all firms, firms going public during 1991-1995 and during 1996-2000, Fortune 500 firms, and Fortune 100 firms. The table indicates that there is a substantial percentage of in-state incorporation in all groups. The fraction of in-state incorporations is smaller – but still substantial – for firms that went public in the 90's and for large firms.

Tables 5A and 5B display how each state fares in the "market for corporate law" – with respect to all firms and to all firms that went public in 1996-2000, respectively. The tables display for each state (i) how many of its in-state firms it retains, both in absolute numbers and as a percentage of all in-state firms; (ii) how many out-of-state firms it attracts, both in absolute number and as a percentage of all out-of-state incorporations; and (iii) its net outflow (inflow) of firms, both in absolute numbers and as a percentage of the number of in-state firms.

These tables indicate that, both with respect to all firms and to the firms that went public in 1996-2000, the large majority of states are net "exporters" of firms with a net outflow of firms. Other than Delaware, which is a huge "importer," there are only 2 other states that have a significant net inflow of firms – Maryland and Nevada, with net inflows of 275 firms and 175 firms respectively. The tables also indicate that states greatly vary in how successful they are in the incorporation marketplace, both in terms of retaining in-state firms and in terms of attracting out-of-state firms.

III. Home-State Advantage and Its Sources

A. The Presence of Home-State Advantage

The literature on state competition has generally viewed the incorporation choice of publicly traded firms as a "stand-alone" choice, one that depends only on judgment as to which state's corporate law system would be best, and that is independent of the state where the firm is located. US firms incorporated in any given state may transact on equal footing in any state. Consequently, being incorporated in any other state is not supposed to affect how a firm's operations are going to be taxed or regulated. Similarly, the corporate law of any given state, which largely affects the relationship between shareholders and managers, applies equally to all the firms incorporated in that state regardless of where they are located.

For these reasons, the conventional view regards incorporation choices as a "pure" choice of a legal regime, based only on a comparison of states' corporate law systems and a judgment which of those systems would be best for the firm. And the corporate law rules that would best fit any given firm might depend on various features of the firm, its shareholders, or its managers, but there is no good reason to expect them to depend on the particular location of the firm's headquarters. On this view, all states are viewed as "selling" their corporate law system to all publicly traded firms, and not especially to the firms located in them. If this picture were indeed accurate, we could still expect some states to be more successful than others in attracting a given type of firm, but we would not expect a state to be more successful (controlling for firm characteristics) in attracting local firms than out-of-state firms.

This conventional picture was put in doubt by the report of Daines (1999) that the vast majority of firms incorporate either in their home state or in Delaware. Our data indicates that there is a significant presence of out-of-state incorporations in states other than Delaware. However, our data still confirms the presence of a strong home-state advantage. There is a very heavy concentration of firms along the boxes of the diagonal of Table 3. Tables 5A and 5B also indicate that the great majority of states are much more attractive to their in-state firms than to out-of-state firms. Even states that do rather poorly with respect to out-of-state firms do succeed in retaining a significant fraction of their own firms.

For example, California, which does relatively poorly on both dimensions, still does far better for in-state firms, retaining 23% of them, than for out-of-state firms, attracting only 0.2% of them – (see Table 5A). Altogether, California is the incorporation choice of 326 firms located in California but only 15 firms located elsewhere. Although California does poorly in both retaining in-state firms and attracting out-of-state firms, it does have a significant number of incorporations because it starts with a large stock of firms located in it (see Table 2).

To test systematically the difference in states' abilities to attract in-state and out-of-state firms, we ran for each given state that has 10 or more firms located in it the following logit regression. We regressed a dummy variable that has a value of 1 if a company incorporates in the given state and 0 otherwise on (i) various characteristics of the company – specifically, the company's sales (log), the company's Tobin's Q, the company's return on assets, the company's number of employees, the company's total equity, and dummy variables reflecting whether the company went public in 1996-2000, 1991-1995, or before 1990, and (ii) a dummy variable that has a value of 1 if the company is located in the given state and 0 otherwise. In all the regressions, being located in the state increased the likelihood of incorporating in the state at 99% confidence. To illustrate, Table 6 displays one of these regressions, the one applying to California. The table indicates that the coefficient for being located in California is positive and large at a 99% confidence.

B. Factors Pulling toward Remaining In-state

As noted, if firms were paying attention only to the relative quality of the corporate law system offered by states, firms' incorporation decisions would not be influenced by their location. What explains firms' giving preference to incorporating in their home state? There are four stories that can help explain why firms are pulled in the direction of remaining in-state.

(i) The Extra Costs Pull: It might be suggested that the presence of home-state bias emerges from firms' desire to avoid the extra costs that might be involved in going outside the state. Incorporation in Delaware involves a franchise tax that is non-negligible, though not substantial for most publicly traded firms. Perhaps more importantly, incorporating out-of-state

might involve some additional transaction costs resulting from the need to retain additional law firms or to conduct legal business at a distance.[5]

Because the extra costs of going out of state are unlikely to rise proportionately with firm size, these costs can be expected to weigh more heavily on smaller firms, and smaller firms can be thus expected to display stronger tendencies to incorporate in-state. Note that, because extra costs are likely to be trivial for firms that are very large, and because home-state bias is still present to some extent for Fortune 500 and Fortune 100 firms (see Table 4), the extra costs story cannot provide a full explanation for the observed home-state bias.

(ii) The Uniformity Story: A complementary story to the extra costs story can be based on the fact that many states have substantially similar corporate law codes that are all based on the Revised Model Business Corporation Act (RMBCA) (or its predecessor, the Model Business Corporation Act).[6] The Revised Model Act is a sample statute, put together by a committee of corporate scholars and practitioners, that many states have adopted wholesale. For all firms that prefer being subject to the RBMCA and are headquartered in a state that has adopted the RMBCA, so the story goes, even a tiny cost of going out-of-state might serve as a tie-breaker and lead to remaining in their state of headquarters.[7] A problem with this story is that, even among states that have adopted the RMBCA, there is significant variance in the additional antitakeover statutes if any that were adopted. In any event, the prediction of this story is that firms located in states with the RMBCA will show stronger tendencies to incorporate in-state.

[5] According to Cumming and MacIntosh (2001), Canadian lawyers whom the authors interviewed note the extra costs involved in out-of-province incorporation as an important reason for incorporating in the province of location.
[6] For a detailed description and a list of the states adopting the RMBCA, and its close predecessor the MBCA, see Section of Business Law of the American Bar Association (1999).
[7] We are grateful to Frank Eastrebrook for suggesting this possible story and for stressing the importance of controlling for the RMBCA factor.

(iii) The Local Favoritism Story: A third factor that might lead some firms to give preference to in-state incorporation is the hope of getting favorable treatment. Even though a state is supposed to treat all firms incorporated in it in the same way regardless of where they are located, a firm located in a state – especially a large firm located in a small state – might hope that its stature and clout in the state would lead judges or public officials to give it a favorable treatment with respect to some corporate law issues that might arise. Similarly, a firm located in a state might expect that, if it displays "loyal citizenship" by incorporating in the state, it would increase its chances of getting favorable treatment from public officials on issues unrelated to corporate law that might arise in the firm's dealings with the state.

A testable prediction of the local favoritism story concerns the interaction of firm size and state size. A large firm located in a small state might have a major presence and can have a significant clout that can enable it to get local favoritism. In contrast, a firm of a similar size that is located in a big state will not be able to stand out and thus is unlikely to be able to obtain local favoritism. Thus, the local favoritism story predicts that, for large firms of any given size, those located in a small state will have a greater tendency to remain in-state.[8]

(iv) The Law Firm Factor: A fourth factor that might pull some firms in the direction of in-state incorporation is that of agency costs in the market for legal services. Recent work by Coates (2001) has forcefully pointed out that agency problems between lawyers and owners-managers might shape choices made at the IPO stage. In particular, it has shown how the identity and location of the IPO law firm substantially affect the antitakeover charter provisions chosen by firms going public. Similarly, the identity of the law firm involved in a firm's IPO and the firm's subsequent corporate governance – and, in particular, whether the law firm is

[8] Another implication of this story, whose testing is left for future work, is that companies operating in lines of business which depend more on the state (because their business is either more affected by the state's regulation or by transactions with the state) would be more likely to remain in-state. Yet another implication is that the more concentrated are a company's actual operations in its state of headquarters, the more likely the company to incorporate in this state.

based in the firm's state of location or elsewhere – might significantly affect the choice of incorporation state. An in-state law firm might be inclined to keep the firm in-state because such in-state incorporation would enable the law firm to handle fully the firm's corporate affairs, avoiding the inconvenience and fees-sharing involved in having to use counsel from another state. Furthermore, in-state incorporation would provide the local law firm with an advantage over out-of-state law firms that might compete for the firm's business, as the local law firm would be likely to have greater familiarity with the home state's corporate law and better connections in this state (see Carney (1998)).

C. Empirical Examination

To examine the factors that make firms more likely to remain in-state, we ran two regressions in which the dependent variables was a dummy variable (In-state) that has a value of 1 if the firm remains in-state and 0 if it incorporates elsewhere. In the first regression, which is reported in Table 7, Column 1, the explanatory variables were only firm characteristics and state dummies used to control for state fixed effects. The firm characteristics included in this regression were the firm's sales (log), the firm's Tobin's Q, the firm's return on assets, the firm's number of employees, the firm's total equity, and dummy variables indicating whether the firm went public in 1991-1995 or in 1996-2000.

In the second regression, whose results are reported in Column 2 of Table 7, we used instead of state dummies, various characteristics of the state in which the firm is located. In particular, we included:

(i) State demographic characteristics -- the size of the state's population (log), the number of located firms, and the per capita income;

(ii) The State's regional location (northeast, south, mid-west, or west);

(ii) A dummy variable indicating whether the state has adopted the RMBCA or the MBCA; and

(iii) A dummy variable for firms located in Delaware (the state that offers special benefits independent of the value of the state's takeover law due to network externalities and developed legal infrastructure); and

(iv) An interaction term of the size of the firm (as measured by the log of its sales) and the size of the state's population (as measured by the log of the state's population).

The results indicate that larger firms are less pulled to remain in-state. The number of employees has in both regressions a coefficient that is negative and statistically significant (at 95% confidence). In the first regression, where log sales is included without the interaction term between it and the state size, it also has a negative and statistically significant coefficient (again, at 95% confidence). Because some of the extra transaction costs involved in out-of-state incorporation are fixed or at least do not grow proportionately with firm size, these costs have lower weight for large firms. This finding is thus consistent with the extra costs story. To the extent that large firms are more likely to use a national law firm, this finding might also be explained by the local lawyer story.

The results in both regressions also indicate that newer firms are more likely (at 99% confidence) to incorporate out-of-state. Firms going public in recent years might have been more likely to use out-of-state law firms, as the market for legal services has become more national. High-tech firms, which were substantially represented among firms going public in the 90's, often had significant holdings by venture capitalists and financial intermediaries connected to legal advisers from national financial centers. Thus, this finding could point toward the local lawyers story.

There is one result that is clearly consistent with the local favoritism factor and does not appear explainable by any of the other stories. As is indicated by the negative sign of the interaction term in the second regression, large firms are more likely (at 99% confidence) to incorporate in-state when their home state is small than when it is large. Large firms are more likely to be able to benefit from local favoritism in small states, where they can stand out and have significant clout, than in large states.

Interestingly, the regional location of states appears to make a significant difference. In particular, firms located in states in the West (we use the division into regions used by the US Census) are more likely (at 99% significance) to incorporate in-state, whereas firms states located in the Northeast are more likely (at 99% confidence) to incorporate out-of-state. Firms located in the Northeast are more likely, and firms located in the West are less likely, to use New York City lawyers engaged in national practice, and we suspect that such lawyers tend to use Delaware incorporations. Furthermore, even when a local lawyer is used, law firms in the Northeast are more likely than law firms in the West to use Delaware. The relevance of regional location can thus be due to the law firm factor.

Both regressions indicate that adopting the RMBCA (or its close predecessor the MBCA) does not have a statistically significant effect on a state's ability to retain firms. This enables us to reject the story that the presence of a large number of home state incorporations results from firms located in RMBCA states that prefer an RMBCA statute and use staying at their home state as a tie-breaker among a large set of states with such a statute.

D. Choosing to Incorporate in Delaware

Thus far, we have examined which characteristics make firms more likely to incorporate out-of-state. It might be of interest to examine in particular which characteristics make firms more likely to incorporate in Delaware, the dominant jurisdiction used in out-of-state incorporations.

Table 8 presents the results of a logit regression in which we regressed a dummy variable that has a value of 1 if the firm incorporated in Delaware and 0 otherwise on the characteristics of firms used in earlier regressions on state dummies. Not surprisingly, the factors that make firms more likely to be incorporated in Delaware are quite similar to those that make firms more likely to be incorporated out-of-state in general. Firms are more likely to incorporate in Delaware when they are large and when they were formed in recent years or at least in the past decade.

Interestingly, we do not find an association between Delaware incorporation and a higher Tobin' Q. This association, which is reported by Daines (2001a) to hold for the 80's and early 90's, apparently does not hold in 1999.[9]

Daines tried to infer from the association he found that Delaware's law is better for shareholders. A problem of drawing such an inference even for the years in which the association existed is the likely presence of a selection effect; the selection of firms that have Delaware incorporation is far from random. The results reported in Table 8 indicate that the firm characteristics available from the Compustat database, which is the data used both by us and by prior empirical work, can explain only a very small part of the selection of firms that incorporate in Delaware. There are clearly some omitted variables with respect to firms (such as, for example, the identity of the firm's law firm) that have substantial influence on their incorporation choices. Identifying these omitted variables is an important task for future research. In the meantime, however, correlations between Delaware incorporation and shareholder value cannot be used as a reliable basis for drawing inferences concerning the effect of Delaware law on shareholder value.[10]

[9] Subramanian (2001, fn 70) reports that his work-in-progress found that the correlation between Delaware incorporation and a higher Tobin's Q largely disappears after 1996. Bebchuk, Cohen, and Ferrell (2002) point out that even during the 1981-1996 period studied by Daines, the correlation existed only in some years but not in others. They also argue that the fact that the correlation does not exist in some years, and that it comes and goes, indicates both that the correlation is not a general and persistent phenomenon and, furthermore, that its existence in some years is likely to result from a selection effect.
[10] See Bebchuk, Cohen, and Ferrell (2002) for further discussion of this issue.

IV. ANTITAKEOVER PROTECTION AND INCORPORATION CHOICES

We have thus far examined what factors other than states' corporate law systems affect incorporation choices. We now turn to examine the features of states' corporate rules that influence these decisions and, in turn, how states fare in the market for incorporations.

Prior empirical analysis has focused on examining the wealth effects of incorporating in Delaware versus incorporating elsewhere. Instead of focusing on differences between Delaware and all other states taken as a group, this paper unpacks the large group of states other than Delaware. As documented earlier, states vary considerably in their ability to retain in-state firms and to attract out-of-state firms. These differences enable us to explore what factors make states more or less attractive for firms choosing a state of incorporation. Because competition provides states with an incentive to make themselves attractive to incorporators, such an analysis can identify directions in which competition pushes states. In particular, I will focus on using such an analysis to investigate how offering antitakeover statutes affects states' attractiveness in the incorporation marketplace.

A. Antitakeover Protections

One of the most important and hotly debated subjects in corporate law has been the regulation of hostile takeovers. Unlike the British City Code, which bans all defensive tactics and facilitates takeover bids, most US states have developed a large body of antitakeover protections over the last twenty-five years. One primary source of antitakeover protections has been the adoption of state antitakeover statutes. Antitakeover protections have also been provided by the development in the Delaware courts (whose decisions were subsequently followed by courts in other states) of doctrines that permit managers to engage in defensive tactics and, in particular, to use poison pills.

The body of academic opinion has largely viewed state takeover law as providing excessive protections against takeovers. Researchers who generally support state competition have been among those viewing state antitakeover statutes as excessive (see, e.g., Easterbrook and Fischel (1991), Romano (1993a, 1993b)). The many scholars who believe that antitakeover statutes do not serve shareholders find support for their view in the empirical evidence on the effects of such statutes. The overwhelming majority of the many event studies done on the adoption of state antitakeover statutes found either no price reactions or negative price reactions (sometimes a substantial one).[11] Furthermore, researchers have also found direct evidence that state antitakeover statutes have operated to increase agency costs.[12]

While researchers have generally taken the view that the antitakeover protections developed by state corporate law are excessive, they have differed on the role of state competition in this area. The proliferation of antitakeover statutes is consistent with the view of those who believe that state competition can produce adverse incentives with respect to issues that have a substantial effect on managers' private benefits. From this perspective, competition can be expected to produce excessive antitakeover protections (see Bebchuk (1992), Bebchuk and Ferrell (1989, 2001a) and Bar-Gill, Barzuza, and Bebchuk (2001)).

However, the proliferation of state antitakeover statutes might present a problem for those holding the dominant view that state competition is generally beneficial. Supporters of this view have sought to reconcile it with their belief that state antitakeover statutes do not serve shareholders by arguing that state competition does not encourage, and is thus not

[11] See, e.g., Karpoff and Malatesta (1989). For surveys of these many studies, see Romano (1993a) and Gartman (2000).
[12] Bertrand and Mullinathan (1998) found that the adoption of state antitakeover statutes resulted in increased extraction of rents through executive compensation. Bertrand and Mullainathan (1999) found that the adoption of antitakeover statutes reduced managers' incentives to minimize labor costs.

responsible for, the adoption of antitakeover statutes (see, e.g., Easterbrook and Fischel (1991), Romano (1993a, 2001)). On this view, amassing strong antitakeover statutes is likely to decrease rather than increase the number of incorporations. Such statutes were still adopted even though they could have been expected to reduce the number of future incorporations, so the argument goes, because the adopting states could not resist the lobbying or political pressure of some managers concerned about the threat of a takeover. As Winter (1993, at xi) puts it: "The problem [with antitakeover statutes] is not that states compete for charters but that too often they do not." Thus, on this view, state competition has operated not to encourage the adoption of antitakeover statutes but rather to discourage and moderate it.

Supporters of state competition have sought to support this position by arguing that Delaware, the most successful state, has adopted fewer and milder antitakeover statutes, especially compared with states such as Pennsylvania, Ohio, and Massachusetts. This suggests, so the argument goes, that state competition rewards moderation in providing antitakeover protections.

It is far from clear, however, that Delaware offers less antitakeover protection than most states. Although there are states that have more antitakeover statutes than Delaware, there are also states that have no antitakeover statutes. Furthermore, unlike other states, Delaware has a very large and developed body of case law on takeovers, which makes the absence of some statutes practically irrelevant. For example, because Delaware has a large body of judge-made law upholding the indefinite use of poison pills, the absence in Delaware of some state antitakeover statutes, such as a statute endorsing poison pills, is practically irrelevant.[13]

[13] As long as the pill is in place, any additional defense is superfluous, as the pill by itself completely blocks a bidder from proceeding. And if a bidder overcomes the pill by taking control of the board in a proxy contest, a control share acquisition statute and fair price statute, which are generally applicable only to offers the board does not approve, would be irrelevant as well. See Bebchuk and Ferrell (2001).

In contrast, the adoption of state antitakeover statutes did have practical significance in other states. No state other than Delaware has a developed case law on defensive tactics. Indeed, a Lexis search indicates that most states do not have even a single case on poison pills. In these states, the adoption of pill endorsement statutes and constituency statutes provided managers with the confidence, notwithstanding the absence of precedents in these states thus far, that indefinite use of poison pill would be permitted. In some states (e.g., New Jersey), there was a case prohibiting the use of poison pills, and the adoption of a subsequent pill endorsement statute served to override it. The adoption of antitakeover statutes by a state without a developed takeover case law, especially the adoption of several types of statutes, might have conveyed a message that the state's corporate law is committed to providing substantial protections from takeovers, a message which in Delaware was in large part supplied by case law.

Thus, in examining the question whether competition rewards stronger antitakeover protections, little can be learnt from observing that Delaware has fewer antitakeover statutes than some states – both because other states vary considerably in this regard and because Delaware's takeover law is in large part provided by its developed case law. We therefore propose to approach this question by unpacking the group of all states other than Delaware and studying the cross-state differences within this group. The position taken by supporters of state competition implies that states adopting more antitakeover statutes would not do better, and indeed would do worse, in the market for incorporations. This prediction will be tested below.

B. Standard Antitakeover Statutes

Table 9, taken from Gartman (2000), indicates the antitakeover statutes that each state has. The first six columns stand for "standard" types of antitakeover statutes. We define the following dummy variables:

(1) Control share: equal to 1 if the state has a control share acquisition statute and to 0 otherwise; [14]

(2) Fair price: equal to 1 if the state has a fair price statute and to 0 otherwise; [15]

(3) NoFreezeuts (1-3), which is equal to 1 if the state has a business combination statute that prevents a freezeout for up to three years after a takeover and to 0 otherwise; [16]

(4) NoFreezouts (4-5), which is equal to 1 if the state has a business combination statute that prevents a freezeout for a period longer than three years after a takeover (the longest period adopted by some states is 5 years) and to 0 otherwise;

(5) Poison Pill Endorsement, which is equal to 1 if the state has a statute endorsing the use of a poison pill and to 0 otherwise; [17] and

(6) Constituencies, which is equal to 1 if the state has a statute allowing mangers to take into account interests of non-shareholders in defending against a takeover and to 0 otherwise. [18]

Altogether, control share acquisition statutes were passed in 27 states, fair price statutes

[14] A control share acquisition statute essentially requires a hostile bidder to put its offer to a vote of the shareholders before proceeding with it. If a bidder does not do so and purchases a large block of shares, it runs a very serious risk of not being able to vote these shares at all and thus not be able to gain control despite its large holdings.

[15] A fair price statute requires a bidder that succeeds in gaining control and then proceeds with a second-step freezeout (a transaction removing remaining shareholders) to pay the remaining minority shareholders the same price as it paid for shares acquired through its bid. This prevents bidders from using the threat of a second-step freezeout at a low price as a mechanism for pressuring the shareholders into tendering.

[16] Business combination statutes prevent a bidder that gains control from merging the target with its own assets for a specified period of time (unless certain difficult-to-meet conditions are satisfied). Such a constraint might make it more difficult for successful bidders to realize gains from synergy following a takeover and thereby, by reducing the potential profits from a takeover, might discourage potential buyers from bidding.

[17] Poison pills are warrants or rights issued by the company which are triggered and entitle their holders to get significant value in the event that any buyer obtains a significant block without the approval of the board. As long as they are not redeemed, poison pills make a takeover prohibitively costly. Delaware courts have approved the use of pills in a series of well-known cases, starting with Moran vs. Household International in 1985. Other states have found it necessary to ground the use of poison pills in legislation either because of the absence of such cases or in a few instances to reverse court rulings against poison pills.

[18] Such statutes are regarded as antitakeover statutes because allowing the managers to take into account how a takeover would affect, say, employees or debtholders provides managers with extra reasons for opposing the takeover and makes it more difficult for courts to scrutinize such decisions.

in 27 states, business combination statutes (of both types) in 33 states, pill endorsement statutes in 25 states, and constituencies statutes in 31 states. Of these 143 statutes, 135 statutes were adopted in the period 1985-1991. [19]

As noted above, antitakeover statutes are possibly important not only in what they actually do but also in the antitakeover message that they send and the antitakeover commitment that they communicate. Therefore, how many statutes have been adopted by a given state might be important. Adopting the full arsenal of standard antitakeover statutes sends a clear antitakeover message to state courts and to potential and existing incorporators. We therefore will use, as an alternative to using dummies for each of the statutes, an antitakeover protection index (using a similar approach to that LaPorta et. al. (1998) used to study cross-country differences in shareholder protection).

Our antitakeover protection index, INDEX, attaches to each state a score from 0 to 5 that is equal to the number of standard antitakeover statutes that it has. (Because each state can have either a freezeout statute with up to 3 years moratorium or one with a 4 or 5 years moratorium (but of course not both), the maximum number of standard antitakeover statutes that a state can adopt is 5. We also run a regression in which we seek to avoid imposing linearity on the effects of any given increase by one in the index score, and to this end we define five dummy variables – INDEX1, INDEX2, INDEX3, INDEX4, INDEX5 – each representing the set of states with the relevant number of statues.

C. Extreme Statutes

In addition to the standard statues, there are three "notorious" states that adopted unusual and more restrictive statues. Pennsylvania and Ohio adopted statutes that enable the

[19] Two statutes were adopted earlier and six statutes were adopted in 1997-99. We ran all our regressions excluding the six statutes adopted in 97-99 and obtained similar results.

"disgorgement" or "recapture" of all the short-term profits made by a hostile acquirer, thus discouraging potential hostile bidders. Massachusetts adopted a statue that mandated a staggered board, which has a strong antitakeover force,[20] even for firms that did not have a provision to this effect in their charter.

These two types of statutes and these three states have earned the universal scorn of commentators. Commentators have generally regarded these statutes as especially excessive and detrimental to shareholders. Indeed, several event studies found that the statutes passed by these three states had a substantial negative effect – higher than the effects found for the passage of other antitakeover statutes – on the stock value of firms incorporated in these states.[21]

Supporters of state competition have used these three states to support their position that state competition rewards moderation in the provision of antitakeover protections. For example, Daines (2001a) and Romano (1993a, 1993b, 2001) use Pennsylvania, Ohio, and/or Massachusetts as prime examples for their view that Delaware's law is relatively hospitable to takeovers.

Supporters of state competition have also directed some of their empirical work to these three states. Daines (2001a) reports that firms in these three states have a lower Tobin's Q. Note, however, that this finding is at most an indication that the statutes hurt shareholder wealth, consistent with the findings of the event studies. This finding however, does not at all indicate that the statutes discouraged incorporations in these states and hurt the states adopting them in the incorporations marketplace.

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[20] Bebchuk, Coates, and Subramanian (2002) analyze the special antitakeover power of staggered boards and present evidence that staggered boards indeed have such an effect. Staggered boards are shown to increase in a big way the likelihood that a target receiving a hostile bid would remain independent.

[21] Szewczyk and Tsetsekos (1992), Karpoff and Malatesta (1990), and Swartz (1996) all found that passage of the Pennsylvania statute was accompanied by a substantial reduction in the value of Pennsylvania companies. Ryngaert and Netter (1990) reached a similar conclusion with respect to the passage of the Ohio legislation. Finally, Daines (2001b) obtained similar findings with respect to the passage of the Massachusetts legislation.

Romano (1993) reports that most Pennsylvania firms opted out of the Pennsylvania statute, and she views this opting out as an indication that state competition works well. Such a conclusion, however, cannot be drawn from this finding. Because the opt-out procedure was rather simple, the managers of Pennsylvania firms that chose to opt out of the statute could not have been much hurt by its passage. In contrast, the adoption of the statutes might have benefited considerably those managers that did not opt out and who obtained takeover protections they probably could not have obtained otherwise. Thus, the substantial incidence of opting out does not imply that the passage of the Pennsylvania statute had an overall negative rather than positive effect on managers of Pennsylvania firms. In any event, the opting out by firms that remained incorporated in Pennsylvania in no way indicates that this state has been hurt in the incorporations market.

Surprisingly, supporters of state competition have not tried to test directly whether the actions of Pennsylvania, Ohio, and Massachusetts have substantially hurt these states in the incorporations market. To explore this question, we defined two additional dummy variables:

(i) Recapture, which is equal to 1 if the state has a statue enabling the recapture of profits and to 0 otherwise;[22] and

(ii) Staggered, which is equal to 1 if the state has a statue imposing staggered boards and to 0 otherwise.[23]

Recapture is essentially a dummy variable standing for Pennsylvania or Ohio and Staggered is essentially a dummy variable standing for Massachusetts.

[22] Recapture statutes prevent bidders that gained control from making any short-term profits by requiring that such profits be turned to the company.

[23] The staggered board statute adopted by Massachusetts changed the default: instead of allowing a staggered board only if the company opts into such an arrangement, the statute imposed such an arrangement unless the company opted out of it, opting out that was difficult for the shareholders of existing Massachusetts companies to obtain.

D. What Helps States Retain In-State Firms?

To test the effects of the various features of a state on the inclination of local firms to incorporate in the state, we regressed a dummy variable that is equal to 1 if the firm incorporates in its home state and to 0 otherwise on:

(i) all the firm characteristics used in the earlier regressions of Table 7;

(ii) all the characteristics of the state of location used in the earlier regression of Table 7;

(iii) the percentage of the voters choosing the Democratic candidate in the 2000 election; and

(iv) the antitakeover protections that are offered by the state, as describe below.

We ran four regressions, based on different specification for states' antitakeover protections, and we report their results in Table 10. The regression reported in Column 1 uses the score of each state in the antitakeover protection index to stand for the state's antitakeover protection. To test whether adopting antitakeover statutes affects differently small and large states, the regression reported in Column 2 adds an interaction term between the index and the size of the state (represented by log population). The regression reported on Column 3 also relies on the index but uses instead the five dummy variables representing the groups of states with index levels of 1,2,3,4, and 5. The regression reported in Column 4 uses dummy variables for each of the standard antitakeover statutes. All four regressions use dummy variables for the extreme statutes, the recapture (disgorgement) statute present in Pennsylvania and Ohio and the staggered boards statute present in Massachusetts.

As the tables indicate, the firm characteristics and state characteristics studied in Section III continue to play in these new regressions the same role they played in the earlier regressions. We can thus focus on the effects of the new parameters added:

(i) Standard Antitakeover Statutes: We now turn to examine whether offering antitakeover protections helps a state to attract incorporations from its located firms. Looking first at the summary statistics in Table 5A, we observe that states without antitakeover statutes

seem to be doing poorly in terms of retaining their firms. Whereas the average fraction of in-state firms retained is 41%, most of the states with no antitakeover statutes retain a much lower fraction; California, for example, retains only 23% of the firms located in it. Observe also that states that have all the standard antitakeover statutes generally retain a larger-than-average fraction of their in-state firms. For example, Indiana and Wisconsin, each of which offers a "royal flush" set of five standard antitakeover statutes, retain 72% and 76% respectively of the firms located in them.

Looking at Tables 10, all regressions indicate that a stronger antitakeover protection makes a state more likely to retain located firms. The first three regressions, in Columns 1 2, and 3 of Table 10, all indicate that having a higher score on the antitakeover index increases the fraction of retained firms (at 99% confidence). The fourth regression, on Column 4, using separate dummies for different standard statutes, indicates that the statutes that are most helpful to have (all at 99% confidence) are a control share acquisition statute, a business combination statute with a long (4-5 years) moratorium period, and a pill endorsement statute. Our results, that amassing standard antitakeover statutes helps states to retina local firms, are generally consistent with those of Subramanian (2001).

Interestingly, the interaction term between the index and log population, reported on Column 2 of Table 10, is negative and statistically significant (at 95% significance). This indicates that having a high index is especially helpful in small states. In unreported regression, we find that small states are less inclined to adopt antitakeover statutes; with a small number of publicly traded firms, they might choose not to bother. For this reason, when small states do elect to adopt such statutes, the antitakeover signal might be especially strong.

(ii) Extreme Statutes: Let us again look back at the summary statistics in Table 5A. We observe that Pennsylvania and Ohio, which have the notorious disgorgement statute, retain a

larger-than-average fraction of their located firms. The third "misbehaving" state, Massachusetts, retains a slightly below average fraction of its located firms.

In all four regressions, having a recapture statute has a positive but not statistically significant effect on states' attractiveness for their in-state firms. Thus, as far as retaining located firms is concerned, the evidence does not at all support the belief that adopting a recapture statute has hurt Pennsylvania and Ohio in the incorporations market. To be sure, some located firms opted out of the adopted statute according to the findings reported by Romano (1993b). There is no evidence, however, that the adoption of the statute has led firms located in Pennsylvania and Ohio to migrate, which is the critical test for determining success in the market for incorporations.

As to the staggered board statute, in three regressions (see Columns 1, 2 and 3 of Table 10), a staggered board statute helps in retaining firms (at 99% confidence), but such a statute has a negative effect (at the same confidence) in the fourth regression. With such mixed results, we think it would be fair to say that the evidence does not enable accepting the belief of supporters of state competition that adopting a staggered board statute is penalized in the incorporations market.

In contrast to our results, Subramanian (2001) concludes that the recapture and staggered boards statutes have hurt the ability of the states adopting them to retain firms. However, he uses one dummy variable to stand for the presence of either a recapture or a staggered board statute, and he controls only for firm characteristics but not for state characteristics other than their antitakeover statutes. When we ran the same regressions as he did, we obtained similar results to his. However, in order to allow for the possibility that the incorporations market did not treat recapture and staggered boards statutes in the same way, we used a separate dummy variable for each of these statutes. With this specification, the recapture statute was no longer found to hurt the states adopting it even without introducing state characteristics. And once we controlled for state characteristics, the staggered board statute was also largely found not to hurt the state adopting it.

(iii) *Liberal political and legal culture*: Interestingly, in all four regressions, states that are strongly Democratic are less successful (at 99% confidence) in retaining located firms. For any given set of statutory corporate provisions, judges in states that are strongly Democratic might be expected to be more willing to intervene, which might be unattractive to those making incorporation decisions.[24]

E. What Makes States Attractive for Out-of-State Firms?

We now turn to examine what makes states other than Delaware more or less attractive to out-of-state incorporations. Looking first at the summary statistics in Table 5A, we find that, out of the 10 states with the highest number of out-of-state incorporations, 9 states have four or five antitakeover statutes.

To examine this issue more systematically, we ran the regressions reported in Table 11. In these regressions, the dependent variable is log of (1 + the number of out-of-state incorporations) for all states other than Delaware.[25] For the covariants we used the same firm characteristics and the same state characteristics (including the alternative specifications of antitakeover protections) that we used in the earlier regressions reported in Tables 10. We also ran the same regressions for the set of out-of-state incorporations among Fortune 500 firms, the set of the set of out-of-state incorporations among corporations that went public in 1996-2000, the set of out-of-state incorporations among corporations that went public in 1991-1995, and

[24] Different observers might interpret this link in different ways. The desire to avoid judicial intervention might be rooted in shareholder value considerations (on the positive interpretation) or in agency problems (on the negative interpretation).
[25] Having the dependent variable be equal to the number of out-of-state incorporations yields similar results.

the set of out-of-state incorporations among corporations that went public prior to 1991, and we obtained similar results.

Starting with state demographic characteristics, a higher per capita income helps attracting out-of-state incorporations (at 99% confidence in all three regressions). It might be that, once firms go out-of-state, they prefer a state with a relatively developed legal infrastructure, whose presence might be correlated with a higher per capita income.

The ideological leaning toward Democrats does not have any statistically significant role. It might be that, once a firm goes out-of-state, it will tend to choose a state with certain clear positions on corporate law issues, and those positions will make the general ideological leaning of the state less significant.

Also in contrast to the regressions on in-state attractiveness, adopting the Revised Model Business Corporation Act (or the Model Business Corporation Act preceding it) is statistically significant, making states less attractive for out-of-state incorporations. With so many of the migrating firms coming out of states with corporate codes based on this uniform code, these firms can be expected to look for a state with something different, otherwise there would be little point to incorporating out-of-state.

Turning to antitakeover protection, the results clearly indicate that offering a stronger antitakeover protection is helpful also in attracting out-of-state incorporations. The first regression (Column 1) indicates that having a higher score on the antitakeover index makes a state more attractive (at 99% confidence) to out-of-state incorporations. The second regression (Column 2), which uses dummies for each of the score levels, also finds such a link. Finally, the third regression (Column 3) indicates that the statutes most helpful to attracting out-of-state incorporations are a control share acquisition statute and a pill endorsement statute; business combinations statutes, which were the third type of statute that we identified as helpful for retaining in-state firms, is not statistically significant in attracting out-of-state incorporations.

Finally, as to the two types of extreme statutes, the results here are clear. In all three regressions, both a staggered board statute and a recapture statute do not have a statistically significant effect on states' ability to attract out-of-state incorporations. The evidence, again, does not enable concluding that the incorporations marketplace penalizes states adopting such statutes.

F. The Overall Effects of Corporate Migration on Antitakeover Protections

We finally turn to examine the overall effect of the migration of firms from their states of locations to states other than Delaware on the takeover rules governing them. Does this migration operate overall to increase antitakeover protections?

To study this question, let us first look at some summary statistics. Table 12A displays, for each level of the antitakeover index, (i) how many of the migrating firms had this index level at the home state that they left, and (ii) how many of the migrating firms had this index level at their state of incorporation. The table indicates that migrating firms by and large moved to a state with the same or higher level of the antitakeover index than their state of headquarters; the great majority of firms are located in the boxes of the table that are on or above the diagonal.

Table 12B reports results on the distribution of changes caused by migration. Within the group of firms not located or incorporated in Delaware, the migration of firms to out-of-state incorporation increases (at 99% confidence) the level of the antitakeover index that governs these firms. Furthermore, for each of the standard antitakeover statutes, this migration increases (at 99% confidence) the likelihood that any given migrating firm will be governed by such a statute. Thus, this migration operates unambiguously to increase the overall levels of antitakeover protection enjoyed by these firms (or, more accurately, their managers).

V. DELAWARE'S DOMINANCE OF THE MARKET

We now turn to explore how the market is divided and to explore Delaware's market power. In most markets where a firm has a market power, a major concern is that this firm would reduce output to raise prices. In contrast, in the market for corporate law that we study, output reduction is not a problem. However, the presence of market power is quite important for understanding how this market will operate and how the dominant seller would make quality and price choices.

Let us look back at Table 2, which displays Delaware's market share. Delaware has incorporations of 51% of all firms and 58% of the incorporations of Fortune 500 firms. This division of the market represents a substantial market concentration. Using the Herfindahl index (see Tirole (1988, at 221), Hovenkamp (1999, at 512-16)), we calculate that its value is 2,747 in the market for incorporations and 3,552 in the market for incorporations of Fortune 500 firms. Such numbers indicate very high levels of concentration.[26]

The above paragraph has considered Delaware's market share among all incorporations or Fortune 500 incorporations, which is how Delaware's dominant position is commonly measured (see e.g, Gartman (2000)).[27] Although the numbers reported in the preceding paragraph already indicate a large degree of market concentration, they do not in our view provide the full picture concerning Delaware's market power.

To start with, it is useful to consider not only Delaware's fraction of the total incorporations market but also its fraction of out-of-state incorporations. As we have seen, many firms' choices display a home-state bias. There is no reason to think that all of these

[26] According to the 1992 Justice Department guidelines, for example, mergers may be examined for possible challenge if the post-merger Herfindahl index is above 1000 (see Hovenkamp (1999), at 516).

[27] See also the web site of the Delaware Division of Corporations, www.state.de.us/corp, which indicates that about 50% of all public corporations and 60% of the Fortune 500 are incorporated in Delaware.

firms are exactly on the fence – that is, that they prefer to incorporate be in their home state rather than in Delaware by only a very small margin. A state that marginally improved on Delaware's product could hope to capture the full out-of-state incorporations market; in contrast, such a state could not hope to attract those firms that currently prefer in a significant way in-state incorporation over Delaware incorporation. Thus, in assessing Delaware's position, it is useful to consider not only Delaware's share of all incorporations but also its share of all out-of-state incorporations.

Table 13 displays the division of the market for out-of-state incorporations. Delaware has 78% of total out-of-state incorporations, 84% of the out-of-state incorporations of Fortune 500 firms, and 86% of the incorporations of firms that went public in 1996-2000. The concentration of the market for out-of-state incorporations is thus very large (see Table 13 for the extremely high values of the Herfindahl index for the out-of-state incorporations market and its different segments).

Furthermore, it is important to examine not only Delaware's current shares of total incorporations and total out-of-state incorporations but also to consider how these shares have been evolving over time. Table 14 divides all the firms not located in Delaware (almost all firms) into three groups: those firms that went public before 1991, those that went public during 1991-1995, and those that went public during 1996-2000.

The results of the regressions reported in Table 7 indicate that firms that went public in the past decade, and even more so firms that went public in the past five years, are more likely to be incorporated out-of-state. Consistent with this result, Column 1 of Table 14 shows that the percentage of firms incorporating out-of-state is higher for more recent cohorts: this percentage is 61% for firms that went public before 1991, goes up to 67% for firms that went public during 1991-1995, and further climbs to 72% for firms that went public in 1995-2000.

Column 2 of Table 14 indicates that Delaware captures the lion's share of out-of-state incorporations for firms of different vintages and, furthermore, that its share has been trending upwards in the past decade. Delaware captures 71% of all of out-of-state incorporations by firms that went public before 1991, 84% of all such incorporations by firms that went public during 1991-1995, and 87% of all such incorporations by firms that went public during 1996-2000.

Both factors – the higher fraction of out-of-state incorporations in recent cohorts and Delaware's higher share of the out-of-state incorporations of the recent cohorts market – combine to make Delaware's share of total incorporations higher for firms from recent cohorts. As Column 3 of Table 14 indicates, Delaware captures only 43% of the incorporations of firms that went public before 1991, 56% of the incorporations of firms that went public during 1991-1995, and 63% of the incorporations of firms that went public during 1996-2000. This implies that, if Delaware simply maintains with future cohorts its performance with the most recent cohorts, its total share of incorporations can be expected to climb in the future, as new firms enter the market and old ones leave it in one way or another.

The very substantial concentration in the market for corporate law does not by itself imply that Delaware has a market power that it can use to make supra-competitive returns. Even a seller that has a market share close or equal to 1 would have little ability to make supra-competitive profits if the market were perfectly contestable and any attempt to make such profits could be expected to trigger immediately a challenge by a new entrant.

In the case of the market for corporate law, however, there are reasons to believe that the market is far from perfectly contestable. Delaware makes, and has long made, substantial supra-competitive profits (see Kahan and Kamar (2001)). Delaware's franchise tax revenues are more than $400 million per year, constitute a substantial fraction of the state's annual budget, and far exceed the state's expenses on the firms incorporated in it. These franchise tax revenues have been a source of substantial profit to Delaware for a long time (see Romano (1985)). Furthermore, Delaware derives additional benefits from the substantial profits made (and taxes paid) by its relatively large legal services sector.

The presence of such supra-competitive returns, and their persistence over time, indicate the likely presence of some substantial barriers to entry. The incumbent in this market might obtain advantages from the presence of network externalities (see Klausner (1995), Kahan and Kamar (1997)), from Delaware's sunk investments in legal infrastructure (such as a specialized and effective court system – see Romano (1985), Black (1990), Fisch (2001)), or from the incumbent's ability to match and out-do any serious attempt to unseat it (see Bebchuk and Ferrell (2001)). Bebchuk and Hamdani (2001) analyze the full range of barriers to entry in the market for corporate law that might provide Delaware with market power and enable it to make supra-competitive returns.

As already emphasized, Delaware's market power and dominance does not give rise to the traditional concerns associated with monopoly power in other markets, that is, the deadweight loss due to output reduction. Rather, it is relevant for a better analysis of Delaware's behavior and its choices with respect to products design and prices. Researchers have already examined how Delaware's dominance might lead it to make its law more unpredictable and litigation-intensive (Kamar (1998), Kahan and Kamar (2001)), to engage in price-discrimination (Kahan and Kamar (2001)), and to seek to discourage challenges to its dominance by charging firms less than the value to them of Delaware's network and institutional advantages (Bar-Gill, Barzuza, and Bebchuk (2001)). The analysis in this section suggests that more work in this direction would be worthwhile. Bebchuk and Hamdani (2001) offer an analysis of the range of positive and normative implications of the findings that this paper has with respect to the division of the market.

VI. CONCLUDING REMARKS

This paper has taken a different approach to the empirical study of state competition than prior work. The substantial prior work on the subject has focused on the wealth effects of Delaware incorporation, taking incorporation decisions as exogenous and putting all states other than Delaware in one group. In contrast, this paper has focused on investigating the factors that influence and explain incorporation decisions. Furthermore, this paper has paid close attention to the differences among states other than Delaware, using these cross-state differences to identify what makes states more and less successful in attracting incorporations.

The evidence indicates that a significant home-state advantage is at work in the market for corporate law. In contrast to the conventional picture of state competition, firms do not choose incorporation solely focusing on comparing states' corporate law systems but are also significantly influenced by the firm's location. States are substantially more successful in "selling" their corporate laws to firms located in them than to firms headquartered elsewhere. This home-state advantage is especially strong with respect to smaller and older firms, a pattern consistent with several explanations for the presence of such advantage. The evidence is consistent, we have found, with firms induced to remain in-state by the desire to save on extra costs, by the hope to benefit from local favoritism, or by the influence of local counsel. The evidence is inconsistent, however, with the possibility that the widespread adoption of the RMBCA contributes to firms' incorporations in their home state.

Although all states have some success in retaining firms located in them, and although none of the other states comes even close to Delaware in terms of attracting out-of-state incorporations, states greatly differ in how they fare in the incorporations market. We have used cross-state differences to study the legal and other features of states that make them more or less attractive to incorporators. Among other things, we have found that states that have a heavily Democratic electorate, and thus are more likely to have activist judges, are less successful in attracting firms. States that have adopted the Revised Model Business Corporations Act or its predecessor are not more successful in retaining local firms and are less successful in attracting out-of-state incorporations. Demographic characteristics and location of the state also play a role.

Addressing the long-standing debate on whether state competition has encouraged the proliferation of antitakeover statutes, we have found that amassing antitakeover statutes makes states more successful in the incorporations market, both in retaining in-state firms and in attracting out-of-state incorporations. States that offer all or most of the standard antitakeover statutes do especially well, and states that offer no such statutes do especially poorly. Not surprisingly, the migration of firms to out-of-state incorporations significantly increases the antitakeover protection applying to these firms.

Indeed, in contrast to the beliefs of supporters of state competition, the evidence does not indicate that the incorporations marketplace has penalized even those three states that passed statutes universally regarded as detrimental to shareholders. These statutes thus did not bring the states adopting them to the point in which antitakeover protections drive away firms. Because these statutes did not help the adopting states attract more firms, however, this point might be not far away from the one reached by these states.

Our findings on antitakeover protection and state competition call for reconsidering a widely held view that is both negative on antitakeover statutes and positive on state competition. Those who hold this view should revisit at least one of the elements of their position. At this stage, it appears that researchers can reasonably take somewhat different views on the position that should be adopted in light of our findings.[28] What is important, however, is

[28] Our own view is that some state antitakeover statutes are likely beneficial or neutral. Control share acquisition statutes, for example, can address the problem of pressure to tender and facilitate undistorted shareholder choice (Bebchuk (1985), Bebchuk and Hart (2001), Bebchuk (2002)). However, poison pills can produce excessive

that the established link between state antitakeover statutes and incorporations be taken into account in any future analysis of state competition and takeover law.

Delaware's market dominance, we have shown, is even greater than has been previously recognized. The fraction of firms going out of state has been steadily increasing, and Delaware's dominance of the market for out-of-state incorporations has also been increasing and reached high monopoly levels in the past decade. Both factors made Delaware's share of total incorporations among recent corporate cohorts substantially greater than in the pool of all incorporations. Thus, even if Delaware only maintains for future cohorts its performance for recent cohorts, Delaware's share of total incorporations is expected to increase substantially over time. The levels of concentration in the market for corporate law, combined with the profits consistently made by Delaware, suggest that the market is best analyzed as one with a monopoly seller and significant barriers to entry. Subsequent work on the market for corporate law should pay much attention to how these features of the market affect the decisions of the dominant player and other market participants.

Our analysis can provide both a basis and questions for subsequent empirical work. Much more work can be done on the factors that pull firms to remain in-state. Also, our approach for studying how incorporation choices are affected by cross-state differences can be used with respect to other features of corporate law that vary across states. Future work could examine how incorporations choices are affected by elements of corporate law other than those on which we have focused. Such work could help complete the picture of what determines firms' incorporation decisions and thus, in turn, of the incentives that state competition provides.

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protection from takeovers when they are coupled with staggered boards (Bebchuk, Coates, and Subramanian (2001)). As a result, the wide latitude granted to managers to use poison pills by poison pill endorsement statutes and stakeholder statutes is likely to produce excessive protection in many cases. Thus, our view is that, although some antitakeover statutes are beneficial or neutral, others are not, and that the incorporations marketplace provides states with excessive incentives to restrict takeovers.

Finally, whereas our work has taken as given the existing differences in takeover law among states, it would be worthwhile to investigate what explains these differences. Given that amassing antitakeover statutes helps attract incorporations, why don't all states amass such statutes? The reason, at least in part, is presumably that not all states focus on the goal of maximizing the number of incorporations.[29] Although the standard assumption in the literature on state competition is that all states are guided by this goal, the findings of this paper indicate that this is clearly not the case; after all, many states do not take some easy steps (i.e., adopt more antitakeover statutes) that would likely increase the number of incorporations these states attract. Exploring what makes some states focus on attracting incorporations but not others, as well as what differences among states produce their varied decisions on antitakeover statutes, is another interesting question left for future research.

[29] Some states (especially large states) might not care about how many companies incorporate in them, and some states might have preferences about the substantive content of its corporate law and not only in how this law would affect incorporations in them. (New York or California, for example, might have among their citizens a significant fraction of the shareholders of many public companies.) Cumming and MacIntosh (2001) suggest that, in the Canadian market for corporate law, the behavior of provinces is inconsistent with the view that they seek to maximize the number of (or revenues from) incorporations.

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TABLE 1

The Distribution of Firm Locations among States

All publicly traded firms

State	Number of firms located in state	Percentage
CA	1437	16.80%
NY	954	11.15%
TX	693	8.10%
MA	499	5.83%
IL	426	4.98%
NJ	414	4.84%
FL	408	4.77%
PA	351	4.10%
OH	267	3.12%
MN	248	2.90%
CO	235	2.75%
GA	216	2.52%
VA	192	2.24%
CT	184	2.15%
WA	157	1.83%
MD	143	1.67%
MI	141	1.65%
NC	135	1.58%
MO	130	1.52%
AZ	105	1.23%
IN	104	1.22%
TN	100	1.17%
WI	90	1.05%
OR	81	0.95%
UT	77	0.90%
Other	769	8.99%
Total	8556	100%

Fortune 500 firms

State	Number of firms located in state	Percentage
CA	50	10.96%
NY	50	10.96%
TX	38	8.33%
IL	35	7.68%
OH	28	6.14%
PA	26	5.70%
NJ	20	4.39%
VA	16	3.51%
MI	15	3.29%
MO	15	3.29%
GA	14	3.07%
CT	13	2.85%
MA	13	2.85%
FL	12	2.63%
MN	12	2.63%
NC	12	2.63%
WA	10	2.19%
WI	9	1.97%
AL	7	1.54%
TN	6	1.32%
DE	5	1.10%
MD	5	1.10%
AR	4	0.88%
AZ	4	0.88%
CO	4	0.88%
Other	33	7.24%
Total	456	100%

Firms going public during 1996-2000

State	Number of firms located in state	Percentage
CA	601	24.65%
NY	243	9.97%
TX	192	7.88%
MA	166	6.81%
FL	140	5.74%
NJ	90	3.69%
IL	85	3.49%
PA	74	3.04%
CO	73	2.99%
GA	69	2.83%
WA	64	2.63%
VA	61	2.50%
MN	54	2.21%
MD	47	1.93%
CT	46	1.89%
OH	40	1.64%
NC	38	1.56%
MI	32	1.31%
AZ	30	1.23%
MO	28	1.15%
TN	25	1.03%
OR	18	0.74%
UT	18	0.74%
DC	17	0.70%
LA	15	0.62%
Other	172	7.05%
Total	2438	100%

TABLE 2

The Distribution of Incorporations among States

All publicly traded firms

State	Number of firms incorporate in state	Percentage
DE	4385	51.27%
MD	418	4.89%
CA	341	3.99%
MA	310	3.62%
NY	302	3.53%
MN	245	2.86%
NV	243	2.84%
TX	205	2.40%
FL	202	2.36%
PA	185	2.16%
OH	170	1.99%
CO	145	1.70%
NJ	145	1.70%
GA	116	1.36%
VA	101	1.18%
WA	100	1.17%
IN	87	1.02%
MI	82	0.96%
WI	73	0.85%
NC	70	0.82%
OR	64	0.75%
UT	59	0.69%
MO	56	0.65%
TN	49	0.57%
IL	42	0.49%
Other	357	4.17%
Total	8552	100%

Herfindahl index = 2747

Fortune 500 firms

State	Number of firms incorporate in state	Percentage
DE	263	58.44%
NY	26	5.78%
OH	20	4.44%
PA	15	3.33%
NJ	13	2.89%
MD	9	2.00%
NC	9	2.00%
VA	9	2.00%
IN	8	1.78%
FL	7	1.56%
GA	7	1.56%
CA	6	1.33%
MN	6	1.33%
TX	6	1.33%
WA	6	1.33%
MA	5	1.11%
MI	5	1.11%
NV	5	1.11%
IL	4	0.89%
MO	4	0.89%
KS	3	0.67%
DC	2	0.44%
KY	2	0.44%
OR	2	0.44%
RI	2	0.44%
Other	6	1.33%
Total	450	100%

Herfindahl index = 3522

Firms going public during 1996-2000

State	Number of firms incorporate in state	Percentage
DE	1525	62.55%
CA	106	4.35%
MD	83	3.40%
NV	77	3.16%
FL	73	2.99%
MA	57	2.34%
TX	57	2.34%
CO	42	1.72%
WA	42	1.72%
MN	39	1.60%
NY	38	1.56%
GA	37	1.52%
PA	29	1.19%
OH	25	1.03%
VA	24	0.98%
NJ	19	0.78%
MI	18	0.74%
NC	16	0.66%
OR	15	0.62%
TN	13	0.53%
IN	11	0.45%
MO	11	0.45%
UT	11	0.45%
LA	9	0.37%
WI	9	0.37%
Other	52	2.13%
Total	2438	100%

Herfindahl index = 3993

TABLE 3

Location and Incorporation

Location and incorporation -- Active firms

incorp

state	AK	AL	AR	AZ	CA	CO	CT	DC	DE	FL	GA	HI	IA	ID	IL	IN	KS	KY	MA	MD	ME	MI	MN	MS	MO	MT	NC	ND	NE	NH	NJ	NV	NY	OH	OK	OR	PA	AS	PR	RI	SC	SD	TN	TT	UT	VA	VT	WA	WI	WV	WY	Total
AK	2								1																																											3
AL		6				1			45																					1													1									54
AR			5						16						1											1																							1								24
AZ				26		1			50	1	1				1	2				2			1	1								2	9	3	1			1							1	1						2	106
CA	1				327	10			970	3	1	1				1			4	35			2		2				1		4	49	8	1		1		1			1		1	1	8			2			1	1432
CO					3	76			105	1				1		1			10	7												1	9	2												1	2			2			2	223
CT						1	26		134	1									1	1												2	3	9				1									3			1			183
DC								8	24												3															1																	1				37
DE									34											2																																			36
FC					1				39	1											1													18	5						1						1			1				68
FL						4	2		180	172						1			2	13			1		1		2		1		3	17	9				1								1	1	1					1	412
GA		1				2			89	4	106								2	3			4				1						1	1	1			1							2								218
HI						1			5			9																						1																						16
IA									14				21							1			2	3					1					2																						44
ID									10					2									1												2														1			1				17
IL					1	1			248		2		1		32	1		1	55	18		1	38									1	5	5		1		3								1	2			1			418
IN						2			22							76			1	3																												1						105
KS						3			21								17			1					4										1																						47
KY									28	1								19										1									2																					51
LA						2			24									25																3																									54
MA					1				250	1									193	28									1		2	4	5		1		4			3				2								495
MD					3	1			77	1										53			1				1					1	2															3						143
ME									5	1									1		10																											1							18
MI						1			49		2					1			1	6		78												1	1																				140
MN						1			57				1							1			181	11	1							2	1																					256
MO									69	1			1				5			1					43							1	1	3													1							126
MS									8		3									2			1																							1									15
MT									3															1			6																													10
NC									55	2											4							59							2	3				2						1		1			2						131
ND						1			4																					1																									6
NE						1			16																							7																		1				1			26
NH									24									1													4																						1			30
NJ			1		2	1			214	3						1			2	43												117	7	17				11								1								420
NM						1			6											2				2								7	1																								19
NV					2	2			13															2											49	2												1								71
NY				1	1	6	3		514	4						2		1	25	138			1				1				4	22	212	2	1		1										2	3		1			1	946
OH						1			81	3						1		1		7							1				4	1	1	159			2											3		1				266
OK						2			32								1			1				1										5			27											1								70
OR									17											2														3	1			56																				79
PA					1	2			169	1	1					1				16												1	6	4	2		1	172											1						378
PR									1																																		4									1						6
RI									14	1									1	3														1							9												29
SC									24																			1																21												46
SD									5																																						4										9
TN									42		1							1		4			1											4	1											43		1								98
TX			1		3	10			408	6	2	1	1				2	2	1	5		1	2		3							2	31	3	1	3	2	1							185	4	1		2	1		4	686
UT						3			30	1										1														8															35							78
VA						1		2	86	1	2									7	1											2	4	4											1			82		2			1	196
VI									2																																											6					8
VT									7																											1																					8
WA	1					1			61					1					2														1				2														86			1	156
WI						1			17						1					1												1			1																69			91
WV									3																									2		1			2														7		15
WY						3			1				1																																									4	9
Total	4	7	7	27	345	143	31	10	4423	210	121	11	26	4	35	88	25	50	302	415	11	80	239	18	55	6	67	1	11	4	149	273	306	172	33	62	202	1	5	12	23	4	48	196	60	103	6	99	74	7	17	8628

TABLE 4

In-State and Out-of-State Incorporations

	Number of In-state Incorporations	Percentage of Total Incorporations	Number of Out-of-state Incorporations	Percentage of Total Incorporations	Total Number of Incorporations
All firms	2983	34.86%	5575	65.14%	8558
Went public Pre-91	1796	38.95%	2815	61.05%	4611
Went public 91-95	503	33.33%	1006	66.67%	1509
Went public 96-00	684	28.06%	1754	71.94%	2438
Fortune 500	147	32.24%	309	67.76%	456
Fortune 100	28	28.87%	69	71.13%	97

TABLE 5A

Migration and Emigration in the "Market for Corporate Law:" All Publicly Traded Firms

State	Number of firms located in state	Percentage	Number of firms located and incorporate in state	As percentage of all firms located in this state	Number of firms located in state but incorporate in Delaware	As percentage of the number of firms located in state but incorp elsewhere	Number of firms located elswhere but incorporate in state	As percentage of all out-of state incorp	Net flow	As percentage of the number of firms located in state
AK	3	0.04%	2	66.67%	1	100.00%	2	0.02%	-1	-33.33%
AL	53	0.62%	6	11.32%	44	93.62%	2	0.02%	45	84.91%
AR	24	0.28%	5	20.83%	16	84.21%	1	0.01%	18	75.00%
AZ	105	1.23%	27	25.71%	48	61.54%	1	0.01%	77	73.33%
CA	1,437	16.80%	326	22.69%	979	88.12%	15	0.21%	1096	76.27%
CO	235	2.75%	82	34.89%	113	73.86%	63	0.76%	90	38.30%
CT	184	2.15%	25	13.59%	136	85.53%	4	0.05%	155	84.24%
DC	38	0.44%	7	18.42%	24	77.42%	2	0.02%	29	76.32%
DE	37	0.43%	35	94.59%	35	1750.00%	4,350	51.06%	-4348	-11751.35%
FL	408	4.77%	169	41.42%	180	75.31%	33	0.41%	206	50.49%
GA	216	2.52%	103	47.69%	92	81.42%	13	0.16%	100	46.30%
HI	17	0.20%	9	52.94%	5	62.50%	2	0.02%	6	35.29%
IA	41	0.48%	21	51.22%	14	70.00%	5	0.06%	15	36.59%
ID	16	0.19%	2	12.50%	10	71.43%	1	0.01%	13	81.25%
IL	426	4.98%	37	8.69%	246	63.24%	5	0.06%	384	90.14%
IN	104	1.22%	75	72.12%	22	75.86%	12	0.14%	17	16.35%
KS	47	0.55%	17	36.17%	20	66.67%	8	0.09%	22	46.81%
KY	50	0.58%	19	38.00%	27	87.10%	2	0.02%	29	58.00%
LA	54	0.63%	26	48.15%	23	82.14%	4	0.05%	24	44.44%
MA	499	5.83%	194	38.88%	254	83.28%	116	1.44%	189	37.88%
MD	143	1.67%	51	35.66%	80	86.96%	367	4.36%	-275	-192.31%
ME	16	0.19%	10	62.50%	5	83.33%	1	0.01%	5	31.25%
MI	141	1.65%	80	56.74%	48	78.69%	2	0.02%	59	41.84%
MN	248	2.90%	186	75.00%	54	87.10%	59	0.71%	3	1.21%
MO	130	1.52%	44	33.85%	71	82.56%	12	0.14%	74	56.92%
MS	21	0.25%	9	42.86%	7	58.33%	6	0.07%	6	28.57%
MT	9	0.11%	6	66.67%	2	66.67%	0	0.00%	3	33.33%
NC	135	1.58%	62	45.93%	55	75.34%	8	0.10%	65	48.15%
ND	7	0.08%	1	14.29%	4	66.67%	0	0.00%	6	85.71%
NE	26	0.30%	7	26.92%	16	84.21%	4	0.05%	15	57.69%
NH	31	0.36%	4	12.90%	25	92.59%	0	0.00%	27	87.10%
NJ	414	4.84%	113	27.29%	210	69.77%	32	0.39%	269	64.98%
NM	17	0.20%	7	41.18%	6	60.00%	3	0.04%	7	41.18%
NV	68	0.79%	48	70.59%	11	55.00%	195	2.30%	-175	-257.35%
NY	954	11.15%	211	22.12%	511	68.78%	91	1.20%	652	68.34%
OH	267	3.12%	157	58.80%	83	75.45%	13	0.16%	97	36.33%
OK	66	0.77%	26	39.39%	32	80.00%	6	0.07%	34	51.52%
OR	81	0.95%	59	72.84%	17	77.27%	5	0.06%	17	20.99%
PA	351	4.10%	155	44.16%	161	82.14%	30	0.37%	166	47.29%
PR	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
RI	30	0.35%	9	30.00%	15	71.43%	2	0.02%	19	63.33%
SC	49	0.57%	21	42.86%	26	92.86%	2	0.02%	26	53.06%
SD	10	0.12%	4	40.00%	6	100.00%	0	0.00%	6	60.00%
TN	100	1.17%	43	43.00%	42	73.68%	6	0.07%	51	51.00%
TX	693	8.10%	195	28.14%	402	80.72%	10	0.13%	488	70.42%
UT	77	0.90%	35	45.45%	30	71.43%	24	0.28%	18	23.38%
VA	192	2.24%	81	42.19%	85	76.58%	20	0.24%	91	47.40%
VT	13	0.15%	5	38.46%	7	87.50%	0	0.00%	8	61.54%
WA	157	1.83%	88	56.05%	62	89.86%	12	0.14%	57	36.31%
WI	90	1.05%	68	75.56%	17	77.27%	5	0.06%	17	18.89%
WV	15	0.18%	7	46.67%	3	37.50%	0	0.00%	8	53.33%
WY	11	0.13%	4	36.36%	3	42.86%	13	0.15%	-6	-54.55%
Total	8556		2983		4385		5569			
Average		1.92%		40.98%		107.03%		1.27%		-190.31%

TABLE 5B

Migration and Emigration in The "Market for Corporate Law:" Firms that Went Public during 1996-2000

State	Number of firms located in state	Percentage	Number of firms located and incorporate in state	As percentage of all firms located in this state	Number of firms located in state but incorporate in Delaware	As percentage of the number of firms located in state but incorp elsewhere	Number of firms located elswhere but incorporate in state	As percentage of all out-of state incorp	Net flow	As percentage of the number of firms located in state
AK	1	0.04%	0	0.00%	1	100.00%	0	0.00%	1	100.00%
AL	7	0.29%	1	14.29%	6	100.00%	0	0.00%	6	85.71%
AR	5	0.21%	1	20.00%	3	75.00%	0	0.00%	4	80.00%
AZ	30	1.23%	5	16.67%	17	68.00%	0	0.00%	25	83.33%
CA	601	24.65%	104	17.30%	456	91.75%	2	0.11%	495	82.36%
CO	73	2.99%	23	31.51%	48	96.00%	19	0.80%	31	42.47%
CT	46	1.89%	2	4.35%	41	93.18%	0	0.00%	44	95.65%
DC	17	0.70%	2	11.76%	11	73.33%	0	0.00%	15	88.24%
DE	8	0.33%	8	100.00%	8	0.00%	1,517	62.43%	-1517	-18962.50%
FL	140	5.74%	61	43.57%	61	77.22%	12	0.52%	67	47.86%
GA	69	2.83%	34	49.28%	32	91.43%	3	0.13%	32	46.38%
HI	4	0.16%	1	25.00%	1	33.33%	0	0.00%	3	75.00%
IA	7	0.29%	4	57.14%	2	66.67%	0	0.00%	3	42.86%
ID	4	0.16%	0	0.00%	4	100.00%	0	0.00%	4	100.00%
IL	85	3.49%	5	5.88%	64	80.00%	1	0.04%	79	92.94%
IN	14	0.57%	9	64.29%	3	60.00%	2	0.08%	3	21.43%
KS	12	0.49%	4	33.33%	5	62.50%	3	0.12%	5	41.67%
KY	12	0.49%	3	25.00%	5	55.56%	0	0.00%	9	75.00%
LA	15	0.62%	8	53.33%	5	71.43%	1	0.04%	6	40.00%
MA	166	6.81%	48	28.92%	112	94.92%	9	0.40%	109	65.66%
MD	47	1.93%	14	29.79%	31	93.94%	69	2.89%	-36	-76.60%
ME	7	0.29%	4	57.14%	3	100.00%	0	0.00%	3	42.86%
MI	32	1.31%	17	53.13%	13	86.67%	1	0.04%	14	43.75%
MN	54	2.21%	35	64.81%	17	89.47%	4	0.17%	15	27.78%
MO	28	1.15%	8	28.57%	16	80.00%	3	0.12%	17	60.71%
MS	4	0.16%	1	25.00%	2	66.67%	0	0.00%	3	75.00%
MT	1	0.04%	1	100.00%	0	0.00%	0	0.00%	0	0.00%
NC	38	1.56%	13	34.21%	22	88.00%	3	0.13%	22	57.89%
ND	3	0.12%	1	33.33%	1	50.00%	0	0.00%	2	66.67%
NE	5	0.21%	1	20.00%	3	75.00%	1	0.04%	3	60.00%
NH	8	0.33%	0	0.00%	8	100.00%	0	0.00%	8	100.00%
NJ	90	3.69%	17	18.89%	57	78.08%	2	0.09%	71	78.89%
NM	6	0.25%	1	16.67%	2	40.00%	0	0.00%	5	83.33%
NV	15	0.62%	11	73.33%	3	75.00%	66	2.72%	-62	-413.33%
NY	243	9.97%	33	13.58%	179	85.24%	5	0.23%	205	84.36%
OH	40	1.64%	23	57.50%	15	88.24%	2	0.08%	15	37.50%
OK	11	0.45%	4	36.36%	7	100.00%	0	0.00%	7	63.64%
OR	18	0.74%	12	66.67%	5	83.33%	3	0.12%	3	16.67%
PA	74	3.04%	24	32.43%	38	76.00%	5	0.21%	45	60.81%
RI	6	0.25%	1	16.67%	4	80.00%	0	0.00%	5	83.33%
SC	12	0.49%	3	25.00%	8	88.89%	1	0.04%	8	66.67%
SD	1	0.04%	0	0.00%	1	100.00%	0	0.00%	1	100.00%
TN	25	1.03%	11	44.00%	11	78.57%	2	0.08%	12	48.00%
TX	192	7.88%	52	27.08%	118	84.29%	5	0.22%	135	70.31%
UT	18	0.74%	5	27.78%	12	92.31%	6	0.25%	7	38.89%
VA	61	2.50%	22	36.07%	34	87.18%	2	0.08%	37	60.66%
VT	2	0.08%	0	0.00%	2	100.00%	0	0.00%	2	100.00%
WA	64	2.63%	39	60.94%	23	92.00%	3	0.13%	22	34.38%
WI	14	0.57%	8	57.14%	3	50.00%	1	0.04%	5	35.71%
WV	2	0.08%	0	0.00%	1	50.00%	0	0.00%	2	100.00%
WY	1	0.04%	0	0.00%	1	100.00%	1	0.04%	0	0.00%
Total	2438		684		1525		1754			
Average		1.96%		32.50%		77.43%		1.42%		-322.51%

TABLE 6

Attractiveness of California Incorporation: In-State vs. Out-of-State Firms

Logit regression:

Dependent variable:	Incorporated in California
Located in California	4.9 (0.29)***
log (sales)	-0.04 (0.036)
Tobin's Q	-0.001 (0.001)
Return to assets	0.014 (0.017)
Number of employees	-0.086 (0.032)***
Total equity	0.0001 (0.0007)*
Went public in 1991-1995	-0.11 (0.17)
Went public in 1996-2000	0.73 (0.16)***
Constant	-5.53 (0.31)***
Number of observations	6588
Adjusted R^2	0.4067

*, **, *** Significant at 1%, 5%, and 10% confidence interval, respectively.

TABLE 7

Factors Inducing Firms to Remain In-State

Logit regression:

Dependent variable: In-state dummy	1	2
Firm characteristics:		
log(Sales)	-0.035 (0.014)$^{\backslash **}$	0.44 (0.23)**
Tobin-Q	-2.0e-04 (0.006)	-7.0e-06 (0.0006)
Return on assets	-0.003 (0.006)	-0.004 (0.006)
Number of employees	-0.004 (0.002)**	-0.004 (0.002)**
Going public between 91-95	-0.32 (0.07)***	-0.32 (0.07)***
Going public between 96-00	-0.55 (0.07)***	-0.53 (0.07)***
Delaware dummy		4.66 (1.13)***
State Demographic Characteristics:		
log(Population)		0.18 (0.12)*
Number of firms located		-3.0e-04 (2.4e-04)
Per capita income		-2.4e-05 (1.6e-05)
Interaction:		
log(Sales)*log(Population)		-0.03 (0.014)**
State region:		
Northeast		-0.43 (0.12)***
South		-0.13 (0.10)
West		0.44 (0.12)***
Uniformity of laws:		
RMBCA		-0.09 (0.09)
Other state characteristics		YES[1]
State Dummy	YES	NO
2-digit industry dummy	YES	YES
Number of observations	6554	6554
Pseudo R^2	0.1505	0.1049

*, **, *** Significant at 10%, 5%, and 1% confidence interval, respectively.

1 Controls for antitakeover protection and legal culture, results reported in Table 9, Column1

TABLE 8

Which Firms Migrate to Delaware?

Dependent variable:	In-Delaware Dummy coef.
Log(sales)	0.1**
	(0.013)
Tobin-Q	0.0007
	(0.0006)
Return on assets	0.006
	(0.006)
Number of employees	0.001
	(0.001)
Going public between 91-95	0.41***
	(0.07)
Going public between 96-00	0.64***
	(0.07)
State dummies	YES
2-digit SIC dummies	YES
Number of observations	5989
Pseudo R^2	0.1277

*, **, *** Significant at 10%, 5%, and 1% confidence interval, respectively.

TABLE 9

Standard Antitakeover Statutes

State	Number of Statutes	Control Share	Fair Price	No Freezeouts (years prohibited)	Poison Pill Endorsement	Constituencies
Alaska	0	0	0	0	0	0
Alabama	0	0	0	0	0	0
Arkansas	0	0	0	0	0	0
Arizona	4	1	1	3	0	1
California	0	0	0	0	0	0
Colorado	1	0	0	0	1	0
Connecticut	3	0	1	5	0	1
DC	0	0	0	0	0	0
Delaware	1	0	0	3	0	0
Florida	4	1	1	0	1	1
Georgia	4	0	1	5	1	1
Hawaii	3	1	0	0	1	1
Iowa	3	0	0	3	1	1
Idaho	5	1	1	3	1	1
Illinois	4	0	1	3	1	1
Indiana	5	1	1	5	1	1
Kansas	2	1	0	3	0	0
Kentucky	4	0	1	5	1	1
Louisiana	3	1	1	0	0	1
Massachusetts	4	1	0	5	1	1
Maryland	5	1	1	5	1	1
Maine	1	0	0	0	0	1
Michigan	3	1	1	5	0	0
Minnesota	4	1	1	4	0	1
Missouri	4	1	1	5	0	1
Mississippi	3	1	1	0	0	1
Montana	0	0	0	0	0	0
North Carolina	3	1	1	0	1	0
North Dakota	1	0	0	0	0	1
Nebraska	2	1	0	5	0	0
New Hampshire	0	0	0	0	0	0
New Jersey	4	0	1	5	1	1
New Mexico	1	0	0	0	0	1
Nevada	5	1	1	3	1	1
New York	4	0	1	5	1	1
Ohio	5	1	1	3	1	1
Oklahoma	2	1	0	3	0	0
Oregon	4	1	0	3	1	1
Pennsylvania	5	1	1	5	1	1
Rohde Island	4	0	1	5	1	1
South Carolina	3	1	1	2	0	0
South Dakota	5	1	1	4	1	1
Tennessee	5	1	1	5	1	1
Texas	1	0	0	3	0	0
Utah	2	1	0	0	1	0
Virginia	4	1	1	3	1	0
Vermont	1	0	0	0	0	1
Washington	3	0	1	5	1	0
Wisconsin	5	1	1	3	1	1
West Virginia	0	0	0	0	0	0
Wyoming	3	1	0	3	0	1
Average/total	2.7	27	27	33	25	31

TABLE 10
What Makes a State Attractive for In-State Firms?

Logit regression:

Dependent variable: In-state dummy	1	2	3	4
Firm characteristics:				
log(sales)	0.44 (0.23)**	0.42 (0.23)*	0.43 (0.22)*	0.38 (0.23)*
Tobin-Q	-7.0e-06 (0.0006)	-2.0e-05 (0.006)	-4.0e-05 (0.006)	4.4-05 (6.0e-04)
Return on assets	-0.004 (0.006)	-0.004 (0.006)	-0.003 (0.006)	-0.003 (0.006)
Number of employees	-0.004 (0.002)**	-0.004 (0.002)**	-0.004 (0.002)**	-0.004 (0.002)**
Going public between 91-95	-0.32 (0.07)***	-0.32 (0.07)***	-0.32 (0.07)***	-0.33 (0.07)***
Going public between 96-00	-0.53 (0.07)***	-0.52 (0.07)***	-0.53 (0.07)***	-0.53 (0.07)***
Delaware dummy	4.66 (1.13)***	4.8 (1.14)***	4.6 (1.15)***	5.02 (1.14)***
State Demographic Characteristics:				
log(Population)	0.18 (0.12)*	0.3 (0.14)**	0.06 (0.13)	0.23 (0.13)*
Number of firms located	-3.0e-04 (2.4e-04)	-4.5e-04 (2.6e-04)**	0.001 (5.0e-04)**	-1.7e-04 (2.6e-04)
Per capita income	-2.4e-05 (1.6e-05)	-2.7e-04 (1.6e-04)*	-4.0e-05 (1.7e-05)**	-5.6e-07 (1.7e-05)
Interaction:				
log(Sales)*log(Population)	-0.03 (0.014)**	-0.03 (0.014)**	-0.03 (0.014)**	-0.026 (0.014)*
State region:				
Northeast	-0.43 (0.12)***	-0.37 (0.13)***	-0.45 (0.13)***	-0.70 (0.14)***
South	-0.13 (0.10)	-0.15 (0.10)	-0.16 (0.11)	-0.23 (0.11)**
West	0.44 (0.12)***	0.40 (0.13)***	0.37 (0.13)***	0.20 (0.14)
Antitakeover protection:				
Control share				0.84 (0.1)***
Fair Price				-0.25 (0.15)
No freezeouts (1-3 years)				0.05 (0.10)
No freezeouts (4-5 years)				0.83 (0.12)***
Poison Pill Endorsement				0.42 (0.09)***
Constituencies				-0.03 (0.10)
Index	0.27 (0.03)***	0.90 (0.42)**		
Index1			0.50 (0.21)***	
Index2			0.38 (0.27)	
Index3			1.39 (0.22)***	
Index4			1.26 (0.18)***	
Index5			1.79 (0.22)***	
Staggered board	0.49 (0.14)***	0.45 (0.14)***	0.56 (0.14)***	-0.45 (0.24)*
Recapture	0.17 (0.14)	0.18 (0.14)	0.02 (0.20)	0.09 (0.16)
Interaction:				
Index*log(Population)		-0.04 (0.02)**		
Uniformity of laws:				
RMBCA	-0.09 (0.09)	-0.02 (0.09)	-0.10 (0.11)	0.04 (0.09)
"Liberal" political culture:				
Percentage of Democrats	-2.52 (0.7)***	-2.32 (0.77)***	-3.2 (1.08)***	-2.39 (0.9)***
2-digit industry dummy	YES	YES	YES	YES
Number of observations	6554	6554	6554	6555
Pseudo R^2	0.1049	0.1075	0.1075	0.1172

*, **, *** Significant at 10%, 5%, and 1% confidence interval, respectively.

TABLE 11

What Makes States Attractive for Out-of-State Incorporations?

OLS regression:

Dependent variable: log of (1+number of out-of-state incorporation)	1	2	3
State Demographic characteristics:			
Population	-1.0e-07 (1.1e-0)	-9.2e-08 (1.2e-07)	-8.2e-08 (1.2e-07)
Located	0.003 (0.003)	0.003 (0.003)	0.003 (0.003)
Per capita income	1.5e-04 (5.4e-05)***	1.5e-04 (6.0e-05)**	1.5e-04 (6.1e-05)**
State region:			
Northeast	-0.23 (0.55)	-0.27 (0.58)	-0.09 (0.59)
South	1.00 (0.40)**	1.12 (0.41)***	0.98 (0.44)**
West	0.81 (0.45)*	0.94 (0.47)**	0.67 (0.48)
State statutes:			
Control share			0.89 (0.37)**
Fair Price			-0.21 (0.4)
No Freezeouts (1-3 years)			-0.08 (0.42)
No Freeze outs (4-5 years)			0.30 (0.48)
Poison Pill Endorsement			0.89 (0.35)**
Constituencies			0.34 (0.39)
Index	0.36 (0.09)***		
Index1		1.07 (0.57)*	
Index2		1.87 (0.68)***	
Index3		1.38 (0.50)***	
Index4		1.74 (0.47)***	
Index5		2.13 (0.55)***	
Staggered board	0.85 (1.17)	0.97 (1.18)	-0.19 (1.32)
Recapture	0.52 (0.87)	0.66 (0.95)	0.21 (0.90)
Uniformity of laws:			
RMBCA	-0.81 (0.35)**	-0.66 (0.37)	-0.83 (0.36)**
"Liberal" political culture:			
Percentage of democrats	-2.95 (2.04)	-1.79 (2.18)	-2.93 (2.24)
Number of observations	50	50	50
Adjusted R^2	0.5354	0.5294	0.5293

*, **, *** Significant at 10%, 5%, and 1% confidence interval, respectively.

TABLE 12A

Antitakeover Protection Index Before and After Migration

Index of Headquarters state	Index of Incorporation state 0	1	2	3	4	5	Total
0	1	16	9	6	30	91	153
	0.65%	10.46%	5.88%	3.92%	19.61%	59.48%	100%
1	6	15	11	16	36	62	146
	4.11%	10.27%	7.53%	10.96%	24.66%	42.47%	100%
2	0	9	2	0	6	15	32
	0%	28.13%	6.25%	0%	18.75%	46.88%	100%
3	1	8	2	4	36	35	86
	1.16%	9.3%	2.33%	4.65%	41.86%	40.7%	100%
4	8	20	17	28	242	374	689
	1.16%	2.9%	2.47%	4.06%	35.12%	54.28%	100%
5	6	9	1	4	41	52	113
	5.31%	7.96%	0.88%	3.54%	36.28%	46.02%	100%
Total	22	77	42	58	391	629	1219
	1.8%	6.32%	3.45%	4.76%	32.08	51.6%	100%

TABLE 12B

The Effects of Corporate Migration on Antitakeover Protection

	After	Before	Difference	Ttest
Antitakeover Index	4.13 (0.04)	3.11 (0.05)	1.03 (0.05)	18.72
Control Share	0.78 (0.011)	0.32 (0.013)	0.46 (0.019)	23.88
Fair Price	0.77 (0.012)	0.67 (0.013)	0.097 (0.017)	5.53
No freezeouts	0.86 (0.009)	0.75 (0.012)	0.112 (0.015)	7.28
Poison Pill Endorsement	0.87 (0.010)	0.68 (0.013)	0.186 (0.016)	11.45
Stakeholders	0.85 (0.010)	0.68 (0.013)	0.17 (0.016)	10.89

TABLE 13

The Division of the Market for Out-of-State Incorporations

All publicly traded firms

State	Number of firms located elsewhere but incorporated in state	As percentage of all out-of-state incor
DE	4,350	78.11%
MD	367	6.59%
NV	195	3.50%
MA	116	2.08%
NY	91	1.63%
CO	63	1.13%
MN	59	1.06%
FL	33	0.59%
NJ	32	0.57%
PA	30	0.54%
UT	24	0.43%
VA	20	0.36%
CA	15	0.27%
GA	13	0.23%
OH	13	0.23%
WY	13	0.23%
IN	12	0.22%
MO	12	0.22%
WA	12	0.22%
TX	10	0.18%
KS	8	0.14%
NC	8	0.14%
MS	6	0.11%
Other	67	1.20%
Total	5,569	100%

Herfindahl index = 6168

Fortune 500

State	Number of firms located elsewhere but incorporated in state	As percentage of all out-of-state
DE	259	83.82%
NY	9	2.91%
MD	5	1.62%
NV	5	1.62%
IN	4	1.29%
NJ	4	1.29%
PA	4	1.29%
KS	3	0.97%
OH	3	0.97%
NC	2	0.65%
VA	2	0.65%
DC	1	0.32%
FL	1	0.32%
GA	1	0.32%
HI	1	0.32%
KY	1	0.32%
MA	1	0.32%
RI	1	0.32%
TN	1	0.32%
UT	1	0.32%
Total	309	100.00%

Herfindahl index = 7048

Firms going public during 1996-2000

State	Number of firms located elsewhere but incorporated in state	As percentage of all out-of-state
DE	1,517	86.49%
MD	69	3.93%
NV	66	3.76%
CO	19	1.08%
FL	12	0.68%
MA	9	0.51%
UT	6	0.34%
NY	5	0.29%
PA	5	0.29%
TX	5	0.29%
MN	4	0.23%
GA	3	0.17%
KS	3	0.17%
MO	3	0.17%
NC	3	0.17%
OR	3	0.17%
WA	3	0.17%
CA	2	0.11%
IN	2	0.11%
NJ	2	0.11%
OH	2	0.11%
TN	2	0.11%
VA	2	0.11%
Other	7	0.40%
Total	1,754	100%

Herfindahl index = 7512

TABLE 14

Delaware's Market Shares Over Time

Years firms went public	Fraction of Firms Going Out-of-state	Delaware's Fraction of Out-of-state Incorporations	Delaware's Fraction of all Incorporations
Pre 1991	61.27%	70.92%	43.45%
1991 - 1995	66.91%	83.58%	55.93%
1996 - 2000	72.39%	86.53%	62.63%