DIVERSITY JURISDICTION AND UNINCORPORATED BUSINESSES: COLLAPSING THE DOCTRINAL WALL

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Federal courts have diversity jurisdiction over controversies that satisfy an amount in controversy requirement and are between citizens of different states. Although corporations are artificial beings, courts must determine their citizenship to decide whether diversity jurisdiction is proper. For jurisdictional purposes, Congress has stated that a corporation is a citizen of its state of incorporation as well as the state of its principal place of business. In the past two decades, unincorporated business associations have risen in popularity for a variety of reasons, including the increasing willingness of states to treat hybrid entities such as limited liability companies as partnerships for tax purposes. Current jurisdictional law equates the citizenship of an unincorporated association with the citizenship of each of its members, making it difficult for unincorporated businesses to bring controversies before federal courts. The “doctrinal wall” articulated by the Supreme Court mandates that a corporation is treated as a citizen in its own right, but an unincorporated association is not. Commentators have expressed widespread dissatisfaction with this rule. This note argues that the doctrinal wall should be abolished and that courts should treat unincorporated associations similarly to corporations for purposes of diversity jurisdiction. Because judicial action is unlikely, the author proposes an amendment to the federal diversity-jurisdiction statute adopting a uniform citizenship test for all business associations.

I. INTRODUCTION

“The resolutions we have reached . . . can validly be characterized as technical, precedent-bound, and unresponsive to policy considerations raised by the changing realities of business organization.” And yet, the law continues to draw a bright line between incorporated and unincorporated business organizations when determining whether federal courts have diversity jurisdiction over a matter. For purposes of federal diver-

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sity jurisdiction, a corporation is considered a citizen separate and distinct from its owners, but an unincorporated business is not. Rather, to determine the citizenship of unincorporated associations, courts look to the citizenship of the association’s members.

Current jurisdictional law defines a corporation as a citizen of the state of its incorporation and the state of its primary place of business, but equates the citizenship of an unincorporated association with the citizenship of each of its members. The recent proliferation of new unincorporated business associations presents a challenge to courts applying this bright line distinction because many of these new associations combine attributes of the corporate and partnership forms, making disparate treatment seem arbitrary.

Unincorporated associations represent an increasingly significant cross-section of American businesses. Because an unincorporated business’s ability to litigate in federal courts on diversity grounds depends on the courts’ determination of its citizenship, the rule for determining the citizenship of unincorporated businesses is of increasing pertinence.

This note will examine the current state of the law regarding diversity jurisdiction and the citizenship of unincorporated business associations. Part II will provide an overview of the changing landscape of business entities and a historical background of the rationale behind the development of federal courts’ diversity jurisdiction. This part will also examine the diversity statute as it is currently applied to determine the citizenship of corporations and unincorporated associations for jurisdictional purposes.

Part III will explore the implications of the current state of jurisdictional law as applied to unincorporated business associations and explain why the results are anomalous and arbitrary. This part will also explore some of the arguments for change and previously proposed resolutions to conclude that, as judicial action is unlikely, legislative action is necessary. Part IV will recommend legislative action to amend the diversity statute.

II. BACKGROUND

The body of law governing business associations struggles to keep pace with an ever-changing business landscape. State laws continue to create new business forms, thus changing the backdrop for federal laws which affect businesses. Part II will describe the recent proliferation of new hybrid entities, highlighting limited liability companies as an exam-

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2. See infra notes 7–8 and accompanying text.
5. Carden, 494 U.S. at 185; United Steelworkers, 382 U.S. at 145.
ple, and explain how this has evidenced a trend away from the aggregate approach to unincorporated associations. Further, this section will provide a background of the basis of diversity jurisdiction and explain how application of the diversity statute to corporations and unincorporated associations results in disparate access to federal courts. Finally, this section will describe the widespread dissatisfaction with the current state of the law and the Supreme Court's response.

A. The Rise of LLCs in the Business Associations Landscape

It is said that a corporation is a legal fiction because it is a legal entity separate from its owners, given the legal rights and duties of a person. The quintessential business entity, a corporation is an “artificial” or “juridical” person, which “for the purpose of legal reasoning is treated more or less as a human being.” It is referred to as a legal fiction because it is a creature of law, essentially just a framework through which people conduct business, and yet, it may own property, enter into contracts, and sue and be sued in court. Corporate governance fundamentally deals with the relationship between and among a corporation’s various constituents—its owners (shareholders), directors, and officers. While these constituents play an important role in the everyday life of a corporation, a corporation possesses its own fictional personality. In this regard, regulatory schemes and various federal and state statutes contemplate corporations as any other person.

Unincorporated business associations, on the other hand, are not necessarily separate entities. A general partnership was traditionally perceived as an aggregate of individuals under common law, whereby every aggregation of partners is unique and the departure of any partner will cause that unique aggregation to cease to exist. This aggregate approach was codified in the Uniform Partnership Act (“UPA”). In 1994, however, the aggregate approach was abandoned by the Revised Uniform Partnership Act (“RUPA”), which adopted an entity approach to partnerships. Under RUPA, a partnership is “an entity distinct from its partners” and, as such, the departure of one partner does not necessarily change the partnership entity. As of 2005, RUPA had been adopted

7. 18 AM. JUR. 2D Corporations § 1 (2004); BLACK’S LAW DICTIONARY 1178 (8th ed. 2004); see also DEL. GEN. CORP. LAW § 106 (2001) (“Upon the filing with the Secretary of State of the certificate of incorporation . . . the incorporator or incorporators . . . shall, from the date of such filing, be and constitute a body corporate . . . .”).
8. BLACK’S LAW DICTIONARY, supra note 7, at 1178.
10. See id. at 51–52.
11. Id. at 51.
12. REVISED UNIF. P’SHIP ACT (RUPA) § 201(a) (1997).
13. Id. § 201.
14. SMITH & WILLIAMS, supra note 9, at 53.
by about two-thirds of the states. Partnerships are a popular business entity because they can easily be formed without any formalities and the statutory default rules are simple to adapt to a particular business. A partnership’s status as an entity or aggregate depends on whether its home state has adopted RUPA, and the trend among the states has been to adopt the entity approach.

State legislatures have long experimented with business forms to achieve hybrid entities possessing the best features of the corporate and partnership forms. Corporations offer limited liability for their owners and officers, but suffer from double taxation; partnerships enjoy flow-through taxation, but their members may be personally liable for the partnership’s obligations. Hybrid entities, however, offer the flow-through taxation of a partnership and the limited liability of a corporation. One hybrid entity that has become a very popular business form in recent years is the limited liability company (LLC). The widespread acceptance of LLCs evidences the trend away from the traditional aggregate theory of unincorporated associations.

The LLC’s rise to popularity is attributable to several developments in tax regulation. The first such development was a 1988 revenue ruling in which the IRS allowed Wyoming LLCs to be classified as partnerships for tax purposes. Other states then began drafting LLC statutes that mimicked Wyoming’s statute, careful to create entities that would likewise receive partnership taxation.

Until the mid-1990s, the determination of whether an LLC would be taxed as a corporation or partnership was governed by the Kintner regulations. The Kintner regulations ascertained whether a business association more closely resembled a corporation or a partnership, and then taxed it accordingly. Under this regime, a business association was taxed as a corporation if it possessed more than two of the characteristics which the IRS felt distinguished a corporation from a partnership: perpetual life, centralized management, limited liability, and free transferability of ownership interests. The 1997 promulgation of “check-the-

16. SMITH & WILLIAMS, supra note 9, at 51.
17. Id. at 127. Double-taxation refers to the concept that corporate profits are taxed at the corporate level and then again at the individual level after dividend distributions. Flow-through taxation refers to the taxing of a general partnership’s profits at the individual level according to the allocation of those profits among the partners.
18. Id. at 147.
19. Id.
21. See id.
22. Id.
box” tax regulation abandoned individualized evaluation under *Kintner* and instead allowed unincorporated firms to select their tax treatment.23

The *Kintner* factors remain instructive, however, in analyzing the LLC’s functional resemblance to the corporation.24 The features of an LLC which are most clearly analogous to a corporation are centralized management, limited liability, and allocation of ownership interests.25

1. **Centralized Management in an LLC**

   An LLC may adopt centralized management. The default rule under most LLC statutes is for the firm to be managed directly by the members, like a partnership, but these statutes also provide LLCs the option of adopting centralized management in their operating agreement.26 Therefore, if an LLC prefers to be manager managed, it can adopt a management structure which resembles a corporation whereby only managers may act on the LLC’s behalf.27

2. **Limited Liability in an LLC**

   Limited liability was historically a primary motivation to incorporate a firm, and is now a standard feature of hybrid entities. The LLC, regardless of its management structure, provides all of the firm’s members with a degree of limited liability.28 All members who act in the ordinary course of business avoid personal liability, but may still be liable for wrongful acts by individual members.29

3. **Ownership Interests in an LLC**

   Most LLC statutes allocate financial rights among members according to their financial contributions.30 Further, many statutes allow the LLC to issue share certificates as a means of allocating to a member his financial interest.31 These shares, like stock in a corporation, may be transferred.32

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23. SMITH & WILLIAMS, supra note 9, at 147.
25. LLC statutes typically do not establish perpetual life as the default condition. Rather, the dissociation of a member may lead to the LLC’s dissolution. RIBSTEIN, supra note 20, § 12.11 at 483.
26. Id. § 12.08, at 456.
27. Id.
28. See id. § 12.02, at 430.
29. See id.
30. See id. § 12.07, at 451.
31. See id. § 12.07, at 452.
Thus, it is said that LLCs “go the furthest of all hybrid entities in creating a corporation-like entity with pass-through tax treatment.”\(^{33}\) LLC statutes have been adopted in every state, and the business form continues to grow in popularity.\(^{34}\) Consequently, the LLC has evolved from an experiment combining partnership and corporate attributes to a popular alternative to the corporate form.\(^{35}\)

B. Diversity Jurisdiction

1. Origins

The jurisdiction of federal courts is limited and the law presumes a cause of action is without federal jurisdiction unless an exception applies.\(^{36}\) Generally, the Constitution allows the federal judicial power to be exercised over cases involving federal law; other cases are left to the state courts.\(^{37}\) The exception to this norm is diversity jurisdiction: Article III of the Constitution extends federal judicial power “to Controversies . . . between Citizens of different States,”\(^{38}\) and empowers Congress to establish courts with such jurisdiction.\(^{39}\)

The popular justification for federal courts’ diversity jurisdiction is to provide a neutral forum for suits between citizens of different states. A neutral forum protects out-of-state parties from the local bias or prejudice of state courts.\(^{40}\) Legislative history suggests the Framers of the Constitution believed that, subconsciously or otherwise, state courts may favor citizens of their own state; thus, the federal judiciary ought to preside to ensure impartiality in suits between citizens of different states.\(^{41}\) Diversity jurisdiction is an attempt to ensure propriety in the decision-making process. The underlying idea is that diversity jurisdiction promotes correct outcomes by ensuring decisions are based on the merits of a case rather than the predisposition of the court.\(^{42}\)

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33. Smith & Williams, supra note 9, at 128.
34. See id.
35. See, e.g., Ribstein, supra note 20, § 12.01, at 426–27.
39. U.S. Const. art. III, § 1 (“The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as Congress may . . . establish.”); see also Kline v. Burke Constr. Co., 260 U.S. 226, 233–34 (1922) (“The effect of these [constitutional] provisions is not to vest jurisdiction in the inferior courts over the designated cases and controversies but to delimit those in respect of which Congress may confer jurisdiction upon such courts as it creates.”).
40. Henry J. Friendly, The Historic Basis of Diversity Jurisdiction, 41 Harv. L. Rev. 483, 492–93 (1928); see also Dodge v. Wooley, 59 U.S. 331, 354 (1856) (“[The purpose of federal diversity jurisdiction] is to make the people think and feel, though residing in different States of the Union, that their relations to each other were protected by the strictest justice, administered in courts independent of all local control or connection with the subject-matter of the controversy between the parties to a suit.”).
41. See Friendly, supra note 40, at 492.
Another purpose served by diversity jurisdiction is the protection of interstate commerce.\textsuperscript{43} The federal judicial system was established to “give nonresidents a legal forum independent of local uncertainties,” and it is likely the Framers considered interstate businesses among those in need of this forum.\textsuperscript{44} For the interstate businesses of early America, the federal courts provided a degree of uniformity and certainty in the adjudication of state laws that were confusing and conflicting.\textsuperscript{45} Originally intended to protect and facilitate interstate business dealings, the federal courts have “aided the development of business throughout much of the nation’s history.”\textsuperscript{46}

The primary argument against diversity jurisdiction is that it creates additional work for an already overburdened federal judiciary.\textsuperscript{47} As a general matter, judges have been warning against opening the “floodgates of litigation” for nearly two hundred years,\textsuperscript{48} and Congress is evermindful of the implications of extending federal jurisdiction. A 1990 report by the congressionally appointed Federal Courts Study Committee examined the congestion in federal courts caused by increased caseloads and recommended that diversity jurisdiction be eliminated except for in a narrow band of cases.\textsuperscript{49} This recommendation was not acted upon,\textsuperscript{50} however, and caseloads continue to grow.\textsuperscript{51}

2. Citizenship of Corporations

Under 28 U.S.C. § 1332(a), federal courts have diversity jurisdiction over cases where the matter in controversy exceeds $75,000 and is between citizens of different states.\textsuperscript{52} The judiciary has interpreted the diversity jurisdiction statute to require complete diversity: no plaintiff may be a citizen of the same state as any defendant.\textsuperscript{53} Further, in determining whether complete diversity exists, courts only consider the citizenship of those parties who are considered “real and substantial parties to the controversy.”\textsuperscript{54} For diversity jurisdiction purposes, § 1332(c) deems a corpo-

\textsuperscript{43} See Friendly, supra note 40, at 492–93.
\textsuperscript{44} TONY ALLAN FREYER, FORUMS OF ORDER: THE FEDERAL COURTS AND BUSINESS IN AMERICAN HISTORY 173 (1979).
\textsuperscript{45} See id. at 19, 30; see also Friendly, supra note 40, at 495–97 (explaining the advantage of a neutral forum in the context of various state laws concerning debtors and creditors).
\textsuperscript{46} FREYER, supra note 44, at 174–75.
\textsuperscript{47} See Larry Kramer, Diversity Jurisdiction, 1990 BYU L. REV. 97, 102.
\textsuperscript{50} Id.
\textsuperscript{51} Id.
\textsuperscript{53} Strawbridge v. Curtiss, 7 U.S. 267, 267 (1806).
\textsuperscript{54} Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 460 (1980).
ration “a citizen of any State by which it has been incorporated and of the State where it has its principal place of business . . . .”

Congress added the corporate citizenship provision in 1958 after a series of Supreme Court decisions with varying interpretations of a corporation’s proper characterization under the diversity jurisdiction statute. When the Court first addressed the issue of corporate identity in the early nineteenth century, it viewed the corporation as an aggregate of its shareholders and thus looked to the citizenship of its shareholders to determine whether diversity existed. This opinion was eventually overruled, but the Court subsequently took inconsistent positions as to whether a corporation was itself a separate entity with its own citizenship. In 1844, the Court held that a corporation could be “treated as a citizen of [its state of incorporation], as much as a natural person.” In 1854, however, the Court held that although a corporation was not itself a citizen, its shareholders should be conclusively “presumed” citizens of its state of incorporation. The result of the cases was the same: the citizenship of a corporation was the state of its incorporation.

In each case, the Court’s reasoning rested upon the legal fiction that a corporation is an artificial person:

[A] corporation is an artificial being . . . existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as were supposed best calculated to effect the object for which it was created.

The act of incorporation creates an entity which may make contracts, hold property, and sue and be sued just like a natural person. Further, the Court noted that the right to a neutral forum is just as important to corporations as to natural persons because corporations are just as susceptible to the local bias of state courts. Accordingly, the Court fashioned a rule for diversity jurisdiction as applied to corporations, which remained intact for nearly a century.

It was not until 1958 that Congress spoke to the issue, revising the Court’s rule by amending the diversity statute to deem a corporation a citizen of its state of incorporation as well as the state of its principal

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55. 28 U.S.C § 1332 (c)(1) (2000).
60. Letson, 43 U.S. at 557.
62. Id. at 327; Letson, 43 U.S. at 557.
63. Letson, 43 U.S. at 557.
64. See Marshall, 57 U.S. at 327; Letson, 43 U.S. at 557.
65. Marshall, 57 U.S. at 329; Letson, 43 U.S. at 558.
place of business. Legislative history suggests that the purpose of this amendment was not to approve the judiciary’s treatment of corporations as entities possessing their own citizenship, but rather to limit the jurisdiction being accorded corporations by the Court. Congress acknowledged that the current judicial doctrine treated corporations as citizens of their state of incorporation, and intended to “curtail diversity jurisdiction as it applies[d] to corporations by giving a corporation dual citizenship when its principal place of business [was] in a different state than its state of incorporation.” Interestingly, the 1958 amendment had the opposite effect and increased litigation by corporations in federal courts. Regardless of congressional intent, the amendment validated the Court’s treatment of corporations and, as a result, the diversity statute treats corporations as separate entities that are citizens of their state of incorporation and the state of their principle place of business.

In applying the diversity statute, courts determine a corporation’s principal place of business by considering various factors related to the corporation’s total activity. There is no single test that the courts must use, but courts traditionally use one of three tests—the nerve center test, the place-of-operations test, or the total activity test—depending on the nature of the corporation in question.

3. Citizenship of Unincorporated Businesses

Although the diversity statute clearly treats corporations as citizens, it does not provide a rule for determining the citizenship of unincorporated associations for purposes of § 1332(a). Rather, the citizenship of unincorporated businesses is determined using a judicially crafted bright-line rule.

i. Judicial Application of the Diversity Statute to Unincorporated Businesses

To determine the citizenship of unincorporated associations for purposes of diversity jurisdiction, courts look to the citizenship of all of

68. Id.; see also Peter B. Oh, A Jurisdictional Approach to Collapsing Corporate Distinctions, 55 RUTGERS L. REV. 589, 426–27 (2003) (noting that § 1332(c) was intended to curtail the ability of corporations to litigate in the federal courts simply because they had incorporated in a state different from their principal place of business).
69. Oh, supra note 68, at 429.
71. Id.
the firm’s members.73 Unlike a corporation, an unincorporated association is not accorded a fictional personality and thus, is not deemed a citizen, in its own right, of any state.74 Rather, the citizenship of an unincorporated association is the citizenship of each of its individual members.75 As a result, complete diversity cannot exist if one of the association’s members has state citizenship which is the same as that of the opposing party.76

This rule derives from the “doctrinal wall” first articulated in 1889 by the Supreme Court in Chapman v. Barney.77 In Chapman and many cases thereafter, the Court has drawn a bright line between corporations and unincorporated associations: a corporation is treated as a citizen in its own right; an unincorporated association is not.78 The Court held in Chapman that a joint-stock company could not be a citizen of the state of its organization because it was not a corporation.79 Because the plaintiff joint-stock company was essentially a partnership, its citizenship was equated to the citizenship of the individual members of the company.80

In its most recent decision on the issue, Carden v. Arkoma Associates, the Court held that the citizenship of all partners must be considered to determine the citizenship of a limited partnership. The Court found that only Congress may extend diversity jurisdiction to deem unincorporated associations citizens and thus, precedent requires the assimilation of all noncorporate firms to partnerships.81 The Court’s reasoning was broad:

The 50 states have created, and will continue to create, a wide assortment of artificial entities possessing different powers and characteristics, and composed of various classes and members with varying degrees of interest and control. Which of them is entitled to be considered a ‘citizen’ for diversity purposes, and which of their members’ citizenship is to be consulted, are questions more readily resolved by legislative prescription than by legal reasoning, and questions whose complexity is particularly unwelcome at the threshold stage of determining whether a court has jurisdiction. We have long since decided that, having established special treatment for corporations, we will leave the rest to Congress; we adhere to that decision.82

74. 32A AM. JUR. 2D Federal Courts § 834 (2005).
75. Carden, 494 U.S. at 195.
76. 32A AM. JUR. 2D Federal Courts, supra note 74.
78. Carden, 494 U.S. at 185; United Steelworkers, 382 U.S. at 145; Chapman, 129 U.S. at 682.
80. Id.
81. Carden, 494 U.S. at 190.
82. Id. at 197.
Accordingly, the circuit courts have consistently applied a broad interpretation of *Carden* to all unincorporated associations.83 This has frustrated some courts because the post-*Carden* business landscape has seen a great influx of various new unincorporated associations, many of which function like corporations.84

The Supreme Court has not ruled on the citizenship of LLCs, but in 1997, a district court in Michigan became the first court to extend *Carden* to an LLC.85 The court noted that the members of an LLC are like shareholders in a corporation, and that the Michigan LLC Act grants to LLCs “all powers granted to corporations . . . includ[ing] the powers to sue and be sued.”86 Nonetheless, the district court found that LLCs could not be considered citizens because they are not corporations, and cited the Michigan LLC Act, which defines an LLC as an “unincorporated association having 2 or more members and is formed under this act.”87 Other district and circuit courts which have addressed the issue have ruled similarly, deferring to the state’s definition of the entity.88 If the state label for an entity includes the word “corporation,” the entity is a citizen under the diversity jurisdiction statute. If the state label does not include the word corporation, courts reason that, under *Carden*, the members of the entity are citizens for purposes of diversity jurisdiction until Congress provides otherwise.

ii. Congressional Consideration of the Diversity Statute

Congress recently created a citizenship test for unincorporated associations that mimics the test for corporations, but it is only applicable in the context of class action suits.89 As part of the Class Action Fairness Act of 2005 ("CAFA"), Congress amended the diversity statute to include a new basis for diversity jurisdiction for unincorporated associations involved in class action suits.90 As of 2005, 28 U.S.C. § 1332(d)(10) provides: “For purposes of this subsection . . . an unincorporated association shall be deemed to be a citizen of the State where it has its principal

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83. *See generally* Hoagland ex rel. Midwest Transit, Inc. v. Sandberg, Phoenix & Von Gontard, P.C., 385 F.3d 737, 745 (7th Cir. 2004) (Easterbrook, J., concurring) (noting that to determine the citizenship of limited liability partnership, it is necessary to consider all the firm’s partners); GMAC Commercial Credit LLC v. Dillard Dept. Stores, 357 F.3d 827, 829 (8th Cir. 2004) (assimilating LLCs to partnerships for purposes of diversity jurisdiction); Handelsman v. Bedford Village Assocs. Ltd. P’ship, 213 F.3d 48, 52 (2d Cir. 2000) (treating LLC as a partnership and determining citizenship by looking to citizenship of all members).
84. *See, e.g.*, Hoagland, 385 F.3d at 745 (Easterbrook, J., concurring).
86. *Id.* at 553–54.
87. *Id.* at 553 (citation omitted).
88. *See supra* note 83.
90. *Id.*
place of business and the State under whose laws it is organized.” Sub-
section (d) lays out the requirements which must be met for federal
courts to have diversity jurisdiction over class action suits. Because
the language of § 1332(d)(10) explicitly states that the citizenship treatment
of unincorporated businesses applies only to that subsection, it implict-
ly does not apply to the rest of § 1332. Thus, an unincorporated asso-
ciation is accorded a fictional citizenship, like a corporation, if it is in-
volved in a class action suit; if it is involved in any other civil suit, the
statute is silent with regard to its citizenship and courts apply the doc-
trinal wall.

One of CAFA’s objectives in expanding access to federal courts was
to protect unincorporated associations in interstate class actions from the
bias of state courts and to assure a level playing ground for litigation that
carries interstate commerce ramifications. In this regard, Congress felt
that “unincorporated associations should receive the same treatment as
 corporations for purposes of diversity jurisdiction.” And yet, CAFA
only amends the statute with regard to unincorporated associations in-
volved in class actions suits, leaving the disparity intact for all non-class
action suits. It is unclear whether this was Congress’s intent.

4. Dissatisfaction with the Current Rule for Determining the Citizenship
of Unincorporated Associations

In 1965, the Court addressed courts’ and commentators’ dissatisfac-
tion with the doctrinal wall in United Steelworkers v. Bouligny. One of
the prevalent arguments against the rule at that time, which is even more
pertinent today, is that “[t]he distinction between the ‘personality’ and
‘citizenship’ of corporations and that of . . . unincorporated associa-
tions . . . has become artificial and unreal.” Indeed, this criticism has
increasing relevance given the post-Carden introduction of check-the-
box tax treatment and the subsequent surge of unincorporated entities
such as the LLC. The Court’s response in United Steelworkers, as it was in
Carden, is that although the arguments analogizing unincorporated busi-
ness entities to corporations for purposes of diversity jurisdiction are
meritorious, any such extension of diversity jurisdiction is appropriately
reserved for Congress. Congress recently addressed these concerns

91. Id. (emphasis added).
92. Id. § 1332(d).
93. Id. § 1332(d)(10).
94. Id. § 1332.
96. Id.
98. Id. at 149.
99. See supra Part II.A.
100. United Steelworkers, 382 U.S. at 150-51; see also Carden v. Arkoma Assoc., 494 U.S. 185, 197 (1990).

when it considered CAFA, but its legislative response only applies to unincorporated firms involved in class action suits.

In its report accompanying CAFA, the Senate Judiciary Committee acknowledged the current judicial doctrine regarding the citizenship of unincorporated businesses, acknowledged widespread dissatisfaction with the rule, and credited commentators’ observation that the rule creates a nonsensical anomaly.101 The Judiciary Committee went on to say that “[i]t makes no sense to treat an unincorporated insurance company differently from, say, an incorporated manufacturer for purposes of diversity jurisdiction. New subsection 1332(d)(10) corrects this anomaly.”102 Under 1332(d)(10), however, an unincorporated association is considered a citizen only if it is involved in a class action.103 Thus, the anomaly persists for unincorporated associations involved in any other civil action.

III. ANALYSIS

An examination of the diminishing distinction between corporations and noncorporate business forms and the policy behind the diversity requirement suggests that unincorporated associations should be treated similarly to corporations for purposes of diversity jurisdiction. Part III will first explain the problems inherent in the current state of the law. Second, it will analyze the arguments against the doctrinal wall and the policy implications of a universal citizenship test. Third, it will explore previously suggested resolutions, focusing on the Carden dissent. Finally, it will consider the Court’s resolve to follow precedent, which makes it unlikely the judiciary will modify the doctrinal wall.

A. General Implications of the Doctrinal Wall

As the number of unincorporated business associations grows, an increasingly large cross-section of American businesses is denied access to the federal courts because of Carden. The lower courts’ application of this bright-line rule results in many suits being dismissed for failure to establish diversity jurisdiction. Diversity is easily destroyed where a suit involves an unincorporated association versus a third party, an individual member of the association, or individual members in a derivative suit. Thus, the merits of these cases frequently do not reach the federal judiciary.

Where a suit involves an unincorporated association and a third party, diversity jurisdiction will depend on the citizenship of each of the

102. Id.
firm’s members at the time the action is filed.104 Because complete diversity requires every plaintiff to be diverse from every defendant,105 diversity cannot exist if any member of the unincorporated association is a citizen of the same state as the opposing party. An unincorporated association that has members in numerous states may therefore have difficulty establishing complete diversity. Moreover, if the opposing party is also an unincorporated association, each of its members’ citizenship will be considered. Additionally, using an LLC as an example, if one of the firm’s members is itself an unincorporated organization, the LLC’s citizenship will include the citizenship of each member of that firm.106 Thus, the composition of any unincorporated association creates a unique challenge to establishing citizenship which is completely diverse from a third party.

Furthermore, diversity cannot be established where a partner sues his partnership.107 Under Carden, the citizenship of the defendant partnership will be the citizenship of all of its partners.108 The citizenship of the suing partner, therefore, will be considered on both the plaintiff’s and defendant’s sides.109 Thus, a partner cannot sue his partnership in federal court based on diversity jurisdiction, nor can a partnership remove such a suit to federal court.110 Because the current rule assimilates all unincorporated associations to partnerships,111 diversity is also destroyed in any action involving an LLC and one of its members.

Finally, diversity may also be destroyed in cases where a derivative suit is brought by partners or members because the firm will be joined as a defendant; thus, the suing members’ citizenship will be counted on both the plaintiff’s and defendant’s sides.112

Unincorporated business associations are often denied access to the federal judiciary in the aforementioned scenarios, but the citizenship accorded to corporations avoids these difficulties. Because a corporation is deemed a citizen in its own right,113 diversity will not hinge upon the citizenship of any one of the firm’s shareholders. In light of the diminishing distinctions between unincorporated and incorporated business forms, disparate access to federal courts is inappropriate.

106. Bishop & Kleinberger, supra note 104, at 31, 36.
109. Tribeck, supra note 107, at 90.
110. Id.
111. Carden, 494 U.S. at 190.
112. Ribstein, supra note 6, at 783.
B. Arguments Against the Doctrinal Wall

The application of Carden’s bright-line rule often results in disparate access to federal court based on a distinction which has become arbitrary.\(^\text{114}\) In Carden, the Court said that its decision could be criticized as “unresponsive to policy considerations raised by the changing realities of business organization.”\(^\text{115}\) Further, the Court noted that the state legislatures continue to create new business entities which possess varying characteristics.\(^\text{116}\) In the post-Carden era of check-the-box tax regulation, state legislatures have become even more creative in their development of hybrid entities.\(^\text{117}\) This proliferation of new hybrid entities signifies evidences a movement away from the aggregate concept of a common law partnership and toward the entity concept of a corporation. Thus, it is argued that Carden’s aggregate presumption is inappropriate for modern unincorporated business associations such as the LLC.\(^\text{118}\)

1. The Aggregate Approach Is Outdated

Criticisms of an aggregate approach to unincorporated associations for diversity jurisdiction purposes are not new.\(^\text{119}\) Treating unincorporated associations like corporations, it is argued, is consistent with common sense, general considerations of fundamental fairness, and the purpose of diversity jurisdiction. The history underlying corporations’ fictional citizenship highlights the reasons that functionally similar unincorporated associations should be treated similarly for purposes of diversity jurisdiction.

A strong argument for a universal test of citizenship is that there is no longer a viable basis for the anomalous treatment of corporations and unincorporated associations for purposes of diversity jurisdiction. Unincorporated associations are now attractive and increasingly popular business forms, much as corporations were when the Court first articulated the special citizenship treatment which is now codified at 28 U.S.C. § 1332(c).\(^\text{120}\) Furthermore, the characteristics which once distinguished corporations from unincorporated associations are dwindling.

It is argued that unincorporated associations should be treated as citizens in their own right because they no longer bear the functional distinctions from corporations that they once did. The Carden majority acknowledged as “undoubtedly correct” the assertion that limited partnerships are functionally analogous to other business forms which are

\(^{114}\) Ribstein, supra note 6, at 784.
\(^{115}\) Carden, 494 U.S. at 196.
\(^{116}\) Id. at 197.
\(^{117}\) See supra Part II.B.
\(^{118}\) Ribstein, supra note 20, § 12.05, at 445.
\(^{119}\) Rickard, supra note 24, at 741 n.14 (compiling cases and commentary).
treated as citizens for jurisdictional purposes. Accordingly, some commentators focus on the fact that modern unincorporated business associations are functionally similar to corporations in their argument against disparate citizenship treatment.

It makes sense for a court to assume that a corporation is a citizen of its state of incorporation because this conforms to the treatment of the corporation as an artificial person elsewhere in the law. Further, corporations may be owned by legions of shareholders and it would be extremely cumbersome to decipher the citizenship of every shareholder in order to determine a corporation’s citizenship.

In determining the citizenship of an unincorporated association, it historically made sense to consider the citizenship of all of its members. Unincorporated businesses were considered aggregate associations and, therefore, their members had a direct interest in litigation because they could be personally liable. Under the traditional aggregate theory of partnership, a partner’s ownership interest was coextensive with personal liability. Currently, however, “most states regard even a general partnership as an entity, and LLCs are everywhere regarded as entities.”

Like corporations, state laws often stipulate that these unincorporated associations may own property, enter into contracts, and sue and be sued. Furthermore, most hybrid entities offer limited liability to at least some members. Thus, one argument proposes that an unincorporated association be treated as a juridical citizen where the state law creating it contemplates the association as a separate, corporate-like entity.

Nonetheless, courts continue to stringently apply Carden and consider the citizenship of all of an association’s members, regardless of any corporate-like characteristics a business form may possess. In 2006, the Seventh Circuit held that “[t]he citizenship for diversity purposes of [an LLC], despite the resemblance of such a company to a corporation (the resemblance of such a company to a corporation (the

121. Carden, 494 U.S. at 196.
122. See, e.g., Oh, supra note 68, at 389 (arguing that the blurred distinctions between corporations and unincorporated associations call for uniform treatment).
124. Id.
125. See Smith & Williams, supra note 9, at 97 (“UPA § 15 reveals its roots in the aggregate theory of partnership by making partners directly liable for partnership obligations. . . . [RUPA § 306(a)] retains direct personal liability of partners for obligations of the partnership and thus compromises the entity approach that RUPA elsewhere has explicitly embraced.”)
126. Ribstein, supra note 6, at 783.
127. See, e.g., Warren H. Johnson, Limited Liability Companies: Is the LLC Liability Shield Holding Up Under Judicial Scrutiny, 35 NEW ENG. L. REV. 177, 225 (2000) (arguing that when a state’s legislative intent is to give LLC members limited liability, an LLC must have a juridical personality in federal court that is separate and distinct from it members).
128. See, e.g., Lincoln Prop. Co. v. Roche, 546 U.S. 81, 84 n.1 (2005) (citing Carden as the applicable citizenship test for a limited partnership); Wise v. Wachovia Sec., L.L.C., 450 F.3d 265, 266 (7th Cir. 2006); Fifty Assocs. v. Prudential Ins. Co. of Am., 446 F.2d 1187, 1190 (9th Cir. 1970) (“The citizenship of each member of an unincorporated association must be alleged, even though the entity might be recognized at state law as having the ability to sue and the liability to be sued.”).
hallmark of both being limited liability), is the citizenship of each of its members.” 129 Irrespective of the association’s entity or aggregate attributes, its citizenship is determined under Carden unless its governing statute bears the title “corporation.” As Judge Easterbrook notes, “a ‘corporation’ is any entity on which a state bestows that label. Thus if a state renames a limited liability company as a ‘limited liability corporation,’ it becomes a ‘citizen’ with its own jurisdictional attributes, and the citizenship of its members no longer matters.” 130 Thus, the lower courts’ broad application of Carden’s rule-based approach results in “states defin[ing] the meaning of a federal statute.” 131

2. A Universal Test of Citizenship for Business Associations Furthers the Policy Goals of Diversity Jurisdiction

A universal test of citizenship is consistent with the purpose of diversity jurisdiction. Diversity jurisdiction is intended to ensure correct decisions in the sense that they are rendered on the basis of the merits of a case rather than the prejudice of a court. 132 As corporations rose to prominence in the business landscape, they were treated differently and perceived as deserving of access to federal courts. Likewise, the increasing importance of unincorporated associations justifies a reassessment of the citizenship test applied to them.

In the Court’s view, the increasing importance of corporations to the nation’s economy justified treating them as citizens for purposes of diversity jurisdiction. 133 It is accepted rationale that a corporation is entitled to be treated as a jurisdictional citizen because it is susceptible to the local bias of state courts just like a natural person. 134 Where a corporation is a party, the fact that one shareholder is a citizen of the same state as the opposing party would not be enough to eliminate the danger of bias because a court is unlikely to be aware of, nor weigh seriously, the citizenship of the corporation’s various shareholders. 135 Thus, § 1332(c) limits the states where a corporation may be deemed to be a citizen. 136

Currently, unincorporated business associations are of increasing prevalence much as corporations were when the Court initially decided that corporations should be treated as citizens. 137 Unincorporated asso-

129. Wise, 450 F.3d at 266.
131. Id.
132. See supra Part II.B.1.
135. Id. at 34–35.
137. See Oh, supra note 68, at 464.
ciations are likewise susceptible to local bias and should therefore be protected by having their citizenship limited. Because many unincorporated associations are structurally similar to a corporation, it is similarly unlikely that having one member who is a citizen of the same state as the opposing party would eliminate the danger of bias in a state court. Thus, unincorporated associations are deserving of limited citizenship for purposes of diversity jurisdiction.138

This argument fails to persuade some commentators, however, because they simply disagree with the contention that state courts are biased.139 That state courts are not biased is a prominent, and meritorious, argument against diversity jurisdiction generally.140 Additionally, there is a general reluctance to overburden the federal courts and Congress traditionally favors restricting diversity jurisdiction rather than expanding it.141

A universal test is consistent with the purpose of diversity jurisdiction, however, as long as the federal courts provide a neutral forum for corporations. In other words, unless Congress heeds the arguments to abolish diversity jurisdiction completely,142 unincorporated associations should enjoy the same access to a neutral forum as corporations. This could be achieved through a universal test for citizenship of business associations for diversity jurisdiction purposes.

C. Previously Suggested Resolutions

Many have argued for the Court to modernize the law in this area and let Congress follow. The Court addressed the diversity jurisdiction of corporations several times prior to the 1958 amendment of § 1332(c),143 and Congress adopted some of the Court’s language when creating the present citizenship test for corporations. Although the Court is deferential to Congress, the Court also has a duty to apply statutes to situations not anticipated by Congress.144 Thus, the Court could fashion a new test to determine the citizenship of unincorporated business associations.

138. Id. (observing “the original basis for applying the current disparate citizenship tests to unincorporated associations and corporations is no longer viable”).
140. For a discussion, see Currie, supra note 134, at 1.
143. See supra Part II.B.2.
144. See Carden v. Arkoma Assoc., 494 U.S. 185, 199 (1990) (O’Connor, J., dissenting); Taylor Simpson-Wood, Has the Seductive Siren of Judicial Frugality Ceased to Sing?: Dataflux and its Family Tree, 53 Drake L. Rev. 281, 332 (“In refusing to scale the Chapman wall, the Court failed to fulfill one of its primary duties, for the ‘application of statutes to situations not anticipated by the legislature is a pre-eminently judicial function.’”).
The current rule for determining the citizenship of unincorporated associations has been described as "a classic illustration of how the doctrine of stare decisis can perpetuate outmoded rules." Where a substantive discrepancy exists in a statute or a judicially crafted rule, the Court should not feel bound to strictly adhere to the rule. Further, the Court may overrule its own precedent where a governing rule is unworkable. Because Carden creates an anomaly that is unjustified by policy considerations affecting businesses, the Court could change its rule. The test which has been most frequently advocated in courts is the real party to the controversy test.

The Carden majority felt it was not their place to expand the statutory definition of "citizen." In her dissenting opinion, however, Justice O’Connor felt that the pertinent question facing the Court was not whether a limited partnership was a citizen, but which of its members were the real parties to the controversy. Justice O’Connor asserted that the Court need not defer to Congress on the issue of which unincorporated associations should be considered citizens and which of their members’ citizenship should be considered for purposes of diversity jurisdiction. It is the Court’s proper function to apply statutes to situations unanticipated by Congress, and Justice O’Connor felt that the Court should use the “real party to the controversy” test to determine the citizenship of a limited partnership.

After all, this is how the Court originally developed its test for corporate citizenship:

have concluded that the shareholders were not the real parties to the controversy, the Court held that only the State of incorporation of the corporate entity need be counted for purposes of diversity jurisdiction and that the citizenship of the shareholders would be presumed to be that of the State of incorporation.

Further, the Court’s precedent indicates that the corporate or noncorporate nature of the entity does not resolve the question of who are the real parties to the controversy. Thus, Justice O’Connor applied the “parties to the controversy test” and found that limited partners should not be counted for purposes of diversity jurisdiction.

145. Oh, supra note 68, at 474.
146. Id.
147. See Tribeck, supra note 107, at 89.
148. See, e.g., id.
149. Carden, 494 U.S. at 197 ("[The accommodation of federal diversity jurisdiction to changing realities of commercial organization] is not only performed more legitimately by Congress than by courts, but it is performed more intelligently by legislation than by interpretation of the statutory word ‘citizen.’").
150. Id. at 198–99 (O’Connor, J., dissenting).
151. Id.
152. Id.
153. Id. at 202 (referencing Marshall v. Balt. & Ohio R.R. Co., 57 U.S. 314 (1853)).
154. Id. at 205–07.
155. Id.
Under the real party to the controversy test, a court determines whether a party is a real party by looking at the nature of the party’s control over the business and the litigation, and their liability in the event of an unfavorable judgment. Commentators have argued for this test to be applied to unincorporated associations because, as Justice O’Connor found for limited partnerships, a passive investor will often constitute a nominal party rather than a real party to the controversy. The citizenship of nominal parties need not be considered in determining whether complete diversity exists so as to establish diversity jurisdiction, and thus, the citizenship of passive investors would not be considered.

Justice O’Connor concluded that the limited partners in a limited partnership were nominal parties and should not be considered for purposes of diversity jurisdiction. Unlike general partners, limited partners do not control the management or assets of the limited partnership. Further, limited partners cannot initiate litigation on behalf of the limited partnership. Thus, when determining whether complete diversity existed, Justice O’Connor considered the citizenship of the limited partnership itself—“assuming that it should be considered a citizen”—and that of each of the general partners.

The problem with the real party to the controversy test, however, is that it is burdensome. It is a factual determination which would require courts to make a case-by-case investigation into which parties should be considered when deciding whether complete diversity exists. To alleviate this burden, it is suggested that the courts could rely on the association’s characterization under the state statute and conclusively determine which types of members should be considered for diversity jurisdiction purposes. This would eliminate some of the work, because courts would no longer have to look at each association on a case-by-case basis and would still achieve the goal of diminishing the bright-line distinction between unincorporated and incorporated firms. On the other hand, a conclusive determination that certain members of a given association are real parties might undermine the goal of the real party to the controversy test, which is to adequately account for the economic realities of a business organization. Further, to apply the real party to the controversy test in this matter would perpetuate Carden’s tendency toward form over function.

As the Seventh Circuit notes, “[f]unctional approaches to legal questions are often, perhaps generally, preferable to mechanical rules;

158. Carden, 494 U.S. at 205–07 (O’Connor, J., dissenting).
159. Id. at 205–06.
160. Id. at 206.
161. Id. at 207.
162. See Szypszak, supra note 67, at 15.
163. See id.
but the preference is reversed when it comes to jurisdiction.\footnote{164} The imposition of simple and mechanical jurisdictional rules is preferred to a costly factual inquiry into whether the court has jurisdiction.\footnote{165} Judicial resources are more appropriately reserved to deciding the merits of the controversy. Thus, it seems undesirable to apply a case-by-case approach to decide which firms should be classified as corporations for purposes of diversity jurisdiction.

Perhaps more importantly, proposals for judicial action may be futile in light of the Court’s persistent deference to Congress. Given the Court’s repeated stance that it will not extend diversity jurisdiction, it is unlikely the Court would depart from its precedent at this point.

\section*{D. Judicial Action Is Unlikely}

Although the Court was initially willing to create a niche for corporations in the diversity statute, it has been unwilling to do the same with regard to unincorporated associations. A primary function of the judiciary is to apply statutes to situations unanticipated by Congress, but the Court has repeatedly emphasized its conclusion that any further accommodation of diversity jurisdiction is appropriately reserved for Congress.\footnote{166}

Since the doctrinal wall was first enunciated in 1889,\footnote{167} it has been a subject of contention in the courts. In 1965, the Court addressed the concerns being posited to the Court in \textit{United Steelworkers}.\footnote{168} In a statement which seemed to put the issue to rest, the Court suggested that such arguments were being addressed to the inappropriate forum and would be more appropriately made to Congress.\footnote{169} The message was re-emphasized, even more forcefully, in \textit{Carden}.\footnote{170}

In \textit{United Steelworkers}, the Court recognized as meritorious the lower court’s contention that there was “no common sense reason for treating an unincorporated national labor union differently from a corporation.”\footnote{171} \textit{Carden} again acknowledges as “perhaps correct” the petitioner’s argument that similarly functioning business associations should have similar access to federal courts.\footnote{172} In both cases, however, the Court strongly asserted that such arguments should be directed to Congress and not the courts.\footnote{173}

\footnote{164}Hoagland \textit{ex rel.} Midwest Transit, Inc. v. Sandberg, Phoenix & Von Gontard, P.C., 385 F.3d 737, 739 (7th Cir. 2004).
\footnote{165}\textit{Id.}
\footnote{166}See, e.g., \textit{Carden}, 494 U.S. at 197.
\footnote{169}\textit{Id.} at 150–51.
\footnote{170}See \textit{Carden}, 494 U.S. at 197.
\footnote{171}\textit{United Steelworkers}, 382 U.S. at 146.
\footnote{172}\textit{Carden}, 494 U.S. at 196.
\footnote{173}\textit{Carden}, 494 U.S. at 197; \textit{United Steelworkers}, 382 U.S. at 150–51.
It is likely that the Court’s resolve stems from an inherent aversion to extend federal jurisdiction. When Congress originally drafted the diversity jurisdiction statute, the intention was to facilitate interstate commerce and curb local bias, not to expand diversity jurisdiction to the point of overburdening the courts. The courts and Congress remain ever mindful of the concern of overcrowding federal dockets. Indeed, the already congested dockets and overworked personnel of the federal courts is a significant justification for limited diversity jurisdiction. “The concern . . . is that failure to consider the citizenship of all the members of an unincorporated business association will expand diversity jurisdiction at a time when our federal courts are already seriously overburdened.”

Given the growth of unincorporated associations, however, the extension of corporate-like citizenship may be necessary to effectuate the policy underlying diversity jurisdiction. Congress has already stipulated that corporations need protection from local bias. Now that many unincorporated associations are functionally indistinct from corporations, they too are deserving of this protection. Thus, many commentators have heeded the Court’s advice and advocate the amendment of § 1332. These suggestions have come in various forms. One commentator suggested that Congress simply add the phrase “and limited liability companies” after “corporations” in § 1332(c).

The Carden majority felt that Congress had “not been idle,” and Congress has not been idle in the years since Carden either. In negotiating CAFA, Congress acknowledged the proliferation of other business associations and extended corporate-like citizenship to unincorporated associations involved in class actions under § 1332(d). This legislation is significant because Congress acknowledged that the current state of the law was problematic as applied to unincorporated associations, yet only changed the citizenship test for unincorporated associations involved in class actions. Thus, because the anomaly of the doctrinal wall persists, and because the Court is unlikely to overrule its precedent in this area, congressional action is the only appropriate resolution.

IV. Resolution

Although Carden is often criticized for allowing form to prevail over substance, the decision highlights an important point about the
separation of powers.181 Congress has legislated in the area of corporate citizenship,182 and, recently in CAFA, has legislated in the area of the citizenship of unincorporated associations.183 Congress has acted, but not adequately. The Court has recognized that the doctrinal wall may no longer be appropriate, but has deferred to Congress to correct it. The reports accompanying CAFA describe the doctrinal wall as an anomaly that does not make sense, and suggests that CAFA corrects this,184 but CAFA did not correct the anomaly for non-class action diversity cases. Thus, Congress’s new amendment to § 1332(d) will only allow courts to apply uniform citizenship tests to corporations and unincorporated associations in class action suits.185 Congress should apply a similar provision to the rest of § 1332.186 This could be accomplished by rewording or adding a new subsection to § 1332(c).187

Congress should amend § 1332(c) as follows. The provision establishing the citizenship of corporations, § 1332(c)(1), will remain unchanged and will be immediately followed by § 1332(c)(2),188 which will read:

An unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.189

Because the definitions in § 1332(c) apply to the entire section (rather than a single subsection),190 the citizenship test for unincorporated associations will consistently apply to class action suits as well as other civil actions.

In applying this rule for determining the citizenship of unincorporated associations, courts should use an analysis similar to that currently used for corporations under § 1332(c)(1).191 First, the entity will be treated as a citizen of the state where it has chosen to file its organizational document. Next, the entity’s “principal place of business” will be determined using one of three tests: the nerve center test, the place-of-operations test, or the total activity test.192 The federal district courts have determined for themselves which of these tests they feel is most reasonable and should thus apply that test to unincorporated associations.

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181. Bishop & Kleinberger, supra note 104, at 31, 35.
184. Id. § 1332(d) (West 2006).
185. Id.
187. Id. § 1332(c).
188. This assumes that the current § 1332(c)(2) becomes § 1332(c)(3).
190. 28 U.S.C. § 1332(c) (2000) (“[f]or the purposes of this section and section 1441 of this title”).
191. See id. § 1332(c)(1).
192. 32A AM. JUR. 2D Federal Courts, supra note 70.
The proposed legislation intends to provide unincorporated associations the same treatment as corporations with regard to their access to the federal courts. This furthers the goal of diversity jurisdiction by allowing federal courts to hear more cases which implicate interstate commerce. Such cases are more appropriately heard in a neutral forum than in a state court which may be inherently predisposed to favor its own citizens. Moreover, the proposed legislation adequately reflects the reality that unincorporated associations are now in the same playing field as corporations.

V. CONCLUSION

In the fifteen years that have passed since Carden, the business landscape has been dramatically altered by the proliferation of unincorporated associations that function like corporations. Jurisdictional law, however, has been slow to keep up with this changing reality, and the doctrinal wall continues to equate the citizenship of an unincorporated association with that of each of the firm’s members. In practical application, this often results in unincorporated associations being denied access to federal courts for their failure to establish complete diversity.

Given the great influx of hybrid entities in recent years, litigation involving unincorporated associations often has significant interstate commerce ramifications. The protection of interstate commerce is a primary purpose of diversity jurisdiction, and the increasing importance of unincorporated associations to our nation’s economy justifies extending them the protections of a neutral forum. An amendment to the diversity statute will effectuate the goals of diversity jurisdiction and provide unincorporated associations with proportionate access to federal courts.