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Recommended Citation
Caitlin Sawyer, Don’t Dissolve the “Nerve Center”: A Status-Linked Citizenship Test for Principal Place of Business, 55 B.C.L. Rev. 641 (2014), http://lawdigitalcommons.bc.edu/bclr/vol55/iss2/8

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DON’T DISSOLVE THE “NERVE CENTER”: A STATUS-LINKED CITIZENSHIP TEST FOR PRINCIPAL PLACE OF BUSINESS

Abstract: 28 U.S.C. § 1332 requires complete diversity among parties to invoke a federal court’s jurisdiction. The statute provides that a corporation is a citizen of its incorporating state and its principal place of business. In the 2010 case *Hertz Corp. v. Friend*, the U.S. Supreme Court adopted the “nerve center” test as the exclusive test for determining a corporation’s principal place of business. Although the Court intended to adopt a simple standard, applying the rule to dissolved and inactive corporations remains complex. This Note argues for a status-linked nerve center test. This approach is consistent with the text of § 1332 because it ensures that every corporation has a principal place of business under the dual citizenship requirements of the statute. In addition, a status-linked nerve center test is consistent with *Hertz*, as it creates a simple, predictable rule that reflects a corporation’s true center of control. Given the consistency with the statute and with *Hertz*, the status-linked nerve center rule is the best way to apply the nerve center test to atypical corporations.

INTRODUCTION

Consider an Internet-based corporation that sold clothing and conducts all of its sales activities online.¹ Because this company was primarily an online retailer, it made some of its controlling business decisions at a small office in Boston—the corporation’s only office—and others by teleconference.² Two and a half years ago, this corporation dissolved by filing a certification of dissolution with the State of Delaware, its state of incorporation.³ The corporation had failed to make a sufficient profit and its few stockholders unanimously voted to approve dissolution.⁴ Immediately after dissolving, the corporation

¹ See generally *Hertz Corp. v. Friend*, 559 U.S. 77 (2010) (referring to the problem of corporations that communicate over the Internet); John T. Mitchell, *Home Is Where the Nerve Center Is: Locating a Corporation’s Principal Place of Business*, GPSOLO, Oct./Nov. 2011, at 36, 37–38 (explaining that it is common for corporations to conduct important business by teleconference).
² See *Hertz*, 559 U.S. at 96; Mitchell, supra note 1, at 37–38.
³ See DEL. CODE ANN. tit. 8, § 275(b) (2011). A corporation incorporated in Delaware can voluntarily dissolve by filing a certificate of dissolution with the Secretary of State. Id.
⁴ See id. § 275(a). To voluntarily dissolve, a corporation’s board of directors must adopt a resolution indicating that dissolution is advisable. Id. Then, a majority of the corporation’s stockholders must vote to approve the dissolution. Id.
broke the lease of its small office, as it could no longer afford to pay the rent.\(^5\) The corporation’s officers then left Boston and went home to Philadelphia, where the former chief executive officer—from his apartment—paid and closed the corporation’s accounts and sold off its assets.\(^6\)

Two years and nine months after this corporation dissolved, the former landlord sues for the unpaid portion of the commercial lease.\(^7\) The landlord brings the action in a state court in Boston, but the corporation is concerned about out-of-state prejudice and seeks to remove the action to the U.S. District Court in Massachusetts.\(^8\) At this point, because this corporation dissolved nearly three years ago, any local ties that it had in Boston have dissipated.\(^9\) Moreover, this corporation did not have many local ties while it was active, as this corporation was an Internet-based company, and its activities were essentially invisible to the public.\(^10\) The corporation thus argues that there is complete diversity among the parties, as Delaware is its state of incorporation, and its “principal place of business” is Pennsylvania, where the officers are currently directing the closing of the business.\(^11\) The landlord, however, contends that there is not complete diversity among the parties, as the landlord is a citizen of Delaware.\(^5\)

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\(^6\) See generally DEL. CODE ANN. tit. 8, § 278 (2011) (providing that a corporation continues to exist for three years after dissolution for purposes of closing the business and conducting litigation).

\(^7\) See id. If litigation is initiated within three years of dissolution, a corporation will exist past the three-year statutory period for purposes of continuing the litigation. Id.

\(^8\) See 28 U.S.C. § 1441(a)-(b) (2012). Removal to federal court in such a case would be based on the diversity of citizenship among the parties, as the landlord would bring a state-law claim. See id.

\(^9\) See Holston Invs., Inc. B.V.I., v. LanLogistics Corp., 677 F.3d 1068, 1071 (11th Cir.) (reasoning that, generally, an inactive corporation does not have a “lingering local presence”), cert. dismissed, 133 S. Ct. 499 (2012); Grand Union Supermarkets of the V.I., Inc. v. H.E. Lockhart Mgmt., Inc., 316 F.3d 408, 411 (3d Cir. 2003) (holding that an inactive corporation “is in the same position as a foreign corporation in the eyes of the locality, and should therefore be given the same protection”).

\(^10\) Cf. Hertz, 559 U.S. at 96 (discussing a corporation that has its headquarters in New Jersey, but conducted all of its visible activities in New York); Michael E. Chaplin, Resolving the Principal Place of Business Conundrum: Adopting a Single Test for Federal Diversity Jurisdiction, 30 REV. LITIG. 75, 96–97 (2010) (discussing the Hertz Court hypothetical and referring to this as the “hidden control” problem).

\(^11\) Cf. 28 U.S.C. § 1332(a)(1), (c)(1) (2012) (indicating that a corporation is a citizen of its state of incorporation and its principal place of business); Petition for Writ of Certiorari at 9, LanLogistics Corp. v. Holston Invs., Inc. B.V.I., No. 12-366 (U.S. Sept. 21, 2012) [hereinafter LanLogistics Petition] (arguing that the post-dissolution principal place of business should be the state in which the corporation is winding up its affairs); see also Athena Auto., Inc. v. DiGregorio, 166 F.3d 288, 292 (4th Cir. 1999) (suggesting that, upon dissolution, a corporation’s principal place of business could be the place from which the corporation was pursuing litigation).
Massachusetts and the dissolved corporation’s principal place of business should be considered the state in which it last conducted business: Massachusetts.  

The issue posed by this hypothetical is difficult because once a corporation dissolves or becomes inactive, determining its principal place of business becomes a more complex question. Since the financial crisis of 2008, business failure and dissolution has been the unfortunate fate of many corporations and financial institutions. When a corporation dissolves or becomes inactive, it ceases its normal business and thus no longer has a principal place of business in the colloquial sense of the term. Because such a corporation continues to legally exist, however, this change in active status raises important questions about whether the change impacts its jurisdictional citizenship.

Diversity jurisdiction under 28 U.S.C. § 1332 requires each party on one side of a controversy to be citizens of different states than those on the other side. Section 1332(c) indicates that a corporation is a citizen of its incorporat-

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12 Cf. 28 U.S.C. § 1332(a)(1), (c)(1); Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc., 933 F.2d 131, 141 (2d Cir. 1991) (holding that a corporation has its principal place of business in the state of its last business transaction); see also Athena Auto., 166 F.3d at 291 (concluding that a corporation might continue to conduct activity sufficient to retain a principal place of business after dissolution).

13 Cf. Hertz, 559 U.S. at 92, 94–95 (adopting the nerve center test for determining a corporation’s principal place of business, but not indicating how to apply this test to dissolved and inactive corporations); The Supreme Court, 2009 Term—Leading Cases, 124 HARV. L. REV. 309, 318 (2010) [hereinafter Leading Cases] (predicting that courts will “struggle to develop a coherent common law doctrine in those ‘hard cases’ where novel fact patterns arise”).


15 See DEL. CODE ANN. tit. 8, § 278 (2011) (indicating that a dissolved corporation does not continue to exist for the purpose for which it was organized); Chaplin, supra note 10, at 85 n.53 (“If a corporation is inactive, it has no brain, and therefore, no nerve center.”); Timothy J. Yuncker, Inactive Corporations and Diversity Jurisdiction Under 28 U.S.C. § 1332(c): The Search for a Principal Place of Business, 28 U. TOL. L. REV. 815, 815–16 (1997) (explaining that once a corporation no longer conducts business, it does not have a principal place of business).

16 See DEL. CODE ANN. tit. 8, § 278; infra notes 101–111 and accompanying text (discussing the effect of dissolution and inactivity under state corporate law).

ing state and its principal place of business.\textsuperscript{18} Establishing a uniform test to determine the principal place of business has been complicated by the variety of corporate structures and activities.\textsuperscript{19} As a result, in the 2010 case \textit{Hertz Corp. v. Friend}, the U.S. Supreme Court provided guidance on this question by adopting a uniform test for all corporations.\textsuperscript{20} The \textit{Hertz} Court held that a corporation’s principal place of business is its “nerve center” — i.e., its “center of direction, control, and coordination.”\textsuperscript{21}

This Note argues for a status-linked nerve center test for determining a corporation’s principal place of business.\textsuperscript{22} Despite the Court’s adoption of the nerve center test in \textit{Hertz}, applying this test to atypical corporate structures and activities remains problematic.\textsuperscript{23} The finding of a status-linked nerve center will ensure that every corporation has a principal place of business and thus meets the dual corporate citizenship requirements of 28 U.S.C. § 1332.\textsuperscript{24} In addition, because a corporation’s nerve center will be linked to its active status, this nerve center will reflect the actual center of control at the time of the litigation.\textsuperscript{25} Finally, this approach is both simple to apply and generates predictable jurisdictional results.\textsuperscript{26}

Part I explains diversity jurisdiction, the principal place of business tests that existed prior to \textit{Hertz}, and the Court’s attempt to simplify this scheme.\textsuperscript{27} Part II examines the problem of determining the principal place of business of dissolved and inactive corporations and the circuit split that developed in this

\textsuperscript{18} 28 U.S.C. § 1332(c)(1).
\textsuperscript{19} See, e.g., Ferrell v. Express Check Advance of SC LLC, 591 F.3d 698, 706 (4th Cir. 2010) (holding that the “place of operations” test should be applied when a corporation’s physical operations are located in one state); Peterson v. Cooley, 142 F.3d 181, 184 (4th Cir. 1998) (applying the nerve center test to a holding company that is not geographically bound).
\textsuperscript{20} 559 U.S. at 92–93. The Supreme Court adopted the nerve center test to the exclusion of other activity-based tests that had previously been applied. \textit{Id.} at 93.
\textsuperscript{21} \textit{Id.} at 92–93.
\textsuperscript{22} See infra notes 235–290 and accompanying text.
\textsuperscript{23} Compare \textit{Hertz}, 559 U.S. at 92–93 (holding that a corporation’s principal place of business is its “center of direction, control, and coordination”), with \textit{Holston}, 677 F.3d at 1070–71 (analyzing whether a dissolved corporation has a principal place of business and concluding that \textit{Hertz} is merely relevant, but not controlling, for dissolved corporations), Chaplin, \textit{supra} note 10, at 85 n.53 (arguing that an inactive corporation has “no nerve center”), and Yuncker, \textit{supra} note 15, at 815–16 (explaining that a dissolved corporation does not have a principal place of business). Moreover, the \textit{Hertz} Court itself indicated the potential for difficult applications of the nerve center test, specifically acknowledging that some corporations “divide their command and coordinating functions.” \textit{See} 559 U.S. at 94–95.
\textsuperscript{24} See infra notes 255–269 and accompanying text.
\textsuperscript{25} See infra notes 270–281 and accompanying text.
\textsuperscript{26} See infra notes 282–290 and accompanying text.
\textsuperscript{27} See infra notes 31–85 and accompanying text.
context prior to *Hertz*.\textsuperscript{28} Part III assesses the effect of the *Hertz* Court’s adoption of the nerve center test and the three potential approaches that remain after *Hertz* regarding the citizenship of dissolved and inactive corporations.\textsuperscript{29} Finally, Part IV argues that the nerve center of a corporation should be directly linked to its active status and that the citizenship of dissolved and inactive corporations should thus be the location from which litigation and wind up activities are conducted.\textsuperscript{30}

I. DIVERSITY JURISDICTION AND THE EVOLUTION OF THE PRINCIPAL PLACE OF BUSINESS ANALYSIS

The U.S. Constitution extends the judicial power “to controversies . . . between Citizens of different States.”\textsuperscript{31} Rather than automatically extend this power to federal district courts, the Constitution instead authorizes Congress to grant judicial power to the “inferior Courts” that it establishes.\textsuperscript{32} To have the power to adjudicate, a federal court must have both personal jurisdiction over all of the parties and subject matter jurisdiction over the type of case that it is hearing.\textsuperscript{33} Generally, a federal court will have subject matter jurisdiction pursuant to a “federal question” or if there is complete “diversity of citizenship”

\textsuperscript{28} See infra notes 86–145 and accompanying text.

\textsuperscript{29} See infra notes 146–234 and accompanying text.

\textsuperscript{30} See infra notes 235–290 and accompanying text. “Winding up” a corporation’s affairs involves paying and closing corporate accounts and liquidating (selling) corporate assets. *BLACK’S LAW DICTIONARY* 1738 (9th ed. 2009).

\textsuperscript{31} U.S. CONST. art. III, § 2, cl. 1. In addition, the Constitution extends the judicial power “to all cases, in law and equity, arising under . . . the Laws of the United States.” *Id.* This has been articulated as “federal question” jurisdiction. *See* Louisville & Nashville R.R. v. Mottley, 211 U.S. 149, 153–54 (1908).

\textsuperscript{32} U.S. CONST. art. III, § 1; *see* Kline v. Burke Constr. Co., 260 U.S. 226, 234 (1922) (explaining that, with the exception of the Supreme Court, “[e]very other court . . . derives its jurisdiction wholly from the authority of Congress”). Because the Constitution limits the power of federal courts, Congress may not extend the power it grants to federal district courts beyond the scope of Article III. *See Kline*, 260 U.S. at 234; 13F CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3522 (3d ed. 2009); *see also* Dustin M. Dow, Note, *The Unambiguous Supremacy Clause*, 53 B.C. L. REV. 1009, 1017 (2012) (explaining that a federal court’s jurisdictional power is constrained by both Article III and federal statutes).

\textsuperscript{33} *See* Int’l Shoe Co. v. Washington, 326 U.S. 310, 316–17 (1945) (holding that personal jurisdiction can exist based on a party’s contacts with the forum state if those contacts are sufficient to satisfy due process of law); Mayor v. Cooper, 73 U.S. (6 Wall.) 247, 252 (1867) (ruling that a court without subject matter jurisdiction over a case lacks power to hear that case), superseded by statute, Customs Courts Act of 1980, Pub. L. No. 96-417, sec. 510, § 1919, 94 Stat. 1727, 1743 (current version at 28 U.S.C. § 1919 (2012)), as recognized in Johns-Manville Corp. v. United States, 893 F.2d 324, 326 (Fed. Cir. 1989).
among the parties and a minimum amount in controversy. A court must immediately dismiss or remand a case if it determines, at any time, that it lacks subject matter jurisdiction.

In 28 U.S.C. § 1332, Congress defined and limited federal district courts’ original jurisdiction over “all civil actions” between “citizens of different States.” Diversity jurisdiction under § 1332 requires all parties on one side of a controversy to be citizens of different states than those on the other side. This requirement reflects the purpose of diversity jurisdiction, which aims to provide a neutral federal forum for out-of-state parties who might experience prejudice in state courts. Unlike an individual, who is only a citizen of the state of domicile, a corporation, under § 1332, is a citizen of both its incorporating state and its principal place of business. This definitional difference reflects the reality that a corporation may have a presence sufficient to render it a “citizen” in more than one state.

The previous rule that equated a corporation’s citizenship with only its state of incorporation created the possibility of a corporation invoking an undeserved federal forum. For instance, by incorporating in a different state, a corporation could attain a federal forum in a state where it had a local presence.

34 See 28 U.S.C. § 1331 (2012) (federal question jurisdiction); id. § 1332 (diversity jurisdiction); Michael G. Collins, Jurisdictional Exceptionalism, 93 VA L. REV. 1829, 1830–32 (2007). Currently, diversity jurisdiction requires a minimum of $75,000 in controversy. 28 U.S.C. § 1332(a). Note that a federal court may also have jurisdiction in limited circumstances other than federal question and diversity cases, such as admiralty cases. See Collins, supra, at 1854–55.
35 FED. R. CIV. P. 12(h)(3); Cooper, 73 U.S. at 252.
37 See id. § 1332(a)(1); Caterpillar, 519 U.S. at 68 (citing Strawbridge, 7 U.S. (3 Cranch) at 267).
38 S. REP. NO. 1830, at 4 (1958), reprinted in 1958 U.S.C.C.A.N. 3099, 3101–02; see also 13F WRIGHT & MILLER, supra note 32, § 3601 (explaining that diversity jurisdiction was established in response to the concern about out-of-state parties facing prejudice in state courts and noting that the origins of this concern are unclear).
39 See 28 U.S.C. § 1332(c)(1). Although a corporation—under the statute—is a citizen of “every” state in which it is incorporated, it can only have one principal place of business. See id.
40 See S. REP. NO. 1830, at 4 (explaining that § 1332 was amended to add principal place of business citizenship in response to the illogic previously resulting from allowing a corporation to obtain a federal forum in the state in which it had its principal place of business).
This potential for abuse gave rise to a need to expand corporate citizenship to multiple states.\footnote{44} In 1958, Congress amended 28 U.S.C. § 1332 by adding § 1332(c), which provided that a corporation is a citizen of its incorporating state and of “the State where it has its principal place of business.”\footnote{45} The amendment responded to the illogic of allowing a corporation engaged in local business to attain a federal forum merely by reincorporating in a different state.\footnote{46} By creating dual citizenship for corporations, the amendment reflected the reality that a corporation is unlikely to suffer out-of-state prejudice if it has its principal place of business in that state.\footnote{47}

Although the amendment to § 1332 attempted to adopt an easily administrable definition for a corporation’s principal place of business, applying the amended statute proved to be difficult in practice.\footnote{48} Specifically, courts disagreed about the location in which a corporation would be least likely to suffer prejudice in state courts.\footnote{49} This Part explains courts’ diverse attempts to define principal place of business and the Supreme Court’s attempt to clarify this issue in \textit{Hertz}.\footnote{50} First, Section A outlines the various complex principal place of business tests that courts utilized prior to \textit{Hertz}.\footnote{51} Then, Section B discusses

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\textsuperscript{42} See S. REP. NO. 1830, at 4.
\textsuperscript{45} See sec. 2, § 1332, 72 Stat. at 415 (current version at 28 U.S.C. § 1332(c)(1)). Recently, Congress further amended § 1332(c)(1) to indicate that a corporation is a citizen of “every state” in which it has incorporated and of “the State or foreign state where it has its principal place of business.” Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, sec. 102, § 1332(c)(1), 125 Stat. 758, 758–59 (emphasis added) (codified as amended at 28 U.S.C. § 1332(c)(1)).
\textsuperscript{46} See S. REP. NO. 1830, at 4. This inherent unfairness was further exacerbated by the fact that incorporation is a “legal device [that is] not available to the individual citizen.” \textit{Id}.
\textsuperscript{47} 13F WRIGHT & MILLER, \textit{supra} note 32, § 3624. Notably, if a corporation has its principal place of business in its incorporating state, the corporation is only a citizen of one state. \textit{See} 28 U.S.C. § 1332(c) (2012).
\textsuperscript{48} 13F WRIGHT & MILLER, \textit{supra} note 32, § 3625; \textit{see} \textit{Hertz}, 559 U.S. at 88 (explaining that decisions under the Bankruptcy Act disagreed about how to determine a corporation’s principal place of business and thus concluded that this phrase failed to guide federal courts in the context of diversity jurisdiction).
\textsuperscript{49} 13F WRIGHT & MILLER, \textit{supra} note 32, § 3625; \textit{see infra} notes 53–70 and accompanying text (discussing the various federal appeals court approaches prior to \textit{Hertz}).
\textsuperscript{50} \textit{See infra} notes 53–85 and accompanying text.
\textsuperscript{51} \textit{See infra} notes 53–70 and accompanying text.
the nerve center test that the *Hertz* Court adopted in an attempt to simplify the principal place of business analysis.\(^{52}\)

### A. The Complex Principal Place of Business Scheme

Prior to *Hertz*, federal courts used a variety of complex multifactor tests to determine a corporation's principal place of business.\(^{53}\) Generally, courts utilized the “center of corporate activity” test,\(^{54}\) the “nerve center” test,\(^{55}\) or a facts and circumstances-based “total activity” test that incorporated elements of the other two approaches.\(^{56}\) With the exception of the U.S. Court of Appeals for the Seventh Circuit, most federal appeals courts did not apply one of these tests to the exclusion of the other.\(^{57}\) Rather, most courts analyzed a corporation’s structure and activities and applied the test that seemed best suited to carry out the purposes of diversity jurisdiction in the particular case.\(^{58}\) The goal was to apply the test that would locate the state in which a corporation would be least likely to experience prejudice in state court.\(^{59}\)

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52 See infra notes 71–85 and accompanying text.
53 15 J. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 102.54[3][a] (3d ed. 2012); see infra notes 54–56 (collecting cases).
54 See *Grand Union*, 316 F.3d at 411. This test was sometimes referred to as the “place of operations” or the “corporate operations” test. See *Ferrell*, 591 F.3d at 706; Tosco v. Cmtys. for a Better Env’t, 236 F.3d 495, 497 (9th Cir. 2001), abrogated by *Hertz*, 559 U.S. 77; Neat-N-Tidy Co. v. Tradepower (Holdings) Ltd., 777 F. Supp. 1153, 1156 (S.D.N.Y. 1991). In the First Circuit, this approach collapsed into the “locus of the operations” test as both tests focused on the location of a corporation’s actual operations and assets. See *Díaz-Rodríguez v. Pep Boys Corp.*, 410 F.3d 56, 59–60 (1st Cir. 2005), abrogated by *Hertz*, 559 U.S. 77.
57 See, e.g., *Ferrell*, 591 F.3d at 706 (explaining that either the nerve center test or the place of operations test should be applied based on the circumstances); *Peterson*, 142 F.3d at 184 (same). The Seventh Circuit applied the nerve center test in all circumstances, explaining that jurisdiction should be simple and determinable. See *Wis. Knife*, 781 F.2d at 1282–83.
58 See, e.g., *Ferrell*, 591 F.3d at 706 (choosing to apply the place of operations test because the corporation in the case had a physical presence within the state); *Peterson*, 142 F.3d at 184 (explaining that, when a corporation is not “geographically bound,” the court will apply the nerve center test rather than the place of operations test); Indus. Tectonics, Inc. v. Aero Alloy, 912 F.2d 1090, 1094 (9th Cir. 1990) (applying the place of operations test, rather than the nerve center test, because the corporation’s local contact mitigated against prejudice concerns in state court).
59 See *Peterson*, 142 F.3d at 184; *Indus. Tectonics*, 912 F.2d at 1094.
The center of corporate activity test associated the principal place of business with the physical location of a corporation’s assets and day-to-day operations.\(^\text{60}\) Courts would typically apply this test if operations were relatively centralized in one or a few states rather than “far-flung” or spread evenly across multiple states.\(^\text{61}\) If operations occurred in a few states, the principal place of business was identified as the state where operations substantially predominated.\(^\text{62}\) By applying the center of corporate activity test to corporations with centralized physical operations, courts assumed that this type of corporation would be least likely to suffer outsider prejudice in the state where its activities were most visible to the public.\(^\text{63}\)

Rather than focus on corporate assets and operations, the nerve center test equated “the corporation’s brain,” typically its headquarters, with its principal place of business.\(^\text{64}\) In 1959, in *Scot Typewriter Co. v. Underwood Corp.*, the U.S. District Court for the Southern District of New York articulated this test, defining the nerve center as the location “from which its officers direct, control and coordinate” activities “in the furtherance of the corporate objective.”\(^\text{65}\) Many courts applied this test only if activities were “far-flung” across many states, if assets could be easily relocated, if the corporation lacked any physical operations, or if it had a complex structure.\(^\text{66}\) These courts reasoned that the nerve center test should apply when the center of corporate activity test failed to identify the state in which the corporation was least likely to suffer prejudice in state courts.\(^\text{67}\)

Other courts, in an effort to align the principal place of business with the nature of corporate activities and organizational structure, applied a third total activity test to assess “the totality of the corporate existence.”\(^\text{68}\) Federal ap-

\(^{60}\) See, e.g., Ferrell, 591 F.3d at 706; Díaz-Rodríguez, 410 F.3d at 59; Grand Union, 316 F.3d at 411.

\(^{61}\) See, e.g., Díaz-Rodríguez, 410 F.3d at 61; Tosco, 236 F.3d at 497.

\(^{62}\) Davis v. HSBC Bank Nev., N.A., 557 F.3d 1026, 1028–29 (9th Cir. 2009); Tosco, 236 F.3d at 497.

\(^{63}\) See Díaz-Rodríguez, 410 F.3d at 61; Indus. Tectonics, 912 F.2d at 1094.

\(^{64}\) Wis. Knife, 781 F.2d at 1282 (stating that the court “look[s] for the corporation’s brain”); see Metro. Life Ins. Co. v. Estate of Cammon, 929 F.2d 1220, 1223 (7th Cir. 1991) (stating that the nerve center is a corporation’s “executive headquarters”); see also Topp, 814 F.2d at 834 (explaining that the nerve center test focuses on the place where corporate activities are “controlled and directed”); Scot Typewriter, 170 F. Supp. at 865 (defining the nerve center as the place where corporate officers “direct, control and coordinate all activities”).

\(^{65}\) 170 F. Supp. at 865.

\(^{66}\) See, e.g., Peterson, 142 F.3d at 184–85; Topp, 814 F.2d at 834; Scot Typewriter, 170 F. Supp. at 865.

\(^{67}\) See Peterson, 142 F.3d at 184–85; Topp, 814 F.2d at 834.

\(^{68}\) See, e.g., MacGinnitie, 420 F.3d at 1239; Teal Energy, 369 F.3d at 876, 879; Capitol Indem., 367 F.3d at 836.
peals courts applying this test reasoned that it achieved a needed flexibility to account for differing activities and structures. There was disagreement among these courts, however, regarding how to practically implement the totality test.

B. Hertz and the Nerve Center Test for Principal Place of Business

Although these complex tests reflected an attempt to carry out the purpose of diversity jurisdiction, it was at the expense of uniformity, predictability, and administrative simplicity. Given the variety of fact-specific principal place of business tests and the intra-circuit variations found with each approach, these tests were criticized for producing inconsistent results. Specifically, scholars observed that corporate citizenship determinations were completely unpredictable because the each test focused on different factors. A single corporation could be deemed a citizen of three different states depending on the test applied, a phenomenon that could lead plaintiffs to file claims in courts where they would receive a favorable jurisdiction determination.

69 See Teal Energy, 369 F.3d at 876, 879; Capitol Indem., 367 F.3d at 836.
70 See, e.g., MacGinnitie, 420 F.3d at 1239; Teal Energy, 369 F.3d at 876; Capitol Indem., 367 F.3d at 836. The U.S. Courts of Appeals for the Fifth and Eleventh Circuits considered all of the facts and circumstances in light of the corporation’s nerve center and “place of activities” to determine which of these focal points should be given more significance in each case. See MacGinnitie, 420 F.3d at 1239; Teal Energy, 369 F.3d at 876. The U.S. Courts of Appeals for the Sixth, Eighth, and Tenth Circuits applied a more ad hoc totality test that considered a corporation’s character, purpose, type of business, and place of operations. See Capitol Indem., 367 F.3d at 836; Gadlin, 222 F.3d at 799; Gafford, 997 F.2d at 162–63.
71 See Hertz, 55 U.S. at 92 (explaining the drawbacks of these complex tests).
72 See Chaplin, supra note 10, at 77–78 (characterizing the pre-Hertz state of the law as uncertain); Lindsey D. Saunders, Note, Determining a Corporation’s Principal Place of Business: A Uniform Approach to Diversity Jurisdiction, 90 MINN. L. REV. 1475, 1486 (2006) (observing that there is a “lack of uniformity” among the various federal appeals court approaches). Compare Indus. Tectonics, 912 F.2d at 1091, 1094 (concluding that even if the headquarters is in a different state, the principal place of business is the state in which a majority of corporate activities occur), with Wis. Knife, 781 F.2d at 1282 (declining to look to the location of corporate assets or employees and concluding that the principal place of business would generally be in the state in which the headquarters is located).
73 See Chaplin, supra note 10, at 77 (explaining that the pre-Hertz tests were “malleable”); Connor D. Devereell, Casenote, Defining a Corporation’s ‘Principal Place of Business’: The United States Supreme Court’s Decision in Hertz v. Friend, 56 LOY. L. REV. 733, 745, 774 (2010) (observing that the various tests, which emphasized different factors, produced inconsistent results). Compare Díaz-Rodriguez, 410 F.3d at 59 (reasoning that the location of the corporation’s retail stores was most significant), with Wis. Knife, 781 F.2d at 1282 (holding that the location of the headquarters was most significant).
74 See Devereell, supra note 73, at 754 (implying that, prior to Hertz, a corporation’s citizenship was unclear because it could differ in each of the federal appeals courts); Saunders, supra note 72, at 1475 (observing that “[n]onuniformity encourages forum shopping” to have the benefit of the most
over, because these tests required the courts to assess the relevant facts and circumstances to locate a corporation’s principal place of business, subject matter jurisdiction was criticized as a burdensome, time-consuming process.\(^7^5\)

Acknowledging the concerns about unpredictability, the Supreme Court in \textit{Hertz} expressly adopted the nerve center test for determining a corporation’s principal place of business to the exclusion of the various multifactor approaches used by most federal courts.\(^7^6\) The \textit{Hertz} Court premised its nerve center test on two main grounds.\(^7^7\) First, the Court reasoned that the text of 28 U.S.C. § 1332(c)(1) suggests the recognition of a “prominent” place found in a single, determinable location within a state.\(^7^8\) The Court explained that a corporation’s prominent location is typically in the state of its headquarters, rather than in the state with the highest volume of business activity.\(^7^9\)

\(^7^5\) See Chaplin, supra note 10, at 87 (“Flexibility is, by nature, time-consuming.”); Deverell, supra note 73, at 748 (noting that it was time consuming for courts to apply multifactor approaches); see also Teal Energy, 369 F.3d at 876–82 (using six pages to explain its principal place of business analysis); cf. Wis. Knife, 781 F.2d at 1282 (“We prefer the simpler test. Jurisdiction ought to be readily determinable.”).

\(^7^6\) See 559 U.S. at 92–93. The Court considered the principal place of business issue under circumstances that did not clearly invoke either the nerve center test or the center of corporate activity test, as \textit{Hertz} Corporation’s physical operations were conducted in many states without any obvious centralization. \textit{See id.} at 81–82, 89. On the one hand, because \textit{Hertz} conducted business in 44 states, its activities were “far-flung” over many states and, thus, the nerve center test would have been the most appropriate. \textit{See id.} at 82; \textit{see also} Friend v. \textit{Hertz} Corp., No. C–07–5222 MMC, 2008 WL 7071465, at *3 (N.D.C.A. Jan. 15, 2008) (noting \textit{Hertz}’s argument that its activities were “spread among many states” (internal quotation marks omitted)), vacated, 375 F. App’x 757, 757 (9th Cir. 2010). Alternatively, given that the volume of \textit{Hertz}’s activity was greatest in California, the center of corporate activity test could have arguably been applied. \textit{See Friend v. \textit{Hertz} Corp.,} 297 F. App’x 690, 691 (9th Cir. 2008) (concluding that the district court correctly applied the “place of operations” test), vacated, 559 U.S. 77; \textit{see also Hertz,} 559 U.S. at 81 (noting that California accounted for $811 million of \textit{Hertz}’s $4.371 billion in annual revenue).

\(^7^7\) See 559 U.S. at 93.

\(^7^8\) \textit{Id.} This interpretation is highlighted by the statute’s reference to the fact that a corporation is deemed a citizen of “\textit{every} State and foreign state by which it has been incorporated[,]” but only of “\textit{the} State or foreign state where it has its principal place of business.” \textit{See} 28 U.S.C. § 1332(c)(1) (2012) (emphasis added).

\(^7^9\) \textit{Hertz}, 559 U.S. at 93. The Court noted that applying the corporate activities test instead would frequently locate a national corporation’s principal place of business in California, as California’s population is significantly larger than that of other states. \textit{Id.} at 94.
Second, the Court emphasized the importance of a simple rule that produces a predictable result. The Court reasoned that a simple jurisdictional test is more efficient and cost-effective for courts. According to the Hertz Court, this is particularly true in the subject matter jurisdiction context, as a federal court has an obligation to ensure that jurisdiction is proper before considering the merits of a case. Further, the Court reasoned that corporations benefit from a more uniform and predictable citizenship approach, as jurisdictional predictability allows for more effective business planning.

Finally, the Hertz Court acknowledged that the nerve center test would occasionally fail to locate the state in which out-of-state prejudice was least likely. Nevertheless, the Court stressed that the need for a uniform, predictable principal place of business analysis outweighed this inevitable consequence.

II. DEFINING CITIZENSHIP: THE PRINCIPAL PLACE OF BUSINESS PROBLEM FOR DISSOLVED AND INACTIVE CORPORATIONS

The variety of corporate structures and activities exacerbates the difficulties inherent in both defining principal place of business under 28 U.S.C. § 1332(c)(1) and applying the nerve center test. In many cases, determining the location of a corporation’s direction and control is not obvious. As corpo-

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80 Id. at 94. The Court reasoned that it is easier to determine the location of a corporate headquarters under the nerve center test than it is to assess the volume of activity within various states. Id. The Court noted, however, that ease of administration should not come at the expense of locating the “place of actual direction, control, and coordination,” and that courts should not locate a nerve center in a place that is merely “a mail drop box” or “a bare office with a computer.” Id. at 97.

81 Id. at 94.

82 See id.; see also Wis. Knife, 781 F.2d at 1282 (“The first thing a federal judge should do . . . is check to see that federal jurisdiction is properly alleged.”).

83 Hertz, 559 U.S. at 94–95.

84 See id. at 96 (explaining that “seeming anomalies” are a necessary consequence in light of the “benefits that accompany a more uniform legal system”). The Court noted that, for example, if most of a corporation’s visible activities are in one state, but its headquarters is in another state, out-of-state prejudice might be less likely in the state where its activities are more visible rather than in the location of its headquarters. Id.

85 See id.

86 See Hertz Corp. v. Friend, 559 U.S. 77, 96 (2010) (observing that the principal place of business is less clear when a corporation’s headquarters is located in one state but its most visible activities occur in a different state); see also Chaplin, supra note 10, at 95 (explaining that, for large corporations, it is unclear if the nerve center test requires that courts “balance the importance of the various command structures”); Mitchell, supra note 1, at 37–38 (observing that it is often difficult to locate the physical location of management’s decisions, particularly when a corporation’s meetings occur by teleconference).

87 See Hertz, 559 U.S. at 96 (observing that the nerve center test does not “automatically generate a result”); see also Chaplin, supra note 10, at 95 (arguing that the nerve center is not obvious when control activities are decentralized); Mitchell, supra note 1, at 38 (illustrating the practical difficulties
rations continue to conduct more of their business over the Internet, for example, there may be multiple locations—rather than a single physical headquarters—where a corporation is directed and controlled. The nerve center is similarly difficult to identify if a corporation does not have a headquarters after dissolving or becoming inactive. Indeed, when a corporation is dissolved or inactive, its center of control may change to accommodate the officers’ activities in directing and controlling the corporation.

Moreover, when defining the principal place of business of a corporation that lacks a physical headquarters, the state in which out-of-state prejudice is least likely is often unclear. By amending 28 U.S.C. § 1332 to include the principal place of business requirement, Congress aimed to deem a corporation a citizen of the location where it was least likely to suffer prejudice in state courts. Accordingly, the nerve center test, by focusing on the center of control, generally aims to locate the place where a corporation is least likely to suffer such prejudice. For a dissolved or inactive corporation, however, a change in the center of control may subject the corporation to out-of-state

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88 See Hertz, 559 U.S. at 95–96 (recognizing the possibility that, using the Internet, “corporations may divide their command and coordinating functions”); see also Mitchell, supra note 1, at 38 (observing that executives are often located in multiple states rather than a single state).

89 See Chaplin, supra note 10, at 83, 99 (indicating that because an inactive corporation’s principal place of business is unclear, the results of the nerve center test in this context are also uncertain); Dawn Levy, Note, Where Do Dead Corporations Live?: Determining the Citizenship of Inactive Corporations for Diversity Jurisdiction Purposes, 62 BROOK. L. REV. 663, 671, 674 (1996) (observing that it is unclear whether an inactive corporation has a principal place of business and that the traditional indicia of corporate citizenship do not exist in this context).

90 See Mamco Corp. v. Carlisle Cos., No. 10-C-0124, 2011 WL 13646, at *3 (E.D. Wis. Jan. 4, 2011) (holding that a corporation in the process of dissolving has its principal place of business where its wind up activities are conducted); see also Yuncker, supra note 15, at 830 n.103 (implying that, arguably, a corporation's nerve center could change from the location of its headquarters to the location of its post-dissolution wind up activities).

91 See Yuncker, supra note 15, at 830 (explaining that a corporation that has been inactive for only a short period of time will not be subject to out-of-state prejudice); Levy, supra note 89, at 687–88 (arguing that a local corporation is still local after becoming inactive and, thus, will not be subject to out-of-state prejudice). Compare Athena Auto., Inc. v. DiGregorio, 166 F.3d 288, 291–92 (4th Cir. 1999) (explaining that an inactive corporation could have a “continuing impact . . . sufficient to give it a geographical identity there”), with Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc., 933 F.2d 131, 141 (2d Cir. 1991) (concluding that the principal place of business is the location of the corporation’s last business transaction, as this is the state where it retains a local character).


93 See Hertz, 559 U.S. at 96 (implying that in most cases a corporation’s nerve center will be the location where prejudice is least likely, although the test “may in some cases produce results that seem to cut against the basic rationale” for diversity jurisdiction).
prejudice in a state where it originally had its headquarters, as there is consequently less of a local presence in that state.\textsuperscript{94} The appropriate location of such a corporation’s nerve center is thus not obvious.\textsuperscript{95}

As a result, although the Supreme Court in the 2010 \textit{Hertz Corp. v. Friend} decision provided some clarity by articulating the nerve center test, determining a corporation’s principal place of business remains problematic for unorthodox corporations.\textsuperscript{96} The \textit{Hertz} Court recognized the possibility of “hard cases” where a corporation’s principal place of business might not be the state where out-of-state prejudice is least likely, but provided little guidance regarding the location of the nerve center in these contexts.\textsuperscript{97}

This Part explores the difficulties inherent in determining the principal place of business of dissolved and inactive corporations.\textsuperscript{98} Section A discusses the nature of dissolved and inactive corporations under corporate law principles.\textsuperscript{99} Then, Section B explores the pre-\textit{Hertz} circuit split that developed regarding the citizenship of these corporations.\textsuperscript{100}

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\textsuperscript{94} See Grand Union Supermarkets of the V.I., Inc. v. H.E. Lockhart Mgmt., Inc., 316 F.3d 408, 411 (3d Cir. 2003) (concluding that an inactive corporation does not have a principal place of business as it does not have a business presence and is thus a “foreign corporation in the eyes of the locality”); \textit{Athena Auto.}, 166 F.3d at 291 (indicating that a corporation remains a citizen of the state where it was previously active only to the extent that it continues to have an impact there).

\textsuperscript{95} Compare Holston Invs., Inc. B.V.I. v. LanLogistics Corp., 677 F.3d 1068, 1071 (11th Cir.) (concluding that a dissolved corporation does not have a principal place of business), \textit{cert. dismissed}, 133 S. Ct. 499 (2012), with \textit{Yuncker, supra} note 15, at 834–35 (arguing that an inactive corporation should retain its last principal place of business for 180 days after becoming inactive), and \textit{Levy, supra} note 89, at 684 (arguing that an inactive corporation’s principal place of business should be the location of its last principal place of business while it was active).

\textsuperscript{96} \textit{Compare Hertz}, 559 U.S. at 92, 95 (holding that the principal place of business is a corporation’s nerve center, while recognizing the potential for “hard cases”), and \textit{City of Syracuse v. Loomis Armored U.S., LLC, No. 5:11–cv–00744, 2011 WL 6318370, at *4 (N.D.N.Y. Dec. 15, 2011)} (ruling that an inactive corporation’s principal place of business is the location in which it last conducted business), with \textit{Holston}, 677 F.3d at 1071 (holding that the nerve center test did not apply to a dissolved corporation that had withdrawn from business, reasoning that the corporation did not have a principal place of business), \textit{Chaplin, supra} note 10, at 85 n.53 (arguing that an inactive corporation has “no nerve center”), and \textit{Yuncker, supra} note 15, at 815–16 (explaining that a dissolved corporation does not have a principal place of business).

\textsuperscript{97} See 559 U.S. at 95–96. Significantly, the Court noted that the nerve center test would not “automatically generate a result” under 28 U.S.C. § 1332(c)(1). \textit{Id.} This lack of guidance is complicated by the circuit split that had developed in this context prior to \textit{Hertz}. See \textit{infra} notes 112–145 and accompanying text.

\textsuperscript{98} See \textit{infra} notes 101–145 and accompanying text.

\textsuperscript{99} See \textit{infra} notes 101–111 and accompanying text.

\textsuperscript{100} See \textit{infra} notes 112–145 and accompanying text.
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A. The Nature of Dissolved and Inactive Corporations

As a threshold matter, inactivity and dissolution are not coextensive. A corporation is inactive if it does not conduct any business activities. Inactivity occurs, among other ways, when a corporation ceases activity. Unlike a dissolved corporation, an inactive corporation that merely ceases business continues to exist for purposes of continuing its business.

In contrast, dissolution is governed by statute and requires an affirmative act. The requisite act can occur by a corporation’s voluntary dissolution, court order, or state administrative action. Upon dissolution, state corporate law statutes provide that a dissolved corporation is not completely “dead” and authorize the corporation to continue to exist as a legal entity for a specified period. A dissolved corporation continues to exist to liquidate its business and assets, and to prosecute and defend lawsuits. Directors are generally permitted to remain in office as agents of the corporation for the limited purposes of liquidating business and winding up the corporation’s affairs until the statutory period expires. In most states, the corporation’s power to wind up its business includes the capacity to sue and be sued as a separate legal enti-


102 Id. § 7991. A corporation is also considered inactive, but not necessarily dissolved, if it fails to commence business or if all of its assets or shares are acquired. Id. §§ 7989, 7995; see also Park Terrace, Inc. v. Phx. Indem. Co., 91 S.E.2d 584, 586 (Ariz. 1956) (holding that a corporation is inactive, but continues to exist, when all of its stock is acquired by one person).

103 See 16A FLETCHER, supra note 101, § 7991; see also Old Colony Trust Co. v. Third Universalist Soc’y of Cambridge, 188 N.E. 711, 149 (Mass. 1934) (explaining that a corporation continues to exist despite transferring all of its assets because the corporation did not take any formal steps to dissolve); Greenwood v. Estes, 504 P.2d 206, 210 (Kan. 1972) (holding that a corporation does not “automatically forfeit its charter” when it does not engage in activities).

104 16A FLETCHER, supra note 101, § 7986; see, e.g., DEL. CODE ANN. tit. 8, § 275(a) (2011) (indicating that dissolution generally requires both a resolution adopted by the board of directors and a vote by a majority of the stockholders entitled to vote); MASS. GEN. LAWS. ch. 156D, § 14.02(b), (e) (2012) (requiring that to voluntarily dissolve a corporation, the board of directors must submit a proposal to the shareholders and a majority of the shareholders entitled to vote must approve). At common law, dissolution was equated with termination of corporate existence. 16A FLETCHER, supra note 101, § 7966.

105 16A FLETCHER, supra note 101, § 7986.

106 See id. § 7966. Delaware General Corporate Law indicates that a dissolved corporation continues to exist for three years after dissolution. DEL. CODE ANN. tit. 8, § 278 (2011). Other states have similar statutes in place. See, e.g., 805 ILL. COMP. STAT. 5/12.80 (2012) (continuing existence for five years); N.Y. BUS. CORP. § 1006 (McKinney 2012) (continuing corporate existence for certain activities without any express time limitation).

107 16A FLETCHER, supra note 101, § 7966.

108 See id. §§ 8142, 8144.40, 8158.
ty.110 A dissolved corporation, however, does not continue to exist in order to carry on the business that it conducted prior to dissolution.111

B. The Principal Place of Business Problem: Dissolved and Inactive Corporations Prior to Hertz

When articulating in 28 U.S.C. § 1332(c)(1) that a corporation is a citizen of both its incorporating states and its principal place of business, Congress did not expressly indicate whether these are conjunctive requirements.112 Generally, jurisdictional rules are strictly construed to limit the circumstances under which diversity jurisdiction can be invoked.113 Although the use of conjunctive “and” in a statute generally indicates that all requirements must be met, articulated requirements may be read as disjunctive alternatives if doing so is more consistent with context and congressional intent.114 A court is unlikely to interpret “and” as disjunctive, however, unless a conjunctive reading of the statute

110 Id. § 8142; see, e.g., DEL. CODE ANN. tit. 8, § 278 (“All corporations . . . shall nevertheless be continued . . . for the purpose of prosecuting and defending suits . . . .”); 805 ILL COMP. STAT. 5/12.30(a)(5) (2012) (same); N.Y. BUS. CORP. § 1006(a)(4) (same).

111 DEL. CODE ANN. tit. 8, § 278; see also 805 ILL COMP. STAT. 5/12.30(a) (“[A] dissolved corporation shall not thereafter carry on any business except that necessary to wind up . . . .”); N.Y. BUS. CORP. § 1006(a) (indicating that a dissolved corporation only continues to exist to wind up the corporation’s affairs).

112 See 28 U.S.C. § 1332(c)(1) (2012). Congress’s use of the word “and” in § 1332(c)(1) does not necessarily indicate intent for the requirements to be conjunctive. See Slodov v. United States, 436 U.S. 238, 247 (1978) (analyzing congressional intent even though “and” appeared in a federal tax statute); see also Reese Bros., Inc. v. United States, 447 F.3d 229, 235 (3d Cir. 2006) (observing that the word “and” is not always used conjunctively). Interpreting a statute as establishing disjunctive alternative requirements is sometimes more consistent with the context of the statute. See Slodov, 436 U.S. at 247, 251.


114 Compare Crooks v. Harrelson, 282 U.S. 55, 58 (1930) (holding that “and” is ordinarily conjunctive when utilized in a statute), Johnson v. Advance Am., 549 F.3d 932, 935 (4th Cir. 2008) (analyzing § 1332(c)(1) and concluding that the “statute’s use of the conjunctive gives dual, not alternative, citizenship”), Reese Bros., 447 F.3d at 235–36 (“The usual meaning of the word ‘and’ . . . is conjunctive . . . .”), and 1 A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 21:14 (6th ed. 2006) (“Statutory phrases separated by the word ‘and’ are usually interpreted in the conjunctive.”), with OfficeMax, Inc. v. United States, 428 F.3d 583, 589 (6th Cir. 2005) (explaining that “and” can be interpreted as disjunctive if it is more consistent with congressional intent).
is irrational. Consequently, courts have disagreed about whether there might be circumstances when, based on either the context or congressional intent, a particular type of corporation is a citizen of only its incorporating state.

Applying § 1332(c)(1) prior to *Hertz*, courts established three main approaches to determine the principal place of business of dissolved and inactive corporations. Rather than apply one of the complex principal place of business tests that were utilized for active corporations, the courts frequently applied a distinct inquiry.

1. Last Business Transaction Approach: Principal Place of Business as a Prerequisite for Diversity Jurisdiction

The “last business transaction” approach established in the U.S. Courts of Appeals for the Second Circuit required that an existing corporation, even a dissolved or an inactive one, retain dual citizenship. This approach interprets 28 U.S.C. § 1332(c)(1) as establishing the state of incorporation and principal place of business as two conjunctive requirements for each diversity jurisdiction inquiry. In this circuit, a dissolved or inactive corporation is deemed a citizen of the place that it last transacted business while it was active or, alternatively, the place in which it last had its principal place of business.

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115 See *Slodov*, 436 U.S. at 246–47; *Crooks*, 282 U.S. at 55; *OfficeMax*, 428 F.3d at 589 (observing that courts only interpret “and” as disjunctive “to avoid an incoherent reading of a statute”); see also *Sosa v. Chase Manhattan Mortg. Corp.*, 348 F.3d 979, 981, 983 (11th Cir. 2003) (concluding that “and” should be interpreted disjunctively to prevent “irrational results”).


117 See 15 MOORE ET AL., supra note 53, § 102.56[3]; infra notes 119–145 and accompanying text (discussing these pre-*Hertz* approaches in detail).

118 See, e.g., *Wm. Passalacqua*, 933 F.2d at 141 (assessing the place of the corporation’s last business transaction without mentioning any of the principal place of business tests); SEG Vanguard Gen. Corp. v. Ji, 195 F. Supp. 2d 564, 568 (S.D.N.Y. 2002) (discussing the principal place of business tests only after first determining that SEG Vanguard was an active corporation).

119 *Pinnacle Consultants, Ltd. v. Leucadia Nat’l Corp.*, 101 F.3d 900, 907 (2d Cir. 1996). Additionally, although the U.S. Court of Appeals for the Ninth Circuit has not yet expressly addressed this issue, a district court within the Ninth Circuit deemed a dissolved or inactive corporation a citizen of the place where it last had a principal place of business. See *China Basin Props., Ltd. v. One Pass, Inc.*, 812 F. Supp. 1038, 1040 (N.D. Cal. 1993).

120 *Circle Indus. USA, Inc. v. Parke Constr. Grp., Inc.*, 183 F.3d 105, 108 (2d Cir. 1999); *China Basin*, 812 F. Supp. at 1040 (explaining that § 1332 requires a finding of “the corporation’s place of incorporation and its principal place of business”).

121 *Wm. Passalacqua*, 933 F.2d at 141; *China Basin*, 812 F. Supp. at 1040. Often, but not always, these two places are the same. See *Wm. Passalacqua*, 933 F.2d at 141. The Second Circuit reasoned that a corporation’s citizenship is not altered by conducting a lawsuit or continuing to receive mail, as
This rule reflects the reality that a dissolved or inactive corporation might still retain a local character.\(^{122}\) Thus, eliminating the principal place of business citizenship requirement would provide these corporations with an undeserved federal forum.\(^{123}\) The approach has been criticized, however, on the grounds that considering a corporation’s pre-lawsuit activities improperly extends beyond the scope of the jurisdictional inquiry.\(^{124}\) Further, this rule may make a corporation a citizen of a state that it would not have been a citizen of prior to dissolution or inactivity.\(^{125}\) Finally, when a corporation has been inactive for a substantial length of time—and thus may have lost its local identity in the location of its principal place of business while active—applying this rule could deny a federal forum to what has essentially become a foreign corporation.\(^{126}\)

2. Bright Line Approach: Ceasing Activities Strips Dual Citizenship

At the opposite extreme, the U.S. Court of Appeals for the Third Circuit established a “bright line” rule that a dissolved or inactive corporation does not have a principal place of business and thus is only a citizen of its incorporating state.\(^{127}\) This approach rejects the notion that 28 U.S.C § 1332(c)(1) requires identification of a principal place of business for all corporations if such a place does not in fact exist.\(^{128}\) Further, to avoid inquiry into pre-lawsuit activities do not constitute transacting business. See Circle Indus., 183 F.3d at 108; Wm. Passalacqua, 933 F.2d at 141.

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\(^{122}\) See Wm. Passalacqua, 933 F.2d at 141.

\(^{123}\) See id. Allowing a federal forum would seem to undercut Congress’s intent when it amended 28 U.S.C. § 1332(c)(1) to indicate that a corporation is a citizen of its principal place of business. China Basin, 812 F. Supp. at 1040; see also S. REP. NO. 1830, at 4 (1958), reprinted in 1958 U.S.C.C.A.N. 3099, 3101–02 (explaining that § 1332 was amended in response to the illogic of allowing a corporation to obtain a federal forum in the state where it had its principal place of business).

\(^{124}\) See Athena Auto., 166 F.3d at 290–91 (explaining that subject matter jurisdiction is determined only based on the citizenship of the parties at the commencement of a case (citing Freeport-McMoRan, Inc. v. K N Energy, Inc., 498 U.S. 426, 428 (1991)).

\(^{125}\) Harris v. Black Clawson Co., 961 F.2d 547, 551 (5th Cir. 1992) (characterizing this possibility as an “odd result”); see Yuncker, supra note 15, at 830 (criticizing the last business transaction approach because it could afford a corporation an undeserved federal forum). For example, this would occur if, just before becoming inactive, the corporation obtained a final judgment on an arbitration award in a state other than its incorporating state or the location of its headquarters. See Wm. Passalacqua, 933 F.2d at 133 (concluding that a construction contract and preliminary construction work was sufficient activity to create a principal place of business).

\(^{126}\) Sports Shinko Co. v. QK Hotel, LLC, 486 F. Supp. 2d 1168, 1177 (D. Haw. 2007). Precluding access to federal courts does not adequately protect a corporation that has been inactive for many years prior to dissolution as this corporation has essentially become a foreign corporation that may experience prejudice in local courts. See id.

\(^{127}\) See, e.g., Grand Union, 316 F.3d at 411; Hansen, 48 F.3d at 696.

\(^{128}\) Grand Union, 316 F.3d at 411 (reasoning that a corporation must actually conduct business in order to have a principal place of business); Hansen, 48 F.3d at 696 (same).
ties, the bright line rule rejects any consideration of past transactions. Instead, courts utilizing this approach emphasize that a corporation is “a citizen of the state in which it has its principal place of business,” rather than the state in which it “has or has had” its principal place. In effect, the bright line rule that a dissolved or inactive corporation lacks a principal place of business creates a jurisdictional rule that is simple and predictable.

Despite these benefits, this approach may allow a once local corporation to nevertheless avail itself of a federal forum. The rule can be particularly problematic, as it could provide an undeserved federal forum to a local corporation “the day after it ceased business activities.” For example, application of the bright line rule could enable a corporation to have access to a federal court in the jurisdiction where it previously had its principal place of business. The bright line rule has thus been criticized as contrary to Congress’s intent to limit federal diversity jurisdiction to parties that are truly from different states.

3. Finding the Middle Ground: Case-by-Case Analysis to Determine Principal Place of Business

Recognizing the drawbacks of the two extremes, the U.S. Courts of Appeals for the Fourth and Fifth Circuits established a case-by-case analysis to

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129 See Grand Union, 316 F.3d at 410 (explaining that citizenship is determined at the time of the complaint); Hansen, 48 F.3d at 696 (same).

130 See Hansen, 48 F.3d at 698 (internal quotation marks omitted); id. (reasoning that the plain meaning of the statute supports the bright line rule); see also Grand Union, 316 F.3d at 411 (explaining that a corporation only has a principal place of business to the extent that it exists in reality).

131 See Grand Union, 316 F.3d at 411 (emphasizing the benefits of certainty and clarity); Hansen, 48 F.3d at 698 (same).

132 See Sports Shinko, 486 F. Supp. 2d at 1178; see also Hansen, 48 F.3d at 700–01 (Seitz, J., dubitante) (noting that the bright line rule is simple and “may reflect the reality that an inactive corporation has no business activities” but that it “seems to run counter to the congressional purpose”); Yuncker, supra note 15, at 832 (explaining that the bright line approach enables corporations to have access to a federal court in a jurisdiction where it previously had its principal place of business).

133 Sports Shinko, 486 F. Supp. 2d at 1178 (arguing that this advantage “may subvert the intent of Congress” because § 1332(c) was amended to prevent this result); see also Yuncker, supra note 15, at 832 (arguing that the bright line approach is particularly illogical where a corporation has been inactive for a short period of time).

134 See Hansen, 48 F.3d at 700–01 (Seitz, J., dubitante); Sports Shinko, 486 F. Supp. 2d at 1178; Yuncker, supra note 15, at 832.

135 See Patel v. Sugen, Inc., 354 F. Supp. 2d 1098, 1112 (N.D. Cal. 2005) (observing that the rule has “the disadvantage of expanding the scope of diversity jurisdiction”); Yuncker, supra note 15, at 833 (arguing that the bright line approach seems contrary to congressional intent, as it counteracts the purpose of the statute’s 1958 amendments). But see Grand Union, 316 F.3d at 412 (explaining that an inactive corporation “is in the same position as a foreign corporation in the eyes of the locality”).
determine whether a dissolved or inactive corporation conducts sufficient activity to render a particular state its principal place of business. Rather than focus on the intricacies of the terminology in 28 U.S.C. § 1332(c)(1), these courts preferred a flexible “facts and circumstances” approach. And although the last business transaction remained a relevant factor for the principal place of business under this approach, it was not determinative. These courts considered other factors, including whether the corporation continued to have “any local impact” on the public and the amount of time since its last business activity, both of which are relevant for finding corporate citizenship. Within this case-by-case assessment, courts carved out a safe harbor for corporations that had been inactive for a “substantial” period of time. Under this approach, a substantial period of inactivity rendered a corporation a citizen of only its incorporating state as a matter of law. Courts that applied this approach reasoned that substantial inactivity transformed a corporation, in essence, to an out-of-state citizen deserving of a federal forum.

A case-by-case analysis allowed courts to carry out Congress’s intent by limiting diversity jurisdiction. Further, assessing all of the facts and circumstances enabled conclusions that reflected a corporation’s activities and local character. This process, however, has been criticized as time-consuming and

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136 See Athena Auto., 166 F.3d at 291; Harris, 961 F.2d at 551. District courts within the Ninth Circuit have also adopted a case-by-case assessment in this context. See Sports Shinko, 486 F. Supp. 2d at 1177; Patel, 354 F. Supp. 2d at 1112.
137 See Athena Auto., 166 F.3d at 291–92; Harris, 961 F.2d at 551.
138 See Harris, 961 F.2d at 551 (reasoning that treating the last business transaction as a non-determinative factor would avoid potentially odd results).
139 Athena Auto., 166 F.3d at 291–92 (explaining that an inactive corporation could have a “continuing impact . . . sufficient to give it a geographical identity there”); see Harris, 961 F.2d at 551 (considering these factors).
140 See Athena Auto., 166 F.3d at 291–92 (concluding that three years was “substantial”); Harris, 961 F.2d at 551 (holding that five years was “substantial”); cf. Sports Shinko, 486 F. Supp. 2d at 1181 (finding that less than two years was not “substantial”). Under this approach, the question of whether a period was sufficiently “substantial” for jurisdictional purposes was decided on a case-by-case basis. See Sports Shinko, 486 F. Supp. 2d at 1176.
141 See Athena Auto., 166 F.3d at 291–92; Harris, 961 F.2d at 551; Sports Shinko, 486 F. Supp. 2d at 1178.
142 Athena Auto., 166 F.3d at 291–92; Harris, 961 F.2d at 551.
143 See Athena Auto., 166 F.3d at 292; Harris, 961 F.2d at 551.
144 See Athena Auto., 166 F.3d at 291 (“[A] court must analyze the facts of each case to determine . . . [whether] activity was sufficient to make it a citizen of the state of such activity.”); Harris, 961 F.2d at 551 (reasoning that this approach is best suited to reflect the location where a corporation’s principal place of business was actually located).
unpredictable, as it was unclear which activities the court would prioritize and how much time would be deemed “substantial.”

III. Hertz’sImplications for Dissolved and Inactive Corporations

By adopting the nerve center test for determining principal place of business under 28 U.S.C. § 1332(c) to the exclusion of all prior approaches, the Supreme Court’s 2010 Hertz Corp. v. Friend decision altered the corporate citizenship analysis. After Hertz, a court can no longer simply rely on the principal place of business test previously adopted within its circuit. Instead, courts must consider whether and to what extent Hertz controls or is relevant to the citizenship question.

Because the Hertz Court did not explicitly carve out any exceptions to the nerve center test, however, the scope of the ruling remains unclear. Although the Court indicated that the nerve center test is the sole method for determining a corporation’s principal place business, perhaps the Court did not intend for the test to apply, or intended that it be applied differently, to corporations that do not easily fit under a nerve center test. Specifically, the impact of Hertz’s nerve center test for dissolved and inactive corporations is unclear, especially given the circuit split that had previously developed in this context.

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145 See Patel, 354 F. Supp. 2d at 1112 (explaining that this case-by-case assessment carries out Congress’s intent “at the expense of definiteness”); Yuncker, supra note 15, at 831–32 (observing that the outcome of the “substantial” analysis is unclear).

146 See 559 U.S. 77, 92–93 (2010); see also LanLogistics Petition, supra note 11, at 23 (arguing that the nerve center test was intended as a uniform rule applicable to all corporate citizenship determinations); Chaplin, supra note 10, at 92–93 (suggesting that although the Hertz Court intended a uniform rule to apply to all corporations, it is unclear how the nerve center test will be applied in unorthodox circumstances).

147 See 559 U.S. at 92 (adopting the nerve center test as the exclusive test for a corporation’s principal place of business); see also Marion Cnty. Econ. Dev. Dist. v. Wellstone Apparel, LLC, No. 2:13-CV-44-KS-MTP, 2013 WL 3328690, at *3–4 (S.D. Miss. July 2, 2013) (applying the nerve center test to a dissolved corporation rather than one of the pre-Hertz approaches).

148 See Holston Invs., Inc. B.V.I. v. LanLogistics Corp., 677 F.3d 1068, 1071 (11th Cir.) (holding that Hertz is relevant, but not binding for dissolved and inactive corporations and thereafter proceeding to apply the bright line approach), cert. dismissed, 133 S. Ct. 499 (2012); Wellstone Apparel, 2013 WL 3328690, at *3–4 (holding that Hertz controls the question of principal place of business for dissolved corporations).

149 See Chaplin, supra note 10, at 97 (arguing that for nontraditional corporations, it is unclear whether courts will “employ a traditional and more flexible nerve center test” or whether courts will “take a wooden approach to the nerve center test”).

150 See id. at 94 (suggesting the possibility of a more flexible application of the nerve center test in unorthodox circumstances).

151 Cf. 559 U.S. at 92 (adopting the nerve center test without mentioning the longstanding circuit split regarding treatment of dissolved and inactive corporations). See generally supra notes 112–145 and accompanying text (expounding upon this circuit split). Courts have since reached opposing con-
Given the unambiguous intent for a “more uniform interpretation” in

*Hertz*, the nerve center test fundamentally alters the citizenship analysis for dissolved and inactive corporations.152 Prior to *Hertz*, the citizenship analysis for inactive or dissolved corporations was inconsistent, as it varied among the federal appeals courts.153 Thus, by articulating the need for a uniform approach, the *Hertz* Court necessitates a reexamination of the corporate citizenship question in this context.154

This Part examines the impact of *Hertz* on the various approaches for determining the principal place of business of dissolved and inactive corporations.155 First, Section A considers the scope of the *Hertz* decision and concludes that the nerve center test applies to every corporation, regardless of its active status.156 Section B then discusses *Hertz*’s significance for the previously utilized tests in this context, concluding that *Hertz* likely implicitly overrules each of them.157

### A. The Applicability and Significance of *Hertz*

The *Hertz* Court expressly adopted the nerve center test and emphasized the need for jurisdictional predictability and administrative simplicity.158 In so holding, the Court declined to provide guidance to courts attempting to apply the rule in atypical cases.159 Specifically, the *Hertz* Court did not indicate the

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152 See 559 U.S. at 95–96; see also Chaplin, *supra* note 10, at 92 (arguing that despite the rule’s intended simplicity, “reasonable people will disagree about how to apply the new rule and the standards used to determine whether such rule has been met”). Although the Court acknowledged the existence of other “hard cases,” this Note focuses only on *Hertz*’s implications for dissolved and inactive corporations. See *infra* notes 186–234 and accompanying text.

153 See, e.g., Grand Union Supermarkets of the V.I., Inc. v. H.E. Lockhart Mgmt., Inc. 316 F.3d 408, 411 (3d Cir. 2003) (holding that a dissolved or inactive corporation does not have a principal place of business); Athena Auto., Inc. v. DiGregorio, 166 F.3d 288, 291 (4th Cir. 1999) (considering whether a particular inactive or dissolved corporation conducts sufficient activity to establish a principal place of business); Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc., 933 F.2d 131, 141 (2d Cir. 1991) (assessing the place of the corporation’s last business transaction to determine its principal place of business); *supra* notes 112–145 and accompanying text.

154 See 559 U.S. at 95–96; Chaplin, *supra* note 10, at 97 (arguing that it is unclear how courts will apply the nerve center test in unconventional contexts).

155 See *infra* notes 186–234 and accompanying text.

156 See *infra* notes 186–234 and accompanying text.

157 See *infra* notes 112–145 and accompanying text.

158 See 559 U.S. at 94–95; accord Deverell, *supra* note 73, at 754 (explaining that the nerve center test provides certainty regarding corporate citizenship).

159 See *Hertz*, 559 U.S. at 95–96 (acknowledging the existence of “hard cases” when applying the nerve center test without elaborating on the appropriate approach for courts in these circumstances).
extent to which the nerve center test overruled the existing circuit split regarding a dissolved or inactive corporation’s principal place of business.\textsuperscript{160}

By expressly adopting the nerve center test without providing guidance for “hard cases,” the\textit{Hertz} decision left open the question of whether the test applies to dissolved and inactive corporations.\textsuperscript{161} Nevertheless, the\textit{Hertz} Court likely intended the nerve center test to apply to every corporation, regardless of its active or inactive status, because a broad application is consistent with both the absence of statutory exceptions and the fact that the Court did not expressly exempt any corporations in “hard cases.”\textsuperscript{162}

First, reading an exception into diversity jurisdiction for dissolved and inactive corporations lacks statutory support.\textsuperscript{163} Despite the variety of corporate structures that exist, Congress did not indicate any exceptions within the text of 28 U.S.C. § 1332(c)(1).\textsuperscript{164} Moreover, when amending the statute, Congress intended to establish a citizenship rule that is easily administered.\textsuperscript{165} Interpreting the word “and” in § 1332(c)(1) as establishing conjunctive requirements, and thus a principal place of business determination for all corporations, accomplishes this intended simplicity.\textsuperscript{166}

\begin{itemize}
\item \textsuperscript{160}See 559 U.S. at 95–96 (declining to mention the impact of the nerve center test on existing case law regarding dissolved and inactive corporations).
\item \textsuperscript{161}See id. at 94–95 (adopting the nerve center test but omitting any mention of dissolved or inactive corporations). Importantly, recall that prior to\textit{Hertz}, not only did the federal courts impose disparate tests to determine a standard corporation’s principal place of business, see supra notes 53–70 and accompanying text, but these courts also imposed wholly different tests in the event that a corporation was deemed inactive or dissolved, see supra notes 117–145 and accompanying text. In fact, at least one scholar has gone so far as to argue that even after the\textit{Hertz} nerve center test, the pre-\textit{Hertz} approaches to the citizenship of dissolved and inactive corporations “remain the law in their respective jurisdictions for the foreseeable future.” William D. Bolling III,\textit{Diversity Jurisdiction—Does a Dissolved Corporation Have a Principal Place of Business?}—Holston Investments, Inc. B.V. I. v. LanLogistics Corp., 677 F.3d 1069 (11th Cir. 2012), 37 AM. J. TRIAL ADVOC. 241, 246 (2013).
\item \textsuperscript{162}See infra notes 163–172 and accompanying text.
\item \textsuperscript{163}See 28 U.S.C. § 1332(c)(1) (2012) (stating, without express limitation, that a corporation is deemed a citizen of its principal place of business).
\item \textsuperscript{164}See id. Congress’s silence in this regard is arguably significant, as Congress—in enacting the statute—was aware of the variations in corporate structures. See S. REP. NO. 1830, at 4 (1958), reprinted in 1958 U.S.C.C.A.N. 3099, 3101–02 (acknowledging the distinction between the corporate form and individuals and suggesting that the strategic differences drove the decision to amend § 1332(c)); cf. Daniel L. Rotenberg,\textit{Congressional Silence in the Supreme Court}, 47 U. MIAMI L. REV. 375, 386 (1992) (“[Congressional] silence has meaning in the interpretative process, but what it means will vary from case to case.”).
\item \textsuperscript{165}See 13F WRIGHT & MILLER, supra note 32, § 3625; see also supra notes 36–47 and accompanying text (discussing Congress’s intent when amending § 1332).
\item \textsuperscript{166}Compare 13F WRIGHT & MILLER, supra note 32, § 3625 (illustrating that by linking a corporation’s principal place of business to the existing analysis under the Bankruptcy Act, Congress in-
\end{itemize}
Second, carving out exceptions to the nerve center test may be inconsistent with *Hertz*. The *Hertz* Court adopted a bright line test and did not exempt specific categories of corporations on the grounds that they lack a principal place of business. The omission of any articulated exemptions suggests the broad applicability of the nerve center test to all citizenship determinations. Indeed, the Court’s emphasis on simplicity and predictability illustrates an intent to establish a single test applicable to all corporations. Moreover, *Hertz*’s silence on this issue is significant, as the Court had an opportunity—when defining principal place of business—to clarify the scope of the statutory requirement. Because the Court did not indicate that 28 U.S.C. § 1332(c)(1) should be interpreted more narrowly than is explicitly indicated in the statute, it can be inferred that lower courts should refrain from limiting the application of the principal place of business requirement.

Conversely, the nerve center test may not apply to dissolved and inactive corporations, although this alternative is ultimately less compelling. First, the fact that dissolved and inactive corporations do not have a physical principal place of business may suggest that they are only citizens of their incorpo-
rating states and thus that the nerve center test does not apply to them.\textsuperscript{174} Some courts have reasoned that these corporations do not conduct business activities and therefore do not have a principal place of business.\textsuperscript{175} By this logic, because dissolved and inactive corporations are only citizens of their incorporating states, \textit{Hertz}’s nerve center holding may not have any impact on those corporations or the circuit split that had developed in this context.\textsuperscript{176} Congress’s intended administrative simplicity when amending corporate citizenship rules, however, suggests that this disjunctive analysis overcomplicates the matter.\textsuperscript{177} Moreover, the use of the conjunctive “and” in the statute suggests a single approach for all citizenship determinations, rather than a threshold analysis of a corporation’s active status.\textsuperscript{178}

\begin{footnotesize}
\begin{enumerate}
\item See \textit{Hertz}, 559 U.S. at 94–95 (recognizing the existence of “hard cases” and suggesting that a corporation’s nerve center—rather than a mailbox or an empty office—must be its true center of control); see also \textit{Holston}, 677 F.3d at 1071 (reasoning that the \textit{Hertz} nerve center test does not apply when a corporation is not active); SEG \textit{Vanguard}, 195 F. Supp. 2d at 568 (assuming that only an active corporation has a principal place of business). In the congressional hearings when § 1332(c) was adopted, a Judicial Conference representative observed that, “in some situations[,] it might not be possible to identify a principal place of business.” See Jack H. Friedenthal, \textit{New Limitations on Federal Jurisdiction}, 11 STAN. L. REV. 213, 224 (1959). This observation indicates that perhaps Congress anticipated exceptions to dual citizenship. See \textit{id}.
\item See, e.g., \textit{Grand Union}, 316 F.3d at 411 (reasoning that if a corporation does not conduct any activities, it cannot have a principal place of business); Midlantic Nat’l Bank v. Hansen, 48 F.3d 693, 698 (3d Cir. 1995) (same).
\item See \textit{Holston}, 677 F.3d at 1071 (declining to apply the \textit{Hertz} nerve center test, reasoning that a dissolved corporation does not have a principal place of business and is thus a citizen of only its incorporating state); Notice of Removal of Defs. Red Strokes Entertainment, Inc. and Garth Brooks Pursuant to 28 U.S.C. § 1441(a) (Diversity of Citizenship) at 5–6, Sanderson v. Brooks, No. 2:13CV03497 (C.D. Cal. May 15, 2013), 2013 WL 2296383 [hereinafter Red Strokes Notice of Removal] (following \textit{Holston} and holding that an inactive corporation is only a citizen of its incorporating state); Bolling, supra note 161, at 246 (assuming that the pre-\textit{Hertz} state of the law remains in the context of dissolved and inactive corporations); see also Pl.’s Mem. in Opp’n to Def.’s Mot. to Vacate Final J. and Dismiss for Lack of Subject Matter Jurisdiction at 8, Holston Invs. Inc. B.V. v. LanLogistics, Corp., No. 08–21569–CIV–Moreno/Torres (S.D. Fla. June 18, 2010), 2010 WL 3899814 [hereinafter Holston Memorandum] (suggesting that \textit{Hertz} was merely persuasive authority in this context, as it did not involve the citizenship of a dissolved or inactive corporation).
\item See 13F WRIGHT & MILLER, supra note 32, § 3625 (explaining that by linking a corporation’s principal place of business to the existing analysis under the Bankruptcy Act, Congress intended to create a rule that would be relatively simple for federal courts to apply); see also 28 U.S.C. § 1332(c)(1) (2012) (stating, without express limitation, that a corporation is deemed a citizen of its principal place of business); S. REP. No. 1830, at 4 (1958), reprinted in 1958 U.S.C.C.A.N. 3099, 3101–02 (explaining that § 1332 was amended in response to the illogic of allowing a corporation to obtain a federal forum in the state where it had its principal place of business).
\item See S. REP. No. 1830, at 5 (discussing the principal place of business amendment to § 1332(c) in terms of corporations generally without mentioning any exceptions); 13F WRIGHT & MILLER, supra note 32, § 3625; see also Johnson v. Advance Am., 549 F.3d 932, 936 (4th Cir. 2008) (“The statute’s use of the conjunctive gives dual, not alternative, citizenship . . . .”).
\end{enumerate}
\end{footnotesize}
Second, even if a dissolved or inactive corporation is in fact a citizen of a principal place of business, the *Hertz* Court may nevertheless have intended the nerve center test to apply to only active corporations.\(^{179}\) The phrase “principal place of business” in 28 U.S.C. § 1332(c)(1) could be interpreted in the colloquial notion of the phrase, rather than as a jurisdictional term of art.\(^{180}\) If Congress intended principal place of business to refer to a corporation’s actual physical location, a distinct test would need to be applied in contexts where the location is not obvious—e.g., when a corporation is inactive or dissolved.\(^{181}\) It is possible, however, to reconcile a colloquial interpretation of principal place of business with the nerve center test articulated in *Hertz*.\(^{182}\) Although an inactive or dissolved corporation often does not have a traditional headquarters as contemplated in *Hertz*, it does not necessarily follow that such a corporation does not have a nerve center.\(^{183}\) Instead, it is more likely that the exclusive test

\(^{179}\) Cf. Holston, 677 F.3d at 1071 (holding that the *Hertz* nerve center test did not control the citizenship of dissolved and inactive corporations); Mamco Corp. v. Carlisle Cos., No. 10-C-0124, 2011 WL 13646, at *1–2 (E.D. Wis. Jan. 4, 2011) (concluding that the nerve center test applies only to active corporations); see also Holston Memorandum, *supra* note 176, at 8 (suggesting that *Hertz* was merely persuasive authority in this context, as it did not involve the citizenship of a dissolved or inactive corporation).

\(^{180}\) Cf. Hansen, 48 F.3d at 698 (concluding that courts should not strain to find a principal place of business if one does not in fact exist). Notably, the Supreme Court concluded that the phrase “principal place of business” under the Bankruptcy Act should be interpreted as referring to “the common acception of the phrase.” Royal Indem. Co. v. Am. Bond & Mortg. Co., 289 U.S. 165, 169 (1933). Despite this interpretation under the Bankruptcy Act, courts struggled to identify the principal place of business that Congress intended to recognize. See, e.g., *In re* Peachtree Lane Assoc., 150 F.3d 788, 794 (7th Cir. 1998) (explaining that it was unclear whether an entity’s principal place of business under the Bankruptcy Act is the location of its daily operations or where major business decisions are made); *In re* Commonwealth Oil Refining Co., 596 F.2d 1239, 1245–47 (5th Cir. 1979) (analyzing the principal place of business requirement under the Bankruptcy Act and concluding that it is likely the location of a corporation’s “general supervision,” rather than the location of its physical assets); *In re* Eagle Point Ltd. Dividend Hous. P’ship, 350 B.R. 84, 89 (Bankr. N.D. Ind. 2006) (characterizing the Fifth Circuit’s holding as the nerve center analysis and concluding that a corporation’s principal place of business was located in the location where major decisions are made and agreements are negotiated).

\(^{181}\) See *Mamco*, 2011 WL 13646, at *1–2. The U.S. District Court for the Eastern District of Wisconsin in its 2011 decision *Mamco Corp. v. Carlisle Companies* interpreted *Hertz* as narrowly applying to only active corporations. *Id.* Determining that the corporation was inactive, the court applied an activity-based test rather than the nerve center test. See *id.* at *2–3.

\(^{182}\) Cf. 28 U.S.C. § 1332(c)(1) (2012) (providing that a corporation is a citizen of the state in which it “has its principal place of business” (emphasis added)); *Hertz*, 559 U.S. at 92 (holding that a corporation’s nerve center is its “actual center of direction, control, and coordination”); *Hansen*, 48 F.3d at 698 (reasoning that a plain meaning interpretation of 28 U.S.C. § 1332(c)(1) suggests congressional intent to identify a corporation’s current principal place of business).

\(^{183}\) See *Mamco*, 2011 WL 13646, at *3 (holding that a corporation in the process of dissolving has its principal place of business where its wind up activities are conducted); LanLogistics Petition, *supra* note 11, at 23 (arguing that a dissolved corporation’s nerve center should be the location where the corporation is conducting litigation and wind up activities).
adopted in *Hertz* modified the analysis for all corporations and requires locating the nerve center to determine a corporation’s citizenship.184 In the dissolved and inactive corporation context, though, a corporation’s nerve center may ultimately point to a different location than a traditional headquarters.185

**B. Determining the Nerve Center of Dissolved and Inactive Corporations**

The nerve center test articulated in *Hertz* has implications for each of the principal place of business approaches that had previously developed for dissolved and inactive corporations.186 The *Hertz* Court held that the nerve center test is the exclusive test under 28 U.S.C. § 1332(c)(1), rejecting the activity-based jurisdictional tests that had previously been applied to active corporations.187 When determining the citizenship of inactive or dissolved corporations, however, federal appeals courts applied a distinct analysis.188 The *Hertz* Court did not refer to the various approaches applied to these corporations, but simply chose the nerve center test as the proper analysis for determining the principal place of business.189

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184 See 559 U.S. at 92 (adopting the nerve center test to the exclusion of all other prior principal place of business tests without indicating any exceptions); *Wellstone Apparel*, 2013 WL 3328690, at *3–4 (applying the nerve center test to a dissolved corporation and assessing the location of “overall direction, control, and coordination”); *Leatherman v. Cabot Oil & Gas Corp.*, No. 12–3783, 2013 WL 1285491, at *1 (E.D. Pa. Mar. 29, 2013) (applying the nerve center test to an inactive corporation).

185 See *Athena Auto.*, 166 F.3d at 292 (contemplating that an inactive or dissolved corporation’s nerve center could change); *LanLogistics Petition*, supra note 11, at 23 (indicating that a dissolved corporation’s nerve center could be the place where wind up activities are conducted); see also *Hertz*, 559 U.S. at 92, 94–95 (emphasizing simplicity and predictability as the driving justifications for the nerve center test). Importantly, when articulating the nerve center test, the *Hertz* Court acknowledged the existence of “hard cases.” See 559 U.S. at 95–96. Specifically, the Court provided two examples of “hard cases”: (1) a corporation with its headquarters in one state but visible activities in another, and (2) a corporation that decentralizes its nerve center functions and divides them among several states. *Id.* The Court’s examples of “hard cases” indicate that what constitutes the nerve center will vary in different contexts. See id.

186 See 559 U.S. at 92 (adopting the nerve center test to achieve a “more uniform interpretation of the statutory phrase”); *LanLogistics Petition*, supra note 11, at 7–8 (arguing that *Hertz* abrogated the bright line test for dissolved and inactive corporations, as this approach was premised on the corporate activities test that the Court expressly rejected).

187 See 559 U.S. at 92 (concluding that the nerve center test is the sole means for determining a corporation’s principal place of business and rejecting the other “divergent and increasingly complex interpretations”).

188 See, e.g., *Grand Union*, 316 F.3d at 411 (holding that an inactive or dissolved corporation does not have a principal place of business); *Athena Auto.*, 166 F.3d at 291 (conducting a case-by-case analysis to determine whether a corporation conducts sufficient activity to have a principal place of business); *Wm. Passalacqua*, 933 F.2d at 141 (assessing the place of the corporation’s last business transaction without mentioning any of the principal place of business tests).

189 See 559 U.S. at 92, 95 (adopting the nerve center test as the exclusive test and recognizing the existence of “hard cases” without expressly referring to inactive or dissolved corporations); see also...
It is unclear whether the pre-\textit{Hertz} tests for dissolved and inactive corporations survive the Supreme Court’s articulation of the nerve center test.\footnote{Cf. 559 U.S. at 92 (holding that the nerve center test is the exclusive principal place of business test).} Indeed, the circuit split that developed in this context was largely grounded in the activity-based jurisdictional tests that \textit{Hertz} expressly overruled.\footnote{See \textit{LanLogistics Petition}, \textit{supra} note 11, at 7–8 (recognizing that \textit{Hertz} did not involve a dissolved corporation and that the Court did not refer to inactive or dissolved corporations in its decision).} Although the \textit{Hertz} decision has different implications for each of the approaches to determining the principal place of business of inactive or dissolved corporations, it likely overrules each of them.\footnote{See infra notes 193–234 and accompanying text.}

1. Last Business Transaction Approach

After \textit{Hertz}, the last business transaction approach is flawed, as it is inconsistent with the Court’s express holding.\footnote{See 559 U.S. at 92; see also \textit{LanLogistics Petition}, \textit{supra} note 11, at 23 (arguing that the last business transaction rule fails to locate a dissolved or inactive corporation’s nerve center at the time of the complaint).} The \textit{Hertz} Court defined nerve center as a corporation’s “\textit{actual} center of direction, control, and coordination.”\footnote{559 U.S. at 92 (emphasis added). Other courts analyzing a corporation’s principal place of business after \textit{Hertz} have reasoned that the presently active center of control should be determinative for diversity purposes. \textit{See Wellstone Apparel}, 2013 WL 3328690, at *3–4 (analyzing the nerve center functions of an administratively dissolved corporation that was continuing to operate); \textit{Letherman}, 2013 WL 1285491, at *1 (examining the control functions of an inactive corporation to locate its nerve center).} Equating a dissolved or inactive corporation’s principal place of business with the location of its most recent business transaction while it was active will often fail to locate its center of direction and control that \textit{actually exists} after the change in active status.\footnote{See \textit{LanLogistics Petition}, \textit{supra} note 11, at 7–8 (recognizing that \textit{Hertz} did not involve a dissolved corporation and that the Court did not refer to inactive or dissolved corporations in its decision).} A corporation’s last business transaction could occur in any location—it is not limited to the location of its most recent

\textit{LanLogistics Petition}, \textit{supra} note 11, at 7–8 (recognizing that \textit{Hertz} did not involve a dissolved corporation and that the Court did not refer to inactive or dissolved corporations in its decision).
principal place of business.\textsuperscript{196} When the last transaction occurred in a location other than the corporation’s most recent headquarters, this approach would produce a result that is inconsistent with \textit{Hertz}’s intent for a predictable rule.\textsuperscript{197} Moreover, even if the last business transaction occurred at the most recent headquarters, the application of this rule would be inconsistent with the Court’s holding to the extent that the corporation’s headquarters has ceased to be the actual center of direction and control post-dissolution or inactivity.\textsuperscript{198}

Conversely, because \textit{Hertz} did not expressly abrogate the last business transaction test, it is possible that this approach partially survives the nerve center test.\textsuperscript{199} Particularly when the last business transaction occurs in the location of a corporation’s headquarters, this approach is simple to apply and leads to predictable results.\textsuperscript{200} Moreover, the approach is consistent with the conjunctive interpretation of 28 U.S.C. § 1332(c)(1), as equating the principal place of business with the location of its last business transaction would ensure

\textsuperscript{196} See Wm. Passalacqua, 933 F.2d at 133 (concluding that a construction contract and preliminary construction work was sufficient activity to create a principal place of business); see also Harris v. Black Clawson Co., 961 F.2d 547, 551 (5th Cir. 1992) (noting the possibility that this test could confer citizenship in a location where a corporation could not have been a citizen while active and characterizing this as an “odd result”); LanLogistics Petition, supra note 11, at 17–18 (explaining that the principal place of business under the last business transaction test is the location where a corporation most recently transacted business); Yuncker, supra note 15, at 830 (arguing that this approach could produce “absurd results”).

\textsuperscript{197} See 559 U.S. at 94–95 (emphasizing the importance of a simple, predictable rule). Moreover, applying the last principal place of business rule would be complex and unpredictable if a corporation had never been active. Cf. Noland v. Pelletier, No. 2:09-cv-02035-MCE-DAD, 2010 WL 1404621, at *2 (E.D. Cal. Apr. 6, 2010) (applying the bright line rule in this context).

\textsuperscript{198} See \textit{Hertz}, 559 U.S. at 92 (holding that the nerve center is the “actual center of direction, control, and coordination”); see also \textit{Wellstone Apparel}, 2013 WL 3328690, at *3–4 (focusing on the current location of the dissolved corporation’s center of direction and control).

\textsuperscript{199} See Circle Indus. USA, Inc. v. Parke Constr. Grp., Inc., 183 F.3d 105, 108 (2d Cir. 1999) (holding that the corporation was a citizen of the state in which it last transacted business); \textit{Wm. Passalacqua}, 933 F.2d at 141 (same); City of Syracuse v. Loomis Armored U.S., LLC, No. 5:11-cv-00744, 2011 WL 6318370, at *3–4 (N.D.N.Y. Dec. 15, 2011) (same). The U.S. District Court for the Northern District of New York in its 2011 decision in \textit{City of Syracuse v. Loomis Armored} equated the inactive corporation’s principal place of business with the location in which it last conducted business—its headquarters. 2011 WL 6318370, at *4. Although the court did not cite to \textit{Hertz} or use the term nerve center in its analysis, presumably the court would have reached the same result if it had applied \textit{Hertz}. See id.

\textsuperscript{200} Cf. \textit{Hertz}, 559 U.S. at 94–95 (emphasizing simplicity and predictability). Because the corporation’s principal place of business would remain unchanged from its nerve center while it was active, this rule would not require a more fact-based assessment than is necessary under the normal nerve center test. See id. Moreover, a corporation’s nerve center while active will often be easily identifiable, as it will generally be its most recent headquarters. See id. at 92.
that every corporation could meet the statutory requirements. 201 Continuing to apply this rule after Hertz will require new reasoning, however, as courts that applied this standard focused on the corporation’s most recent activity. 202 Further, the rule ceases to be simple or predictable in the event that the last transaction occurred in a location other than the location of the corporation’s most recent headquarters. 203 Given the possibility of absurd results, and because the rationale behind the rule is inconsistent with Hertz, the last business transaction approach most likely does not survive the Court’s articulation of the nerve center test. 204

2. Bright Line Approach: No Nerve Center in This Context

The bright line rule misinterprets § 1332(c)(1), conflicts with Hertz’s express holding, and is often neither simple nor predictable. 205 First, the bright line rule creates an exception to the conjunctive requirements of § 1332(c)(1) for an entire class of corporations, an exception that is not supported by the statute. 206 Indeed, the dual citizenship requirement reflects the reality that a corporation’s local presence can be sufficient to render it a citizen of more than one state. 207 The mere fact that a corporation has dissolved or become inactive

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201 See 28 U.S.C. § 1332(c)(1) (2012); see also China Basin, 812 F. Supp. at 1040 (interpreting the statute as consisting of two conjunctive requirements and equating an inactive corporation’s principal place of business with its last principal place of business while it was active).

202 See Holston, 677 F.3d at 1071 (criticizing the last principal place of business approach because it “focuses not on a corporation’s nerve center but where business was last conducted”); cf. Wm. Passetalacqua, 933 F.2d at 141 (applying the last principal place of business test and examining the activities that led to the litigation to determine citizenship).

203 See LanLogistics Petition, supra note 11, at 21 (indicating that there is confusion regarding the application of the last business transaction test); see also Hertz, 559 U.S. at 93–94 (emphasizing simplicity and predictability as the driving forces behind the nerve center test); Harris, 961 F.2d at 551 (characterizing this possibility as an “odd result”).

204 See LanLogistics Petition, supra note 11, at 7–8 (suggesting that approaches premised on activity-based analyses do not survive Hertz); see also Hertz, 559 U.S. at 92 (adopting the nerve center test and expressly overruling the activity-based tests).

205 See infra notes 206–228 and accompanying text.

206 See 28 U.S.C. § 1332(c)(1) (consisting of a conjunctive “and” rather than “or” and not explicitly indicating any exceptions to the rule); see also Yuncker, supra note 15, at 832 (“[D]isregarding the search for a principal place of business is strongly at odds with the requirement . . . of the place of incorporation as well as the principal place of business.”).

207 See S. REP. NO. 1830, at 4 (1958), reprinted in 1958 U.S.C.C.A.N. 3099, 3101–02 (explaining that § 1332 was amended in response to the illogic of allowing a corporation to obtain a federal forum in the state where it had its principal place of business); Levy, supra note 89, at 667–68 (explaining that Congress intended to prevent corporations with a local presence from invoking diversity jurisdiction in a federal court in that state).
does not necessarily indicate that the corporation ceases to have a local presence.\textsuperscript{208}

Second, the \textit{Hertz} Court did not indicate any exceptions to the nerve center test or to the statutory principal place of business requirement.\textsuperscript{209} Applying the bright line rule often fails to locate a dissolved or inactive corporation’s “actual” center of direction and control at the time of the complaint.\textsuperscript{210} A dissolved or inactive corporation will often continue to maintain a location from which it conducts wind up activity or pursues lawsuits.\textsuperscript{211} Moreover, the bright line rule is internally inconsistent, as it relies on the colloquial meaning of principal place of business but disregards the reality that a corporation might continue to have an actual nerve center despite its dissolution or inactivity.\textsuperscript{212}

Third, applying the bright line rule is often not simple or predictable.\textsuperscript{213} For example, when a corporation’s status is unclear, courts have engaged in a threshold inquiry concerning whether a corporation is “inactive” prior to applying the bright line rule.\textsuperscript{214} This threshold inquiry conflicts with the \textit{Hertz} Court’s rejection of fact-based assessments of corporate activities.\textsuperscript{215} Further-

\begin{footnotesize}
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\item[208] See S. REP. NO. 1830, at 4; see also Levy, supra note 89, at 687–88 (explaining that given the overall anti-prejudice purpose behind diversity jurisdiction, Congress only intended to provide a corporation with access to a federal forum if it does not have “local ties” to a jurisdiction).
\item[209] See 559 U.S. at 92; see also LanLogistics Petition, supra note 11, at 8 (arguing that the \textit{Hertz} Court requires every corporation to have a nerve center and intended to articulate “a single uniform rule to be applied in every case involving a corporation”).
\item[210] See LanLogistics Petition, supra note 11, at 22–23 (arguing that this approach “ignores the reality that businesses do not cease to exist upon the closing of their doors”); see also \textit{Hertz}, 559 U.S. at 92 (holding that the nerve center is the “actual” location of direction and control).
\item[211] See Mamco, 2011 WL 13646, at *2 (observing that, after the corporation had closed, its board of directors maintained a central location to conduct wind up activities); LanLogistics Petition, supra note 11, at 3 n.1 (explaining that the corporation in the case directed the post-dissolution winding up of its business from its headquarters). Most states have a statute indicating that a corporation will continue to exist for a specified period of time after dissolution. 16A FLETCHER, supra note 101, § 7966; see, e.g., DEL. CODE ANN. tit. 8, § 278 (2011) (specifying that a dissolved corporation continues to exist for three years to engage in wind up activities and litigation).
\item[212] See LanLogistics Petition, supra note 11, at 3 (arguing that the corporation’s nerve center was the place from which it directed and controlled its wind up activities); \textit{cf. Holston}, 677 F.3d at 1071 (holding that a dissolved corporation does not have an actual principal place of business and thus is a citizen of only its incorporating state).
\item[213] See Rost, 2011 WL 5238805, at *2 (conducting a threshold inquiry into corporation’s active status before deciding to not apply the bright line rule). \textit{But see Holston}, 677 F.3d at 1071 (explaining that the clarity and predictability of a bright line rule justifies results that are occasionally at odds with the purposes of diversity jurisdiction).
\item[214] See Rost, 2011 WL 5238805, at *2 (assessing the activities of the company’s employees before conducting a principal place of business analysis); \textit{Noland}, 2010 WL 1404621, at *2 (engaging in an analysis of the company’s activities before concluding that it was always an inactive corporation).
\item[215] \textit{Compare Hertz}, 559 U.S. at 92–93 (adopting the nerve center test to the exclusion of other fact-based approaches), \textit{with Mamco}, 2011 WL 13646, at *1–2 (performing a threshold inquiry of the company’s status by assessing the corporation’s various wind up activities). Moreover, the threshold
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more, because a threshold inquiry is often the first step when applying the bright line rule, this two-step analysis undermines its purported justifications of simplicity and predictability.216

Alternatively, after Hertz, it is possible that the bright line rule applies and immediately strips a corporation of a nerve center upon inactivity or dissolution.217 First, 28 U.S.C. § 1332(c)(1) may support this approach if principal place of business is interpreted based on its colloquial meaning.218 Because a corporation’s citizenship is based on where it has—rather than where it “has or has had”—its principal place of business, § 1332(c)(1) might not require a principal place of business for a corporation if such a physical place does not in fact exist.219 Second, Hertz might support the bright line rule, as the Court indicated that a corporation’s nerve center will generally be in the location of its headquarters.220 By negative implication, this observation could suggest that a corporation without a headquarters does not have a nerve center.221 Moreover, in some cases, applying the bright line rule would be simple and predicta-

inquiry that is often involved is inconsistent with the Hertz Court’s emphasis on administrative simplicity. See 559 U.S. at 94–95.

216 Compare Rost, 2011 WL 5238805, at *2 (discussing the functions of employees and concluding that the acquired corporation was not sufficiently inactive to justify application of the bright line rule), and Noland, 2010 WL 1404621, at *2 (conducting a brief threshold analysis before concluding that a corporation was inactive), with Holston, 677 F.3d at 1071 (justifying the bright line approach as the most simple and predictable rule).

217 See Holston, 677 F.3d at 1071 (concluding that a dissolved corporation is only a citizen of its incorporating state); see also Grand Union, 316 F.3d at 411 (holding that a corporation that does not actually conduct business activities does not have a principal place of business); Hansen, 48 F.3d at 696 (same); Bolling, supra note 161, at 246 (assuming that the pre-Hertz state of the law remains in the context of dissolved and inactive corporations). For example, district courts in the Third Circuit have also continued to apply the bright line rule. See Rost, 2011 WL 5238805, at *2 (concluding that an inactive corporation does not conduct corporate activities and thus does not have a principal place of business); Wolman v. Petro Technik, Inc., No. 11-1623(SDW), 2011 WL 5082237, at *8 (D.N.J. Sept. 16, 2011) (same); Noland, 2010 WL 1404621, at *2 (same).

218 See 28 U.S.C. § 1332(c)(1) (2012). Because Congress did not define principal place of business, the phrase could be interpreted in this way. See id.; Hansen, 48 F.3d at 698 (holding that Congress did not intend for courts to “strain to locate a principal place of business when no such place in reality exists”); supra notes 179–185 and accompanying text (elaborating on this interpretation of § 1332).

219 See Grand Union, 316 F.3d at 411 (internal quotation marks omitted) (explaining that Congress did not intend for courts to identify a principal place of business that does not in fact exist); Hansen, 48 F.3d at 698 (same); see also Wolman, 2011 WL 5082237, at *8 (declining to look to the corporation’s last principal place of business and concluding that the inactive corporation did not have a principal place of business because it was not currently conducting any activities).

220 Cf. 559 U.S. at 93 (“[I]n practice, [the nerve center] should normally be the place where the corporation maintains its headquarters . . . .”).

221 See id.; Holston, 677 F.3d at 1071 (interpreting the nerve center test in this way); Chaplin, supra note 10, at 92–93 (arguing that, after Hertz, it remains unclear whether courts must apply the nerve center test in every case).
able. Upon determining that a corporation is dissolved or inactive, no further inquiry would be required.

As with the last business transaction rule, however, continuing to apply the bright line rule would require new reasoning after Hertz. Courts previously justified the bright line rule because dissolved and inactive corporations do not conduct any actual business activities, which conflicts with the Hertz Court’s express rejection of activity-based jurisdictional tests. Further, it is more consistent with Hertz and the text of 28 U.S.C. § 1332(c)(1) to reconcile a colloquial interpretation of principal place of business with the nerve center test. Doing so is consistent with the statute, which indicates conjunctive requirements for corporate citizenship. Additionally, because the Hertz Court observed that the nerve center will not always be located at the corporation’s headquarters, it does not necessarily follow that an inactive or dissolved corporation does not have a nerve center.

3. Multifactor Case-by-Case Analysis

The Hertz Court’s express rejection of multifactor principal place of business assessments implicitly overruled the pre-Hertz case-by-case analysis of
dissolved and inactive corporations.\textsuperscript{229} This case-by-case approach analyzed an inactive or dissolved corporation’s activities and local character, arriving at a principal place of business conclusion that reflected the nature of the corporation.\textsuperscript{230} This “facts and circumstances” approach may carry out Congress’s intent for creating diversity jurisdiction—to prevent out-of-state prejudice in state courts—because assessing the facts will often reveal whether a corporation is truly out of state.\textsuperscript{231} Ultimately, however, the test is inconsistent with the\textit{Hertz} Court’s emphasis on “straightforward rules” that achieve jurisdictional simplicity and predictability even at the expense of the traditional rationales for diversity jurisdiction.\textsuperscript{232} Indeed, \textit{Hertz} accepted that by adopting the nerve center test to achieve simplicity, a corporation’s principal place of business would sometimes not be located in the state in which it was least likely to experience prejudice.\textsuperscript{233} Accordingly, since \textit{Hertz}, lower courts do not appear to be applying this case-by-case assessment to determine the citizenship of dissolved and inactive corporations.\textsuperscript{234}

\textsuperscript{229} See 559 U.S. at 92; see also LanLogistics Petition, \textit{supra} note 11, at 23 (arguing that this case-by-case approach impermissibly assesses corporate activities, rather than the nerve center).

\textsuperscript{230} \textit{Athena Auto.}, 166 F.3d at 291–92 (explaining that an inactive corporation could have a “continuing impact . . . sufficient to give it a geographical identity there”); \textit{Harris}, 961 F.2d at 551 (considering a variety of factors, including whether the corporation continued to have “any local impact” on the public and the amount of time since its last business activity).

\textsuperscript{231} See S. REP. NO. 1830, at 4 (1958), \textit{reprinted in} 1958 U.S.C.C.A.N. 3099, 3101–02 (explaining that § 1332 was amended in response to the illogic of allowing a corporation to obtain a federal forum in the state where it had its principal place of business); \textit{Athena Auto.}, 166 F.3d at 291 (“[A] court must analyze the facts of each case to determine . . . [whether] activity was sufficient to make it a citizen of the state of such activity.”); \textit{Harris}, 961 F.2d at 551 (reasoning that this approach is best suited to reflect the location where a corporation’s principal place of business was actually located).

\textsuperscript{232} See 559 U.S. at 92–93 (rejecting fact-based tests in favor of simplicity); \textit{see also} Patel v. Sugen, Inc., 354 F. Supp. 2d 1098, 1112 (N.D. Cal. 2005) (explaining that this case-by-case assessment carries out Congress’s intent “at the expense of definiteness”); Yuncker, \textit{supra} note 15, at 831–32 (observing that the outcome of the case-by-case analysis is unpredictable). \textit{See generally} \textit{Harris}, 961 F.2d at 551 (applying a multifactor test).

\textsuperscript{233} See 559 U.S. at 95 (“We also recognize that the use of a ‘nerve center’ test may in some cases produce results that seem to cut against the basic rationale for 28 U.S.C. § 1332.”).

\textsuperscript{234} \textit{See, e.g.}, \textit{Holston}, 677 F.3d at 1071 (declining to follow the case-by-case assessment used in the Fourth and Fifth Circuits because “simple jurisdictional tests are preferable”); \textit{Wellstone Apparel}, 2013 WL 3328690, at *3–4 (applying the nerve center test to a dissolved corporation); \textit{Leatherman}, 2013 WL 1285491, at *1 (applying the nerve center test to an inactive corporation); \textit{Loomis Armored}, 2011 WL 6318370, at *3–4 (applying the last business transaction test); \textit{Rost}, 2011 WL 5238805, at *2 (applying the bright line rule).
IV. STATUS-LINKED NERVE CENTER: THE ACTUAL CENTER OF DIRECTION, CONTROL, AND COORDINATION

Given the inadequacies of the other alternatives, a corporation’s nerve center should be directly linked to its active status. For example, when a corporation becomes dissolved or inactive, this change of status should trigger the assignment of a new nerve center. This new nerve center is the place from which the corporation directs and controls litigation and wind up and activities. Importantly, this approach is consistent with the conjunctive requirements in 28 U.S.C. § 1332(c)(1), as it declines to create a jurisdictional exception for dissolved and inactive corporations. Moreover, a status-linked nerve center is in line with the Supreme Court’s holding in the 2010 case *Hertz Corp. v. Friend*, as it recognizes the corporation’s “actual” center of control at the time of the litigation. Finally, this approach establishes a simple, predict-
able rule, as it directly reflects the corporation’s actual status at the time of the lawsuit.240

After Hertz, a corporation’s principal place of business must be determined by reference to its nerve center.241 According to the Court, the nerve center is a corporation’s “actual center of direction, control, and coordination.”242 By framing the nerve center as the “actual” location of direction and control, the Hertz Court’s definition suggests a nerve center in which a corporation’s principal place of business is directly linked to its active status.243

For dissolved and inactive corporations, identifying the “actual” location of control requires determining the place from which the corporation’s officers are presently conducting its “direction, control, and coordination” functions.244 Often, these control functions will involve directing the corporation’s litigation or inactive corporation conducts wind up activities reflects its actual nerve center at the time of the complaint); infra notes 270–281 and accompanying text (explaining that this approach is consistent with Hertz).

240 See Hertz, 559 U.S. at 94–95 (emphasizing the need for a simple and predictable unified rule); infra notes 282–290 and accompanying text (explaining that this rule is both simple and predictable); cf. Johnson v. SmithKline Beecham Corp., 853 F. Supp. 2d 487, 495 (E.D. Pa. 2012) (reasoning that a “holding company exception” would “necessitate the kind of ‘complex jurisdictional administration’ the Hertz Court condemned” (quoting Hertz, 559 U.S. at 94)), aff’d, 724 F.3d 337 (3d Cir. 2013).

241 559 U.S. at 92; see also Marion Cnty. Econ. Dev. Dist. v. Wellstone Apparel, LLC, No. 2:13-CV-44-KS-MTP, 2013 WL 3328690, at *3–4 (S.D. Miss. July 2, 2013) (applying the nerve center test—rather than one of the pre-Hertz approaches—to a dissolved corporation); SmithKline Beecham, 853 F. Supp. 2d at 495 (declining to adopt an exception to the nerve center test for holding companies); Chaplin, supra note 10, at 97 (implying that the nerve center test applies to all corporations, but suggesting that courts might apply a “more flexible nerve center test” in unconventional contexts); supra notes 158–185 and accompanying text (explaining why Hertz’s nerve center test is controlling even in cases of atypical corporations). But see Holston Invs., Inc. B.V. v. LanLogistics Corp., 677 F.3d 1068, 1071 (11th Cir.) (holding that Hertz is relevant, but not binding for dissolved and inactive corporations and proceeding to apply the bright line approach rather than the nerve center test), cert. dismissed, 133 S. Ct. 499 (2012).

242 Hertz, 559 U.S. at 92 (emphasis added); see LanLogistics Petition, supra note 11, at 14 (arguing that because a dissolved corporation conducts wind up activities and litigation, it retains an “actual” center of direction and control and, thus, retains a nerve center).

243 See 559 U.S. at 92; see also Mamco, 2011 WL 13646, at *3 (holding that a corporation in the process of dissolving has its principal place of business where its wind up activities are conducted); LanLogistics Petition, supra note 11, at 5, 14 (arguing that a dissolved corporation’s nerve center should be the location where the corporation is conducting litigation and wind up activities).

244 Hertz, 559 U.S. at 92 (holding that the nerve center is the “actual center of direction, control, and coordination”); see Wellstone Apparel, 2013 WL 3328690, at *4 (concluding that a dissolved corporation’s nerve center was located where the corporation’s major transactions were negotiated); Mamco, 2011 WL 13646, at *3 (holding that a corporation in the process of dissolving has its principal place of business where its wind up activities are conducted); LanLogistics Petition, supra note 11, at 14 (arguing that because a dissolved corporation conducts wind up activities and litigation, it retains an “actual” center of direction and control, and thus retains a nerve center).
or wind up activities. Upon dissolution or inactivity, a corporation’s former headquarters cease to be its actual center of control if the post-dissolution control functions are conducted from a different location. When such a change occurs, the corporation’s nerve center should reflect the new location from which it actually directs and controls its litigation and wind up activities. From the time of this change until all litigation and wind up activities cease, a corporation should be both a citizen of its incorporating state and of its principal place of business—the location of its new nerve center.

Because the Hertz Court emphasized the need for a uniform jurisdictional rule that is both simple and predictable, a corporation’s change in status and control functions should not render the nerve center test inapplicable. Section 1332(c)(1) indicates that every corporation has dual citizenship in both its incorporating state and the state of its principal place of business. The fact that a corporation is no longer active does not alter the requirements of the statute. Section A argues that the text of § 1332(c)(1) supports status-linked corporate citizenship. Section B then asserts that this approach is consistent with Hertz’s express holding and will often locate the state in which a dissolved or inactive corporation is least likely to suffer out-of-state prejudice.

245 See Athena Auto., 166 F.3d at 292 (observing that a dissolved corporation’s nerve center could be located at the place from which it was conducting its litigation); Mamco, 2011 WL 13646, at *3 (focusing on the state where the corporation’s wind up activities were conducted); LanLogistics Petition, supra note 11, at 14 (explaining that wind up activities and litigation can allow a dissolved corporation to retain a nerve center).

246 See Athena Auto., 166 F.3d at 292; see also LanLogistics Petition, supra note 11, at 7, 9 (implying that the nerve center could change if the wind up activities were directed from a new location).

247 See Hertz, 559 U.S. at 92 (holding that the nerve center is the “actual” location of direction and control); LanLogistics Petition, supra note 11, at 7, 9; cf. Athena Auto., 166 F.3d at 292 (contemplating that, upon dissolution, a corporation’s nerve center could change from the place where it previously conducted business to the place where it directs its litigation).


249 See 559 U.S. at 92, 94–95; LanLogistics Petition, supra note 11, at 9 (“The fact that the corporation has dissolved and is winding up does not mean that it has no place of direction and control and thus no principal place of business.”).

250 See 28 U.S.C. § 1332(c)(1); Crooks, 282 U.S. at 58 (concluding that “and” is generally conjunctive); Johnson, 549 F.3d at 935 (holding that “and” in § 1332(c)(1) creates dual citizenship).

251 See 28 U.S.C. § 1332(c)(1) (articulating dual citizenship requirements without expressly indicating any exceptions); LanLogistics Petition, supra note 11, at 9 (arguing that the statute requires every corporation to have a principal place of business and that a company’s dissolution does not render this requirement inapplicable).

252 See infra notes 255–269 and accompanying text.

253 See infra notes 270–281 and accompanying text.
Finally, Section C explains that, consistent with the policies emphasized in
*Hertz*, this simple rule produces predictable jurisdictional results.254

**A. Section 1332(c)(1) Suggests a Status-Linked Principal Place of Business**

Reading § 1332(c)(1) as a whole indicates congressional intent to establish status-linked principal place of business citizenship.255 Interpreting the statute in this way gives meaning to the conjunctive “and” rather than reading each element as if it stood on its own.256 Moreover, strict statutory construction suggests that in the event that a corporation’s principal place of business is nonobvious, Congress intended for a corporation to be a citizen of its most prominent location under the circumstances.257 Rather than create a class of corporations exempt from one of the conjunctive 28 U.S.C. § 1332(c)(1) elements, the structure and text of the statute indicate that a corporation’s principal place of business should be defined by reference to the location in which it is presently most prominent.258

254 See infra notes 282–290 and accompanying text.
255 See infra notes 256–269 and accompanying text; cf. 28 U.S.C. § 1332(c)(1) (2012) (articulating two distinct corporate citizenship requirements without any exceptions and indicating that a corporation is a citizen in the location where it has its principal place of business); *Athena Auto.*, 166 F.3d at 292 (suggesting that a corporation’s principal place of business might change upon dissolution); LanLogistics Petition, supra note 11, at 9–12 (analyzing a dissolved corporation’s principal place of business in light of the § 1332(c)(1) requisite conjunctive requirements).
256 See infra notes 259–263 and accompanying text; cf. *Astra Oil Trading v. PRSI Trading Co.*, 794 F. Supp. 2d 462, 468 (S.D.N.Y. 2011) (explaining that if § 1332(c) applies to foreign corporations, “it must confer dual-citizenship in both the foreign state of incorporation and . . . the principal place of business”).
257 See infra notes 264–269 and accompanying text; see also 28 U.S.C. § 1332(c)(1) (“[A] corporation shall be deemed to be a citizen of . . . the State or foreign state where it has its principal place of business . . . .” (emphasis added)); *Manco*, 2011 WL 13646, at *2 (suggesting that a dissolving corporation will retain a principal place of business); LanLogistics Petition, supra note 11, at 9–10 (arguing that a dissolved corporation’s most prominent location, and thus its principal place of business, is the place from which litigation is directed). See generally *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941) (holding that federal jurisdiction statutes must be strictly construed), superseded by statute on other grounds, Act of June 25, 1948, Pub. L. No. 80-773, § 1441, 62 Stat. 937, 937–38 (codified as amended at 28 U.S.C. § 1441(a) (2012)), as recognized in *Breuer v. Jim’s Concrete of Brevard, Inc.*, 538 U.S. 691, 697 (2003).
258 See infra notes 264–269 and accompanying text; see also 28 U.S.C. § 1332(c)(1); LanLogistics Petition, supra note 11, at 9–10 (explaining that because a dissolved corporation continues to exist and § 1332 always requires a finding of both forms of citizenship, “[a dissolved corporation] must have a principal place of business . . . from which, at a minimum, any litigation is directed”). Declining to carve out an exception is consistent with the fact that Congress did not explicitly indicate any exceptions to the dual citizenship requirement. See 28 U.S.C. § 1332(c); cf. *Rotenberg*, supra note 164, at 386 (explaining that congressional silence has meaning when interpreting a statute).
The structure of § 1332(c)(1) establishes two distinct and conjunctive elements for diversity jurisdiction.\textsuperscript{259} Section 1332(c)(1) provides that a corporation is a citizen of its incorporating state “\textit{and}” of its principal place of business.\textsuperscript{260} Congress’s use of “\textit{and}” is best read as a requirement that both citizenship elements be met for any corporation to invoke diversity jurisdiction.\textsuperscript{261} The word “\textit{and}” is generally interpreted in the conjunctive unless doing so would lead to absurd results.\textsuperscript{262} Interpreting “\textit{and}” in § 1332(c)(1) as conjunctive is rational, as it will limit when diversity jurisdiction can be invoked and will ensure that federal jurisdiction does not encroach on the independence of the states.\textsuperscript{263}

Further, the plain meaning of 28 U.S.C. § 1332(c)(1) indicates Congress’s intent for each corporation to be a citizen of both its incorporating state and of the state where it currently “\textit{has} its principal place of business.”\textsuperscript{264} Drawing from the plain meaning of the words chosen, the phrase “principal place” suggests congressional intent to identify a singular prominent place within a state.\textsuperscript{265} When applied to dissolved and inactive corporations, the reference to

\textsuperscript{259} See 28 U.S.C. § 1332(c)(1) (using the conjunctive “\textit{and}” rather than “\textit{or}”); see also Comtec, Inc. v. Nat’l Tech. Sch., 711 F. Supp. 522, 524–25 (D. Ariz. 1989) (concluding that “\textit{and}” indicates congressional intent “for all of the requirements of the statute to be fulfilled” for diversity citizenship to be invoked); 1A SINGER, supra note 114, § 21:14 (“Statutory phrases separated by the word ‘\textit{and}’ are usually interpreted in the conjunctive.”); supra notes 112–116 and accompanying text (discussing the conjunctive requirement interpretation of § 1332(c) in full).

\textsuperscript{260} 28 U.S.C. § 1332(c)(1) (emphasis added).

\textsuperscript{261} See Johnson, 549 F.3d at 935 (analyzing § 1332(c)(1) and concluding that the “statute’s use of the conjunctive gives dual, not alternative, citizenship”); Comtec, 711 F. Supp. at 524–25 (same); LanLogistics Petition, supra note 11, at 9 (“[T]he statute requires a determination, for every corporation, of a principal place of business . . . .”); cf. Levy, supra note 89, at 685–86 (arguing that § 1332(c) implies that all corporations have a principal place of business).

\textsuperscript{262} See Crooks, 282 U.S. at 58 (holding that “\textit{and}” is ordinarily conjunctive when utilized in a statute); OfficeMax, Inc. v. United States, 428 F.3d 583, 589 (6th Cir. 2005) (observing that courts only interpret “\textit{and}” as disjunctive “to avoid an incoherent reading of a statute”); see also Sosa v. Chase Manhattan Mortg. Corp., 348 F.3d 979, 981, 983 (11th Cir. 2003) (concluding that “\textit{and}” should be interpreted disjunctively only to prevent “irrational results”).

\textsuperscript{263} See Shamrock, 313 U.S. at 108–09 (explaining that jurisdictional must be strictly construed); Crooks, 282 U.S. at 58 (holding that “\textit{and}” is generally conjunctive); Levy, supra note 89, at 684 (arguing that where diversity jurisdiction is unclear, the presumption should be against a finding of federal jurisdiction); see also S. REP. NO. 1830, at 4 (1958), reprinted in 1958 U.S.C.C.A.N. 3099, 3101–02 (suggesting that § 1332 was amended to add principal place of business citizenship to limit federal jurisdiction).

\textsuperscript{264} See 28 U.S.C. § 1332(c)(1)(2012) (emphasis added); see also Midlantic Nat’l Bank v. Hansen, 48 F.3d 693, 698 (3d Cir. 1995) (reasoning that this plain meaning interpretation suggests congressional intent to identify a corporation’s current principal place of business); LanLogistics Petition, supra note 11, at 9 (explaining that § 1332(c)(1) does not distinguish between corporations based on active status).

\textsuperscript{265} See Hertz, 559 U.S. at 93 (citing 12 OXFORD ENGLISH DICTIONARY 495 (2d ed. 1989)). Interpreting § 1332(c)(1) according to the plain meaning of the statutory text is consistent with the Hertz
the location in which a corporation “has its principal place of business” sug-
gests that corporate citizenship must be in a state in which the corporation is presently prominent. Some argue that the statute’s text indicates Congress’s intent to render the principal place of business element inapplicable to corporations that presently lack such an identifiably prominent place. Upon dissolution or inactivity, however, a corporation retains a prominent place in the state where it directs litigation and any wind up activity. Inferring congressional intent to create an exception for dissolved and inactive corporations thus misconstrues the application of the § 1332(c)(1) principal place of business requirement in this context.

B. Consistency with Hertz and the Purpose of Diversity Jurisdiction

A status-linked nerve center rule generally reflects the purpose of diversity jurisdiction. Diversity jurisdiction aims to provide a neutral federal forum for an out-of-state party in order to prevent that party from experiencing preju-

266 See 28 U.S.C. § 1332(c)(1) (emphasis added); see also Hertz, 559 U.S. at 93 (indicating that the nerve center is a corporation’s “main, prominent” place); Hansen, 48 F.3d at 698 (reasoning that Congress’s intent is illustrated by its use of “has” rather than “has or had”); LanLogistics Petition, supra note 11, at 9–10 (observing that § 1332 does not distinguish between active and dissolved or inactive corporations and suggesting that an inactive or dissolved corporation is most prominent at the place in which it directs litigation).

267 Hansen, 48 F.3d at 698; see Holston, 677 F.3d at 1071 (explaining that a dissolved corporation does not currently have a principal place of business); Grand Union Supermarkets of the V.I., Inc. v. H.E. Lockhart Mgmt., Inc., 316 F.3d 408, 411–12 (3d Cir. 2003) (suggesting that § 1332(c)(1) refers to a corporation’s presently most prominent place, which can only exist if the corporation is actually conducting business); see also Friedenthal, supra note 174, at 224 (observing that “in some situations it might not be possible to identify a principal place of business”).

268 See Mamco, 2011 WL 13646, at *3; LanLogistics Petition, supra note 11, at 10–11. A dissolved corporation could potentially continue to have a local identity and impact, as winding up a business after dissolution can consist of substantial activities over a long period of time. See LanLogistics Petition, supra note 11, at 10–11 (citing Athena Auto., 166 F.3d at 291).

269 See LanLogistics Petition, supra note 11, at 11 (citing Athena Auto., 166 F.3d at 291).

270 See infra notes 271–281 and accompanying text. Compare S. REP. NO. 1830, at 4 (1958), reprinted in 1958 U.S.C.C.A.N. 3099, 3101–02 (explaining that § 1332(c) was amended to provide a neutral federal forum for out-of-state citizens), with LanLogistics Petition, supra note 11, at 10 (explaining that wind up activities will often create a “geographical identity” sufficient to render the corporation a citizen of that state (citing Athena Auto., 166 F.3d at 291)). See generally Hertz, 559 U.S. 77 (implying that despite occasionally anomalous results, a jurisdictional test should generally reflect the purpose of the statute).
dice in state court.271 Although Hertz ultimately concluded that simplicity and administrative efficiency are important objectives when developing a jurisdictional test, the Court nevertheless implied that the test chosen should generally reflect the purpose of diversity jurisdiction.272 Ideally, the nerve center identified for each corporation should be the location in which the corporation is least likely to suffer out-of-state prejudice.273 When applied to dissolved and inactive corporations, to the extent that directing litigation and wind up activities creates public visibility, a status-linked nerve center rule will prevent a corporation from experiencing out-of-state prejudice.274

271 S. REP. NO. 1830, at 4; cf. Yuncker, supra note 15, at 821 (explaining that the corporate citizenship rules were amended to reflect the reality that many corporations engage in business in more than one state).

272 See 559 U.S. at 92, 96. The Hertz Court explained that the absence of public visibility is not necessarily determinative when locating a corporation’s principal place of business. Id. For instance, an active corporation with its headquarters in New York is a citizen of New York, even if it is most visible to the public in New Jersey. Id. (using this hypothetical to illustrate the significance of public visibility for citizenship determination). Notably, one commentator has suggested that any “principal place of business standard will sometimes produce anomalous results, and commended the Court’s selection of a test that is not very burdensome to apply. See Deverell, supra note 73, at 752–53.

273 See Hertz, 559 U.S. at 92, 96; see also Friedenthal, supra note 174, at 219, 240–41 (indicating that a corporation’s principal place of business should be the location in which it is least likely to experience out-of-state prejudice).

274 See LanLogistics Petition, supra note 11, at 10–11 (citing Athena Auto., 166 F.3d at 292). Because a dissolved or inactive corporation continues to exist for these purposes, it will often retain a local character and public visibility in the state where it is directing its activities. See Athena Auto., 166 F.3d 291. But see Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc., 933 F.2d 131, 141 (2d Cir. 1991) (explaining that a dissolved or inactive corporation might continue to retain a local character, but noting that this character would be found at the corporation’s last principal place of business). The potential for local character and visibility reinforces the conclusion that such a corporation should be a citizen of the state in which these activities are directed. See LanLogistics Petition, supra note 11, at 10–11 (citing Athena Auto., 166 F.3d at 292). Moreover, by treating dissolution and inactivity as jurisdictional triggers, a status-linked nerve center rule generally provides a neutral forum without sacrificing simplicity and predictability. See Hertz, 559 U.S. at 94; infra notes 282–290 and accompanying text (discussing the objectives of simplicity and efficiency in greater detail). Specifically, in this context, the status-linked rule avoids the potential for out-of-state prejudice that may arise under the other principal place of business tests—such as the last business transaction approach. Compare Harris v. Black Clawson Co., 961 F.2d 547, 551 (5th Cir. 1992) (characterizing the possibility that the last business transaction test could confer citizenship in a location where a corporation could not have been a citizen while active as an “odd result”), and City of Syracuse v. Loomis Armored U.S., LLC, No. 5:11-cv-00744, 2011 WL 6318370, at *3–4 (N.D.N.Y. Dec. 15, 2011) (applying the last business transaction approach to a dissolved corporation even though the last transaction could have occurred in a place where the corporation no longer has a presence or in a place where the corporation never had a presence), with LanLogistics Petition, supra note 11, at 10–11 (indicating that a corporation continues to have a presence and thus a principal place of business in the place where it is directing wind up and litigation activities (citing Athena Auto., 166 F.3d at 292)).
At first glance, a status-linked nerve center rule might seem to enable a corporation to more easily manipulate federal court jurisdiction. The Hertz Court emphasized that courts should not permit a corporation to be a citizen of “a bare office with a computer, or the location of an annual executive retreat.” Indeed, a dissolved or inactive corporation’s wind up and litigation activities could potentially be conducted from a bare office with a computer or its equivalent.

Despite this possibility, locating a corporation’s nerve center in a bare office would not undermine Hertz if that office were in fact the corporation’s actual center of direction and control. By simply mentioning the bare office and executive retreat hypotheticals, the Hertz Court did not state that these types of locations could never be a corporation’s nerve center. Rather, the Court utilized these hypotheticals to illustrate the point that adopting a simple rule should not create an avenue for jurisdictional manipulation. In the event that a bare office is the site where a corporation is actually directing and controlling its activities, it is consistent with Hertz to find that such a location is the appropriate nerve center under the circumstances.

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275 Cf. Hertz, 559 U.S. at 97 (suggesting the potential for corporations to manipulatively claim citizenship of states pursuant to “a bare office with a computer”); id. (“[T]he courts should . . . take as the ‘nerve center’ the place of actual direction . . . in the absence of such manipulation.”). See generally Scott Dodson, The Complexity of Jurisdictional Clarity, 97 VA. L. REV. 1, 16–17 (2011) (arguing that jurisdictional rules are generally more susceptible to manipulation than policy-driven standards); supra notes 41–47 and accompanying text (explaining that this potential for manipulation was one of the driving factors for Congress’s amendment of § 1332).

276 559 U.S. at 97.

277 See Athena Auto., 166 F.3d at 292; Mamco, 2011 WL 13646, at *3.

278 Compare Hertz, 559 U.S. at 92 (holding that the nerve center is a corporation’s “actual” location of direction and control), with id. at 93 (explaining, without disregarding other possible locations, that this nerve center will “normally” be a corporation’s headquarters). See generally LanLogistics Petition, supra note 11, at 9–10 (arguing that a court should focus on identifying the corporation’s most prominent place under the circumstances); Deverell, supra note 73, at 750 (arguing that courts will be able to detect and prevent corporate manipulation because “[o]nly a location of direction, control, and coordination will be accepted as a true nerve center”).

279 See 559 U.S. at 97. So long as an unorthodox location is in fact the actual center of direction and control, the fact that a status-linked nerve center rule may occasionally produce this result is not inconsistent with Hertz. See id. at 92–93; LanLogistics Petition, supra note 11, at 10.

280 See Hertz, 559 U.S. at 97; see also Deverell, supra note 73, at 750 (suggesting a court’s role in preventing such manipulation).

281 See 559 U.S. at 92, 97; see also LanLogistics Petition, supra note 11, at 10 (arguing that a dissolved or inactive corporation must have a nerve center, as litigation and wind up activities will “always be directed and controlled from a principal place”).
C. Goal of Simple, Predictable Tests and Administrative Efficiency

In addition to its consistency with the text and purpose of § 1332(c), a status-linked nerve center is a simple rule that will produce predictable jurisdictional results. The Hertz Court emphasized that these objectives justified adopting a rule that occasionally produces results that do not reflect the purpose of diversity jurisdiction. Thus, each particular application of the nerve center test must aim to achieve simplicity and predictability.

Treating dissolution and inactivity as jurisdictional triggers avoids the fact-based inquiries and unpredictable results that Hertz sought to remedy when the Court adopted the nerve center test. Determining the main location

282 See infra notes 283–290 and accompanying text; see also Hertz, 559 U.S. at 94–95 (emphasizing the goals of simplicity and predictability); Cent. W. Va. Energy Co. v. Mountain State Carbon, LLC, 636 F.3d 101, 107 (4th Cir. 2011) (explaining that the application of the nerve center test must be guided by the Hertz Court’s aim “to avoid resource-intensive litigation”).

283 559 U.S. at 95–96 (accepting the potential for anomalous results; for example, a corporation with its headquarters—and thus its nerve center—in New York but all of its visible activities in New Jersey might be subject to more out-of-state prejudice in New York courts). Importantly, both corporations and courts benefit from simplicity and predictability. Id. Corporations can more easily plan and assess business risks and federal courts can more quickly determine whether subject matter jurisdiction exists to efficiently adjudicate a case. Id.

284 See id. at 94–95; see also Cent. W. Va. Energy, 636 F.3d at 107 (holding that an assessment of the amount of time that the officers spend directing the business from a specific location would undercut the intended simplicity of the nerve center test). But see Chaplin, supra note 10, at 96–97 (arguing that emphasizing these policies at the expense of preventing out-of-state prejudice undermines “a court’s obligation to do equity”). In the absence of any alternative approaches, the policies emphasized in Hertz might, by themselves, have justified adopting the bright line rule or the last principal place of business test. See 559 U.S. 95–96 (discussing the potential for anomalous results to achieve simplicity and predictability); Holston, 677 F.3d at 1070 (justifying the bright line rule on policy grounds). Because these approaches are inconsistent with the Hertz holding, however, the status-linked nerve center test is superior because it both furthers the goals of simplicity and predictability and is consistent with Hertz. Compare Hertz, 559 U.S. at 92–93 (holding that the principal place of business must be a corporation’s nerve center, i.e., “the actual center of direction, control, and coordination”), with supra notes 193–234 and accompanying text (illustrating how the alternative approaches to determining the principal place of business for a dissolved or inactive corporation are inconsistent with Hertz), supra notes 270–281 and accompanying text (illustrating how the status-linked rule is consistent with the focus of Hertz), and infra notes 285–290 and accompanying text (illustrating how the status-linked rule promotes simplicity and predictability).

285 See 559 U.S. at 93–94; cf. Jonathan R. Nash, Instrument Choice in Federal Court Jurisdiction: Rules, Standards, and Discretion 33–34 (Emory Univ. Sch. of Law Pub. Law & Legal Theory Research Paper Series, Paper No. 10-92, 2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1553584, archived at http://perma.cc/PPC8-ZSF7 (arguing that jurisdictional rules are more efficient and predictable than standards, as ambiguities in standards encourage litigation). Recall that prior to Hertz, the outcome of the principal place business analysis was unpredictable both because federal courts applied a variety of approaches and because many of these approaches involved complex fact-based inquiries. See, e.g., Ferrell v. Express Check Advance of SC, LLC, 591 F.3d 698, 706 (4th Cir. 2010) (explaining that a corporation’s structure and activities dictate whether to apply the nerve center test or the place of operations test); Teal Energy USA, Inc. v. GT, Inc., 369 F.3d 873, 877
from which a dissolved or inactive corporation directs litigation and wind up activities will be no more complex than locating the nerve center of an active corporation. 286 The Hertz Court indicated that, if possible, a corporation’s nerve center should be identified based on objectively determinable criteria, such as the location of its headquarters. 287 It follows that in the context of dissolved and inactive corporations, the nerve center should be determined based on similarly objective indicia. 288 Moreover, equating a dissolved corporation’s nerve center with such a location would provide predictability for corporations, allowing them to quickly identify their nerve center as the place from which they are directing litigation. 289 Therefore, the status-linked nerve center approach will establish a simple and predictable principal place of business determination for dissolved and inactive corporations. 290

CONCLUSION

After the Supreme Court’s 2010 decision Hertz Corp. v. Friend, a corporation’s principal business is its nerve center—its “center of direction, control, and coordination.” When the nerve center test is applied to a dissolved or inactive corporation, a conclusion that the corporation does not have a nerve center or that it retains its most recent nerve center confers improper significance on a corporation’s active status. Consequently, an inactive or dissolved corporation will either not have a principal place of business under 28 U.S.C. § 1332(c)(1), or its principal place of business will reflect a past center of control, rather than the current location of its control functions. Each of these results is inconsistent with both the diversity statute and the holding and reasoning in Hertz. 286 See LanLogistics Petition, supra note 11, at 10 (observing that litigation and wind up activities “will always be directed and controlled from a principal place”); see also Hertz, 559 U.S. at 92–93 (explaining that the “actual” center of direction and control will generally be a corporation’s headquarters).

287 See 559 U.S. at 92–93.

288 See id.; LanLogistics Petition, supra note 11, at 10.

289 See Athena Auto., 166 F.3d at 292; LanLogistics Petition, supra note 11, at 10 (observing that litigation activities will always be directed from a main location); see also Cent. W. Va. Energy, 636 F.3d at 107 (suggesting that when applying the nerve center test, courts should avoid needlessly fact-based assessments of time spent on direction and control).

290 See LanLogistics Petition, supra note 11, at 10; see also Hertz, 559 U.S. at 94–95 (emphasizing the goals of simplicity and predictability); Nash, supra note 285, at 34 (arguing that jurisdictional rules are less ambiguous than standards and thus produce more predictable results).
A status-linked nerve center test should govern the principal place of business determination. A dissolved or inactive corporation will often have its nerve center in the location where the corporation is closing down its business and directing litigation. This approach will allow a court to find a principal place of business for all corporations and thus meet the dual citizenship requirement for diversity jurisdiction. Unlike other approaches applied to dissolved and inactive corporations, a status-linked nerve center test reflects a corporation’s true center of control that is both simple for courts to apply and predictable for corporations to anticipate. Because this approach is consistent with both § 1332 and the Hertz Court’s nerve center test, courts should apply this approach when determining an atypical corporation’s principal place of business.

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