

United States Senate
WASHINGTON, DC 20510-3203

April 27, 2023

The Honorable David C. Godbey
Chief Judge, U.S. District Court for the Northern District of Texas
1100 Commerce Street, Room 1504
Dallas, Texas 75242-1003

Dear Chief Judge Godbey:

I write to you today urging you to reform the method of assigning cases to judges in your federal district. As Chief Judge of the U.S. District Court for the Northern District of Texas, you have the authority to file orders governing how cases filed in your district are assigned to judges.¹ Even though the Northern District has twelve active judges and another four senior judges who still hear cases, your orders provide that civil cases filed in many divisions are always assigned to a single judge, or to one of just a few. Cases filed in the Amarillo Division are always assigned to Judge Kacsmark; cases filed in the Wichita Falls Division are always assigned to Judge O'Connor; and cases filed in the Abilene, Lubbock, and San Angelo Divisions are split between just two judges. As a result of your recent assignment orders, plaintiffs in your district can now effectively choose the judge who will hear their cases.

Unsurprisingly, litigants have taken advantage of these orders to hand-pick individual district judges seen as particularly sympathetic to their claims. The State of Texas itself is the most egregious example. It has sued the Biden Administration at least 29 times in Texas federal district courts, but it has not filed even *one* of those cases in Austin, where the Texas Attorney General's office is located. Instead, Texas has always sued in divisions where case-assignment procedures ensure that a particular preferred judge or one of a handful of preferred judges will hear the case. That includes the Northern District's Amarillo Division, where Texas has filed seven of its cases against the federal government. Many other litigants have done the same, including the Alliance Defending Freedom in its case challenging the FDA's approval of mifepristone.

Nothing requires the Northern District to let plaintiffs hand-pick their judges like this. Federal law splits the Northern District into seven divisions, but that is a geographical division only. The purpose of the split is to reduce travel times for jurors, criminal defendants, and other local litigants by allowing cases to be tried locally. Particularly with electronic filing, that division does not need to affect judicial assignments at all. Other district courts with many rural divisions divide civil cases randomly between all their judges, regardless of where the case is filed. The Northern District of New York is—like the Northern District of Texas—a geographically large district split into many divisions. But the Northern District of New York assigns all of its judges to all of its divisions and randomly divides all cases between all of them, regardless of where the cases are filed.² A litigant in the Northern District of New York therefore cannot pick its judge by filing suit in

¹ Special Order 3: Order Regarding Judgeships and Case Assignments, <https://www.txnd.uscourts.gov/special-order-3/>.

² N.D.N.Y. General Order No. 12 (Oct. 8, 2020), <https://www.nynd.uscourts.gov/sites/nynd/files/general-ordes/GO12.pdf>.

Plattsburgh instead of Utica. The Western District of Missouri is similar.³ And the Western District of Texas last year changed its case-assignment rules for patent cases filed in Waco—apparently in response to forum-shopping concerns—so that such cases are now randomly assigned between all eleven active judges in the district and one senior judge.⁴

The Northern District of Texas could, and should, adopt a similar rule for all civil cases. Currently, a federal statute allows each district court to decide for itself how to assign cases.⁵ This gives courts the flexibility to address individual circumstances in their districts and among their judges. But if that flexibility continues to allow litigants to hand-pick their preferred judges and effectively guarantee their preferred outcomes, Congress will consider more prescriptive requirements.

Sincerely,



Charles E. Schumer
United States Senator

³ W.D. Mo. L.R. 83.9, https://www.mow.uscourts.gov/sites/mow/files/Local_Rules.pdf.

⁴ Order Assigning the Business of the Court as it Relates to Patent Cases (July 25, 2022), <https://www.txwd.uscourts.gov/wp-content/uploads/Standing%20Orders/District/Order%20Assigning%20the%20Business%20of%20the%20Court%20as%20it%20Relates%20to%20Patent%20Cases%20072522.pdf>.

⁵ 28 U.S.C. § 137(a).