The Effect of Contract Regulation: The Case of Franchising

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Florida State University Law and Economics Research Paper Series

FSU College of Law, Law and Economics Paper No. 07/001

December 2006

GEORGE MASON UNIVERSITY SCHOOL OF LAW

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07-03

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December 13, 2006

The authors thank William Bratton, David Haddock, Eric Helland, Max Schanzenbach, Josh Wright, and Kathy Zeiler for comments on an earlier draft of this paper.

The Effect of Regulation: The Case of Franchising

Abstract: States and the federal government have enacted laws intended to police franchisors' use of termination provisions in franchise contracts to opportunistically take over profitable establishments. This regulation may, however, reduce the total number of chain outlets because franchising is a valuable form of contracting and termination rights allow franchisors to police franchisee free-riding on the franchised trademark. On the other hand, no such effect is implied if the regulation reduces franchisors' extra gains from skimming profitable franchises. We exploit two new sources of data to provide new empirical evidence on the effects of franchise regulation. Panel data on fast food establishments extracted from uniform franchise offering circulars show that laws restricting franchisor termination rights lead to a reduction in franchising, and this reduction is not offset by the concomitant increase in franchisor-operated establishments. This article also examines how Coasian bargaining between the franchisor and franchisee can mitigate the effect of regulation. In particular, regulation may be apparently important but actually inconsequential because affected parties can easily waive the regulation or avoid it through contractual choice-of-law and choice-of-forum clauses. To examine this, we use state employment data to more broadly examine the effects of franchise regulation. We find that employment in franchise industries is significantly reduced when states enact restrictions on franchisor termination rights and the effect is larger when states limit the ability to contract around these restrictions.

Keywords: Franchise; Termination; Labor; Opportunistic Behavior; Corporate Law
JEL Codes: D21; D23; D86; G38; K12; K22; L14; L15; L21; L22; L24; L25

1. INTRODUCTION

Franchising is an important and frequently studied form of organization. Prior articles have used the franchising form to examine the general nature of intra versus interfirm contracting[1] and to analyze how contracts and incentives are used to reduce transactions and agency costs.[2] In addition, studies of franchise regulation illustrate how the regulation of the contractual relationship between franchisors and franchisees affects contracting and the organization of firms.[3]

The franchisor's ability to terminate franchisees is a central focus of economic analyses of franchise contracts and their regulation. In the absence of effective monitoring and incentives, franchisees will attempt to free-ride on efforts by the

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[1] Paul Rubin (1978) applied the insights of transaction cost economics to explain the existence of franchising as a business form. Rubin argued that existing explanations for use of the franchise form based on capital constraints were implausible, and that insights from Coase's (1937) theory of the firm better explain the existence of the franchise form. *See also* Klein (1995) (discussing the economics of franchise contracts); Lafontaine & Masten (1995) (discussing literature generally); Brickley, Misra &Van Horn (2006) (finding contract duration in franchise contracts is positively related to franchisee's level of specific investments), Brickley (1999) (examining incidence of specific contractual provisions in franchise contracts).

[2] Drawing on the agency cost insights of Alchian and Demsetz (1972) and Jensen and Meckling (1976), Rubin's (1978) model of franchising rests on the relative difficulty of monitoring when the franchised unit is not located near to the franchisor or when the entire firm is quite large. *See also* Brickley & Dark (1987); Brickley, Dark & Weisbach (1991b); Mathewson & Winter (1985); Norton (1989). To avoid the need for costly monitoring, the franchisee receives a portion of the revenues flowing from the franchise. See Kaufmann & Lafontaine (1994) (showing that McDonald's franchisees retain rents). However, the franchisor retains some share of revenues either directly or indirectly through contractual provisions requiring the franchisee to purchase its supplies from the franchisor at above marginal cost. To explain this seemingly inefficient revenue sharing scheme, Rubin argues that the franchisor needs to be incentivized to provide on-going support such as advertising. That is, in the absence of countervailing incentive structures, both the franchisee and franchisor will not invest optimally in the franchised establishment, from the joint surplus perspective. Bhattacharyya and Lafontaine (1995) formally model this "double sided moral hazard" and show how the need for these incentive effects leads to linear revenue sharing formulas in franchise contracts. Lafontaine (1992) finds that the observed degree of franchising and among franchisors is consistent with this model, and Lafontaine and Shaw (1999) use panel data on franchise contract terms to show support for the double sided moral hazard model.

[3] *See, e.g.,* Brickley, Dark & Weisbach (1991a), Beales & Muris (1995) (examining state regulation of termination); Marvel 1995 (examining FTC regulation of gasoline franchising); Smith (1982) examining state regulation of automobile dealiers).

franchisor and other franchisees to maintain the brand.[4] In order to economize on agency costs and monitoring costs, franchisors improve franchisees' incentives by giving them a positive rent stream that will be taken away if the franchisee does not perform, which in turn requires that the franchisor be able to terminate shirking franchisees.

But broad termination powers also may allow franchisors to take over profitable franchises even where the franchisee is not shirking, thereby denying the franchisee expected benefits under the contract. Regulation of franchise contracts is intended to police this franchisor opportunism by limiting a franchisor's ability to terminate at will opportunistically. The net benefits of these regulations may, however, be negative. Such regulations may not be necessary given the existence of market forces that would police franchisor opportunism in the absence of such laws. Moreover, these regulations can hurt franchisors and non-shirking franchisees by preventing franchisors from efficiently disciplining those franchisees that are shirking.

Because of the potential costs of such regulations, measuring the actual effects of franchise regulation has been of interest to academics and to policymakers.[5] If regulating franchise termination accomplishes its intended purpose of protecting franchisees' expectations without frustrating franchisors' objectives, such laws should increase or, at minimum, not decrease the use of the franchise contract. The use of the franchise contract may decrease if the regulation prevents the franchisor's opportunistic termination of profitable units. However, because the hypothesized opportunism likely involves

[4] *See* Rubin (1978); Klein (1995, 1980). *See generally,* Klein and Leffler (1981).
[5] *See, e.g.,* Brickley, Dark, & Weisbach (1991a).

inframarginal units, the reduction of franchisor opportunism should not decrease the overall activities of the franchisor.[6]

On the other hand, if reducing franchisors' ability to terminate frustrates franchisors' ability effectively discipline shirking franchisees, these regulations will decrease the use of the franchising form. Under these circumstances, franchisors will be expected to substitute less preferred forms of organization (e.g., use of company owned stores) for franchising. More importantly, to the extent that the franchise form of contracting enables trademark owners to earn profits from chain outlets that they cannot earn through other forms of contracting, the regulation will decrease not only the number of *franchised* outlets but also the *total number* of outlets.[7]

This implicates general econometric problems that plague studies concerning the effects of contract regulation. For example, stock market event studies capture losses to franchisors that result from the imposition of regulation, but do not distinguish losses resulting from reduced opportunism profits from those resulting from higher agency costs and deadweight losses from regulation. Moreover, it may be difficult to obtain data showing the effect of the regulation on the firm in any particular jurisdiction because neither firms nor the government produce widely available data that shows how effects

[6] Because the hypothesized opportunism targets inframarginal franchise outlets, such outlets are unlikely to be closed if the regulations prevent opportunistic cream skimming by the franchisor. This assumption would not be true for other types of regulation. For example, both state and federal laws regulate the sales of franchises by requiring the pre-contractual disclosure of information to potential franchisees in order to prevent the sale of sub-marginal units to uninformed potential franchisees.. *See, e.g. FTC Disclosure Rule,* 16 CFR 436.1 (describing federal disclosure rule and standard form for Uniform Franchise Offering Circulars (UFOC) required by fourteen states). These laws are intended to reduce inefficient sales of franchise units, and a reduction in both the use of franchising and an overall reduction in the number of units would be consistent with efficiency. While our analysis uses the UFOC data produced by such laws to test hypothesis regarding termination regulation, it does not examine the effect of such disclosure laws. For an analysis of these laws, see Hadfield (1990).

[7] Such regulation can frustrate the franchisor's objective to engage in opportunism by taking over profitable franchises. However, because such cream-skimming activity will likely involve infra-marginal outlets, such constraints are unlikely to produce a significant reduction in the total number of outlets.

vary by industry, jurisdiction, and over time. The absence of widely available data has hindered the empirical study of the effects of varying levels of state regulation across different chains or industries. Earlier studies were based on systematic data collected by the U.S. Department of Commerce.[8] However, because of data limitations, studies based on this data were often limited to cross sectional studies. Moreover, collection of this data by the Federal government was discontinued in 1986.[9]

Analyzing the effects of franchise regulation is further complicated by the availability of Coasian bargaining to mitigate the effect of regulation.[10] The relevant statute may allow or fail to preclude contracts between the parties to waive the regulation. Moreover, the statute may be facially mandatory but not prohibit contracts to apply a more permissive law to the interpretation or enforcement of the contract. Also, whether or not the parties can contract for the application of a different law, they may be able to contract to have any cases arising out of the contract adjudicated in a jurisdiction other than the one that imposes the regulation, and this court may apply its own or a third jurisdiction's more permissive law.

This article makes two primary contributions to the literature on the regulation of franchise contracts by providing data and empirical evidence to address these issues. In our first set of empirical tests, we use newly collected firm-level UFOC data on franchising in the fast food industry to examine the effect of the most recently enacted

[8] *See* Beales & Muris (1995); Brickley, Dark & Weisbach (1991a) (discussing U.S. Department of Commerce, *Franchising in the Economy* publication, which collected data on franchising between 1979 and 1986).
[9] *See, e.g.,* Brickley et al., (1991a).
[10] Existing studies have explicitly analyzed how Coasian bargaining affects the terms of the franchise contract. *See, e.g.,* Norton (1987). However, these analyses generally have not considered Coasian bargaining over whether or not a given state's franchise regulations apply. For exceptions, *see* Kobayashi & Ribstein (1999) (discussing the effect of contractual choice of law and forum on the applicability of state franchise regulation); Drahozal & Hylton (2003).

franchise legislation in Iowa. The Iowa statute, enacted in 1992, is uniformly regarded as the most unfavorable to franchisors.[11] In addition to preventing termination at will, the Iowa regulations require that franchisors allow franchisees a right to cure defects. The Iowa statute also explicitly restricts waiver and enforcement of contractual choice of law and choice of forum clauses. Our results show that the passage of this statute led to a reduction in both the number of franchised units and the total number of chain outlets. That is, the increase in the number of franchisor operated establishments was not sufficient to offset the decrease in the number of franchised outlets caused by the franchise regulation.

These results illustrate how a measure of overall activity level (the number of total outlets in a given state) can be used to measure the effects of a franchise regulation. In order to exploit more state law changes, including the use of Coasian bargaining over whether the franchise regulations apply, we analyze a second dataset that uses state employment in industries characterized by a high degree of franchising as a proxy for the overall franchisor activity level. We find that employment in franchise industries, as a proportion of total employment, drops significantly when states enact restrictions on franchisor termination rights. The negative effect is larger in industries that typically do not enjoy repeat business, bolstering the inference that the statutes limit franchisors' ability to police franchisee opportunism. This complements the direct test based on the UFOC data in supporting the view that, on the margin, the expectation of franchisee opportunism has a stronger effect on franchising than potential franchisor opportunism from a termination right.

[11] *See* Kobayashi & Ribstein (1999) at 339.

With respect to the availability of Coasian bargaining, we find variations in the statutes as to whether the parties can directly waive their application or effectively contract over the applicable law or forum. The employment data is rich enough to take account of these variations. We find that termination restrictions, by themselves, do little to affect behavior. It is only when termination restrictions are coupled with restrictions on the franchisee's ability to waive its rights that termination laws have a significantly negative effect on franchising. Specifically, we find that the effect on employment is larger when states restrict the parties' ability to contract around these restrictions through waiver, choice-of-law, and choice-of-forum clauses.

Together, these results provide important new evidence on the effect of franchise regulation and have general implications for empirical research on the effect of regulation of contracts.

Our analysis proceeds as follows. Part 2 discusses the economics of the franchise relationship, focusing on the role of termination provisions. Part 3 discusses the potential economic effects of permitting the parties to avoid regulation through waiver, choice-of-law, and choice-of-forum clauses. Part 4 presents our micro-level data on the effect of franchise regulation on the number of outlets in the regulating state. Part 5 presents our macro-level data on the effect of varying levels of restrictions on employment in the relevant jurisdictions and industries. Part 6 adds analysis of data on the effect of statutes permitting contractual mitigation of regulation through choice-of-law, choice-of-forum and waiver. Part 7 examines differences in the substantive regulation of termination, and Part 8 concludes.

2. THE ECONOMICS OF FRANCHISE TERMINATION

Any analysis of the effect of franchise termination laws has to proceed from an understanding of the role of termination provisions in franchise contracts. As with any incomplete contract, the franchise contract has the potential to generate *ex post* opportunism. Most economic analyses of the franchise form suggest that opportunism arises as franchisees face a moral hazard because they do not bear most of the loss in the value of the franchise trademark when they fail to uphold the franchisor's quality standards.

Because it is generally impossible to specify in perfect detail what those quality standards are under all contingencies, franchisors attempt to limit this moral hazard by including broad termination rights to discipline the franchisee's opportunism. By contracting for at will termination, in which the franchisee loses its franchise-specific investment, this kind of opportunism will be disciplined. In theory, this allows for better quality control, making the franchisor and franchisees collectively better off than they would be if the moral hazard were left unchecked.[12] Perhaps it is unsurprising then that most franchise contracts contain at will termination clauses.

However, these broad termination rights have the potential to generate a different kind of opportunism. It may be rational for franchisors to exercise their termination rights to expropriate the returns from a franchisee's investment in market discovery and development by terminating contracts in those markets that turn out to be unexpectedly profitable, allowing the franchisor to service the markets itself without having to split revenues with a franchisee or to resell the franchise at better terms.

[12] For an early exposition of this argument, see Epstein (1975).

Worries over cream-skimming of this kind led many states to limit franchisor termination rights by statute beginning in the early 1970s. Between 1971 and 1992, nineteen states enacted laws that regulate the franchisor's ability to terminate franchise contracts. Generally, these statutes require good cause for a franchisor to be able to terminate its contract, such as violation of specific contract terms or fraud on the part of the franchisee.[13] If expectations of this kind of opportunism outweigh expectations of the costs of moral hazard, laws restricting termination rights could make both franchisors and franchisees better off because they serve as a pre-commitment device for the franchisor. In the absence of cream-skimming fears, the joint surplus will be expanded as franchisees have more of an incentive to invest in market discovery and development.

Brickley, Dark, & Weisbach (1991a) and Klein (1995) analyze termination clauses in franchise contracts as commitment devices in cases where contracts are incomplete. That is, if it is costly (or impossible) to spell out a franchisee's duties in complete specificity, franchisors will attempt to design self-enforcement mechanisms that give the franchisee an incentive not to cheat. In both models, as long as the capitalized value of future rents available to the franchisee (W) is greater than the one-shot gain available from cheating (F), the franchisee will not cheat, assuming that the franchisor can terminate the franchise arrangement in the event the franchisee does cheat. The

[13] The vast majority of these statutes (i.e., all states with termination statutes except IL, MI, VA, and WA) apply to a franchisor's decision not to renew a franchisee's contract as well. Additionally, many of the statutes give a franchisee the right to cure any cause for termination raised by the franchisor, and they all require that notice be given to the franchisee up to 180 days before the relationship is terminated. Further, most states have indicated by statute that franchisees can not waive these protections. For a listing of the main provisions of these statutes, *see* Table A1, *infra.*

franchisor will franchise the individual establishment whenever the capitalized value of future rents from the establishment as a franchisor-run unit (X) is less than W-F.[14]

If the franchisor's ability to terminate a franchise contract is limited, F is effectively increased, either because the franchisor will have to pay some severance penalty to the franchisee in order to terminate, increasing the one-shot gain from cheating, or because termination itself will not be possible, turning the cheating gain into a multi-period gain. Thus, as spelled out by Brickley, Dark, & Weisbach (1991a), laws restricting franchisor termination rights will lead to less franchising, as fewer units meet the $X < W - F$ condition.

Interestingly, because franchisees are assumed to be able to generate higher rents in the operation of units than are franchisors, the reduction of franchised units also leads to an aggregate reduction of units. That is, while the franchisor will find it profitable to run some of the units it would have franchised were it able to commit the franchisee not to cheat, there will be some marginal units where both $X < 0$ *and* $W - F < 0$. Under these conditions, these units are no longer profitable to run or to franchise. As a result, the regulation induced switch to increased outright ownership will not be sufficient to offset the decrease in the number of franchised outlets. The overall magnitude of this effect depends on the extent to which the franchising form of contract is fungible with other ways to control outlets, including outright ownership.

However, Brickley, Dark, & Weisbach (1991a) also consider the possibility that laws limiting termination police opportunism on the part of franchisors. That is, if franchisors use their termination rights to take over units that turn out to be more

[14] Both models suggest that X will be lower than W (i.e., the rents available to the franchisee exceed the rents available to the franchisor) because the franchisee will be better able to control agency costs among his employees. This is consistent with Rubin's original insight regarding why franchising exists at all.

profitable than expected, and franchisees do not correctly estimate the expected cost of this, there will be too much franchising as some franchisees pay above their true reservation prices for their units.[15] Thus, the passage of termination restrictions will be associated with lower levels of franchising in this scenario as well. However, because cream skimming focuses on profitable inframarginal units where $X > 0$, this theory does not imply that the total number of units operated should be adversely affected by the passage of termination restrictions.

Rather than focus on the total number of outlets, Brickley, Dark, & Weisbach (1991a) instead rule out the possibility of franchisor opportunism by focusing their empirical analysis on differences across industries. Specifically, they argue that if termination clauses primarily discipline franchisee cheating, then the effect of termination limit laws on the rate of franchising will be most pronounced in industries with mostly non-repeat business. In industries with significant repeat business, policing the franchisee will be less important since the revenue-sharing mechanism will already induce the franchisee not to cheat. Otherwise, it will lose its repeat business and suffer a large revenue loss. In industries without much repeat business, the revenue-sharing mechanism will not provide as much discipline, making the potential for termination more important. On the other hand, if termination clauses primarily allow the franchisor to exploit the franchisee, no such cross-industry condition exists. There should be no systematic difference in the change in franchising across industries.

[15] Brickley, Dark, and Weisbach (1991a) point out that miscalculation on the part of franchisees is a necessary condition for this possibility to occur. Otherwise, the effect will be priced in the revenue sharing terms of the contract. As noted above, curing such systematic errors is the function of disclosure regulations, which exist at both the state and federal levels.

Brickley, Dark, & Weisbach (1991a) show that the effect of termination restrictions is greater in the industries they classify as particularly subject to non-repeat customers (restaurants, hotels, and auto rental agencies) as compared to the effect in other industries. A significant limitation of the Brickley, Dark, & Weisbach (1991a) empirical analysis, however, is their reliance on purely cross-sectional data which precludes them from isolating the shock of legal changes and removing any coincidental heterogeneity between industries in states with termination restrictions and those without.

3. THE EFFECT OF CONTRACTUAL AVOIDANCE OF REGULATION

Even if state regulation of franchise termination can harm franchisors, there is still a question as to the form this regulation must take. The uncertainty is due to the fact that contracting parties can utilize several alternatives to minimize or even completely negate the effect of the regulation (Kobayashi & Ribstein (1999), Ribstein (2003)).

Most obviously, the parties may be able to enter into an enforceable agreement waiving the statute. This is unlikely, however, for franchise regulation. Since the whole purpose of the regulation is to protect franchisees from contract provisions favorable to franchisors, it would make little sense for the legislature to permit enforcement of waiver. Indeed, many of the state statutes contain explicit antiwaiver provisions. It is not clear, however, whether such antiwaiver provisions are effective because of alternative contractual clauses that result in *de facto* waiver but are not rendered unenforceable by the antiwaiver provision.

One alternative avoidance mechanism is contract clauses providing that the contract is to be interpreted and enforced under the law of a state that does not regulate

franchise termination. It may not be clear whether these provisions are prohibited by statutory anti-waiver provisions even if they have a similar effect. On the other hand, the effectiveness of these provisions depends on whether the court adjudicating the contract will apply forum state law, the chosen law, or the law of some other state.

The standards the courts apply to these issues are summarized in Restatement (Second) of Conflicts, §187(2), which provides that a choice-of-law clause will not be enforced as to issues such as validity (when the choice of law matters most) if there is no "substantial relationship" between the chosen law and the parties or transaction or other "reasonable basis" for the parties' choice, or application of the chosen law would contravene a "fundamental policy" of a state with a materially greater interest whose law would apply in the absence of contract. Thus, whether a court will enforce a choice of law clause depends on the contacts between the parties and transaction on the one hand and the chosen jurisdiction on the other, whether a state with closer contacts seeks to regulate the transaction, and on the nature of this regulation.

The flexibility of these tests leaves the forum court significant leeway in deciding whether to enforce the choice-of-law clause. These rules suggest that the parties might maximize the chance that the clause will be enforced by adding a forum-selection clause to the agreement providing that the dispute will be decided in a particular court that has a general rule favoring enforcement or that is otherwise inclined to enforce the parties' choice-of-law clause. The vast majority of jurisdictions have a general policy favoring enforcement of choice-of-forum clauses (Solimine (1989)), and enforceability has been further supported by the U.S. Supreme Court,[16] although these opinions on federal issues

[16] *M/S Bremen v. Zapata Off-Shore. Co.*, 407 U.S. 1 (1972); *Carnival Cruise Lines, Inc. v. Shute*. 499 U.S. 585 (1991).

are not necessarily binding in state courts on state issues. One reason for the somewhat different judicial approaches to choice-of-forum and choice-of-law clauses is that a court does not have to clearly disregard local law or the law of another regulating state to hold simply that the case should be brought in the designated forum. Another is that enforcing a choice-of-law clause might force a court to apply the law of another jurisdiction with which it may be unfamiliar, and on which its decision would not have precedential value. The parties' might further enhance the chance of enforcing the forum-selection clause with a clause providing that the parties' consent to jurisdiction in the designated forum[17]

Because courts' flexibility is not unlimited, enforcing the parties' choice of forum clause does not necessarily mean that the chosen forum will enforce the parties' contractual choice of law. Thus, a state law recognizing enforcement of choice-of-law clauses is more permissive than a state law recognizing enforcement only of choice-of-forum clauses.

Finally, the parties can enhance enforcement of the choice-of-law clause by establishing connections with the designated state. As noted above, under the general rules on enforcement of contractual choice of law, enforcement is more likely where the parties and transaction have a "substantial relationship" with the designated state, and where a regulating state does not have a "materially greater interest" than the designated state.

Applying these rules to franchise cases, an important impetus to the enforcement of choice-of-forum and choice-of-law clauses in franchise contracts was the Supreme Court's decision in *Burger King* enforcing a clause in a franchise agreement by which the franchisee consented to jurisdiction in Florida. The court held that the franchisee had

[17] *Burger King v. Rudzewicz*, 471 U.S. 462 (1985).

established "minimum contacts" with Florida, and had agreed to a contract that had "substantial connections with the forum state," including a provision that provided for application of Florida law. As a result, the Michigan Franchise Investment Law, which required cause for termination and gave the franchisee 30 days to cure any defects, did not govern the relationship.

This decision was followed by two cases in the late 1980's that enforced choice-of-law clauses. *Tele-Save*, decided by the U.S. Court of Appeals for the 6th Circuit, upheld a contractual choice of law provision choosing New Jersey Law despite a non-waiver provision found in the Ohio Business Opportunity Plans Act.[18] *Modern Computer Systems*, decided by the U.S. Court of Appeals for the Eighth Circuit, held that a choice of forum clause requiring "exclusive venue in Douglas County Nebraska in any litigation between them concerning this contract" precluded application of the Minnesota Franchise Act in spite of the existence of an anti-waiver provision in the statute.[19]

These holdings effectively gave a franchisor the ability to avoid franchise regulation as long as it included a choice-of-law clause in the franchise contract and established significant contacts with the designated state, or avoided contacts with the regulating state, or both. These opinions established legal rules for 14 of the state statutes that existed as of the late 1980's, which included a large percentage of the states that have enacted franchise regulations, including the particularly oppressive laws in Iowa, Minnesota and Arkansas in the Eighth Circuit, and Michigan in the Sixth Circuit.

On the other hand, some courts have voided contractual choice of law clauses even where the relevant statute did not specifically bar the clause, including one case in

[18] *Tele-Save Merchandising v. Consumers Distributing*, 814 F.2d 1120 (6th Cir. 1987).
[19] *Modern Computer Systems, Inc. v. Modern Banking Systems, Inc*., 871 F.2d 734 (8th Cir.1989).

the 8th Circuit (*Electrical & Magneto*)[20] and an important case in the Seventh Circuit, (*Wright-Moore*)[21], which would directly cover franchise statutes in Illinois, Wisconsin and Indiana. *Wright-Moore* failed to find a substantial relationship to the forum state, noting that although Ricoh was incorporated in New York, its principal place of business was New Jersey. Also, in contrast to the holding in *Modern* that the franchisee's domicile (Minnesota) had expressed a strong preference for upholding contractual choice of law, the court in *Wright-Moore* did not find such an expression by Indiana.

State legislators swiftly reacted to these federal decisions. Soon after the Eighth Circuit's decision in *Modern Computer Systems*, the Minnesota legislature passed a provision explicitly voiding choice of law provisions in franchise contracts by adding the phrase "including any choice of law provision" to the section voiding waivers. Since 1988, six states have explicitly voided choice of forum and choice of forum clauses. Only two, Washington and Iowa, void both types of provisions. The California, Illinois, and Michigan statutes have provisions voiding choice of forum provisions but not choice of law provisions. The Minnesota statute explicitly voids choice of law provisions but does not explicitly void choice of forum provisions. Details of these provisions are listed in Tables A1 and A2.

The state legislative response still permits enforcement of contractual choice of law clauses even in the states that have enacted specific anti-choice provisions because the application of these statutes depends on the places of business of the franchisee and franchisor. For example, in *JRT* the Eighth Circuit held valid the contractual choice of Arkansas law, and affirmed the dismissal or summary judgment of plaintiff's claims

[20] *Electrical & Magneto Service Co. Inc. v. AMBAC Intern. Corp.* 941 F.2d 660 (8th Cir. 1991).
[21] *Wright-Moore v. Ricoh,* 908 F.2d 128 (7th Cir. 1991).

based on the Michigan Franchise Investment Law.[22] The Arkansas Franchise Law can be used only by a franchisee that maintains a place of business in Arkansas. Even without this statutory provision, it is possible that the regulation would not apply to a franchisor because of a lack of a "substantial relationship" between the regulating state and the parties or transaction under the standards of Restatement (Second) of Conflicts §187(2). Thus, franchisors can minimize the impact of state franchise regulations by locating franchises only in non-regulating states, and headquarters either in non-regulating states or in regulating states that apply only to in-state franchisees. Table A3 summarizes these legal relationships.

In addition, Federal law regulates specific types of franchise relationships – automobile franchises under the Federal Automotive Dealer Franchise Act (FADFA) (15 U.S.C. §§1221-1225, which imposes a general duty of good faith, and gasoline franchises under the Petroleum Marketing Practices Act (PMPA) (15 U.S.C. §§2801-2806). These laws may primarily benefit franchisors to the extent that they preempt state law and thereby protect franchisors from more onerous state regulation. However, states can enact significant regulations beyond those contained in the federal statutes. For example, state regulation of automobile dealerships is far more extensive that those contained in the FADFA or the state's general regulation of franchises enacted in almost every jurisdiction. The PMPA did not preempt a preexisting law in Maryland that prohibits refiner control of retail gasoline stations (Md. Ann Code Art. 56 §157E(b)), and would not prevent the enactment of similar laws in other states (Delaware and the District of Columbia have enacted similar laws (6 D.C.A. §2905(a), D.C. St. §10-212).

[22] *JRT v. TCBY Yogurt* 52 F.3d 734 (8th. Cir. 1995).

4. MICRO ANALYSIS OF TERMINATION RESTRICTIONS

We attempt to extend the empirical analysis of the welfare effects of termination rights by avoiding the limitation inherent in Brickley, Dark, & Weisbach (1991a) of relying on cross-sectional data. We use panel data to analyze the effects of laws restricting franchisor termination rights in the hope of ruling out the possibility that unobservable effects generate an omitted variables bias in the Brickley, Dark, & Weisbach (1991a) analysis.

We collected information on the number of franchised and franchisor operated restaurants in each state for the following firms: Burger King; Dunkin Donuts; Domino's Pizza; and KFC. Our data come from the Uniform Franchise Offering Contracts (UFOC) filed with the Attorney General's Office in the state of Maryland. Item number 20 on the UFOC requires the disclosure of this information for all firms offering franchises in the state. We focused on these firms in particular because we need data surrounding the year 1992 to exploit the most recently passed termination law which was passed in Iowa. Because of this constraint, we did not examine some obvious candidate firms (e.g., McDonald's which only started disclosing this information in 1992).[23] We chose those fast food firms that ranked most highly on *Entrepreneur Magazine's* Franchise 500[24] which satisfied the data availability constraint.

For our micro analysis, we are only able to exploit the most recent adoption (Iowa 1992) in a panel data framework, which requires both pre and post law change data to estimate the effect of the law independent of state fixed effects. Descriptive statistics for

[23] McDonald's responded to inquiries for this information by indicating (through its corporate counsel) that it does not have figures for the period before 1992.
[24] http://www.entrepreneur.com/franzone/rank/0,6584,12-12-F5-2006-0,00.html

the firms are available in Table 1. As noted above, the Iowa statute represents the most restrictive statute, as it gives franchisees a right to cure in addition to requiring cause for termination. In addition, the Iowa statute explicitly restricts use of waiver, as well as contractual choice of law and forum clauses.

For our analysis, we examine the natural log[25] of the per capita[26] number of franchised units, franchisor operated units, and total units, including firm-specific state dummies, firm-specific year dummies, and a host of covariates, including the natural log of state per capita income, the percent of state population between the ages of 15 and 19, percent of state population with a high school education, and the labor force participation rate of women in the state.[27] Given that our dependent variable is a per capita measure, we use weighted least squares where we weight by state population.[28] We examine the period 1989 (the first year these data are available on most firms' UFOC's) to 1995, to provide equal sized pre-law and post-law periods.[29]

We present results from these models in Table 2. We find that when Iowa enacts its restriction on franchise termination, the per capita number of franchised fast food restaurants in the state declines by about 37 percent relative to Iowa's pre-law baseline and relative to contemporaneous changes in franchising in other states. The effect is

[25] Using the natural log form is attractive for a variety of reasons. First, it avoids the scaling issues that occur due to differences across firms (e.g., Burger King has more than twice as many units as Dunkin Donuts, on average). Second, it allows us to interpret our coefficients as percentage changes. However, our results are substantively equivalent if we examine levels instead of natural logs. For the few instances in which a firm had no franchisor operated units in a state-year cell, we used ln(0.0001) to avoid losing those observations.

[26] Our results are substantially similar if we examine the number of units (in either OLS regressions or count data models) and simply control for population as a covariate.

[27] We include this covariate because of the suggestion in Chou, Grossman, and Saffer (2004) that one of the main economic forces that has led to the growth of the fast food industry has been the increasing labor market opportunities for women. Their argument suggests that as more women work outside of the home, there is an increased demand for fast food.

[28] Our results are substantially unchanged if we do not weight the observations by state population.

[29] The results are not changed if we expand the post-law window.

statistically significant at the 0.5 percent level (p = 0.003), using heteroskedasticity-corrected (White 1980) robust standard errors. If we allow the standard errors to be clustered by state to address the concerns about serial correlation in difference-in-difference studies raised by Bertrand, Duflo, and Mullainathan (2004), our standard errors drop by about one third (p = 0.000).

In the second column of Table 2, we present results for the per capita number of franchisor run units. We find that passage of Iowa's termination restriction is associated with a 161 percent increase in franchisor operated units. This effect is statistically significant (p = 0.000), regardless of how we calculate the standard errors.

Lastly, we examine the effect of the termination restriction law on the total number of fast food restaurants per capita. If franchisees can generally better control agency costs, as is assumed in the economic literature on franchising, we should find that the increase in franchisor operated units is not large enough to offset the decrease in franchised units when termination restrictions go into effect. We do find such an effect. Total restaurants in Iowa decrease by 24 percent when the Iowa law goes into effect. This coefficient is statistically significant at the 0.5 percent level.

One concern about our analysis arises from the fact that our identification strategy relies on a single law change which increases the potential for time-varying unobservable effects to drive our result. To mitigate this possibility, we re-estimate our models using only data from Midwestern states. Thus, if our original results are driven by regional shocks that are coincidentally related to the Iowa law, we should not find the same treatment effects when we examine regional data only.

We present the Midwest only results in the last three columns of Table 2. We find substantially the same results when we restrict the data in this way. Franchised restaurants decrease by 46 percent ($p = 0.025$). Franchisor-operated units increase by 164 percent ($p = 0.029$), and total units decline by 34 percent ($p = 0.038$). Again, in all cases, the standard errors are actually lower if we cluster them by state.

Our data allows us to exploit one other change in termination restriction laws. In 1998, Washington, D.C.'s franchise termination law was repealed by the U.S. Congress. If we expand our analysis to cover the period 1989-2001, allowing for pre and post windows for both the Iowa law's passage and the D.C. law's repeal, we again find the same results in terms of sign and statistical significance. However, as seen in Table 3, the magnitude of the effects on franchised and total units is smaller when we include the D.C. law change. As suggested below, this is likely due to the fact that the D.C. law is substantially weaker than the Iowa law in that it only provides a termination restriction without restricting the franchisee's right to waive this protection or the parties' ability to include choice of law and choice of forum provisions in their contracts.

5. EFFECT OF TERMINATION RESTRICTIONS ON EMPLOYMENT

The foregoing analysis suggests that laws limiting franchisor termination rights generate welfare losses for franchisors and franchisees collectively, as a franchisor's ability to control opportunism is constrained, leading it to reduce the number of outlets it opens in a given state. However, it is not clear if this result is peculiar to Iowa or whether it is likely to occur whenever states restrict termination rights. For example, the Iowa Statute is one of two statutes that restricts waiver, and enforcement of contractual choice

of law and choice of forum clauses. Iowa also allows the franchisee the right to cure in addition to requiring cause. One question is whether the same effects would be observed in states that have enacted franchise protection statutes that lack some of the restrictions contained in the Iowa statute.

In the prior section, we are limited to examining Iowa's law change due to the non-existence of franchise unit data surrounding the enactment of similar laws in other states. However, between 1971 and 1992, 16 states and the District of Columbia passed such laws as described in Kobayashi & Ribstein (1999), Brickley, Dark, & Weisbach (1991) and Stover (2004).[30] Further, the federal government created restrictions on franchising contracts for gas stations through the Petroleum Marketing Practices Act (PMPA)[31] in 1978. Summary information on these state laws is provided in Table 4, and detailed information is listed in Tables A1 and A2. To exploit this variation, we investigate employment rates in industries that are heavily franchised. If our results for franchise units are externally valid, we should find that employment in these industries declines as a percent of total state employment since franchisors restrict their growth when termination rights are limited.

We collected data on the proportion of employees in a state employed in four SIC codes that historically have a relatively high rate of franchising: Automotive dealers and service stations (624)[32]; eating and drinking places (627); hotels and other lodging places (805); and automotive repair, services, and parking (825). These data come from the

[30] None of the sources notes that D.C. had a franchise termination restriction in effect from 1989-1998. See Table A1, *infra.*
[31] 15 U.S.C. §2801-2806
[32] Choosing this as one of our franchising industries allows us to exploit the national restrictions imposed by the PMPA.

Bureau of Economic Analysis and are available from 1969 to 2000.[33] Descriptive statistics are presented in Table 5.

Exploiting all of the existing termination restriction laws, we perform a difference-in-difference analysis including industry-specific state fixed effects (λ) and industry-specific year dummies (τ). Our dependent variable is the number of workers in each of the industries listed above, divided by the total number of workers in the state.[34] Thus, we have four observations for each state in each year. By looking at the labor force share in each of these industries, instead of the number of workers, we can more precisely control for generic changes in a state's overall labor force. We perform weighted least squares where each observation is weighted by the total labor force in the state, and we use robust standard errors to allow for heteroskedasticity across states. We also provide standard errors that are clustered by state to mitigate concerns about serial correlation. Formally, we estimate the following regression:

$$\left(\frac{\text{workers}_{ist}}{\text{workers}_{st}}\right) = \alpha \cdot law_{ist} + \beta \cdot income_{st} + \lambda_{is} + \tau_{it}$$

where *i* represents the industry, *s* stands for the state, and *t* is the year.

We present the results from this difference-in-difference analysis in the first column of Table 6. We find that enactment of a law restricting a franchisor's termination rights leads to a decrease in the proportion of the state workforce that is employed in each of the franchise-heavy industries we examine of about 1 percent in relative terms and the effect is statistically significant at the 6 percent level, using robust standard errors

[33] Starting in 2001, BEA uses NAICS industry designations instead of SIC codes.
[34] The results that follow are virtually unchanged if we use state population as the denominator of the dependent variable and as the weighting factor.

(though the effect is not statistically significant if the standard errors are clustered by state).

The differences-in-differences analysis, however, does not provide the most powerful available test of the effect of termination laws on employment in franchising industries. Specifically, there may be other variables that are coincidentally correlated with the enactment of franchise termination laws that affect employment in the industries we examine. To control for this possibility, we also collected data on the proportion of the state workforce that is employed in four other industries that have similar wage profiles to the ones identified above, while also exhibiting relatively low levels of franchising. For these within-state control groups, we chose: General building contractors (310); lumber and wood products (413); apparel and other textile products (462); and depository and non-depository institutions (710). Data on these industries allow us to perform a difference-in-difference-in-difference (DDD) analysis in which we independently control for state-specific year dummies (υ) to net out any unobservable variables that affect this segment of the workforce. Additionally, we control for industry-specific state fixed effects (λ) and industry-specific year dummies (τ) generating the following regression:

$$\left(\frac{\text{workers}_{ist}}{\text{workers}_{st}}\right) = \alpha \cdot law_{ist} + \lambda_{is} + \tau_{it} + \upsilon_{st}$$

In this regression, the law variable only takes the value of one in states with termination laws for those industries assumed to have a high degree of franchising to avoid collinearity with the state year dummies. Our identification strategy then is to examine changes in the portion of the state's workforce in franchising industries when termination laws are adopted relative to non-franchising industries in the same state during the same

year, net of any existing baseline within the state and net of any contemporaneous changes in franchising industries in states without termination laws. Again we allow for both robust standard errors and standard errors clustered by state and we weight each observation by the size of the state's workforce.

We present results from this regression in the second column of Table 6. In this specification, we find that adoption of a termination law leads to a decrease in the proportion of the state's workforce in franchising industries of about 6 percent ($p = 0.000$ with robust standard errors; $p = 0.088$ if standard errors are clustered by state). These employment results largely support the conclusions we draw from our firm-level analysis above. Namely, the passage of restrictions on a franchisor's termination rights increase the costs of using the franchise form and imperfect substitution leads franchisors to reduce their net presence in the states that pass such laws.

Borrowing from Brickley, Dark, & Weisbach (1991a), we examine whether there is a differential employment effect across franchising industries. Specifically, if broad termination rights mostly serve to police franchisee opportunism, any estimated treatment effect should be bigger for those industries that do not generally enjoy repeat business. Since the revenue sharing incentive will limit opportunism on the part of franchisees that experience a large amount of repeat business, the importance of the termination option is diminished. Of our four franchising industries, Brickley, Dark, & Weisbach (1991a) suggest that hotels and restaurants fall into the category of non-repeat business, while auto dealers and auto service stations are more likely to rely on repeat business.

We examine this differential treatment effect in two different ways. First, we re-estimate our DDD analysis using only the observations from the franchising industries

and coding our law_norepeat variable as taking the value of one for only the two industries that do not exhibit repeat business:

$$\left(\frac{\text{workers}_{ist}}{\text{workers}_{st}}\right) = \alpha \cdot law\_norepeat_{ist} + \lambda_{is} + \tau_{it} + \upsilon_{st}$$

In this specification, the treatment effect is identified by how employment changes in the franchise industries without repeat business relative to simultaneous changes in the repeat business franchise industries within the state, pre-law baselines for the franchises in each state, and contemporaneous changes in the industries in states without termination laws.

We present these results in the first column of Table 7. We find that passage of termination restrictions lowers the fraction of state employment in non-repeat business franchise industries by almost 2 percent relative to repeat business franchise industries, and the effect is statistically significant at the 4 percent level if we use robust standard errors, but it is not statistically significant if we cluster standard errors by state.

In the second column of Table 7, we present our DDD regression using all industries, franchising and non-franchising, and we include both the law and the law_norepeat variables. This specification will also tell us whether or not the franchising industries without repeat business suffer a larger decline than franchising industries with repeat business when termination restrictions go into effect. We estimate the following regression:

$$\left(\frac{\text{workers}_{ist}}{\text{workers}_{st}}\right) = \alpha \cdot law_{ist} + \beta \cdot law\_norepeat_{ist} + \lambda_{is} + \tau_{it} + \upsilon_{st}$$

Once again, we find that termination restriction laws lead to a decline in the proportion of the state workforce employed in franchise industries. The decline is about 4 percent. This effect is statistically significant regardless of the standard errors used.

Further, the industries without repeat business experience an additional decline of about 2 percent.[35] This additional effect on franchising industries with little repeat business is statistically significant if we use robust standard errors but it is not if we cluster standard errors by state. These results further support the conclusion that no-fault termination clauses in franchise contracts primarily serve to police franchisee opportunism, and laws requiring that terminations only occur for good cause are welfare reducing for the relevant parties.[36]

6. EFFECT OF PERMITTING CONTRACTUAL AVOIDANCE OF REGULATION

Until now, we have focused our attention on termination restrictions alone. However, discussed in Part 3, a potentially significant factor relating to the effect of the statutes is whether they allow avoidance through waiver, choice-of-law, and choice-of-forum provisions. As evident in Table 4, there is significant heterogeneity in the state laws in this regard that may allow us to test for a kind of "dosage" effect of statutes that have varying levels of mandatory application. This test is a significant extension of Brickley, Dark & Weisbach (1991), which did not allow for these variations.

[35] These relative effects (as well as the statistical significance) are virtually unchanged if we run the regressions on the natural log of the employment share to remove any scaling effects from our data.

[36] For robustness purposes, we also re-ran all of the specifications above limiting the dataset to 1969-1991 (i.e., just before the Iowa franchise termination restriction law was passed). Some commenters have suggested to us that since the Iowa law was more restrictive than those passed previously, it may be driving our employment results for reasons other than those suggested in this paper. Specifically, the Iowa law allowed franchisors a right to cure, and also explicitly restricted waiver, choice of law and choice of forum. Indeed franchisors in some industries threatened to boycott Iowa because of its law. If we drop observations for 1992 onward, our results are largely unchanged. We do find that if we enter a separate control for Iowa's termination law, it does appear to generate a slightly larger negative effect on employment than the other termination laws generally. Interestingly, the boycott story is not borne out by the data as fast food franchising did grow nominally in Iowa for the firms in our dataset (as well as for McDonald's, for which we have data from 1992 onward) even if it grew less quickly than in other states, as implied by our results in Table 2.

We examine this dosage effect in two different specifications in Table 8. First, in column 1, we separately code whether a state has a termination restriction, a waiver restriction, a restriction on either COL **or** COF, and whether it has restrictions on both COL **and** COF. In column 2, we code each state with restrictions into four mutually exclusive categories: termination restriction only; termination and waiver restriction only; termination, waiver, and either a COL or a COF restriction only; and states that have all four restrictions.

In both specifications, we find largely the same thing. Termination restrictions alone have very little effect on the employment share of franchise industries. In both specifications, the termination restriction coefficient is quite small and it is not statistically significant. In both specifications, adding a waiver restriction increases the negative effect of the termination restriction by a factor of 10. Further, this effect is statistically significant using robust standard errors (but not standard errors clustered by state). Adding either a COL or COF restriction, in both specifications, doubles the negative effect generated by the waiver restriction, and this effect is statistically significant in both specifications using robust standard errors, but it is only statistically significant using clustered standard errors in the second specification. Lastly, having both a COL and a COF restriction increases the negative effect on franchise employment significantly, and this effect is statistically significant in both specifications using robust standard errors. For the results using clustered standard errors, the effect of having both COL and COF restrictions is statistically significant at the 10 percent level in specification 1 and at the 5 percent level in specification 2.

Table 9 exploits the theoretical differences between repeat and non-repeat business franchise industries. We re-estimate the specification from Table 8 column 2 allowing for both a general restriction effect (common to all franchising industries) and an additional effect on the employment share of industries that do not generally enjoy repeat business. If the restrictions are inhibiting the ability of franchisors to discipline franchisee opportunism, we should find systematically larger negative effects of the restrictions in the non-repeat franchising industries.

As for the general effects of restrictions, the story is largely the same as that found in Table 8. We again find a dosage effect. As for the additional effects found in the non-repeat business franchises, we find that these industries experience larger negative effects for each of the restrictions. For many of the restrictions, the additional effect is individually statistically significant using robust standard errors, and the additional effects are jointly significant using both sets of standard errors, at least at the 10 percent level.

In the foregoing analysis, for both the theoretical reasons laid out above and for the empirically expedient reason that only one state restricts choice of law but not choice of forum (Minnesota), we did not differentiate between COL and COF restrictions. However, it is an empirical question as to whether the effects of these restrictions are equivalent. To investigate this issue, we re-estimate the Table 8 (column 2) regression allowing for separate COL and COF effects. We present these results in Table 10 where we find that the effect of a COL restriction is almost twice as large as the effect of a COF restriction. This differential is both practically large and statistically significant.

The results in Tables 8-10 are consistent with the analysis in Part 3 of the effect of choice-of-law and choice-of-forum provisions. As discussed there, permitting enforcement of these provisions increases a franchisor's ability to avoid regulation. Permitting enforcement of a choice-of-forum provision alone may increase a franchisor's avoidance ability and decrease the effect of the statute as compared with enforcing neither provision because it helps ensure litigation in a state under whose law the agreement is likely to be enforced. However, enforcement of a choice-of-forum provision alone does not enable avoidance to the same extent as enforcement of a choice-of-law restriction because the chosen court may still apply the regulation under general choice-of-law rules. This data shows the importance of taking these contractual variations into account when measuring the effect of regulation.

7. OTHER STATUTORY VARIATION

We exploit one additional bit of heterogeneity across the franchising restrictions found in the various states.[37] Namely, slightly more than half of the states with franchise termination restrictions also require that a franchisor permit the franchisee to cure any problem offered as cause for terminating their relationship. Presumably, if contractual restrictions limit the franchisor's ability to discipline franchisee opportunism, we should find a dosage effect associated with the cure requirement.

The prior empirical literature franchising has generally ignored state by state variation in the statutes. One exception is Muris & Beales, who examined the dosage

[37] We also examined the heterogeneity in state laws regarding whether the termination restrictions applied to decisions not to renew a relationship as well as decisions to terminate the relationship during the contract term. We found that states exempting renewal decisions from the cause requirement did exhibit an up tick in the employment share of franchising industries, but the effect was very small, and it was not statistically significant.

effect of specific provisions on the franchise/own decision. Like the earlier studies, they found the largest negative effects on franchising in non-repeat industries. They also found these effects were concentrated in states where the statute mandated a franchisee right to cure. Further, the negative and significant effects of a right to cure were found in both repeat and non-repeat industries. In Table 11, in the first column, we provide estimates from re-running the Table 8 (column 2) regression adding an indicator that equals 1 for those franchise industries operating in states that have a cure requirement in a given year. In this specification, we do find a negative average treatment effect for the cure requirement, and it is statistically significant at the 5 percent level with robust standard errors, though it is not statistically significant when standard errors are clustered by state.

We also present a specification in column 2 that interacts the cure requirement indicator with each of the various groupings of state contractual restrictions (i.e., termination restriction only, termination and waiver restrictions only, termination, waiver, and either COL or COF restrictions only, and all of the restrictions). We again find evidence that the cure requirement independently reduces the employment share of franchising industries and, in general, this effect is larger in magnitude as states adopt more restrictions on the parties' ability to contract around state law.

8. CONCLUSION

Franchise relationships have the potential to generate *ex post* opportunism on the part of both franchisors and franchisees. Due to the public good nature of the franchise trademark, franchisees have an incentive to shirk by providing a sub-optimal level of

service since they do not bear the full cost of any resulting deterioration of the trademark's value. To limit this problem, franchise contracts generally contain termination at will clauses to commit the franchisee not to shirk. As long as the franchisee gains more from future franchise rents than it can get from cheating, the broad termination provision will induce the franchisee not to cheat.

However, such broad termination rights could generate franchisor opportunism, as it seeks to expropriate the franchisee's investments in market discovery and development in markets that turn out to be particularly profitable. To combat this possibility, a number of states have passed laws requiring good cause for the termination of a franchising arrangement.

We show that these laws induce franchisors to limit their business growth. Using micro data on the number of franchised and franchisor-operated fast food restaurants, we show that passage of these laws leads to a decrease in both franchised and total fast food restaurants in a state.

As a policy matter, this suggests that laws limiting franchisors' and franchisees' freedom of contract are not beneficial to franchisees as a class or to franchisors. Faced with termination restrictions, franchisors switch to less efficient franchisor operated establishments or simply cut back on business altogether. As documented above, these changes could also have effects on workers in a state.[38] These effects are both statistically significant and large in magnitude and survive a number of robustness checks.

[38] In general, we can infer that these results are negative since they shift workers out of industries they would have chosen in the absence of the regulatory change. However, we draw no conclusions about the global efficiency of this shift.

Our data, particularly including the differential effects on repeat and no-repeat business industries, indicates that the reduction appears to be a result of the restriction on the franchisor's ability to constrain franchisee opportunism. This suggests that franchisee opportunism is generally a more important problem than franchisor opportunism. This makes sense, as franchisors will generally already be policed by reputation effects whereby a franchisor that repeatedly engages in opportunistic behavior will have trouble franchising in the future, as potential franchisees avoid franchisors with bad reputations or extract significantly better contract terms in the revenue sharing dimension. Franchisees, on the other hand, are likely to have little to lose in reputation terms by acting opportunistically given their relative anonymity. It is important to emphasize, however, that we are not able to test for this directly with the data we have; we only note that our results are consistent with this interpretation.

Perhaps more importantly, our analysis sheds light on new methods of testing the effect of regulation. We show how macro-level data on state employment rates can fill gaps in micro-level data on firm effects. We also find that the effect is larger when states restrict the parties' ability to contract around these restrictions through waiver, choice-of-law and choice-of-forum clauses, thus indicating the significance of Coasian bargaining. These results have general implications for empirical research on the effect of regulation of contracts.

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Table 1
Summary Statistics for Fast Food Franchisors

Firm	Franchised Units Per State		Operated Units Per State		Total Units Per State	
	Mean	SD	Mean	SD	Mean	SD
Burger King	122	130	12	24	134	140
Dunkin Donuts	59	112	0	1	59	113
Domino's Pizza	74	74	16	29	90	93
KFC	64	66	34	47	100	105

Note: All data cover the period 1989-2001 and were collected from UFOC's filed with the Maryland Attorney General's Office.

Table 2
Effect of Iowa Franchise Law on Fast Food Establishments Per Capita
(robust standard errors in parentheses)
[standard errors clustered by state in brackets]

	Full Sample			Midwest Only		
Dependent Variable	Franchised units	Franchisor run units	Total units	Franchised units	Franchisor run units	Total units
Termination Law	-0.365 (0.121)*** [0.087]***	1.606 (0.408)*** [0.324]***	-0.242 (0.084)*** [0.072]***	-0.459 (0.204)** [0.143]***	1.640 (0.746)** [0.592]**	-0.343 (0.165)** [0.141]**
Ln(Income Per Capita)	2.309 (1.247)* [1.615]	-6.521 (4.503) [6.194]	2.500 (1.051)** [1.203]**	5.101 (5.016) [6.568]	-24.419 (13.188)* [11.279]*	0.806 (2.248) [2.464]
Secondary Education (%)	0.040 (0.042) [0.065]	0.068 (0.114) [0.156]	0.046 (0.045) [0.075]	-0.259 (0.160) [0.172]	0.449 (0.394) [0.468]	-0.277 (0.123)** [0.192]
Female Labor Mkt Part. (%)	-0.003 (0.017) [0.018]	-0.132 (0.057)** [0.061]**	-0.005 (0.015) [0.014]	-0.016 (0.030) [0.024]	-0.156 (0.147) [0.112]	-0.038 (0.019)** [0.037]
Age 15-19 (%)	0.198 (0.078)** [0.108]*	-0.917 (0.510)* [0.741]	0.081 (0.110) [0.144]	0.048 (0.211) [0.418]	1.088 (1.526) [1.915]	-0.025 (0.130) [0.303]
Firm-State Effects	Yes	Yes	Yes	Yes	Yes	Yes
Firm-Year Effects	Yes	Yes	Yes	Yes	Yes	Yes
R^2	0.922	0.918	0.946	0.884	0.909	0.963

Note: Analysis performed on data for the 1989-1995 period. All dependent variables are natural logs, and all specifications use state population weights.
***p < 0.01; **p < 0.05; *p < 0.10 (two-sided test of null hypothesis that coefficient equals 0).

Table 3
Effect of Iowa & DC Franchise Laws on Fast Food Establishments Per Capita
(robust standard errors in parentheses)
[standard errors clustered by state in brackets]

Dependent Variable	Franchised units	Franchisor run units	Total units
Termination Law	-0.325 (0.121)*** [0.103]***	1.941 (0.442)*** [0.316]***	-0.197 (0.086)** [0.087]**
Firm-State Effects	Yes	Yes	Yes
Firm-Year Effects	Yes	Yes	Yes
R^2	0.927	0.910	0.939

Note: Analysis performed on data for the 1989-2001 period. All dependent variables are natural logs, and all specifications use state population weights. Also, all regressions contain all of the covariates used in Table 2 (not reported).
***p < 0.01; **p < 0.05; *p < 0.10 (two-sided test of null hypothesis that coefficient equals 0).

Table 4
State Law Restrictions on Franchise Contracts

State	Termination Restriction	Waiver Restriction	Choice of Law (COL) Restriction	Choice of Forum (COF) Restriction
Arkansas	1977*	1977	--	--
California	1980*	1981	--	1994
Connecticut	1972	1981	--	--
Delaware	1971	--	--	--
DC	1989, **1998**	--	--	--
Hawaii	1974*	1974	--	--
Illinois	1980*	1988	--	1988
Indiana	1976	1976	--	--
Iowa	1992*	1992	1992	1992
Michigan	1974*	1974	--	1988
Minnesota	1973*	1973	1989	--
Nebraska	1978	1978	--	--
New Jersey	1971	1971	--	--
Tennessee	1989*	1989	--	1989
Virginia	1972	1972	--	--
Washington	1971*	1971	1991	1991
Wisconsin	1974*	1977	--	--
Gas Stations	1978	1978	1978	--

Note: Gas Stations (SIC 624) are covered by the federal PMPA (15 U.S.C. §2801-2806). Washington, DC's franchise termination law was repealed by the US Congress in 1998. Termination Restrictions noted with an asterisk (*) indicate that the state also included a requirement that franchisees be given a period to cure any problem raised by the franchisor as grounds for termination of the relationship.

Table 5
Descriptive Statistics for Percent of State Workforce in Each Industry

SIC Industry	Classification	Mean	SD
Contractors	Non-Franchising	0.014	0.004
Lumber Products	Non-Franchising	0.009	0.010
Textiles	Non-Franchising	0.008	0.009
Depository Institutions	Non-Franchising	0.017	0.005
Auto Dealers	Franchising (Repeat)	0.020	0.005
Eating & Drinking	Franchising (Non-Repeat)	0.046	0.009
Hotels	Franchising (Non-Repeat)	0.016	0.022
Auto Repairs	Franchising (Repeat)	0.009	0.002

Note: Data collected from Bureau of Economic Analysis and cover years 1969-2000.

Table 6
Effect of Termination Laws on Employment in Franchise Industries
(robust standard errors in parentheses)
[standard errors clustered by state in brackets]

	Franchise Industries Only	Non-Franchising Industries as Control
Termination Law	-0.0003 (0.0001)* [0.0004]	-0.0013 (0.0002)*** [0.0007]*
Industry-Specific Year Effects	Yes	Yes
Industry-Specific State Effects	Yes	Yes
State-Specific Year Effects	No	Yes
R^2	0.988	0.979

Note: Weighted least squares regressions are presented; each observation is weighted by total state employment.
***p < 0.01; **p < 0.05; *p < 0.10 (two-sided test of null hypothesis that coefficient equals 0).

Table 7
Effect of Termination Laws on Employment in Franchise Industries
with Non-Repeat Business
(robust standard errors in parentheses)
[standard errors clustered by state in brackets]

	Franchise Industries Only (repeat business industries as control)	Non-Franchising Industries as Control
Termination Law for Non-Repeat Franchising Industries Only	-0.00055 (0.00026)** [0.00093]	-0.00074 (0.00027)*** [0.00077]
Termination Law for All Franchising Industries	--	-0.00085 (0.00017)*** [0.00036]**
Industry-Specific Year Effects	Yes	Yes
Industry-Specific State Effects	Yes	Yes
State-Specific Year Effects	No	Yes
R^2	0.991	0.979

Note: Weighted least squares regressions are presented; each observation is weighted by total state employment.
***p < 0.01; **p < 0.05; *p < 0.10 (two-sided test of null hypothesis that coefficient equals 0).

Table 8
Effect of Restrictions on Franchise Contracts on Employment
in Franchising Industries
(robust standard errors in parentheses)
[standard errors clustered by state in brackets]

	Incremental Effects of Additional Restriction	Effect of Package of Restrictions
Termination Restriction	-0.00012 (0.00027) [0.00090]	--
Waiver Restriction	-0.00095 (0.00027)*** [0.00081]	--
COL or COF Restriction	-0.00097 (0.00025)*** [0.00067]	--
COL and COF Restriction	-0.00102 (0.00023)*** [0.00058]*	--
Termination Restriction Only	--	-0.00012 (0.00027) [0.00090]
Termination and Waiver Restriction Only	--	-0.00107 (0.00023)*** [0.00071]
Termination, Waiver, and either COL **or** COF Restriction	--	-0.00204 (0.00028)*** [0.00101]**
Termination, Waiver, and COL **and** COF Restriction	--	-0.00306 (0.00042)*** [0.00132]**
Industry-Specific Year Effects	Yes	Yes
Industry-Specific State Effects	Yes	Yes
State-Specific Year Effects	Yes	Yes
R^2	0.980	0.980

Note: Weighted least squares regressions are presented; each observation is weighted by total state employment.
***p < 0.01; **p < 0.05; *p < 0.10 (two-sided test of null hypothesis that coefficient equals 0).

Table 9
Effect of Restrictions on Franchise Contracts on Employment
in Non-Repeat Business Franchising Industries
(robust standard errors in parentheses)
[standard errors clustered by state in brackets]

	General Effect on Franchising SICs	Additional Effect in Non-Repeat Franchising SICs
Termination Restriction Only	-0.00012 (0.00024) [0.00036]	-0.00002 (0.00037) [0.00108]
Termination and Waiver Restriction Only	-0.00092 (0.00019)*** [0.00041]**	-0.00027 (0.00029) [0.00066]
Termination, Waiver, and either COL **or** COF Restriction	-0.00100 (0.00023)*** [0.00050]**	-0.00159 (0.00032)*** [0.00113]
Termination, Waiver, and COL **and** COF Restriction	-0.00203 (0.00041)*** [0.00097]**	-0.00154 (0.00050)*** [0.00120]
Industry-Specific Year Effects	Yes	
Industry-Specific State Effects	Yes	
State-Specific Year Effects	Yes	
R^2	0.980	
F Test for Joint Significance of Non-Repeat Effects	Robust Standard Errors: 10.46*** Standard Errors Clustered by State: 2.45*	

Note: Weighted least squares regressions are presented; each observation is weighted by total state employment.
***p < 0.01; **p < 0.05; *p < 0.10 (two-sided test of null hypothesis that coefficient equals 0).

Table 10
Differential Effects of Choice of Law and Choice of Forum Restrictions
(robust standard errors in parentheses)
[standard errors clustered by state in brackets]

Termination Restriction Only	-0.00006 (0.00028) [0.00092]
Termination and Waiver Restriction Only	-0.00112 (0.00023)*** [0.00068]
Termination, Waiver, and COL Restriction Only	-0.00304 (0.00036)*** [0.00135]**
Termination, Waiver, and COF Restriction Only	-0.00178 (0.00034)*** [0.00117]
Termination, Waiver, and COL **and** COF Restriction	-0.00374 (0.00041)*** [0.00149]**
Industry-Specific Year Effects	Yes
Industry-Specific State Effects	Yes
State-Specific Year Effects	Yes
R^2	0.980
F Test for COL Effect = COF Effect Restriction	Robust Standard Errors: 7.17*** Standard Errors Clustered by State: 0.61

Note: Weighted least squares regressions are presented; each observation is weighted by total state employment.
***p < 0.01; **p < 0.05; *p < 0.10 (two-sided test of null hypothesis that coefficient equals 0).

Table 11
Effect of Cure Requirement in Franchising Relationship
(robust standard errors in parentheses)
[standard errors clustered by state in brackets]

	Average Incremental Effect of Cure Requirement	Effect of Cure Requirement Interacted with Other Contract Restrictions	Termination Restriction and Cure Requirement Only
Termination Restriction Only	0.00039 (0.00031) [0.00086]	0.00141 (0.00050)*** [0.00062]**	-0.00051 (0.00024)** [0.00073]
Termination Restriction and Cure Requirement Only	--	-0.00087 (0.00034)*** [0.00093]	--
Termination and Waiver Restriction Only	-0.00059 (0.00026)** [0.00075]	-0.00141 (0.00039)*** [0.00084]	--
Termination and Waiver Restriction and Cure Requirement Only	--	-0.00122 (0.00029)*** [0.00100]	--
Termination, Waiver, and either COL **or** COF Restriction	-0.00145 (0.00032)*** [0.00095]	-0.00102 (0.00033)*** [0.00101]	--
Termination, Waiver, and COL **or** COF Restriction and Cure Requirement	--	-0.00229 (0.00032)*** [0.00118]*	--
Termination, Waiver, and COL **and** COF Restriction	-0.00222 (0.00047)*** [0.00118]*	--	--
Termination, Waiver, and COL **and** COF Restriction and Cure Requirement	--	-0.00288 (0.00041)*** [0.00134]**	--
Cure Requirement	-0.00083 (0.00033)** [0.00107]	--	-0.00123 (0.00031)*** [0.00102]
Industry-Specific Year Effects	Yes		Yes
Industry-Specific State Effects	Yes		Yes
State-Specific Year Effects	Yes		Yes
R^2	0.980		0.980

Note: Weighted least squares regressions are presented; each observation is weighted by total state employment.
***p < 0.01; **p < 0.05; *p < 0.10 (two-sided test of null hypothesis that coefficient equals 0).

Table A1 - State Regulation of the Franchisor/Franchisee Relationship

STATE	*STATUTE*	*CAUSE REQUIRED FOR TERMINA-TION*	*RIGHT TO CURE*	*CAUSE REQUIRED FOR NON-RENEWAL*	*NOTICE*	*OTHER STATU-TORY RESTRIC-TIONS*
1. AR (Eff. 3/4/77)	AR STAT. ANN 4-72-204	YES	30 days. 10 Days if a, b. None if c, d, e, f, g, h.	YES*	90 days - R/T	
2. CA (Eff. 10/1/80;Op. 1/1/81)	CA BUS. & PROF. CODE @ 20020	YES	30 days None if a, c, d, e, f, g, h.	NONE**, ***-	180 days R	
3. CT (Eff. 10/1/72)	CT GEN. STAT. @ 42-133f	YES	NONE	YES	60 days T/R 30 days if c None if d 6 mo R if g	
4. DC (eff. 4/16/89; repealed 4/29/98)	D.C. CODE @ 29-1201	YES	60 days	YES	60 days T/R 15 days if c. None if d.	
5.DE*/* (1970)	6 DEL C. @ 2552	YES	NONE	YES	90 days	
6.HI*/* (1974)	HRS @ 482E-6	YES	Reasonable Period	YES*	Reasonable Period	
7. IA*/* (1992)	ICA s 523H.7	YES	Reasonable Period None if a, c, d, f.	YES	Reasonable Period	Indepen-dent Sourcing, Liability for Encroach-ment
8. IL (Eff. 1/1/98)*/**	815 ILCS 705/19	YES	30 days, None if a, c, d, f.	NONE	30 days T 60 days R	
9. IN (Eff. 7/1/76)	IN ST. 23-2-2.7	YES	NONE	YES*	90 days R/T	Indepen-dent Sourcing, Liability for Encroach-

						ment
10. MI (Eff. 10/15 /84)	MCLA 445.1527	YES	30 days	NONE	30 days T	
11. MN (eff. 7/1/81)	MSA s80C.14	YES	60 days None if a, c, d.	NONE**	90 days T 180 days R	
12. MO (1974)	MO ST 407.405	NONE	NONE	NONE	90 days - R/T None if c, d, f, h.	
13. MS (eff 7/1/75)	MS ST s75-24	NONE	NONE	NONE	90 days - R/T None if c, d, f, h.	
14. NE (1978)	RRS Neb @ 87-404	YES	NONE	YES	60 days - R/T 15 days if c None if d, f, g, h.	
15. NJ (Eff. 12/21/71)	NJSA 56:10-5	YES	NONE	YES	60 days - R/T 15 days if c. None if d	
16. TN (1989)	TCA 47-25-150B	YES	30 days, non if c, d, f.	YES	60 days	
17. VA (1972)	VA ST s 13.1-564	YES	NONE	NONE	NONE	
18. WA (1971)	RCWA 19.100.180	YES	30 days or substantial & continuing action to cure. None if a, c, d, f.	NONE	30 days	
19. WI (Eff. 4/5/74)	WSA 135.03	YES	60 days, 10 days if h	YES	90 days R/T None if f	Cause applies to "sub-stantial change in compete-tive circum-stances."

NOTES:

Exceptions:
a - Repeated failure to comply with non-discriminatory or reasonable requirements
b - Repeated failure to act in good faith/commercially reasonable manner
c - Abandonment
d - Criminal Conduct/fraud
e - Impairs Franchisor's Trademark
f- Insolvency/Bankruptcy
g- Loss of right to occupy premises
h - Failure to pay/insufficient funds/ no account check

* - Not required for non-renewal reflecting reasonable/standard policies or practices of franchisor.
** - Non-Renewal cannot be for the purpose of converting franchise to franchisor operated outlet
*** - Must give franchisee opportunity to sell,& franchisor has right of first refusal.
/ - DE and HI statutes were amended, but do not know if substantive or technical. DE amended 62 Laws 1980, ch. 352 Section 4, HI amended 1978). IA statute applies different but similar section to franchise contracts entered into after 7/1/2000 (Section 523H.2A).
*/** Prior IL law reflecting termination, Public Act 81-426, renumbered Public Act 81-1509, effective 1980.

Table A2 - Statutory Restrictions on Waiver, Choice of Forum, Choice of Law, and Applicability

States that Regulate the Franchisor/Franchisee Relationship

JURISDICTION	*RESTRICTION ON WAIVER*	*RESTRICTION ON CHOICE OF FORUM*	*RESTRICTION ON CHOICE OF LAW*	*RESTRICTION ON APPLICABILITY*
CT (2nd Circuit)	GEN. STAT. @42-133f (f) 1975	NONE	NONE	GEN. ST @ 42.133h FRANCHISE IN-STATE
15. NJ (3rd Circuit)	NJSA @56:10-7(A) 1971	NONE	NONE	NJSA @56:10-4 FRANCHISE IN-STATE
DE (3rd Circuit)	NONE	NONE	NONE	6 DEL. C. @2551 FRANCHISE IN-STATE
VA (4th Circuit)	VA ST @13.1-571 1972	NONE	NONE	VA ST. s 13.1-559 FRANCHISE IN-STATE
10. MI (6th Circuit)	MCLA @445.1527 (27b) 1974	MCLA @445.1527 (27f) 1988	NONE	MCLA @445.1504 OFFER ORIGINATES OR RECEIVED IN STATE OR FRANCHISE IN STATE
TN (6th Circuit)	TCA 47-25-1507 1989	NONE	TCA 47-25-1510 1989	
IN (7th Circuit)	IN. ST. @ 23-2-2.7-1(5) 1976	NONE	NONE	IN. ST. 23-2-2.7-1 FRANCHISE IN-STATE OR RESIDENT OF IN
WI (7th Circuit)	WSA @135.025 Effective 11/24/77	NONE	NONE	WSA @135.02 FRANCHISE IN-STATE

IL (7th Circuit)	815 ILCS @705/41 1988	815 ILCS @705/4 1988	NONE	815 ILCS @7-5/19-20 FRANCHISE IN-STATE
AR (8th Circuit)	ASA @ 4-72-206(1) 1977	NONE	NONE	ASA @4-72-203 FRANCHISEE IN-STATE
MN (8th Circuit)	MSA @80C.21 1973	NONE	MSA @80C.21 1989	MSA @80C.19 OFFER ORIGINATES OR RECEIVED IN STATE OR FRANCHISE IN STATE
MO (8th Circuit)	NONE	NONE	NONE	MO. ST. 407.400 FRANCHISE IN-STATE
IA (8th Circuit)	ICA @523H.4 1992	ICA @523H.3(1) 1992	ICA @523H.14 1992	ICA @523H.2 FRANCHISE IN STATE
WA (9th Circuit)	RWCA @19.100.220 1971	RWCA @19.100.220 1991	RWCA @19.100.220 1991	RWCA 19.100.160 ANY PERSON ENGAGED IN OFFER TO SELL OR IN BUSINESS DEALINGS
CA (9th Circuit)	BUS. & PROF. CODE @20010 1980, (operative 1/1/1981)	BUS & PROF. CODE @20040.5 1994	NONE	BUS & PROF. CODE @20015 FRANCHISEE DOMICILED OR FRANCHISE OPERATED IN-STATE
HI (9th Circuit)	HRS @482E-6(F) 1974	NONE	NONE	NONE

NE (10th Circuit)	RRS NEB. @87-406 1978	NONE	NONE	RRS NEB. @ 87.403 FRANCHISE IN-STATE
MS (11th Circuit)	NONE	NONE	NONE	NONE
DC (DC Circuit)	NONE	NONE	NONE	NONE

Table A3 - Applicable State Franchise Laws
by Franchisor's Principal Place of Business and Franchisee's State

Franchisor's Principal Place of Business and Contractual Choice of Law

Franchisee's State (Circuit):	*Non-Reg. State*	*AR (8)*	*CA (9)*	*IA (8)*	*IL (7)*	*IN (7)*	*MI (6)*	*MO (8)*	*MN (8)*	*NE (8)*	*NJ (3)*	*WA (9)*	*WI (7)*
Non Reg. State:	**N** **(5)**	**N** **(1)**	**N** **(1)**	**N** **(1)**	**N**	**N**	**N**/y **(H,I)**	**N**	**N**/y	**N** **(1)**	**N** **(1)**	**N**/y	**N**
AR(8)	**N** **(2,B)**	**AR**	N	**N** **(1,2)**	S	S	**N**/y (2)	N	**N**/y	**N**	N	N/y	S
CA(9)	N (2,C)	N (2,B)	**CA**	N (2,B)	Y (O)	Y	N/y	N	N/y	**N** (2,B)	-	-/y	Y
IA(8)	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**IA**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**
IL(7) (3,D)	S	S	Y	S	**IL**	**Y**	S/y **(3,D)**	S	S/y	S	Y	Y	**Y**
IN(7)	S (3,F)	S	Y	S	**Y**	**IN**	S/y	S	S/y	S	Y	Y	**Y**
MI(6)	**N** **(2)**	**N** **(1,2,E)**	N	**N** **(1,2)**	S	S	**MI**	**N**	**N**/y	**N** **(1,2)**	N	N/y	S
MO(8)	Y (G)	Y	Y	Y **(M)**	S	S	Y/y (2)	**MO**	**Y**/y	Y	N	N/y	S
MN(8)	**Y** **(4.L)**	**Y** **(4,J)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**MN**	**Y** **(4,E)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**
NE(8)	**N** **(2,B)**	**N** **(2,B)**	N	**N** **(2,B)**	S	S	**N**/y (2)	**N**	**N**/y	**NE**	N	N/y	S
NJ(3)	N	N	-	N	Y	Y	N/y	N	N/y	N	**NJ**	-/y	Y
WA(9)	**Y** **(4)**	**Y** **(4)**	**Y** **(4,K)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**Y** **(4)**	**WA**	**Y** **(4)**
WI(7)	S (3,F)	S	Y	S	**Y**	**Y**	S	S	S	S	Y	Y	**WI**

Table Entries:
Y - Franchise Law of Franchisee's State applies.
Y - One Circuit has voided Choice of Law Clause
N - Both Circuits have Enforced Choice of Law Clause, or No Frachise Law Exists in Franchisee State

N - One Circuit has Enforced Choice of Law Clause.
S - One Circuit has Enforced Choice of Law, Other has not.

/y - Franchise Law of *Franchisor's* State may apply to out of state franchisee.

Notes:

[1] Franchise statute does not apply to out-of-state franchisee by statute (See Table 3)
[2] Contractual choice of law enforced over general waiver in the absence of explicit anti-choice of law clause
[3] General waiver voids contractual choice of law or forum
[4] Explicit anti-choice of law clause voids contractual choice of law
[5] No regulations apply in either state.

Specific Cases

[A]*Modern Computer Systems v. Modern Banking*, 871 F.2d 734 (8th Cir 1989) (applied contractual choice of NE law over Minnesota Franchise Act (MFA), but prior to amendment adding explicit anti-COL clause to MFA). *DeLaria v KFC Corp.,* 1995 US Dist. LEXIS 21516 at *17 (D. Minn) (interpreting amendment to MFA as legislative response to *Modern*).
[B] Following Eighth Circuit holdings in *Modern Computer* and *JRT* upholding contractual choice absent specific provisions in statute.
[C]*Cottman Transmission System v. Melody*, 869 F. Supp. 1180 (E.D. Pa 1994) (upholding contractual choice of Pennsylvania Law over California Franchise Regulation).
[D] *Hengel, Inc. v. Hot N' Now*, 825 F. Supp. 1311 (N.D. Ill 1993) Franchisor successfully argues that its choice of MI law is void to avoid application of Michigan Franchise Investment Law (MFIL) by a IL franchisee – waiver provision in ILCS invalidates contractual choice of MI law; *To-Am Equipment Co., Inc. v. Mitsubishi Caterpillar Forklift America, Inc.*, 152 F.3d 658 C.A.7 (Ill.) (1998) (same); *Bixby's Food Systems, Inc. v. McKay* 193 F.Supp.2d 1053 (N.D.Ill. 2002) (same); *Healy v. Carlson Travel Network Associates, Inc.* 227 F.Supp.2d 1080 (D.Minn. 2002) (ILCS applied over Minnesota Franchise Statute for IL franchisee with MN choice of law).
[E] *JRT v. TCBY Yogurt*, 52 F.3d 925 (1995) (Enforced choice of AR law over MFIL; AR Franch. law does not apply to MI franchisee.
[F] *Wright-Moore v. Ricoh*, 908 F.2d 128 (7th Cir., 1990) (Applying IN franchise statute over choice of NY law). Morley-Murphy Co. v. Zenith Elec. Corp., 142 F.3d 373, 381 (7th Cir.1998) (Wisconsin law)
[G] *Electro & Magneto Service Co. v. AMBAC,* 941 F.2d 660 (8th Cir., 1991) (applying MO franchise law over choice of SC law).
[H] *Banek v. Yogurt Ventures* 6 F.3d 357 (6th Cir., 1993) (Enforcing choice of GA law, dismissing claims under MFIL).
[I] *Tele Save Merch. V. Consumers Dist. Co.*, 814 F.2d 1120 (6th Cir., 1987).
[J] *TCBY v. RSP*, 33 F.3d 925 (8th Cir., 1994).(Enforced choice of AK law, dismissing claims under MFA because anti-choice of law clause did not apply retroactively).
[K]*Rutter v. BX of Tri-Cities, Inc.,* 806 P.2d 1266 (C.A. Wash., 1991) (Apply WA Franchise Law over choice of CA law).
[L]*Carlock, et al., v. Pillsbury*, 719 F. Supp. 791 (D. Minn. 1989), (uphold choice of NY law over MFA).
[M]*Tri-County Retreading v. Banday, Inc.* 851 S.W. 2d 780, (C.A. Mo., 1993), Upholding choice of IA law.

[N]*Flynn Beverage Inc., v. Joseph E. Segram & Sons,* 815 F. Supp. (C.D. Ill., 1993) (Apply IL law over choice of law).
[O]*Great Frame-Up Syst., Inc. v. Jazayeri Ent.,* 789 F. Supp. 253 (N.D. Ill, 1992) (Apply CA statute over choice of IL law).
Volvo Const. Equipment North America, Inc. v. CLM Equipment Company, Inc. 386 F.3d 581 C.A.4 (N.C.),2004. (October 08, 2004) finding that AR waiver provision was fundamental policy (based on legislative statement), but LA was not (no antiwaiver provision)).
Cromeens, Holloman, Sibert, Inc v. AB Volvo 349 F.3d 376 C.A.7 (Ill.), 2003 (November 07, 2003) finding antiwaiver fundamental public policy of Maine based on legislative statement).