Taking the Guess Out *of* the *Erie* Guess:

The Seventh Circuit's Approach to the Certification of Questions to a State's Highest Court

*By Joshua D. Yount**

The Seventh Circuit frequently hears disputes over the content and meaning of state law. But nothing the court says on those subjects is truly authoritative. Instead, under the *Erie* doctrine, the court simply predicts how the highest court of the relevant state would decide the dispute. Those predictions can be difficult to make, and sometimes are incorrect. As a result, virtually all states allow some federal courts to ask the state's highest court to answer certified questions of state law that will control the outcome of a federal lawsuit. And the Seventh Circuit uses that procedure about once a year.

The Seventh Circuit's recent decisions in *Craig v. FedEx Ground Package System, Inc.* and *American Safety Casualty Insurance Co. v. City of Waukegan* are timely reminders of the factors that the court will consider in deciding whether to certify state law questions.[1] In *Craig,* the Seventh Circuit certified an "outcome determinative" question of Kansas law regarding whether FedEx drivers should be deemed employees or independent contractors for purposes of the Kansas Wage Payment Act.[2] The court had "considerable doubt" about how the Kansas Supreme Court would apply the statute because the available Kansas authorities pointed in different directions and courts across the country had divided over the proper classification of FedEx drivers under similar federal and state laws.[3] In addition, the question was "of great importance not just to th[e] case but to the structure of the American workplace" because it would have "far-reaching effects on how FedEx runs its business," as well as on "FedEx's competitors and employers in other industries as well."[4]

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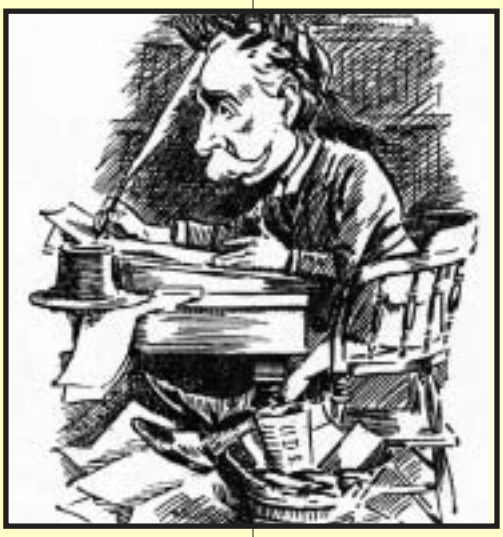
In *American Safety,* the Seventh Circuit refused a request to certify a question to the Illinois Supreme Court regarding the time of "occurrence" for malicious prosecution claims under insurance policies.[5] The court was unpersuaded by the fact that the only Illinois decision on the matter was a 1978 appellate court decision that the Illinois Supreme Court vacated on other grounds, or the fact that the great majority of other jurisdictions had adopted a different position, or the fact that the same question arose in several recent cases litigated in federal court.[6] The court instead observed that there were no conflicting Illinois cases, that the issue must not recur because it could be, but has not been, subject to additional state-court litigation, and one of the parties requesting certification was the one that filed the case in federal court.[7] Together, *Craig* and *American Safety* suggest that the Seventh Circuit is definitely open to certifying questions of state law, but it will not do so freely.



It is vital therefore for counsel to understand the factors that favor (and disfavor) certification of state law questions in the Seventh Circuit's calculus, so that counsel can emphasize the crucial evidence when seeking (or opposing) certification.

* * *

The practice of certifying state law questions to a state's highest court is a relatively recent innovation. The Supreme Court first suggested the idea in 1960, invoking a then-unique Florida statute that invited certified questions.[8] Other states then began adopting certification procedures, particularly after the National Conference of Commissioners on Uniform State Laws proposed a uniform law in 1967,[9] and a 1974 Supreme Court decision promoted the practice as way to "save time, energy, and resources" in the long run and "build a cooperative judicial federalism."[10] Every state, save North Carolina (and perhaps Missouri), now allows at least one federal court to ask the state's highest court to answer certified questions of state law.[11]

In the Seventh Circuit, over 90% of certification requests not surprisingly concern the law of Indiana (40%), Illinois (40%), or Wisconsin (12%). The supreme courts in all three states will answer certified questions. But there are potentially significant differences in each state's certification standards.

Indiana, which first authorized certification in the early 1970s, permits the "United States Supreme Court, any federal circuit court of appeals, or any federal district court" to "certify a question of Indiana law" to the Indiana Supreme Court.[12] But a federal court may do so only when "a proceeding presents an issue of state law that is determinative of the case and on which there is no clear controlling Indiana precedent."[13]

Illinois opened the door to certification in 1983, allowing only the "Supreme Court of the United States" and the "United States Court of Appeals for the Seventh Circuit" to certify "questions of the laws of this State" to the Illinois Supreme Court "for instructions concerning such questions of State law."[14] State law questions can be certified if they "may be determinative of" the case and "there are no controlling precedents in the decisions of" the Illinois Supreme Court.[15]

Wisconsin, which also first authorized certification in 1983, permits its Supreme Court to "answer questions of law certified to it by the supreme court of the United States, a court of appeals of the United States or the highest appellate court of any other state."[16] Certification is appropriate, however, only where a proceeding involves "questions of law of this state which may be determinative of the cause then pending in the certifying court and to which . . . there is no controlling precedent in the decisions of the supreme court and the court of appeals of this state."[17]

The supreme courts in all three states retain discretion to refuse a certified question.[18] If the state court agrees to answer the certified question, briefing and argument will follow pursuant to that state's procedures.[19]

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The Seventh Circuit has its own rule on the certification of questions of state law: Circuit Rule 52. The rule provides that, when a state allows a federal court to certify to the highest court of the state "questions arising under the laws of that state which will control the outcome of a case pending in federal court," the Seventh Circuit "*sua sponte* or on motion of a party, may certify such a question to the state court in accordance with the rules of that court."[20] Any motion for certification must be included in the moving party's brief.[21] And the court will decide on certification only after merits briefing is complete.[22] If the court certifies a question, it may stay the appeal pending an answer from the state court.[23] Finally, the parties have 21 days after the state court issues the opinion answering the certified question to file statements in the Seventh Circuit as to "what action [the] court should take to complete the resolution of the appeal."[24]

In practice, certification decisions follow not just the completion of briefing, but oral argument as well. In fact, the Seventh Circuit has certified questions after deciding an appeal and receiving a petition for rehearing.[25] Also, the Seventh Circuit always stays an appeal if it certifies a question.

Since January 2001, the Seventh Circuit has certified questions of state law 13 times, principally to the supreme courts of Indiana, Illinois, and Wisconsin.[26] According to reported decisions, the court denied requests for certification 37 times during the same period. Seven of those denials, however, did not turn on the "merits" of the request, but resulted from the fact that the requesting party prevailed or another circumstance mooted the certification request.[27] These statistics suggest that the Seventh Circuit grants about 26% of all (reported) requests for certification and about 30% of the (reported) requests considered on the merits.

Each time the Seventh Circuit has certified a question of state law (since at least January 2001), the state supreme court has agreed to answer the certified question.[28] On average, the answers have arrived 10 months after the certification orders, having taken as short as 5 months and as long as 23 months. The questions certified and answered vary widely, from the contours of a car purchaser's Lemon Law rights to the existence of an implied statutory right of action;[29] from the scope of a political advertising law to a municipality's right to require collection of amusement taxes;[30] and from the applicable statute of limitations for a tort action to the scope of insurance coverage.[31]

* * *

Circuit Rule 52 and the Indiana, Illinois, and Wisconsin certification provisions require only two things before the Seventh Circuit can certify state law questions. The state law question must be outcome determinative. And there must be no controlling state precedents. But the Seventh Circuit has added a host of additional factors that, in various combinations, it considers in exercising its discretion to certify state law questions. Examining the factors identified by the Seventh Circuit reveals how the court applies the factors and which ones truly carry weight.

Outcome Determinative. Under Circuit Rule 52, the Seventh Circuit cannot certify a state law question unless it will "control the outcome" of the lawsuit. Thus certification is not proper if the case can be decided on alternative grounds. Many requests for certification falter on the requirement that a question be outcome determinative, which is strictly enforced.[32] Indeed, the Seventh Circuit ordinarily will decide all of the other factual and legal questions in an appeal to ensure that the to-be-certified question is truly outcome determinative.

Controlling State Precedent. The certification requirements in Indiana, Illinois, and Wisconsin all demand the absence of "controlling precedents" from the state's courts. But what is a "controlling precedent"?

Illinois's certification rule specifies decisions of the state Supreme Court.[33] Wisconsin's statute says such precedents can come from "decisions of the supreme court and the court of appeals" of the state.[34] Indiana's rule does not identify the source of the "clear controlling Indiana precedent" that would preclude certification to the Indiana Supreme Court.[35] And the governing *Erie* principles instruct a federal court to determine how the state's highest court would decide the case, but also require it to follow intermediate appellate court decisions absent persuasive reasons to believe that the state's highest court would rule differently.[36]

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In addition, a state court precedent will rarely be on all fours, factually and legally, with the case before the Seventh Circuit. Almost always, there are some factual or legal differences. The question is how analogous must the state court precedents be before they are deemed "controlling."

In practice, the Seventh Circuit resolves the ambiguity in what counts as "controlling" state precedent by asking a series questions aimed at establishing the degree to which state precedents are instructive. Thus certification rulings typically consider whether "the issue is one of first impression for the court of last resort,"[37] and whether "the state supreme court has yet to have an opportunity to illuminate a clear path on the issue."[38] The rulings also review relevant decisions from intermediate appellate courts, looking for ones that — without intervention by the state's highest court — have stood for many years or take the same position as other appellate court decisions.[39] Finally, certification rulings often examine whether anything about a case's factual or legal setting would lead the state's highest court to reject either the path marked by its prior decisions or the position taken by the intermediate appellate courts.[40]

Unavoidably, these inquiries can be subjective and elastic. There are cases in which a single decision from an intermediate appellate court was sufficient to preclude certification, and others in which it was not.[41] Likewise, there are cases in which general precedents from a state supreme court were deemed sufficiently controlling to prevent certification, and others in which they were not.[42] In those borderline cases, other relevant factors seem to have influenced the analysis.

Genuine Uncertainty. On many occasions, the Seventh Circuit has stated that the "most important consideration" guiding a certification decision is "whether the reviewing court finds itself genuinely uncertain about a question of state law that is vital to a correct disposition of the case."[43] The necessary uncertainty can arise from a lack of controlling state precedents.[44] It can come from conflicting state precedents.[45] Or it can come from analysis of the competing interpretations and policy choices implicit in one ruling or another.[46]

The inherent uncertainty in every application of state law, however, does not warrant certification.[47] Nor does the fact that other states have rejected the position suggested by the available state precedent.[48]

As advertised, the Seventh Circuit's level of uncertainty about state law does indeed appear to be the most important consideration in whether the court certifies a question of state law. A lack of uncertainty has been enough to refuse certification in cases where other factors pointed toward certification.[49] And the presence of uncertainty has resulted in certification in cases where other factors counseled against certification.[50]

Likely To Recur. One of the factors most commonly listed as favoring certification of state law questions is that "the issue will likely recur in other cases."[51] But that phrasing is too broad. The Seventh Circuit has repeatedly refused to certify questions that recur in the relevant state's courts.[52] What the Seventh Circuit really looks for is a question that will arise with some frequency in federal court, but that is unlikely to be litigated in state court.[53] In those circumstances, the court can be confident that a 10 month detour to obtain a definitive answer from the state's highest court will benefit litigants and courts in future cases. And the court will have good reason to believe that such an answer will not otherwise be forthcoming in the near term.

Proof that a question is likely to recur in federal court, but not state court, can come from a history of exclusively federal litigation on the subject.[54] Or it can come from evidence that there are obstacles to filing or keeping cases that raise the question at issue in state court — such as diverse citizenship among the only likely parties or a question that arises exclusively in federal causes of action or companion state claims.[55]

In some certification rulings, the likelihood of future federal and state litigation on the relevant question appears to be the most crucial factor.[56] But other rulings give the matter less attention, if any.[57]

Vital Public Concern. Another commonly listed factor bearing on the certification decision is whether "the case concerns a matter of vital public concern."[58] Cases that do can be good candidates for certification. But "fact specific, particularized decisions that lack broad, general significance are not suitable for certification to a state's highest court."[59] The core inquiry is whether resolving the disputed question will "have far-reaching precedential effect."[60]

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The public importance of a question is a crucial factor supporting certification principally when the question concerns the meaning of statutes that regulate everyday transactions or reflect significant policy choices.[61] But the Seventh Circuit also has invoked the factor in asking the Wisconsin Supreme Court how to read common insurance policy language.[62] Still, matters of contractual interpretation or how to apply tort or statutory principles to a particular case are usually too fact-bound to warrant certification.[63]

Conflicting Decisions. Although they arise infrequently, cases presenting questions that have divided the state's intermediate appellate courts make strong candidates for certification to the state's highest court. Many Seventh Circuit decisions instruct that certification is favored when the intermediate appellate courts are "in disagreement" or "conflict."[64] And the absence of a conflict often counts against certification.[65]

The case law shows that the Seventh Circuit will indeed certify when a state's intermediate appellate courts disagree on a question.[66] But that practice is not ironclad. The Seventh Circuit has declined to certify when confident as to which side the state supreme court will take.[67]

Development of State Law. A few decisions say that one factor bearing on the certification decision is whether an issue "is of interest to the state supreme court in its development of state law."[68] This rarely applied factor appears to be geared toward identifying issues for which a state supreme court has a special responsibility or an important national role. The cases discussing the development-of-state-law factor reference illustrative cases involving an open question of Delaware corporate law and an uncertain application of Colorado collateral estoppel law.[69]

Impact on State Citizens. A small number of decisions instruct that "[c]ertification to a state supreme court is more likely when the result of the decision will almost exclusively impact citizens of that state."[70] This factor gives voice to comity concerns that may be heightened when out-of-state citizens are not ordinarily subject to a state law. For instance, when the Seventh Circuit needs to interpret a state statute in order to evaluate a constitutional challenge, the incidence of the statute can be relevant to a certification decision.[71]

Party That Invoked Federal Jurisdiction. The Seventh Circuit will "take into account whether the request for certification to the state court came from the party who chose federal jurisdiction in the first place."[72] A party that filed its complaint in, or removed a case to, federal court is at a distinct disadvantage in requesting certification. Indeed, on several occasions the Seventh Circuit has remarked that "it's not a proper alternative to proceeding in the first instance in state court to sue in federal court but ask that the suit be stayed to permit certifying the interpretive issue to the state court, thus asking that the suit be split between two courts."[73]

The fact that the party requesting certification invoked federal jurisdiction has been a factor in a number of decisions denying certification of a state law question.[74] At the same time, the Seventh Circuit maintains that it is "not a primary factor"[75] and is "not determinative on its own."[76] And a party that has invoked federal jurisdiction can successfully request certification.[77]

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Depending on the circumstances, certification to a state's highest court can be either an invaluable opportunity to get an authoritative answer on a crucial legal issue or a wasteful detour that only postpones the inevitable. The standards that the Seventh Circuit uses to judge certification requests attempt to separate the former from the latter. But as with many multi-factor standards, the ability of counsel to effectively explain how a particular case fits (or does not fit) the Seventh Circuit's standards can make a huge difference to the outcome. Understanding the intricacies of the Seventh Circuit's approach to the certification of state law questions is therefore critical for those who litigate such questions in the Seventh Circuit.

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Notes:

[1] *Craig v. FedEx Ground Package Sys., Inc.,* 686 F.3d 423 (7th Cir. 2012); *Am. Safety Cas. Ins. Co. v. City of Waukegan,* 678 F.3d 475 (7th Cir. 2012).

[2] *Craig,* 686 F.3d at 430-31.

[3] *Id.* at 428-29.

[4] *Id.* at 430-31.

[5] *Am. Safety,* 678 F.3d at 481.

[6] *Id.* at 478-81; *Am. Safety Cas. Ins. Co. v. City of Waukegan,* Nos. 11-2275 et al. (7th Cir.) (Doc. 29-1 at 60-61).

[7] *Am. Safety,* 678 F.3d at 481.

[8] *Clay v. Sun Ins. Office Ltd.,* 363 U.S. 207, 212 (1960).

[9] Unif. Certification of Questions of Law Act (1967).

[10] *Lehman Bros. v. Schein,* 416 U.S. 386, 391 (1974).

[11] *See* Eric Eisenberg, Note, *A Divine Comity: Certification (At Last) In North Carolina,* 58 DUKE L.J. 69, 71 (2008); Wendy L. Watson et al., *Federal Court Certification of State-Law Questions: Active Judicial Federalism,* 28 Just. Sys. J. 98, 100-01 (2007); 17A Charles Alan Wright et al., *Federal Practice Procedure* § 4248, at 495-96 & n.30 (3d ed. 2007).

[12] Ind. R. App. P. 64(A).

[13] *Id.*

[14] Ill. Sup. Ct. R. 20(a).

[15] *Id.*

[16] Wis. Stat. § 821.01.

[17] *Id.*

[18] Ind. R. App. P. 64(B); Ill. Sup. Ct. R. 20(a); Wis. Stat. § 821.01.

[19] Ind. R. App. P. 64(B); Ill. Sup. Ct. R. 20(d); Wis. Stat. § 821.06.

[20] 7th Cir. R. 52(a).

[21] *Id.; see also MacGregor v. Rutberg,* 478 F.3d 790, 793 (7th Cir. 2007) (request made at oral argument was "belated").

[22] 7th Cir. R. 52(a).

[23] *Id.*

[24] 7th Cir. R. 52(b).

[25] *See Chi. Teachers Union, Local No. 1 v. Bd. of Educ.,* 662 F.3d 761 (7th Cir. 2011); *George v. NCAA,* 623 F.3d 1135 (7th Cir. 2010).

[26] *Eichwedel v. Chandler,* 696 F.3d 660 (7th Cir. 2012); *Craig,* 686 F.3d 423; *Chi. Teachers Union, Local No. 1 v. Bd. of Educ.,* 662 F.3d 761 (7th Cir. 2011); *George v. NCAA,* 623 F.3d 1135 (7th Cir. 2010); *City of Chicago, Ill. v. StubHub!, Inc.,* 624 F.3d 363 (7th Cir. 2010); *Storie v. Randy's Auto Sales, LLC,* 589 F.3d 873 (7th Cir. 2009); *Tammi v. Porsche Cars N. Am., Inc.,* 536 F.3d 702 (7th Cir. 2008); *Plastics Eng'g Co. v. Liberty Mut. Ins. Co.,* 514 F.3d 651 (7th Cir. 2008); *DFS Secured Health Care Receivables Trust v. Caregivers Great Lakes, Inc.,* 384 F.3d 338 (7th Cir. 2004); *Metzger v. DaRosa,* 367 F.3d 699 (7th Cir. 2004); *Majors v. Abell,* 317 F.3d 719 (7th Cir. 2003); *Allstate Ins. Co. v. Menards, Inc.,* 285 F.3d 630 (7th Cir. 2002); *Carver v. Sheriff of LaSalle County, Ill.,* 243 F.3d 379 (7th Cir. 2001).

[27] *See, e.g., Irish v. BNSF Ry. Co.,* 674 F.3d 710, 716 (7th Cir. 2012); *In re Rose,* 585 F.3d 306, 310 (7th Cir. 2009).

[28] *Eichwedel v. Chandler,* No. 09-1031, 2012 WL 5377682, at *1 (7th Cir. Nov. 2, 2012); *Craig v. FedEx Ground Package Sys., Inc.,* No. 108526 (Kan. Sup. Ct.) (Docketed Aug. 16, 2012); *Chi. Teachers Union, Local No. 1 v. Bd. of Educ.,* 963 N.E.2d 918 (Ill. 2012); *George v. NCAA,* 945 N.E.2d 150 (Ind. 2011); *City of Chicago v. StubHub, Inc.,* --- N.E.2d ----, 2011 WL 4599858 (Ill. 2011); *Storie v. Randy's Auto Sales, LLC,* 926 N.E.2d 487 (Ind. 2010); *Tammi v. Porsche Cars N. Am., Inc.,* 768 N.W.2d 783 (Wis. 2009); *Plastics Eng'g Co. v. Liberty Mut. Ins. Co.,* 759 N.W.2d 613 (Wis. 2009); *DFS Secured Health Care Receivables Trust v. Caregivers Great Lakes, Inc.,* No. 94S00-0410-CQ-447, 2004 WL 2307967 (Ind. Oct 14, 2004); *Metzger v. DaRosa,* 805 N.E.2d 1165 (Ill. 2004); *Majors v. Abell,* 792 N.E.2d 22 (Ind. 2003); *Allstate Ins. Co. v. Menards, Inc.,* 782 N.E.2d 258 (Ill. 2002); *Carver v. Sheriff of La Salle County,* 787 N.E.2d 127 (Ill. 2003). *Craig* is still pending. In *DFS and Eichwedel,* after acceptance of the certified question but before an answer, the parties settled or developments mooted the dispute. All of the other cases resulted in an answer to the Seventh Circuit.

[29] *Tammi,* 536 F.3d 702; *Metzger,* 367 F.3d 699.

[30] *Majors,* 317 F.3d 719; *City of Chi.,* 624 F.3d 363.

[31] *Allstate,* 285 F.3d 630; *Plastics Eng'g,* 514 F.3d 651.

[32] *See Whitlock v. Brueggemann,* 682 F.3d 567, 590 (7th Cir. 2012); *Chi. Title Land Trust Co. v. Potash Corp. of Sask. Sales Ltd.,* 664 F.3d 1075, 1081 (7th Cir. 2011); *Cleary v. Philip Morris Inc.,* 656 F.3d 511, 520 (7th Cir. 2011); *Brown v. Argosy Gaming Co., L.P.,* 384 F.3d 413, 415-16 (7th Cir. 2004); *Jones v. Infocure Corp.,* 310 F.3d 529, 535-36 (7th Cir. 2002).

[33] Ill. Sup. Ct. R. 20(a).

[34] Wis. Stat. § 821.01.

[35] Ind. R. App. P. 64(B).

[36] *Thomas v. H&R Block E. Enters., Inc.,* 630 F.3d 659, 663 (7th Cir. 2011); *Allstate,* 285 F.3d at 637.

[37] *Allstate,* 285 F.3d at 639; *see also City of Chi.,* 624 F.3d at 367; *State Farm Mut. Auto. Ins. Co. v. Pate,* 275 F.3d 666, 672 (7th Cir. 2001).

[38] *Craig,* 686 F.3d at 430; *Thomas,* 630 F.3d at 667; *In re Jafari,* 569 F.3d 644, 651 (7th Cir. 2009); *Rennert v. Great Dane L.P.,* 543 F.3d 914, 918 (7th Cir. 2008); *Tammi,* 536 F.3d at 713; *Plastics Eng'g,* 514 F.3d at 659-60; *State Farm,* 275 F.3d at 672.

[39] *Am. Safety,* 678 F.3d at 481 (refusing to certify based on position taken by longstanding and unquestioned Illinois Appellate Court decision); *Liberty Mut. Fire Ins. Co. v. Statewide Ins. Co.,* 352 F.3d 1098, 1100 (7th Cir. 2003) (denying certification because Illinois appellate courts had spoken and were not in conflict); *State Farm,* 275 F.3d at 673 (refusing to certify because several decisions from Indiana Court of Appeals were in agreement and Indiana Supreme Court had declined to order further review).

[40] *Rennert,* 543 F.3d at 917-19; *Liberty Mut.,* 352 F.3d at 1101.

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[41] *Am. Safety,* 678 F.3d at 481 (refusing to certify because lone Illinois Appellate Court decision on relevant insurance trigger supported affirmance); *City of Chi.,* 624 F.3d at 367 (certifying despite Illinois Appellate Court decision on the incidence of amusement tax)

[42] *DFS,* 384 F.3d at 355 (certifying after distinguishing general precedents on the availability of punitive damages); *Fort v. C.W. Keller Trucking, Inc.,* 330 F.3d 1006, 1009-12 (7th Cir. 2003) (refusing to certify because Indiana case law generally did not support argument for reversal on set-off issue)

[43] *Craig,* 686 F.3d at 430; *Cedar Farm, Harrison County, Inc. v. Louisville Gas & Elec. Co.,* 658 F.3d 807, 812-13 (7th Cir. 2011); *Cleary,* 656 F.3d at 520; *Thomas,* 630 F.3d at 667; *Brown,* 384 F.3d at 415; *State Farm,* 275 F.3d at 672.

[44] *City of Chi.,* 624 F.3d at 367; *Tammi,* 536 F.3d at 704; *Plastics Eng'g,* 514 F.3d at 654-60.

[45] *Craig,* 686 F.3d at 428; *Allstate,* 285 F.3d at 639.

[46] *Eichwedel,* 696 F.3d at 680-81; *City of Chi.,* 624 F.3d at 367-68; *George,* 623 F.3d at 1137; *Storie,* 589 F.3d at 876; *Tammi,* 536 F.3d at 712-13; *Plastics Eng'g,* 514 F.3d at 654-60; *DFS,* 384 F.3d at 352-55; *Majors,* 317 F.3d at 723-35; *Carver,* 243 F.3d at 381-86.

[47] *State Farm,* 275 F.3d at 672 ("There is always a chance that a state supreme court, if it had the same case before it, might decide the case differently. This ever-present possibility is not sufficient to warrant certification.").

[48] *Am. Safety,* 678 F.3d at 481; *Rennert,* 543 F.3d at 917-19.

[49] *Am. Safety,* 678 F.3d at 481; *Fort,* 330 F.3d at 1009-12.

[50] *Plastics Eng'g,* 514 F.3d at 659-60; *DFS,* 384 F.3d at 354-55.

[51] *See, e.g., Thomas,* 630 F.3d at 667; *Rain v. Rolls-Royce Corp.,* 626 F.3d 372, 378 (7th Cir. 2010); *Auto-Owners Ins. Co. v. Websolv Computing, Inc.,* 580 F.3d 543, 549 n.3 (7th Cir. 2009); *Tammi,* 536 F.3d at 713; *Plastics Eng'g,* 514 F.3d 651; *State Farm,* 275 F.3d at 672.

[52] *Am. Safety,* 678 F.3d at 481; *Rain,* 626 F.3d at 379; *Fort,* 330 F.3d at 1012 n.6. *But see Allstate,* 285 F.3d at 639 (certifying where the issue was "a recurring one and [was] likely to arise with significant frequency both in state and federal forums").

[53] *Am. Safety,* 678 F.3d at 481; *Rain,* 626 F.3d at 379; *City of Chi.,* 624 F.3d at 367-68; *Carver,* 243 F.3d at 386. *Cf. Eichwedel,* 696 F.3d at 681 (certifying issue "which will recur frequently in both state and federal courts within Illinois, but which might not reach appellate courts with the same frequency")

[54] *City of Chi.,* 624 F.3d at 367-68; *Carver,* 243 F.3d at 386.

[55] *Chi. Teachers Union,* 662 F.3d at 764; *City of Chi.,* 624 F.3d at 367-68.

[56] *Am. Safety,* 678 F.3d at 481; *Chi. Teachers Union,* 662 F.3d at 764; *Rain,* 626 F.3d at 379; *City of Chi.,* 624 F.3d at 367-68; *Auto-Owners,* 580 F.3d at 549 n.3; *Carver,* 243 F.3d at 386.

[57] *See, e.g., Storie,* 589 F.3d at 880-81; *Tammi,* 536 F.3d at 713; *DFS,* 384 F.3d at 349, 354, 355.

[58] *See, e.g., Craig,* 686 F.3d at 430; *Thomas,* 630 F.3d at 667; *Tammi,* 536 F.3d at 713; *Plastics Eng'g,* 514 F.3d at 659; *Brown,* 384 F.3d at 416.

[59] *Cedar Farm,* 658 F.3d at 813 (internal quotation marks and brackets omitted); *see also Harney v. Speedway SuperAmerica, LLC,* 526 F.3d 1099, 1101 (7th Cir. 2008); *Plastics Eng'g,* 514 F.3d at 660; *Brown,* 384 F.3d at 416.

[60] *Thomas,* 630 F.3d at 667; *Harney,* 526 F.3d at 1101; *see also George,* 623 F.3d at 1137.

[61] *Craig,* 686 F.3d at 430-31; *City of Chi.,* 624 F.3d at 367; *George,* 623 F.3d at 1137; *Tammi,* 536 F.3d at 713; *Allstate,* 285 F.3d at 639.

[62] *Plastics Eng'g,* 514 F.3d at 660.

[63] *Cedar Farm,* 658 F.3d at 813; *Thomas,* 630 F.3d at 667; *Harney,* 526 F.3d at 1101; *Brown,* 384 F.3d at 416.

[64] *Brown,* 384 F.3d at 416; *Allstate,* 285 F.3d at 639; *State Farm,* 275 F.3d at 672.

[65] *Cedar Farm,* 658 F.3d at 813; *Brown,* 384 F.3d at 416; *Liberty Mut.,* 352 F.3d at 1101; *State Farm,* 275 F.3d at 672-73.

[66] *Allstate,* 285 F.3d at 639.

[67] *Fort,* 330 F.3d at 1012 nn. 5-6.

[68] *Craig,* 686 F.3d at 430; *State Farm,* 275 F.3d at 672; *see also Tammi,* 536 F.3d at 713; *Brown,* 384 F.3d at 416; *Allstate,* 285 F.3d at 639.

[69] *Nagy v. Riblet Prods. Corp.,* 79 F.3d 572, 577-78 (7th Cir. 1996) (Delaware); *Stephan v. Rocky Mountain Chocolate Factory, Inc.,* 129 F.3d 414, 418 (7th Cir. 1997) (Colorado); *Cf. Eichwedel,* 696 F.3d at 680-81 (referencing "comity" interests and "respect for the decision of the state courts" regarding interpretation of state law on penalties for frivolous prisoner suits).

[70] *State Farm,* 275 F.3d at 672; *see also Tammi,* 536 F.3d at 713; *Allstate,* 285 F.3d at 639.

[71] *See Brownsburg Area Patrons Affecting Change v. Baldwin,* 137 F.3d 503, 509 (7th Cir. 1998).

[72] *Rain,* 626 F.3d at 379; *Brown,* 384 F.3d at 417.

[73] *Rain,* 626 F.3d at 379; *Brown,* 384 F.3d at 417; *Doe v. City of Chicago,* 360 F.3d 667, 672 (7th Cir. 2004).

[74] *Am. Safety,* 678 F.3d at 481; *Rain,* 626 F.3d at 379; *MacGregor v. Rutberg,* 478 F.3d 790, 793 (7th Cir. 2007); *Brown,* 384 F.3d at 417; *Epps v. Creditnet, Inc.,* 320 F.3d 756, 761 n.6 (7th Cir. 2003).

[75] *Brown,* 384 F.3d at 417.

[76] *Plastics Eng'g,* 514 F.3d at 659.

[77] *See Plastics Eng'g,* 514 F.3d at 659-61.