

**Certification of Questions of State Law
in the U.S. Courts of Appeals
for the Third, Sixth, and Ninth Circuits
(2010–2018)**

**Certification of Questions of State Law
in the U.S. Courts of Appeals
for the Third, Sixth, and Ninth Circuits
(2010–2018)**

Prepared for the Judicial Conference Committee on Federal-State Jurisdiction

Jason A. Cantone
Carly Giffin

June 2020

Federal Judicial Center

Thurgood Marshall Federal Judiciary Building

One Columbus Circle NE

Washington, DC 20002

fjc.dcn • fjc.gov

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. While the Center regards the content as responsible and valuable, this publication does not reflect policy or recommendations of the Board of the Federal Judicial Center.

Contents

Executive Summary	1
Introduction	2
Certified-Question Activity in the U.S. Courts of Appeals	3
Ninth Circuit	5
Third Circuit	7
Sixth Circuit	9
Appendix A: Initial Examination into Certified Questions	11
Appendix B: Full Analysis of the U.S. Court of Appeals for the Ninth Circuit	13
Certified Questions	13
Denied Certified Questions	16
Cases with No Further Action Taken	17
Appendix C: Full Analysis of the U.S. Court of Appeals for the Third Circuit	19
Certified Questions	19
Denied Certified Questions	22
Cases with No Further Action Taken	23
Appendix D: Full Analysis of the U.S. Court of Appeals for the Sixth Circuit	25
Certified Questions	25
Denied Certified Questions	27
Cases with No Further Action Taken	29

Executive Summary

At the request of the Judicial Conference Committee on Federal-State Jurisdiction, researchers at the Federal Judicial Center studied the use of certified questions of state law in three U.S. circuit courts of appeal: the Ninth, Sixth, and Third Circuits. Researchers identified and analyzed 220 certified-question events occurring between 2010 and 2018—97 in the Ninth Circuit, 63 in the Third Circuit, and 60 in the Sixth Circuit. Certified-question events were defined as when a party motion or sua sponte opinion first raised the possibility of the circuit court certifying a question of state law in a case. This included proposed questions ultimately certified or denied by the circuit court, as well as those granted or denied by the relevant state supreme court.

The data shows variation in the rate of certification between the circuits. The Ninth Circuit was the most likely to certify questions and did so in 92% of the identified cases, compared to 49% for the Third Circuit and 17% for the Sixth Circuit. When the circuits did certify the question, it was more often initiated by a sua sponte order than by a party motion, with 90% of the Third Circuit, 85% of the Ninth Circuit, and 60% of the Sixth Circuit certified questions resulting from sua sponte orders.

Timing varied between circuits. When the Ninth Circuit certified the question, it did so about 22 months after the appeal was filed. This was about twice the corresponding time in the Third Circuit (12 months) or Sixth Circuit (11 months).

State courts also vary in their treatment of certified questions. Eighty-seven percent of the questions certified by the Third Circuit and 80% of the questions certified by the Ninth Circuit were granted by a state supreme court. State supreme courts granted only 60% of the questions certified by the Sixth Circuit.

The receiving state supreme courts granted the certified questions about two months after they were certified by the Third and Ninth Circuits, and about four and a half months after they were certified by the Sixth Circuit.

The state supreme courts issued an opinion responding to the granted certified questions 92% of the time in the Third Circuit, 83% in the Sixth Circuit, and 48% in the Ninth Circuit. These opinions were issued a little more than a year after the question was certified by the Third Circuit, about 17 months after the Ninth Circuit certified the question, and more than two years after the question was certified by the Sixth Circuit.

Overall, from the filing of the appeal to termination, certified-question cases took about 36.5 months in the Ninth Circuit, 27 months in the Third Circuit, and 25.5 months in the Sixth Circuit. In all three circuits, the certified-question cases took longer to terminate than cases where the circuit denied, or took no further action on, a certified-question motion. However, as described in the report, we recommend caution in any interpretation of termination dates in the Ninth Circuit cases, or the percentage of state supreme court opinions, due to observed docketing practices.

Introduction

Certification of questions of state law is a legal procedure by which federal courts can obtain definitive answers from state and territorial courts of last resort on unsettled issues of state law that arise in federal legal proceedings. In 1974, the U.S. Supreme Court in *Lehman Bros. v. Schein* addressed certification of state-law questions, stating that the procedure “saves[s] time, energy, and resources and helps build a cooperative judicial federalism.”¹ In 1995, the National Conference of Commissioners on Uniform State Laws (ULC) encouraged the use of certified questions by updating its model law on certified questions, originally created in 1967. In 1995, the *Long Range Plan for the Federal Courts* recommended that

[t]he states should be encouraged to adopt certification procedures, where they do not currently exist, under which federal courts (both trial and appellate) could submit novel or difficult state law questions to state supreme courts.²

This practice promotes comity between federal and state courts, and it gives state courts an opportunity to address and perhaps advance issues they might not otherwise have the chance to review. It can also assist the courts in promoting uniform approaches to state law, reducing the need for federal judges to attempt to predict developments in state law and possibly reducing forum shopping in a state with multiple federal district courts. The benefits of certified questions have been repeatedly endorsed.

In response to this encouragement, more states authorized the procedure. Currently, 49 states, as well as D.C., Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands, have statutes authorizing certified questions.³ A separate Federal Judicial Center report examines each of the 54 authorizing statutes. In that report, we found considerable variation between statutes, but also some general trends. For example, all but one statute authorized certified questions from the U.S. Supreme Court.⁴

In an early Federal Judicial Center study, U.S. district and appellate judges rated the procedure positively and noted that though the procedure can sometimes add more time and cost to already long-pending cases, the advantages of resolving the issue and underlying dispute, as well as improving federal-state court relations, outweigh any disadvantages.⁵ It is worth remembering, though, that the use of certified questions only goes one way: state courts do not have the opportunity to seek guidance from federal courts through a formal certification process.

Certified questions are not always favored. In *Schein*, the Supreme Court cautioned, “[W]e do not suggest that where there is doubt as to the local law and where the certification procedure is available, resort to it is obligatory.” Instead “its use in a given case rests in the sound discretion of the federal court.”⁶ As shown in this report, courts vary how often

1. *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974).

2. Judicial Conference of the United States, *Long Range Plan for the Federal Courts* 32 (1995).

3. The only state without such a statute, North Carolina, is currently assessing its options regarding certified questions.

4. Jason A. Cantone and Carly Giffin, *Certified Questions of State Law: An Examination of State and Territorial Authorizing Statutes*, Federal Judicial Center (2020).

5. Carroll Seron, Federal Judicial Center, *Certifying Questions of State Law: Experience of Federal Judges* (1983). At the time of Seron’s report, 24 states and Puerto Rico allowed certification of state-law questions in some form.

6. *Schein*, 416 U.S. at 390–91.

they use certified questions. There is also active debate in some jurisdictions about the circumstances in which certification should be used.⁷

In response to a request from the Judicial Conference Committee on Federal-State Jurisdiction in September 2018, the Federal Judicial Center examined the use of certified questions in the U.S. courts of appeals for the Ninth, Third, and Sixth Circuits.

Certified-Question Activity in the U.S. Courts of Appeals

The Center examined the use of certified questions to gauge 1) how often the circuits certified a question of state law, 2) whether the state supreme court⁸ granted the certified question and issued an opinion, and 3) how long the entire certification process took. Our research used two approaches to obtain cases with an initial certified-question event—either a motion to certify or a sua sponte order—occurring between 2010 and 2018. For each circuit, we first searched the Case Management/Electronic Case Files system (CM/ECF) using event codes related to certified questions and contacted the circuits directly to obtain lists of cases they identified as having at least one certified-question event. Center researchers then compared these two lists to identify duplicate cases and to determine which cases contained a certified question, rather than just referring to a certified question from another case. If a case included more than one distinct certified question, each unique certified question was included in the analysis.

For a brief overview of the initial work presented to the committee in 2018, including a discussion of how the courts docket certified-question cases and what data is available from the Court Statistics Project, see appendix A.

Appendices B, C, and D contain a fuller analysis of the data for each of the examined circuits. Each appendix includes the information provided in the report, along with more detailed analysis of certified-question cases and separate analyses of motions to certify either that the circuits denied or for which there was no further activity. While there is redundancy between the analyses in the report and the appendices, this is intended so that readers can choose to read the more abbreviated report or the more detailed analysis of each circuit without needing to refer back to the report for the highlighted findings.

7. For instance, in *Lindenberg v. Jackson National Life Insurance Co.*, 919 F.3d 992 (6th Cir. 2019), judges on the Sixth Circuit, across four opinions, took differing positions about what factors counsel toward certification, how frequently questions should be certified, and whether guidelines should be established to help determine when to certify a question to a state court.

8. Although Puerto Rico, Guam, the Virgin Islands, and the Mariana Islands authorize certified questions, none of these territories accepted and provided an opinion responding to a certified question examined in our study. Thus, we often use *state supreme court* to refer to the court of last resort.

Ninth Circuit

We identified 97 distinct certified-question events in 94 appeals in the Ninth Circuit during the 2010–2018 time period. This included all proposed certified questions, raised either via party motion or sua sponte. The Ninth Circuit certified 89 of the proposed questions (92%). The Ninth Circuit denied certification motions in two cases (2%) and took no action in six cases (6%). As will be shown below, this is a significantly higher certification rate than in either the Third or Sixth Circuits (49% and 17%, respectively). This section provides an overview of the data obtained from the 89 certified questions in the Ninth Circuit.

Case Type. The certified questions came from 33 different types of cases. Most commonly, the cases were insurance cases (26%, or 23), followed by other civil rights (11%, or 10), other labor litigation (10%, or 9), and personal injury/product liability (10%, or 9). Other types of cases included environmental matters, property actions, bankruptcy actions, and actions specifically involving the Americans with Disabilities Act or the Fair Labor Standards Act.

Originating Court. The certified questions originated in 22 different U.S. district courts and the Bankruptcy Appellate Panel, Riverside Bankruptcy Court. About half the questions originated in district courts in the state of California (46%, or 41), with the most (18) coming from the U.S. District Court for the Central District of California.

Initiating Activity. Most of the certified questions (85%, or 76) were ordered sua sponte. Thirteen (15%) originated by motion, and just over half of those motions (53%, or 7) were contested by opposing counsel.

State Court Action. About half of the certified questions were submitted to the Supreme Court of California (47%, or 42). This was more than three times as many as the next-most: the Supreme Court of Washington, with 14% (or 12). The state courts granted 71 (80%) of the certified questions and denied 9 (10%); there was no docket activity regarding state action in the remaining 9 (10%). The number of certified questions granted by the state court, used in **figure 1**, includes cases that did not have an explicit grant on the federal docket but did have a resulting opinion from the state court. For about half of the 89 certified questions (43, or 48%), the state court issued an opinion responding to the certified question. However, as described further in appendix B, the Ninth Circuit often terminated the case the day the question was certified, before the state court could respond. Thus, though these cases appear terminated on the docket, the number of issued state court opinions responding

to the certified question is expected to increase after the time of analysis.

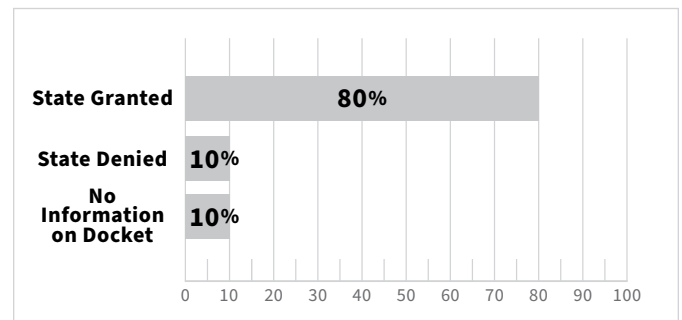


Figure 1: State Court Responses to Certified Questions in the Ninth Circuit

Timing. This section provides a general overview regarding the timing of important events in the certified-question process. The timing data relies on medians, rather than means. See **figure 2**.

The Ninth Circuit certified the question about 22 months after the appeal was initially filed (median 656 days; range: 152 days to 2,226 days). The certification order came sooner for certified questions ultimately granted than ultimately denied by the state court (median 636 days versus 795 days after the appeal was filed). For certified questions initiated by a party motion, the certification came about 18 months after that motion (median 552 days; range: 63 days to 1,373 days).

When the state court granted the certified question, it did so fewer than two months after the Ninth Circuit certified the question (median 50 days; range: 4 days to 304 days), which was about two years after the appeal was filed (median 711 days; range: 196 days to 1,704 days).⁹

When the state court denied the certified question, it did so more than two months after the Ninth Circuit certified the

9. It is important to note that the analyses in this report rely on medians for each time period. Summing each of the smaller time periods' medians will result in a number different than the median of that overall time period. For instance, in the Ninth Circuit, the first two medians for certified questions granted by the state court are 636 and 50 days, which sum to 686 days. However, in the text we say the median of this same time period is 711 days. This is not a mistake, but rather is due to the nature of medians.

question (median 71 days; range: 16 days to 879 days), which was more than two and half years after the appeal was filed (median 952 days; range: 611 days to 2,359 days).

The state courts issued 43 opinions responding to certified questions; this occurred about 15 months after the state court granted the certified question (median 459 days; range: 91 days to 1,053 days).¹⁰

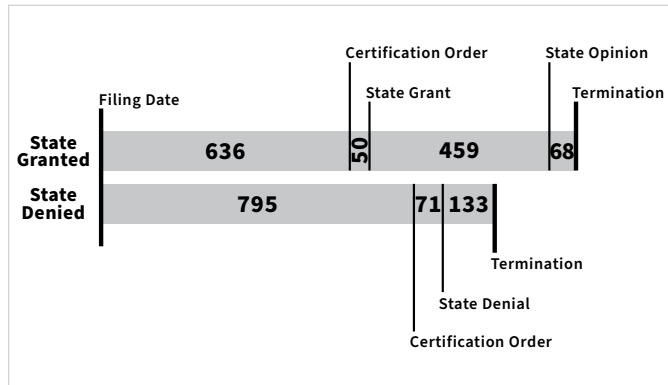


Figure 2: Timeline for Certified-Question Orders in the Ninth Circuit (2010–2018)

Termination. Docketing practices in the Ninth Circuit (at least for cases involving certified questions) added a level of complexity when analyzing termination dates. Of the 86 terminated certified-question cases, 22 (25%) terminated on the docket the day the court certified the question, and, for two cases, the case terminated before the Ninth Circuit certified the question (90 days and 122 days before). We found that for these cases, the Ninth Circuit generally entered an administrative closure and termination date the

day the question was certified. The last docket entry for the examined cases occurred about one month (median 39 days) after the docketed termination date. For consistency between the circuit analyses and prior Center research, we use the docketed termination date; but we advise the reader to interpret the dates with these caveats in mind.

Cases terminated about one year after the state court granted the certified question (median 333 days; range: 137 days before to 1,094 days after), or about four and a half months after the state court denied the certified question (median 133 days; range: 138 days before to 1,315 days after).

Overall, the certified-question cases terminated about 36.5 months after the appeal was filed (median 1,097 days; range: 357 days to 3,157 days).¹¹ This is longer than the two certified questions the Ninth Circuit denied (about 17 months, median 516 days) and the six certified questions where the Ninth Circuit did not take further action (about 11 months, median 323 days).

Outcome. Of the 86 terminated cases with certified questions, 21 (24%) were administratively closed pending a response from the state court that had not yet come at the time of analysis. This was the most common outcome, with the second-most common being affirming the lower court’s judgment (22%, or 19), followed by dismissing via a Rule 42(b) motion (14%, or 12), reversing and remanding (13%, or 11), and vacating and remanding (10%, or 9).

For more detailed analysis on these cases, as well as the two certified-question motions that the Ninth Circuit denied and the six that received no further action on the docket, see appendix B.

10. This was about 17 months after the Ninth Circuit certified the question (median 508 days; range: 115 days to 1,206 days).

11. This was about 29 months after a motion to certify was filed (median 871 days; range: 220 days to 2,024 days), which initiated 11 certified questions.

Third Circuit

In the Third Circuit, we identified 63 certified-question events in 63 appeals during the 2010–2018 time period. The Third Circuit certified the question in 31 cases (49%), denied the certified-question motion in 22 cases (35%), and for 10 cases (16%) there was no evidence on the federal docket of further action taken by the Third Circuit or a state supreme court after the motion was made. This is a significantly lower certification rate than in the Ninth Circuit (92%), but significantly higher than in the Sixth Circuit (17%).

Case Type. The certified questions came from 24 different types of cases. The most common were insurance cases and personal injury/product liability cases. Each represented about one-fifth of the certified questions (19%, or 6 each).

Originating Court. The certified questions originated in seven different courts, including the Bankruptcy Court for the District of Delaware. About one-third of the certified questions originated in either the Eastern District of Pennsylvania or the District of New Jersey (32%, or 10 each).

Initiating Activity. Most of the certified questions (90%, or 28) arose in sua sponte orders from the Third Circuit. In the remaining three cases (10%), a party filed a motion to certify. In two of those three cases, the motion was contested by opposing counsel. Because of the small number of certified questions initiated by a motion, they are not further analyzed below, but see appendix C for a full analysis of the Third Circuit data.

State Court Action. The most cases were certified to the Supreme Court of Pennsylvania (42%, or 13), followed by the Supreme Court of New Jersey (35%, or 11). However, as shown in appendix C, cases were also certified to state supreme courts of states outside of the Third Circuit. The state courts granted 27 (87%) of the questions certified by the Third Circuit and denied 3 (10%). In one case, the certified question was withdrawn due to a new decision. See figure 3. The state court issued an opinion on the question of state law for 24 (92%) of the certified questions they granted.

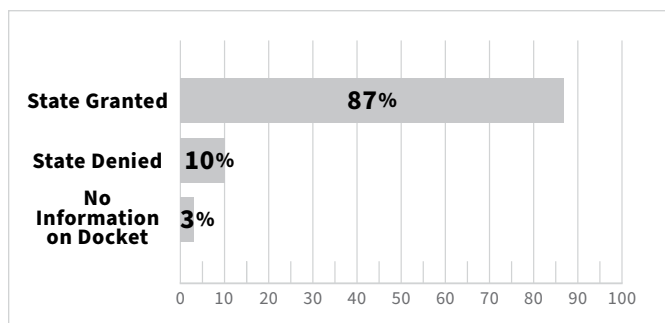


Figure 3: State Court Responses to Certified Questions in the Third Circuit

Timing. The Third Circuit certified the question about 12 months after the appeal was filed (median 357 days; range: 210 days to 1,140 days). As in the Ninth Circuit, the certified-question order came sooner for certified questions ultimately granted than ultimately denied by the state court (median 354 days versus 420 days after the appeal was initially filed). See figure 4.

When the state court granted the certified question, it did so about two months after the question was certified (median 51 days; range: 13 days to 180 days). The state court issued 24 opinions which came a little less than a year after the state supreme court granted review of the certified question (median 342 days; range: 146 days to 779 days).¹² This was more than two years after the filing of the case (median 784 days; range: 393 days to 1,380 days).

When the state court denied the certified question, it did so about 3 months after the question was certified (median 99 days; range: 84 days to 148 days), and about 19 months after the case was filed (median 519 days; range: 414 days to 757 days).

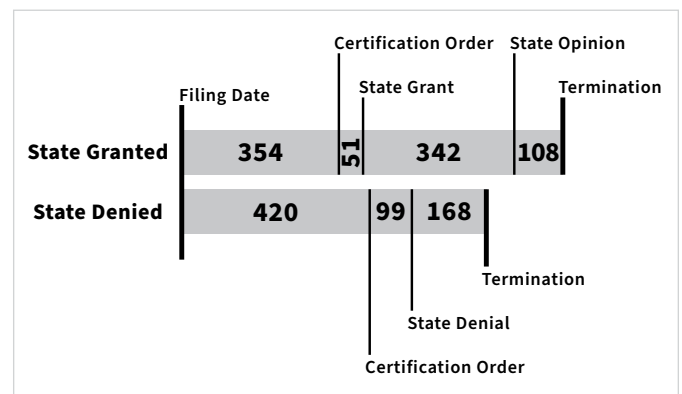


Figure 4: Timeline for Certified-Question Orders in the Third Circuit (2010–2018)

Termination. Termination occurred about 14 months after the Third Circuit certified the question (median 414 days; range: 84 days to 2,122 days), and about 12 months after the state court granted the certified question (median 358 days;

12. This was a little more than a year after the question was certified by the Third Circuit (median 380 days; range: 32 days to 959 days).

range: 50 days to 1,942 days), or about five and a half months after the state court denied the certified question (median 168 days; range: 113 days to 488 days).

For the 22 terminated cases with a state court opinion, the case terminated about three months after the Third Circuit received that opinion (median 108 days; range: 16 days to 1,163 days).

Overall, the 27 terminated cases with certified questions terminated more than two years after the appeal was filed (median 816 days; range: 449 days to 2,507 days). This is longer than the 22 cases with certified-question motions denied by the Third Circuit, which terminated about a year after the appeal was filed (median 368 days; range: 277 days to 1,621 days); half of the cases with a denied certified question (50%, or 11) terminated the same day as the denial. The 10 cases in which the Third Circuit took no action after

the certified-question motion was filed terminated about 14 months after the appeal was filed (median 429 days; range: 117 days to 804 days).

For detailed analysis of the 22 certified-question motions that were denied by the Third Circuit and the 10 certified-question motions that received no further action on the docket, see appendix C.

Outcome. Of the 31 cases with a certified question, 3 had not yet terminated at the time of analysis. Of the 28 that had, 9 (32%) were affirmed, 4 (14%) were vacated and remanded, 4 (14%) were reversed and remanded, and 2 (7%) were affirmed in part, vacated in part, and remanded. The remaining 9 each had a different specific outcome such as affirmed in part and reversed in part, remanded and dismissed in part, and dismissed under Rule 42(b).

Sixth Circuit

The Sixth Circuit sample included 60 certified-question events in 59 appeals during the 2010–2018 time period. The Sixth Circuit certified a significantly smaller percentage of the cases (17%, or 10) than the Ninth or Third Circuits (92% and 49%, respectively). The Sixth Circuit denied 53% (32) and took no further action after the initial motion to certify in 32% (19). Because the Sixth Circuit only certified 10 questions in our 2010–2018 time frame, the results and discussions are more limited.

Case Type. The certified questions most commonly came from bankruptcy cases (40%, or 4). The remainder were personal injury cases (20%, or 2), or contracts, habeas corpus, franchise, or personal property cases (10%, or 1 each).

Originating Court. The certified questions originated in seven different courts. Two cases each originated in the Southern District of Ohio, the U.S. Bankruptcy Court for the Southern District of Ohio, and the Western District of Kentucky. The remaining courts—the Eastern District of Kentucky, the Eastern District of Tennessee, the Middle District of Tennessee, and the Northern District of Ohio—had one case each.

Initiating Activity. Six (60%) of the certified questions originated by sua sponte orders, the other four (40%) by a party’s motion to certify. Three of the four motions (75%) were contested by opposing counsel.

State Court Action. The certified questions were intended for three courts: the Supreme Court of Ohio (50%, or 5), the Supreme Court of Kentucky (30%, or 3), and the Supreme Court of Tennessee (20%, or 2). The state courts granted six (60%) of the certified questions and denied three (30%). In the final case, the Supreme Court of Ohio did not file the certified question because the order from the Sixth Circuit “lacked a designation of a moving party.” This case is designated in the “no further action” category in **figure 5**.

For five (83%) of the six certified questions granted by the state supreme court, that court issued an opinion.

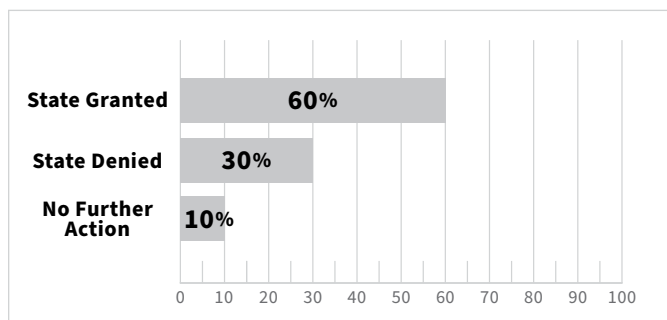


Figure 5: State Court Responses to Certified Questions in the Sixth Circuit

Timing. The Sixth Circuit certified the question about 11 months after the case was filed (median 323 days), and for cases initiated with a motion to certify, about 11 months after that motion was filed (median 322 days). Certified questions ultimately granted by the state court were certified later after filing (median 460 days) than certified questions ultimately denied (median 323 days). See **figure 6**.

The state courts granted six certified questions; this occurred about four and a half months after the question was certified (median 138 days; range: 7 days to 305 days).¹³ This grant occurred about 20.5 months after filing the appeal (median 615 days; range: 307 days to 917 days).

The state courts denied three certified questions; this occurred about three months after the question was certified (median 89 days). This denial occurred about 14 months after the case was filed (median 412 days), about 14 months after the motion to certify (median 411 days), and about 13 months after the referral to a hearing panel (median 376 days).

The state court typically issued its opinion regarding the certified question more than two years after the appeal was filed (median 735 days; range: 594 days to 1,185 days) and about 14 months after the question was certified by the Sixth Circuit (median 425 days; range: 127 days to 725 days). In addition, the response came about nine and a half months after the state court’s grant (median 267 days).

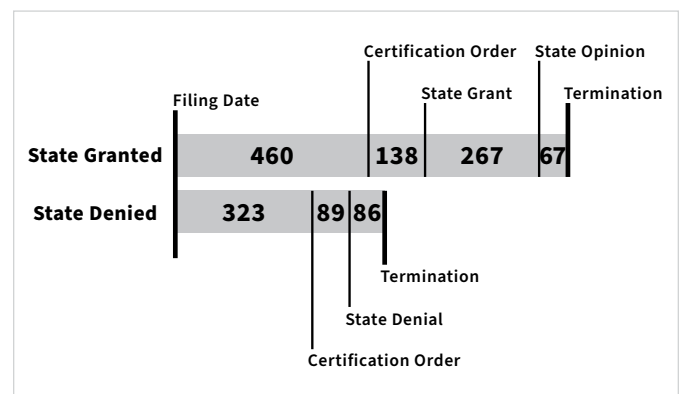


Figure 6: Timeline for Certified-Question Orders in the Sixth Circuit (2010–2018)

13. The date that the state supreme court granted the certified question was not available for two of the cases. This analysis was based on the dates for the remaining four.

Termination. Termination occurred about 15 months after the Sixth Circuit certified the question (median 449 days; range: 113 days to 792 days). This was about 12 months after the state court granted the certified question (median 350 days; range: 154 days to 487 days) or about 3 months after the state denied the certified question (median 86 days; range: 24 days to 483 days). Termination occurred about 2 months after the state court issued its opinion (median 67 days; range: 34 days to 139 days).

The cases with a certified question took about 26 months from filing of the appeal to termination (median 769 days; range: 498 days to 1,252 days). The cases terminated about 20 months after the motion (median 600 days; range: 552 days to 776 days). This is longer than the 31 cases with a denied

certified question, which terminated about 14.5 months after the appeal was filed (median 434 days; range: 181 days to 2,115 days). Additionally, the 19 cases in which the Sixth Circuit took no action after the certified-question motion terminated about 11 months after the filing of the appeal (median 329 days; range: 41 days to 813 days).¹⁴

For detailed analysis of the 32 certified-question motions that were denied by the Sixth Circuit and the 19 cases that received no further action on the docket, see appendix D.

Outcome. Of the 10 cases with a certified question, 8 had terminated at the time of analysis. Four affirmed the lower court's opinion, 2 dismissed the case under Rule 42(b), 1 reversed and remanded, and 1 remanded.

14. In a reduced sample of these cases that took into account that some may not truly be certified questions of state law (but rather, more likely, certificates of appealability to the U.S. Supreme Court), the eight terminated cases took about 13.5 months from filing to termination (median 403 days; range: 68 days to 813 days).

Appendix A

Initial Examination into Certified Questions

In an initial examination into the use of certified questions, Center researchers took two approaches: 1) analyzing data from event codes used by federal courts during docketing, and 2) using statistics provided to the Court Statistics Project by state and territorial courts.¹

First, we examined how often federal district and circuit courts used certified-question docketing codes within the Case Management/Electronic Case Files (CM/ECF) system. These codes are used by the clerk's office to tag specific case events. For example, the standard CM/ECF dictionary for federal district courts includes a specific code for "certification of issue to state court" that can be appended to relevant cases.

Though the standard event codes are intended for use in all 94 district courts, variation occurs in local practice. For example, in a randomly selected sample of the data dictionaries used by 18 federal district courts, the standard, specific event code for certified questions was listed in 13 (72%). The five dictionaries that did not use the standard code did not include another code specific to certified questions. This could be because those districts use a more general code for certified questions (such as *miscellaneous*) or because these jurisdictions do not certify questions regularly enough for the practice to warrant its own code. In fact, our conversations with some district courts found that some do not specifically track certified questions because the state supreme court either has a history of not accepting them or because the relevant statute does not authorize certified questions from the district court.

Center researchers then examined how often the standard code was used across all 94 U.S. district courts in a three-year period. Between September 1, 2015, and September 1, 2018, there were 49 terminated cases, from 21 different district and territorial courts, tagged with the standard event code for certified questions. Although most of the districts had only 1 case with the code, 11 (22%) were cases from the District of Nevada and 7 (14%) were from the District of Utah.

Next, we examined each of the circuit courts' data dictionaries for event codes relevant to certification of questions of state law. In the six circuits with an identifiable event code for certification of state-law questions, the number of distinct codes ranged from one code specified

by the Fifth and Seventh Circuits to eight distinct event codes specified by the Third Circuit. We then searched each of the six circuits using its identifiable codes to find cases involving certified-question events that terminated between September 1, 2015, and September 1, 2018. In doing so, we identified 104 cases. However, further examination showed that many were consolidated cases with the same certified question, resulting in only 27 individual certified questions across the six circuits within the three-year period.

This first approach of solely using docketed event codes in federal cases has some limitations. The clearest limitation is that the federal data reported above only represents cases when standard (for district courts) or circuit-specific (for circuit courts) CM/ECF event codes are docketed with the case. Because we could not identify a specific code for certified questions in many district and circuit courts, we believe that the numbers presented here are an undercount and should be used only with caution. Further research is required to examine the use of certified questions by district courts especially. This speculation regarding an undercount appears more likely when compared to the available state court data, reviewed below.

Our second approach considered available state court data. To obtain state court data on certified questions, we contacted the Court Statistics Project, which collects self-reported state court data, including the number of incoming certified questions. In response, the Court Statistics Project supplied the number of reported certified questions across a five-year time period (2012–2016). As shown in **table A1**, within this period, 404 certified questions were identified, with the most in 2014 (99) and 2015 (94). Overall, 35 states and Puerto Rico provided examinable data to the Court Statistics Project.

While this state court data about the number of identified certified questions exceeds that available by searching just the standard CM/ECF event codes on federal dockets, it faces different limitations. For example, each year, the states can choose to publish or not publish this level of data. As noted by a researcher at the National Center for State Courts, "It is common for courts to report the total category level [original proceedings] as publishable but not each individual subcategory [such as certified questions]." Accordingly, while some states reported this data all five of the examined

1. The Court Statistics Project is a project of the National Center for State Courts and the Conference of State Court Administrators. For more information, see <http://www.courtstatistics.org>.

years (e.g., Alaska, West Virginia), others either stopped (e.g., New York) or later started (e.g., Minnesota) releasing the data within the examined period. In addition, this is self-reported data, and state and territorial courts might identify cases differently. Even with these caveats, and although the time periods are different, comparing **table A1** to the data obtained in the federal-docket searches above provides some evidence that using targeted CM/ECF codes alone to identify the number of certified questions is insufficient.

In response to these limitations, and in discussion with the Judicial Conference Committee on Federal-State Jurisdiction, we then undertook the more expansive research effort described in this report. This approach involved identifying cases with certified questions through docket searches and collaboration with the three selected federal U.S. circuit courts of appeal. While certified questions to state and territorial supreme courts do not solely originate in U.S. circuit courts, this report offered initial information into the use of certified questions across a geographically diverse area. Additionally, a second report examines the state and territorial statutes authorizing certified questions.² Further research could examine the use of certified questions from the state supreme court perspective.³

State	2012	2013	2014	2015	2016
Alabama	5	3	2	3	0
Alaska	2	1	0	1	0
Arizona	1	0	1	--	1
Connecticut	--	--	--	2	0
Delaware	0	2	4	3	2
Florida	2	4	--	--	--
Georgia	6	3	--	--	--
Hawaii	--	--	--	--	0
Idaho	0	2	1	0	--
Illinois	1	0	--	--	--
Indiana	3	3	2	1	0
Kentucky	1	2	3	3	1
Louisiana	2	1	3	0	1
Maryland	1	1	5	4	2
Massachusetts	--	--	--	--	5
Michigan	1	--	0	1	0
Minnesota	--	--	--	1	1
Montana	2	1	2	1	1
New Hampshire	--	3	1	3	0
New Mexico	3	4	4	7	8
New York	4	10	10	--	--
North Dakota	1	0	1	0	1
Ohio	--	--	29	31	15
Oregon	--	0	2	1	1
Pennsylvania	0	0	--	--	0
Puerto Rico	--	--	1	2	1
Rhode Island	--	0	--	--	0
South Carolina	3	3	2	2	2
Tennessee	1	1	2	4	5
Texas	2	0	0	1	1
Utah	3	0	3	1	4
Virginia	3	3	1	--	--
Washington	3	4	3	7	3
West Virginia	13	12	10	13	13
Wisconsin	6	4	3	0	0
Wyoming	--	3	4	2	4
Total	69	70	99	94	72

Table A1: State Court Data of Self-Reported Number of Incoming Certified Questions (2012–2016)

2. Jason A. Cantone and Carly Giffin, *Certified Questions of State Law: An Examination of State and Territorial Authorizing Statutes*, Federal Judicial Center (2020).

3. Currently all states and territories other than California, the District of Columbia, Florida, Louisiana, Mississippi, New York, Pennsylvania, Wisconsin, Illinois, and New Jersey allow certification from U.S. district courts. Tennessee allows certification only from a district court in Tennessee.

Appendix B

Full Analysis of the U.S. Court of Appeals for the Ninth Circuit

The clerk’s office for the U.S. Court of Appeals for the Ninth Circuit provided a list of 106 cases with certified-question events in the years 2010–2018. We performed docket text searches on key terms and identified 19 additional cases with certified-question events. We then analyzed the 125 cases to determine if they actually involved a certified question.

A case was included in the analysis if there was any motion or order regarding certifying a question of law, whether or not it was ultimately certified by the Ninth Circuit. The analysis included cases that had questions certified and either accepted or not accepted by the relevant court (almost always a state supreme court). The sample also included cases where a party moved to certify a question to a state court, but the Ninth Circuit denied certification or took no action on the motion. Not all identified cases were included in our analysis. Cases were excluded if they did not include a certified question for that specific case (e.g., the case referred to a separate case with a pending certified question). If one certified question was relevant across consolidated or joined cases, only one of the cases was included in the analysis. For instance, one set of certified questions was simultaneously docketed in eight separate cases, with separate docket numbers. It is analyzed as one certified-question event.

On the other hand, if one case presented multiple orders regarding certified questions that were distinct, both in timing and content, the case was included multiple times in the data. In one 2010 case, the Ninth Circuit certified different questions of law to the Supreme Court of California three separate times across four years. While that is one case, all three certified questions differed and all three orders were included and analyzed separately. In sum, it was the number of unique certified-question events, rather than cases, that was considered vital to this analysis. Center researchers used the same process to examine the Sixth and Third Circuit cases.

After accounting for consolidated appeals, we identified 97 distinct certified-question events in 94 appeals in the 2010–2018 time period. The Ninth Circuit certified 89 questions (92%), denied certification in two cases (2%), and took no action in six cases (6%). This is a significantly higher certification rate than in either the Third or Sixth Circuits (46% and 17%, respectively).

Certified Questions (N = 89)

Year. The middle column of **table B1** provides the number of questions certified per year by the Ninth Circuit. Since 2010, the years with the most certified questions are the ones most recently analyzed: 2017 (with 13) and 2018 (with 21). The righthand column of **table B1** provides the number of cases with certified-question events by filing year. The earliest docketed cases (2) were filed in the Ninth Circuit in 2004, with the most recent (8) filed in 2017. The years with the most cases with certified-question events filed were 2014 (12) and 2010 and 2016 (with 11 each).

	Number of Questions Certified by the Ninth Circuit (certification year)	Number of Cases with Certified-Question Events (filing year)
2004	--	2
2005	--	--
2006	--	--
2007	--	1
2008	--	3
2009	--	9
2010	6	11
2011	11	6
2012	12	8
2013	4	10
2014	7	12
2015	9	8
2016	6	11
2017	13	8
2018	21	--
Total	89	89

Table B1: Years When Certified-Question Process Was Initiated (and Filing Date)

Case Type. The certified questions came from 33 different types of cases. More than one-quarter of cases (26%, or 23) were insurance cases. The next-most common were classified as other civil rights (11%, or 10), other labor litigation (10%, or 9), and personal injury/product liability (10%, or 9).

Other types of cases included environmental matters, property actions, bankruptcy actions, and actions specifically involving the Americans with Disabilities Act or the Fair Labor Standards Act.

Originating Court. The certified questions originated in 22 different U.S. district courts and in the Riverside Bankruptcy Court Bankruptcy Appellate Panel. As shown in **table B2**, about half of the certified questions originated in federal cases from the state of California (46%, or 41), with the most certified questions (18) coming from the Central District of California. Additionally, 12 cases originated in the District of Nevada, and 10 cases originated in either the District of Oregon or the Western District of Washington.

Table B3 presents the courts that received the certified questions from the Ninth Circuit. About half of the certified questions were submitted to the Supreme Court of California (47%, or 42). This was more than three times as many as the next-most commonly named—the Supreme Court of Washington (14%, or 12), and the supreme courts of Nevada and Oregon (12%, or 11 each).

Originating Court	Number of Certified Questions
B.A.P., Riverside Bankruptcy Court	2
District of Alaska	1
District of Arizona	6
Central District of California	18
Eastern District of California	3
Northern District of California	16
Southern District of California	4
District of Hawaii	1
District of Montana	3
District of Nevada	12
District of Oregon	10
Eastern District of Washington	3
Western District of Washington	10
Total	89

Table B2: Courts Where Certified-Question Events Originated

Receiving Court	Number of Certified Questions
Supreme Court of Alaska	2
Supreme Court of Arizona	6
Supreme Court of California	42
D.C. Circuit Court	1
Supreme Court of Hawaii	1
Supreme Court of Michigan	1
Supreme Court of Montana	2
Supreme Court of Nevada	11
Supreme Court of Oregon	11
Supreme Court of Washington	12
Total	89

Table B3: Intended Receiving Court for Certified Question

Initiating Activity. Most of the certified questions (85%, or 76) were ordered sua sponte.¹ Thirteen (15%) originated by motion, and just over half of those motions (53%, or 7) were contested by opposing counsel.

For eight of the certified questions (9%), the Ninth Circuit requested briefings from the parties as to whether the question should be certified. Of note, every time the Ninth Circuit requested these briefings, the court later certified the question and transferred it to the relevant court (to the supreme courts of California (3), Oregon (1), and Washington (3), and to the D.C. Circuit Court (1)).

Transfer. The Ninth Circuit usually transferred the certified question to the receiving court the same day it was ordered (81%) or the day after (9%). In three instances, the transfer of materials occurred more than a week after certification. For one case, the order for a certified question was withdrawn and then reinstated by the Ninth Circuit and transferred 744 days after the initial order.

State Court Action. The state court granted 71 (80%) of the certified questions and denied 9 (10%). There was no docket activity regarding state action for the remaining nine (10%) cases, including the case certified to the D.C. Circuit Court.² The grant number, used in **figure B1**, includes cases with no explicit grant docketed on the federal record, but

1. This also included cases where the Ninth Circuit certified the question in an order, but there was no explicit mention of it being sua sponte or in response to a motion.

2. This also included the two sets of certified questions in a single case that had not yet terminated at the time of analysis. In that case, the Supreme Court of Nevada issued a stay of consideration for the certified question until after the Ninth Circuit grants or denies the motion to dismiss. All other cases had terminated at the time of analysis. Additionally, in one case, the Supreme Court of Washington granted certification and then “granted the defendant’s Motion to Decline Certification.”

with a resulting opinion from the state court on the certified question.³

In 43 (48%) of the 89 certified questions, the state court issued an opinion responding to the certified question. All cases with evidence of the state court granting the certified question had terminated at the time of analysis. However, because of the docketing practice described below, this does not mean that cases with a state court grant but no opinion are over, or that a state court opinion will not be issued in the future. The percentage of certified questions with a state court opinion should be expected to increase.

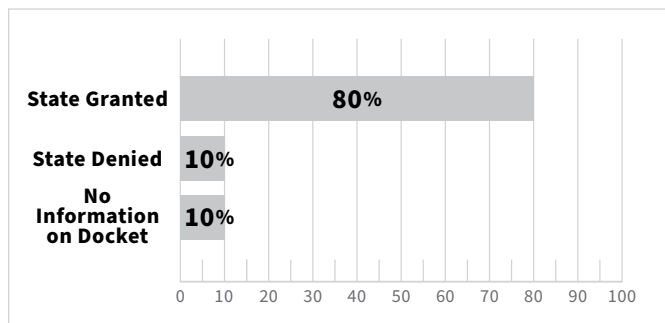


Figure B1: State Court Responses to Certified Questions in the Ninth Circuit

Timing. The Ninth Circuit certified the question about 22 months after the appeal was initially filed (median 656 days; range: 152 days to 2,226 days). The certification order came sooner for certified questions ultimately granted than ultimately denied by the state court (median 636 days versus 795 days after the appeal was filed). For certified questions initiated by a party motion, the certification came about 18 months after that motion (median 552 days; range: 63 days to 1,373 days).⁴

For the cases with a filed certification motion,⁵ the party filed the motion about five months (median 159 days; range: 6 days to 635 days) after the case was filed.⁶ The Ninth Circuit certified the question about 18 months (median 552 days;

range: 63 days to 1,373 days) after the motion.⁷ The state court granted the certified question about 19 months (median 572 days; range: 71 days to 1,417 days) after the motion was filed.⁸ The state court issued an opinion in the seven cases that originated from a motion to certify; those opinions were issued about 27 months, or more than two years (median 822 days; range: 525 days to 1,935 days), after the motion. The 12 cases originating with a motion then terminated about 27 months (median 825 days; range: 12 days before to 2,024 days after) after the motion was filed. For the one case with a certified question denied by the state court, that denial occurred 126 days after the motion was filed.

Considering all the certified questions (originating via motion or sua sponte), the state court granted the certified question fewer than two months (median 50 days; range: 4 days to 304 days), or denied the certified question more than two months (median 71 days; range: 16 days to 879 days), after the Ninth Circuit certified the question.⁹

The state court granted the certified question about two years (median 711 days; range: 196 days to 1,704 days) after the case was filed and denied the certified question about 32 months (median 952 days; range: 611 days to 2,359 days) after the case was filed.¹⁰

The state courts issued 43 opinions responding to certified questions; this occurred about 15 months (median 459 days; range: 91 days to 1,053 days) after the state court granted the certified question, and about 17 months (median 508 days; range: 115 days to 1,206 days) after the Ninth Circuit certified the question.

3. For 65 (73%) of the certified questions, there was an order on the federal docket sheet that the state court granted the certified question. For an additional two cases, there was no docket entry specifying that the state court granted the certified question, but evidence (and the date of grant) was obtained through other documents. In four additional cases, there was no evidence of the state supreme court granting the certified question (or a date for this decision) but there was a resulting opinion issued by the state court. These are all included within the grants in **figure B1**.

4. The second-longest time from filing the appeal to certification was 1,660 days. On the other hand, there were only two cases where the Ninth Circuit certified the question less than eleven months after filing: 193 days and 152 days (the shortest) after.

5. While there were 13 cases with a motion regarding certified questions, only 12 had available dates that could be used in the analysis.

6. The second-shortest was 48 days after filing and the second-longest was 354 days after filing.

7. The second-longest time was 930 days after the motion.

8. The second-shortest period from the motion to the state court granting the certified question was 25 days; the second-longest period was 896 days.

9. The largest number was an outlier, with the second-longest time from certification to denial being 133 days.

10. The certified question submitted 2,226 days after the initial docketing was denied by the state supreme court. This case is an outlier to an already-small sample of cases with a clear state denial (9).

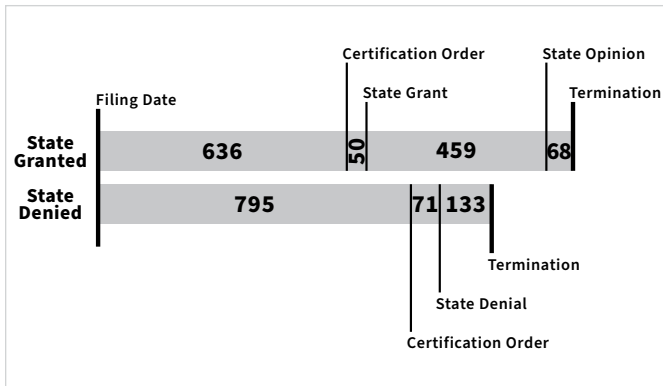


Figure B2: Timeline for Certified-Question Orders in the Ninth Circuit (2010–2018)

Termination. Docketing practices in the Ninth Circuit (at least for cases involving certified questions) added a level of complexity when analyzing termination dates. Of the 86 terminated cases with a certified question, 22 (25%) terminated on the docket the day the court certified the question, and, for two cases, the case terminated before the Ninth Circuit certified the question (90 days and 122 days before). In analyzing the disparity between the docketed termination date and the final docket entry, we found that the last docket entry occurred about one month (median 39 days) after the docketed termination date. We decided to still use the docketed termination date for the sake of consistency with the other circuits and Center research, but we advise the reader to interpret the dates with caution and to consider that three-month difference.

The certified-question cases terminated about 36.5 months (median 1,097 days; range: 357 days to 3,157 days) after the appeal was filed.

Although about one-quarter of cases were terminated the day that the state court granted the certified question, there was still variability in this procedure and the dates relevant to certified questions. For example, for the 86 terminated cases where the Ninth Circuit certified the question, the case terminated about one year (median 364 days) after certification. However, this ranged from 122 days before to 2,194 days after certification.

Cases terminated about 29 months (median 871 days; range: 220 days to 2,024 days) after a motion to certify was filed, which occurred in 11 cases. For the 68 cases with an available date for when the state court granted the certified question, the case terminated about one year after that grant (median 333 days; range: 137 days before to 1,094 days after). Of the cases with a certified question granted by the state court, 28% terminated before that grant. For the 8 terminated cases with a certified question denied by the state court,¹¹ cases generally terminated about four and a half months after that denial (median 133 days; range: 138 days before to 1,315 days after). One case terminated before the denial. The other 7 terminated after the state court denial, with the earliest being three days after.

The cases in which the state court issued a response to the certified question terminated about two months after that response (median 68 days; range: 13 days before to 627 days after). Only one case terminated before the response was received and one case terminated the same day.

Outcome. The Ninth Circuit often terminated the case the day the question was certified. This docketing practice, in some cases, affected the outcomes of our analyses.¹² Of the 86 terminated cases with certified questions, 21 (24%) were administratively closed pending a response from the state court that had not yet come at the time of analysis.¹³ This was the most common outcome, with the second-most common being affirming the lower court’s judgment (22%, or 19), followed by dismissing via a Rule 42(b) motion (14%, or 12), reversing and remanding (13%, or 11), and vacating and remanding (10%, or 9).

Denied Certified Questions (N = 2)

Two certified-question motions were denied by the Ninth Circuit. One was a habeas corpus case filed in 2014 that was intended for the U.S. Supreme Court. It is likely this was meant to be a certificate of appealability to the U.S. Supreme Court that was incorrectly phrased as a certified question. The case took about 17 months (516 days) from filing to termination. The certified-question motion was denied 21 months (630 days) after it was filed, but the case was terminated almost four months (114 days) before that denial. The judgment was affirmed.

11. One case with a certified question denied by the state supreme court had not yet terminated at the time of analysis.

12. For two of the administratively closed cases, the state court provided its opinion after analysis had closed. Those dates were not included in the above analysis.

13. Language commonly used in the Ninth Circuit for this docket entry is, for example,

Further proceedings in this case are stayed pending receipt of the answer to the certified question or notification from the Oregon Supreme Court that it declines to answer. The parties shall notify this Court within ten days after the Oregon Supreme Court accepts or rejects certification. If the Oregon Supreme Court accepts certification, the parties shall file a joint status report with this Court six months after the date of acceptance and every six months thereafter until the case is decided. The parties shall then notify this Court within ten days of the Oregon Supreme Court’s decision. The Clerk is directed to administratively close this docket, pending further order.

The other denial was a real property case, filed in 2011, intended for the Supreme Court of Oregon. Before the Ninth Circuit denied the certified question, the appeal was stayed in 2012 pending the Oregon Supreme Court's decision in response to certified questions in a previous case. In 2014, the Ninth Circuit denied the certified question, which was almost three years (1,053 days) after it was initially filed. The Ninth Circuit terminated the case the same day, reversing and remanding back to the U.S. District Court for the District of Oregon.

Cases with No Further Action Taken ($N = 6$)

For six of the examined cases, no further action was taken by the Ninth Circuit or a state supreme court after the motion was filed. Five were prisoner cases; the sixth was a tax case from the U.S. Tax Court intended for the U.S. Supreme Court.

As with the first denial described above, two certified questions were likely certificates of appealability, filed by prisoners and intended for the U.S. Supreme Court. Those two habeas corpus cases were filed in 2010 and 2017, with motions to certify filed in 2011 and 2017—one from the Eastern District of Washington and the other from the District of Nevada. Both were short, terminating 31 and 58 days after being filed in the Ninth Circuit.¹⁴ Interestingly, both motions to certify were filed after the Ninth Circuit terminated the case. Both cases were excluded from the brief analysis below of the four cases with no further action taken.

Year. The cases were filed in four different years (2011, 2012, 2017, 2018) and had motions regarding certified questions filed in four different years (2013, 2014, 2017, 2018). None are still pending.

Case Type. Three of the four cases (75%) were prisoner cases regarding civil rights (2) or habeas corpus (1). The fourth case was a tax case.

Originating Court. The cases originated in four different courts: the Central District of California, the District of Idaho, the Northern District of California, and the U.S. Tax Court. The filed motions requested certification to the supreme courts of California (2) and Idaho (1), and to the U.S. Supreme Court (1) for the tax case.

Timing and Termination. The cases took about 11 months from filing of the appeal to termination (median 323 days; range: 119 days to 539 days). All four involved a motion to certify, which was filed relatively late in the case, about nine and a half months (median 290 days; range: 16 days to 553 days) after filing and about one and a half months (median 45 days) before termination. For two of the four cases, the motion to certify was filed post-termination.

Outcome. The Ninth Circuit affirmed the judgment in two cases (50%). One of the remaining two was dismissed for lack of appellate jurisdiction, and in the other remaining case, a certificate of appealability was denied.

14. The last docket entry, however, came later: 134 days and 473 days after the termination date.

Appendix C

Full Analysis of the U.S. Court of Appeals for the Third Circuit

To obtain our sample of cases in the Third Circuit, we performed docket searches for all cases that used one of the docketed event codes related to certified questions. In our analysis of event codes used by circuit courts, we found that the Third Circuit included the most—eight discrete codes—in their data dictionary. Within the 2010–2018 search period, this search identified 32 cases. We then compared our list to a list provided by the Third Circuit clerk of court, which included 92 certified questions since 1996.

We analyzed and compared the cases from both lists to determine whether they actually included a certified question. A case was included in the analysis if there was any motion or order to certify a question of law, whether or not it was ultimately certified by the Third Circuit. The analysis included cases that had questions certified and either accepted or not accepted by the relevant court (almost always a state supreme court). The sample also included cases where a party moved to certify a question to the state court, but the Third Circuit denied certification or took no action on the motion.

Not all identified cases were included in our analysis. Cases were excluded if they did not include a certified question for that specific case (e.g., the case referred to a separate case with a pending certified question). As in the other circuits, it was the number of unique certified-question events, rather than cases, that was considered vital to our analysis. When one certified question was relevant across consolidated or joined cases, only one of the cases was included in the analysis. For instance, the Third Circuit certified the same question in two different cases against the same set of municipal actors. That is counted as one certified question in these analyses. No case in the Third Circuit had more than one certified-question event for analysis.

After this analysis, the final list included 63 certified-question events that could be split into three distinct categories. The Third Circuit certified the question in 31 cases (49%), denied the certified-question motion in 22 cases (35%), and for 10 cases (16%), there was no evidence on the federal docket of further action taken by the Third Circuit or a state supreme court after the motion was made. These three categories are analyzed separately below.

Certified Questions (*N* = 31)

Year. The middle column of **table C1** provides the number of state-law questions that were certified by the Third Circuit in a given year. The number ranged from one (in 2016) to six (in 2017). The righthand column of **table C1** provides the number of cases with certified-question events by filing year, which ranged from 2008 to 2018. There was variation across the time span, ranging from one appeal filed in 2008, 2011, and 2013, to seven cases filed in 2016. The three cases filed in 2017 and 2018 had not yet terminated at the time of analysis. There was no clear trend over time regarding motion or filing year.

	Number of Questions Certified by the Third Circuit (certification year)	Number of Cases with Certified-Question Events (filing year)
2008	--	1
2009	--	2
2010	2	5
2011	4	1
2012	3	6
2013	4	1
2014	5	5
2015	2	--
2016	1	7
2017	6	2
2018	4	1
Total	31	31

Table C1: Years When Certified-Question Process Was Initiated (and Filing Date)

Case Type. The certified questions came from 24 different types of cases. Six of the cases (19%) were insurance cases or personal injury/product liability cases (including two actions related to asbestos litigation).

Originating Court. The certified questions originated in seven different courts, including the Bankruptcy Court for the District of Delaware. As shown in **table C2**, two-thirds of the cases originated in either the Eastern District of Pennsylvania or the District of New Jersey (32%, or 10 each).

As would be expected from the originating-court data, most cases were certified to the Supreme Court of Pennsylvania (42%, or 13), followed by the Supreme Court of New Jersey (35%, or 11). However, as shown in **table C3**, cases were also certified to state supreme courts of states outside the Third Circuit.

Originating Court	Number of Certified Questions
Bankruptcy Court for the District of Delaware	1
District of Delaware	3
District of New Jersey	10
Eastern District of Pennsylvania	10
Middle District of Pennsylvania	3
Western District of Pennsylvania	3
District of the Virgin Islands	1
Total	31

Table C2: Courts Where Certified-Question Events Originated

Court Receiving Certified Question	Number of Certified Questions
Supreme Court of Delaware	3
Supreme Court of Indiana	1
Supreme Court of New Jersey	11
Supreme Court of Pennsylvania	13
Supreme Court of South Carolina	1
Supreme Court of the Virgin Islands	1
Supreme Court of Virginia	1
Total	31

Table C3: Intended Receiving Court for Certified Question

Initiating Activity. Of the 31 certified questions, 28 (90%) arose in sua sponte orders from the Third Circuit. The remaining 3 (10%) arose when a party filed a motion to certify. For 4 of the 28 cases that arose sua sponte, the Third Circuit asked the parties to provide a briefing or oral argument regarding the decision to certify. The Third Circuit certified the question in all 4 of those cases. In two of the

three cases initiated by a motion to certify, the other party opposed certification. As shown below, certified questions originating with a party motion were much more likely to be denied than certified by the Third Circuit.

Transfer. Almost always, the Third Circuit transferred the certified question to the state court the same day that the question was certified (77%) or the day after (13%).¹ Only one transfer occurred more than four days after the order; that transfer took place 55 days later and the state court granted that certified question.

State Court Action. Information regarding the state court responses was obtained through examination of the docket for explicit entries mentioning the state supreme court, as well as from our review of Third Circuit opinions. The federal docket information indicates that the state court granted 22 (71%) of the certified questions and denied 3 (10%). In one case, the certified question was withdrawn due to a new decision. For the remaining 5 cases, although there was no docket entry noting that the state supreme court granted the certified question, the state court issued an opinion regarding the certified question. Thus, overall, 27 (87%) of the questions certified by the Third Circuit were granted by the state courts. This is reflected in **figure C1**.

In 8 (26%) of the 31 cases, the docket included a separate acknowledgment that the state supreme court had received the request for a certified question. This appeared to be especially the practice of the Supreme Court of Pennsylvania, which accounted for seven such acknowledgments.² The state courts granted the certified question in all 8 of the cases with acknowledgments.³ Furthermore, the state court issued an opinion in 6 of the 8 cases with an acknowledgment, with the remaining 2 being the 2 discussed above.

The state court issued an opinion regarding the question of state law for 24 (92%) of the 27 certified questions they granted.

1. For 30 (97%) of the certified questions, there was a docket entry for the date the certified question was transferred to the receiving court.
 2. The eighth was from the Supreme Court of South Carolina.
 3. In one of the cases, there was no evidence on the docket of the state supreme court granting the certified question, but an opinion in response to the certified question was later filed. All eight are accordingly considered granted.

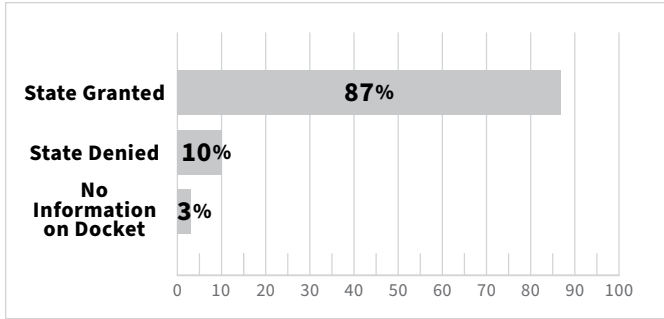


Figure C1: State Court Responses to Certified Questions in the Third Circuit

Timing. The Third Circuit certified the question about 12 months after the appeal was filed (median 357 days; range: 210 days to 1,140 days). The time between filing and certification took longer in the very few cases that the state court ultimately denied (median 420 days) than in cases that the state court ultimately granted (median 354 days).

Three (10%) of the certified questions originated with a motion. However, one of those motions was mentioned in a later court order with no motion date on the docket, so timing information was only available in two cases.⁴

When the state court granted the certified question, it did so about two months after the question was certified (median 51 days; range: 13 days to 180 days). The grant occurred about 15 months after the case was filed (median 409 days; range: 258 days to 1,184 days). The second-longest time from filing to grant was 677 days; the longest case was an outlier. When the state court issued an opinion regarding the certified question, it did so a little more than a year after the question was certified by the Third Circuit (median 380 days; range: 32 days to 959 days), and about a year after the state supreme court granted review of the certified question (median 342 days; range: 146 days to 779 days). This was more than two years after the filing of the case (median 784 days; range: 393 days to 1,380 days). See **figure C2**.

When the state court denied the certified question, it did so about 3 months after the question was certified (median 99 days; range: 84 days to 148 days), and about 19 months after the case was filed (median 519 days; range: 414 days to

757 days). As a reminder, only three certified questions were explicitly denied by the state court.

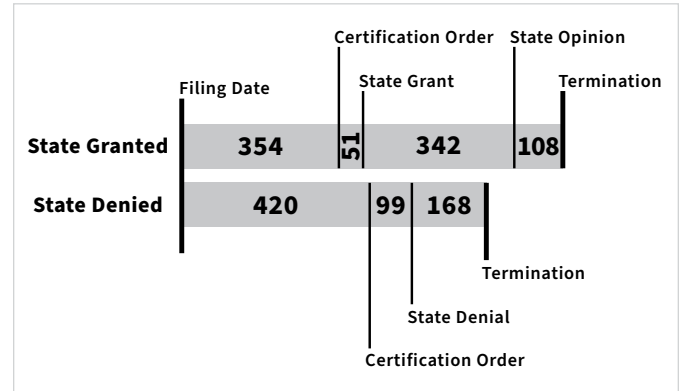


Figure C2: Timeline for Certified-Question Orders in the Third Circuit (2010–2018)

Termination. In examining the cases, we noticed that there were sometimes large gaps between the termination date and the last docket entry for the appeal. In response, we examined three different termination dates for each of the cases in the Third Circuit sample: the date listed as the termination date by the court on the docket, the date of the last docketed entry, and the date of the last substantive docketed entry.⁵ We found that the docketed termination date was the same day as the last substantive docket entry in about two-thirds (64%) of the cases in the entire Third Circuit sample (certified; denied; no further action) and that, including all cases, the last substantive docket entry came about two weeks after the docketed termination date.

Twenty-seven of the 31 certified questions had terminated at the time of analysis. For these cases, the termination and last docketed date was the same day for 21 (78%), with a median of zero days between those dates. Following our usual research practices, we perform all analyses with the docketed termination date.⁶

The 27 terminated cases with certified questions terminated more than two years after filing (median 816 days; range: 449 days to 2,507 days). The longest-pending case was an outlier; the second-longest time from filing to termination was 1,540 days.

4. The two motions were filed 79 days and 151 days after the appeal was filed, and the Third Circuit certified both questions (153 days and 486 days after the filing of the motions). Both certified questions were transmitted to the state court the same day. The state courts acknowledged the certified questions 7 days and 28 days after certification and granted the certified question 34 days and 102 days after the certification (187 days and 588 days after the motion was filed). The state court issued an order responding to the certified questions in one of the two cases—670 days after the motion was filed. That case terminated 930 days after the motion was filed.

5. For this last category, we removed entries for mandates to the district courts, which occasionally were docketed months after the final docket entry and termination of the case. We also did not include discussions regarding attorney fees or, in one instance, when a self-represented litigant sent multiple letters to the court post-termination disagreeing with its judgment.

6. Questions regarding the use of docketed termination dates are also discussed in reference to the Ninth Circuit’s practice.

Termination occurred about 14 months after the Third Circuit certified the question (median 414 days; range: 84 days to 2,122 days⁷), and about 12 months after the state court granted the certified question (median 358 days; range: 50 days to 1,942 days) or about 5.5 months after the state court denied it (median 168 days; range: 113 days to 488 days).

For the 22 terminated cases with a state court opinion, the case terminated about three months after the Third Circuit received that opinion (median 108 days; range: 16 days to 1,163 days).

Outcome. Of the 31 cases with a certified question, 3 had not yet terminated at the time of analysis. Of the 28 that had, 9 (32%) were affirmed, 4 (14%) were vacated and remanded, 4 (14%) were reversed and remanded, and 2 (7%) were affirmed in part, vacated in part, and remanded. The remaining 9 each had a different specific outcome, such as affirmed in part/reversed in part, remanded and dismissed in part, and dismissed under Rule 42(b).

Denied Certified Questions (N = 22)

The data searches described above found 22 cases with a motion for a certified question filed between 2010 and 2018 that was denied by the Third Circuit. In 19 of these cases (86%), there was an explicit denial on the docket; in three (14%), the denial was mentioned in an opinion, once as a footnote. This section does not consider the questions that were neither certified nor explicitly denied. Those are addressed in the next section.

Year. The middle column of **table C4** shows the number of motions to certify per year that were ultimately denied by the Third Circuit. The motions were filed across the 2010–2018 time period, though none were filed in 2016 and only one was filed in 2010. The righthand column of **table C4** provides the number of cases with certified-question events by filing year. The most were filed in 2013 (6), though filing activity was distributed from 2009 to 2018, with none filed in 2015 and one filed in 2010, 2011, 2017, and 2018. All 22 cases had terminated at the time of analysis.

	Number of Motions for Certification Denied by the Third Circuit (certification year)	Number of Cases with Certified-Question Events (filing year)
2009	--	3
2010	1	1
2011	2	1
2012	2	3
2013	3	6
2014	6	4
2015	4	--
2016	--	2
2017	2	1
2018	2	1
Total	22	22

Table C4: Years When Certified-Question Process Was Initiated (and Filing Date)

Case Type. As with the certified-question cases, the most common case type with a denied certified question was insurance (27%, or 6), though this was tied with contracts actions (27%, or 6), followed by bankruptcy appeals under 28 U.S.C. § 158 (14%, or 3). There were also two personal injury/product liability cases, a prisoner case, a labor/management relations act case, and two statutory actions.

Originating Court. The cases with denied certified-question motions originated in five different courts. As shown in **table C5**, nine (41%) originated in the Eastern District of Pennsylvania. This was almost double the second-most common originating district: the District of New Jersey, with less than a quarter (23%, or 5). As shown in **table C6**, more than half (55%) of the certified questions were intended for the Supreme Court of Pennsylvania, significantly more than the next-most common courts, the Supreme Court of the Virgin Islands with four (18%), and the Supreme Court of New Jersey with three (14%).

7. Again, the longest case was an outlier; the second-longest time was 902 days.

Originating Court	Number of Certified Questions
District of New Jersey	5
Eastern District of Pennsylvania	9
Middle District of Pennsylvania	2
Western District of Pennsylvania	2
District of the Virgin Islands	4
Total	22

Table C5: Courts Where Certified-Question Events Originated

Court Receiving Certified Question	Number of Certified Questions
Supreme Court of Delaware	1
Supreme Court of Florida	1
Supreme Court of New Jersey	3
Supreme Court of New York	1
Supreme Court of Pennsylvania	12
Supreme Court of the Virgin Islands	4
Total	22

Table C6: Intended Receiving Court for Certified Question

Timing and Termination. For the 22 cases with a denied certified-question motion, the time from case filing to termination was about one year (median 368 days; range: 277 days to 1,621 days). The longest case took about twice as long as the next-longest case duration (881 days).

The initial certified-question motion was filed about five and a half months after the case was filed (median 164 days; range: 100 days to 1,306 days). The cases terminated about six and a half months after the motion to certify was filed (median 195 days; range: 14 days to 460 days).

Eleven (50%) of the cases with a denied certified question terminated the same day as the denial. Two cases terminated before the Third Circuit issued its denial. The median time between denial and termination was 0 days, with a range from terminating 79 days before to 408 days after the denial.

Outcome. Of the 22 cases with a denied certified question, 21 had terminated at the time of analysis. Of those cases, 15 (71%) were affirmed in full, 3 (14%) were affirmed in part, 2 (10%) were vacated and remanded, and 1 (5%) was reversed and remanded.

Cases with No Further Action Taken ($N = 10$)

For 10 of the examined cases, no further action was taken by the Third Circuit or a state supreme court after the motion to certify was filed. Because of the small number of cases in this category, readers should be cautioned before interpreting the trends reported herein.

Year. The middle column of **table C7** provides the number of motions to certify a question filed per year, though no further action was taken. The righthand column of **table C7** provides the number of cases with certified-question events by filing year. It would make sense if the more recently filed cases were those more likely to have no further action after a filed motion to certify, as the process takes time. However, while two of the four cases with a motion filed in 2018 had not yet terminated at the time of analysis, two had.

	Number of Motions for Certification in Which No Further Action Was Taken (certification year)	Number of Cases with Certified-Question Events (filing year)
2010	1	1
2011	--	--
2012	--	--
2013	--	1
2014	2	1
2015	--	--
2016	2	3
2017	1	2
2018	4	2
Total	10	10

Table C7: Years When Certified-Question Process Was Initiated (and Filing Date)

Case Type. While most certified questions were associated with insurance cases and denied certified-question motions most frequently concerned either insurance or contracts cases, the largest number of cases in which no action was taken after a motion to certify were civil rights actions (3, or 30%), followed by contract actions (2, or 20%). The remaining half were split between the Americans with Disabilities Act, statutory actions, insurance, assault/libel/slander, and property damage: product liability.

Originating Court. The cases originated in four different courts. Four (40%) originated in the District of New Jersey, followed by three (30%) from the Eastern District

of Pennsylvania, two (20%) from the Western District of Pennsylvania, and one (10%) from the Middle District of Pennsylvania. The two cases not yet terminated were from the Eastern and Middle Districts of Pennsylvania. As might be expected considering the courts in which these questions originated, six (60%) of the certified questions were intended for the Supreme Court of Pennsylvania, and four (40%) were intended for the Supreme Court of New Jersey.

Timing and Termination. The cases took about 14 months from filing the appeal to termination (median 429 days; range: 117 days to 804 days). Both the shortest and longest times were outliers. The second-shortest took 313 days; the second-longest took 568 days.

As all 10 cases had no further action taken after the filed motion, none originated *sua sponte*. A date for the certified-question motion was available for eight of the cases. For these cases, the initial certified-question motion was filed about four and a half months after the case was filed (median 139 days; range: 38 days to 287 days). With no state court activity, the cases terminated about eight and a half months after that motion (median 262 days; range: 79 days to 358 days). See **figure 4** of the report.

Outcome. Four (50%) were dismissed under Rule 42(b), and three (30%) were affirmed. The last case was dismissed for lack of appellate jurisdiction.

Appendix D

Full Analysis of the U.S. Court of Appeals for the Sixth Circuit

The clerk’s office for the U.S. Court of Appeals for the Sixth Circuit provided a list of 84 certified-question cases during the 2010–2018 time frame. Using this list for guidance, we developed searches of the circuit’s electronic records to identify similar cases. Through the original list and extensive docket searches, we identified 167 appeals potentially involving certified questions.

We then analyzed and compared the cases from both lists to determine whether they actually included a certified question. A case was included in the analysis if there was any motion or order to certify a question of law, whether or not it was ultimately certified by the Sixth Circuit. The analysis included cases in which questions were certified and either accepted or not accepted by the relevant court (almost always a state supreme court). The sample also included cases where a party moved to certify a question to the state court, but the Sixth Circuit denied certification or took no action on the motion.

Not all identified cases were included in our analysis. Cases were excluded if they did not include a certified question for that specific case (e.g., the case referred to a separate case with a pending certified question). When one certified question was relevant across consolidated or joined cases, only one of the cases was included in the analysis. After examining the Sixth Circuit cases, we found that one pharmaceuticals action consisted of 60 of the identified individual cases, each referring to the same certified question. A separate pharmaceuticals action consisted of 7 different cases with the same motion for a certified question. For our analyses, we included only one representative case for each certified question. In sum, it was the number of unique certified-question events, rather than cases, that was considered vital to our analysis.

We also removed from our sample cases that mentioned motions to certify questions of law on the docket that were in fact motions to grant a certificate of appealability to the U.S. Supreme Court.¹

Our final Sixth Circuit sample included 60 certified-question events across 59 appeals. The Sixth Circuit certified a significantly smaller percentage of the questions (17%, or 10), compared to the Third Circuit (46%) or the Ninth Circuit (92%). The Sixth Circuit denied 32 (53%) cases and took no further action after the initial motion to certify in 19 (32%) cases. As with the Third and Ninth Circuits, the analysis is

split into three different sections: certified, denied, and no further action.

Certified Questions (N = 10)

Year. The middle column of **table D1** provides the number of questions certified per year by the Sixth Circuit. The number of questions certified from 2010 to 2018 vary from none (2010, 2012) to three (2017). The righthand column of **table D1** provides the number of cases with certified-question events by filing year, which ranged from 2011 to 2017. There is no clear trend across either certification year or filing year.

	Number of Questions Certified by the Sixth Circuit (certification year)	Number of Cases with Certified-Question Events (filing year)
2010	--	--
2011	1	1
2012	--	1
2013	1	1
2014	2	2
2015	1	1
2016	1	3
2017	3	1
2018	1	--
Total	10	10

Table D1: Years When Certified-Question Process Was Initiated (and Filing Date)

Case Type. The certified questions most commonly came from bankruptcy cases (40%, or 4). The remainder were personal injury cases (20%, or 2), or contracts, habeas corpus, franchise, or personal property cases (10%, or 1 each).

Originating Court. The certified questions originated in seven different courts. As shown in **table D2**, two cases each originated in the Southern District of Ohio, the U.S. Bankruptcy Court for the Southern District of Ohio (Columbus), and the Western District of Kentucky. The remaining courts had one case each.

1. In one case, the appellant filed a motion to certify two separate questions to two separate courts (the Kentucky Supreme Court and the New York Court of Appeals). Those certified questions, which were each denied by the Sixth Circuit, are counted twice in the analyses below.

The certified questions were intended for three courts: the Supreme Court of Ohio (50%, or 5), the Supreme Court of Kentucky (30%, or 3), and the Supreme Court of Tennessee (20%, or 2).

Originating Court	Number of Certified Questions
Eastern District of Kentucky	1
Western District of Kentucky	2
Northern District of Ohio	1
Southern District of Ohio	2
Southern District of Ohio U.S. Bankruptcy Court (Columbus)	2
Eastern District of Tennessee	1
Middle District of Tennessee	1
Total	10

Table D2: Courts Where Certified-Question Events Originated

Initiating Activity. Six (60%) of the certified questions originated by sua sponte orders, the other four (40%) by motion. Three of the four motions (75%) were opposed. In the small sample of 10 cases, initiating activity did not vary by the originating district court or intended state court.

In the Sixth Circuit, the court docket a specific order “referring to hearing panel, the motion certifying question of law.” This referral was made in two of the four cases with a filed motion to certify that ultimately led to the Sixth Circuit certifying the question. One was ultimately granted and one denied by the state court.

Transfer and Acknowledgment. The Sixth Circuit almost always transferred the certified question to the state court the same day it was certified. For four (40%) of the certified questions, there was a docket entry for the date the certified question was transferred to the receiving court. For three cases, it was the same day; in one case, it occurred 11 days later.

The state courts in the Sixth Circuit filed an explicit-acknowledgment notice that they received the certified question for six (60%) of the cases. Three different state supreme courts sent acknowledgment notices for two cases each. An acknowledgment was not a guarantee of the state supreme court granting the certified question.

State Court Action. Based on the federal docket, the state court clearly granted four (40%) of the certified questions and denied three (30%). In two additional cases, there was no explicit grant or denial filing on the federal docket, but the supreme courts of Ohio and Tennessee later filed opinions responding to the certified question, so those cases are included within the “granted” category in **figure D1**. In the final case, the Supreme Court of Ohio did not file the certified question because the order from the Sixth Circuit “lacked a designation of a moving party.” This was corrected, but there was no further action before the case was dismissed by the Sixth Circuit. This case is designated in the “no further action” category in **figure D1**.

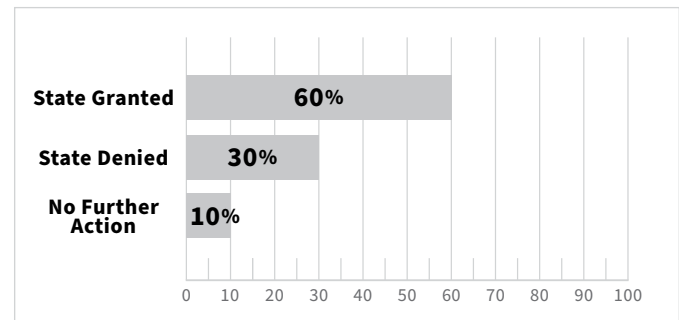


Figure D1: State Court Responses to Certified Questions in the Sixth Circuit

Of the six certified questions granted by the state supreme court, the state supreme court issued an opinion regarding the certified question in five (83%).² Of these five cases, four (80%) originated from a sua sponte order and one (20%) originated from a motion by a party.

Timing. Certification motions were filed about one and a half months (median 43 days) after the appeal was filed. Three of the four motions were filed between 35 and 49 days after the case was filed; one motion was filed 261 days later.

In two of those cases where a motion was filed, the Sixth Circuit referred it to a hearing panel. This occurred 41 days and 152 days after the motion (median 97 days).

The Sixth Circuit certified the question about 11 months after the case was filed (median 323 days), about 11 months after the motion was filed (median 322 days), and about 14 months after the referral to a hearing panel, when applicable (median 415 days).

The acknowledgment from the state court that they received the certified question came about one week after

2. In one of these cases, the federal docket contained a sealed file called “Packet of information from the Supreme Court of Ohio.” After discussion with the Supreme Court of Ohio, it was determined that this packet included the response to the certified question. This number (5) included both cases with no explicit grant on the federal docket but a later-issued opinion by the state supreme court.

certification (median 7 days); it occurred 2, 4, 7, 52, and 138 days later.

The state courts granted six certified questions; this occurred about four and a half months after the question was certified (median 138 days; range: 7 days to 305 days).³ The state court grant occurred about 20.5 months after filing the appeal (median 615 days; range: 307 days to 917 days). For the two cases that originated from a motion to certify the question, the state court granted the certified question about 15 months after that motion was filed (median 457 days; range: 258 days to 656 days). See **figure D2**.

The state court grant also came about three months after that court acknowledged the certification order (median 83 days; range: 0 days to 287 days).

In the three instances when the state supreme court denied the certified question, it occurred about 3 months after the question was certified (mean and median 89 days), about 14 months after the case was filed (median 412 days), about 14 months after the motion to certify (median 411 days), and about 13 months after the referral to a hearing panel (median 376 days). The denial also came about 3 months after the court acknowledged the certification order (median 87 days).

The state court typically issued its opinion regarding the certified question more than two years after the appeal was filed (median 735 days; range: 594 days to 1,185 days) and about 14 months after the question was certified by the Sixth Circuit (median 425 days; range: 127 days to 725 days). In addition, the response came about 9.5 months after the state court’s acknowledgment (median 287 days) and grant (median 267 days). For the one case originated by a motion to certify, the state court response came about 18 months later (545 days).

Termination. Nine of the 10 cases had terminated at the time of analysis. The cases with a certified question took about 26 months from filing of the appeal to termination (median 769 days; range: 498 days to 1,252 days).

The cases terminated about 20 months after the motion (median 600 days; range: 552 days to 776 days). One case, filed in 2015, terminated 400 days after it was referred to a hearing panel. The cases terminated about 15 months after the Sixth Circuit certified the question (median 449 days; range: 113 days to 792 days).

In relation to the state court activity, the cases terminated almost a year after the state court granted the certified question (median 350 days; range: 154 days to 487 days), about

three months after the state denied the certified question (median 86 days),⁴ and about two months after the state court issued its response (median 67 days; range: 34 days to 139 days).

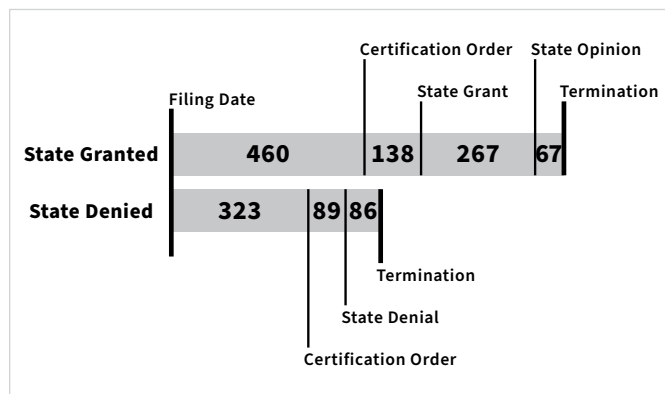


Figure D2: Timeline for Certified-Question Orders in the Sixth Circuit (2010–2018)

Outcome. Of the 10 cases with a certified question, eight had terminated at the time of analysis. Four affirmed the lower court’s opinion, two dismissed the case under Rule 42(b), one reversed and remanded, and one remanded.

Denied Certified Questions (N = 31)

We identified 31 appeals between 2010 and 2018 in which the Sixth Circuit denied a certification motion.

Year. The middle column of **table D3** provides the number of certified-questions motions filed each year; all were denied. The most denials (9, or 29%) came from motions to certify filed in 2013. The righthand column of **table D3** provides the number of cases with certified-question events by filing year. The most cases (7, or 23%) were filed in 2012. In one case, two separate motions to certify were denied. Although there is no statistically significant pattern, it appears that certification motions were denied less frequently toward the end of the time period.

3. As a reminder, the date the state supreme court granted the certified question was not available for two of the cases. This analysis is based on the dates for the remaining four.

4. Only three certified questions were denied by the state court. Their corresponding cases terminated 24, 86, and 483 days after that denial.

	Number of Motions for Certification Denied by the Sixth Circuit (certification year)	Number of Cases with Certified-Question Events (filing year)
2009	--	3
2010	6	5
2011	2	2
2012	5	7
2013	9	5
2014	--	3
2015	5	4
2016	3	1
2017	1	1
2018	--	--
Total	31	31

Table D3: Years When Certified-Question Process Was Initiated (and Filing Date)

Case Type. Across 19 separate case types, the most common for the denied certified questions was insurance contracts (19%, or 6), followed by civil rights (16%, or 5). There were also three product liability cases, three habeas corpus cases, two truth-in-lending cases, and two other types of contract cases. As a reminder, the most common case type for certified questions in the Sixth Circuit was bankruptcy.

Originating Court. The denied certified-question motions in the Sixth Circuit originated in eight different courts, with the most from the Western District of Kentucky (7) and the Eastern District of Kentucky (6). The remaining 18 denied certified-question motions were dispersed evenly, with three from each of the six remaining courts: the Eastern District of Michigan, the Northern District of Ohio, the Southern District of Ohio, the Eastern District of Tennessee, the Middle District of Tennessee, and the Western District of Tennessee.

As shown in **table D4**, the largest number of certified questions that were denied by the Sixth Circuit would have been sent to the Supreme Court of Kentucky, with 12. The next most common were the Supreme Court of Ohio and Supreme Court of Tennessee, with 6 each.

Court Receiving Certified Question	Number of Certified Questions
Supreme Court of Georgia	1
Supreme Court of Kentucky	12
Supreme Court of Michigan	2
New York Court of Appeals	1
Supreme Court of Ohio	6
Supreme Court of Tennessee	6
Supreme Court of the United States	2
Not Specified	1
Total	31

Table D4: Intended Receiving Court for Certified Question

Timing and Termination. The cases took about 14.5 months from filing the appeal to termination (median 434 days; range: 181 days to 2,115 days). The longest-pending case (2,115 days) was an outlier, and the second-longest-pending case lasted 972 days.

The initial certified-question motion was filed about two and a half months after the case was filed (median 76 days; range: 1 day to 1,203 days).⁵ An order of referral to the panel regarding the certified question came about one month after the motion was filed (median 39 days; range: 13 days to 114 days). This was about four months after the case was filed (median 129 days; range: 45 days to 346 days).

The Sixth Circuit denied the certified question about 5.5 months after it was filed (median 169 days; range: 7 days to 848 days). For the 12 cases that were referred to a hearing panel, the denial came significantly later—about 10.5 months after that referral (median 320 days; range: 113 days to 642 days). Combined, the denials came more than one year after the appeal was filed in the Sixth Circuit (median 385 days; range: 104 days to 1,286 days).

More than half (58%) of the cases with a denied certified question terminated the same day as the denial. Accordingly, the median time between denial and termination was 0 days, with a range from the case terminating 36 days before to 829 days after the denial.

Outcome. The denied cases terminated in various ways, and all had terminated at the time of analysis. Of the 31 denial cases, 17 (55%) affirmed the lower court opinion, 3 (10%) dismissed the appeal for lack of appellate jurisdiction, and 3 (10%) denied the certificate of appealability. Additionally, 2 each reversed and remanded (7%), dismissed the case under

5. While the motion was filed 1,200 and 1,203 days after filing in two cases, these were both outliers, with the third-longest time being 391 days after filing.

Rule 42(b) (7%), or affirmed and remanded (7%), and 1 each affirmed in part/reversed in part (3%) or denied the petition for panel rehearing (3%).

Cases with No Further Action Taken (N = 19)

In almost one-third of appeals with certified-question events (32%, or 19), the Sixth Circuit took no action after a motion was filed by a party. However, almost half of these (42%, or 8) involved a motion to certify a question of state law to the U.S. Supreme Court. Seven of these were filed by a prisoner, and it is arguable that they were not meant to be considered as certified questions of state law but rather as certificates of appealability to the U.S. Supreme Court. The analysis described below removes these eight cases, as well as one additional case, reducing the number for analysis to 10.

Year. The middle column of **table D5** provides the number of certified-question motions filed each year, though no further action was taken. The righthand column of **table D5** provides the number of cases with certified-question events by filing year. The most were filed in 2012 (3).

	Number of Motions for Certification Denied by the Sixth Circuit (certification year)	Number of Cases with Certified-Question Events (filing year)
2009	--	1
2010	2	1
2011	1	1
2012	2	3
2013	--	--
2014	2	1
2015	1	1
2016	--	--
2017	--	1
2018	2	1
Total	10	10

Table D5: Years When Certified-Question Process Was Initiated (and Filing Date)

Case Type. Of the 10 cases, three were civil rights, 2 (2%) were personal injury/product liability, and 2 (2%) were labor/management relations. The remaining 3 cases were real property, contract/insurance, and bankruptcy, with one each.

Originating Court. The only district courts with more than one case in this sample were the Southern District of Ohio and the Western District of Kentucky. For this reason, the only courts named more than once to receive the certified question were the Supreme Court of Ohio and the Supreme Court of Tennessee, with two each.

Timing and Termination. The eight terminated cases took about 13.5 months from filing to termination (median 403 days; range: 68 days to 813 days). The motion to certify was filed by a party about 2 months after the case was filed (median 66 days; range: 24 days to 644 days). In six cases, there was an order to refer the certified question to the Sixth Circuit. This order came about 2 months (median 68 days; range: 34 days to 115 days) after the motion was filed.

The cases terminated about 10 months after the certified-question motion (median 295 days; range: 22 days before to 703 days after).

Outcome. Eight of the 10 cases had terminated at the time of analysis. Half (50%) were affirmed, and 2 each (20%) were either dismissed under Rule 42(b) or settled.

The Federal Judicial Center

Board

The Chief Justice of the United States, *Chair*

Judge Carol Amon, U.S. District Court for the Eastern District of New York

Magistrate Judge Tim A. Baker, U.S. District Court for the Southern District of Indiana

Judge Duane Benton, U.S. Court of Appeals for the Eighth Circuit

Judge Nancy Freudenthal, U.S. District Court for the District of Wyoming

Judge Thomas Hardiman, U.S. Court of Appeals for the Third Circuit

Judge Raymond Jackson, U.S. District Court for the Eastern District of Virginia

James C. Duff, Director of the Administrative Office of the U.S. Courts

Director

John S. Cooke

Deputy Director

Clara J. Altman

About the Federal Judicial Center

The Federal Judicial Center is the research and education agency of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620–629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference.

The organization of the Center reflects its primary statutory mandates. The Education Division plans and produces education and training for judges and court staff, including in-person programs, video programs, publications, curriculum packages for in-district training, and web-based programs and resources. The Research Division examines and evaluates current and alternative federal court practices and policies. This research assists Judicial Conference committees, who request most Center research, in developing policy recommendations. The Center's research also contributes substantially to its educational programs. The Federal Judicial History Office helps courts and others study and preserve federal judicial history. The International Judicial Relations Office provides information to judicial and legal officials from foreign countries and informs federal judicial personnel of developments in international law and other court systems that may affect their work. Two units of the Director's Office—the Information Technology Office and the Editorial & Information Services Office—support Center missions through technology, editorial and design assistance, and organization and dissemination of Center resources.