IN THE SUPREME COURT
STATE OF GEORGIA

EHCA CARTERSVILLE, LLC, Appellant, v. BART TURNER, Appellee.	)	CASE NO. S05A1560
DARRYL GARLAND, Appellant, v. JOHN T. PAUL, M.D. and EHCA CARTERSVILLE, LLC, et al. Appellees.	)	CASE NO. S05A2066

BRIEF OF AMICI CURIAE GEORGIA CHAMBER OF COMMERCE, BELLSOUTH CORPORATION, CINGULAR WIRELESS LLC, COCA-COLA BOTTLERS' ASSOCIATION, COCA-COLA ENTERPRISES, INC., GEORGIA-PACIFIC CORPORATION, GEORGIA POWER COMPANY, THE HOME DEPOT, INC., AND UNITED PARCEL SERVICE, INC.

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I. IDENTITY AND INTEREST OF AMICI CURIAE

COMES NOW Georgia Chamber of Commerce, BellSouth Corporation, Cingular Wireless LLC, Coca-Cola Bottlers' Association, Coca-Cola Enterprises, Inc., Georgia-Pacific Corporation, Georgia Power Company, The Home Depot, Inc. and United Parcel Service, Inc. (collectively, "Amici"), and respectfully submit this Amici Curiae brief in accordance with Rule 23 of this Court's rules.

The identities and interests of the Amici are set forth at Tab A hereto.

II. INTRODUCTION

The venue statutes being attacked here -- O.C.G.A. § 9-10-31(c) and § 9-10-31.1(a) -- are common-sense venue rules. These rules promote fairness and efficiency by allowing a trial court to transfer a dispute to a constitutionally permissible venue that is more related to the facts of the case and more convenient for witnesses, the parties and the administration of justice.

These statutes were passed for the admirable purpose of preventing Georgia citizens from being hauled across the state to defend cases in remote counties with little connection to the facts of the case, thus making it both inconvenient and expensive to defend. This legislation became necessary to remedy abuses of the venue rules by certain claimants and their counsel who

repeatedly "gamed the system" by suing marginally-related parties in order to secure venue in a perceived high-verdict, plaintiff-friendly forum.

The Georgia Constitution neither protects nor sanctions such conduct.

The venue statutes at issue remove the incentive to sue marginally-related parties merely because they reside in perceived "plaintiff-friendly" venues. These venue statutes encourage claimants and their counsel to focus on suing only those individuals and entities who bear true responsibility for the loss. Under these statutes, local disputes will be decided locally. Moreover, these statutes encourage efficiency and judicial economy and carry out the primary goal of the constitutional directive that parties be sued in the county of their residence.

In summary, these statutes promote fairness and due process in our trial courts. O.C.G.A. § 9-10-31(c) and O.C.G.A. § 9-10-31.1(a) should be ruled to be constitutional.

III. THE QUESTION PRESENTED

At issue here is the constitutionality of O.C.G.A. § 9-10-31(c) and § 9-10-31.1(a). Both were signed into law by Governor Sonny Perdue in 2005, and both address where venue should lie when there are multiple defendants. These provisions are summarized as follows:

1. Section 9-10-31(c) applies in medical malpractice actions and allows a defendant to transfer a case to his, her or their home county if "the tortious act upon which the medical malpractice is based" occurred in that defendant's county; and

2. Section 9-10-31.1(a) enshrines the common law doctrine of "forum non conveniens" into Georgia statutory law, and provides that in any civil case, a trial court may transfer a case before it to the home county of a co-defendant "in the interest of justice and for the convenience of the parties," after seven enumerated factors are considered.

In Case No. S05A1560 -- EHCA Cartersville v. Turner -- the State Court of DeKalb County declared O.C.G.A. § 9-10-31(c) unconstitutional because it violated the provision of the Georgia Constitution which states that "[s]uits against ... joint tortfeasors ... residing in different counties may be tried in either county." Ga. Const. art. VI, § II, para. IV. Amici respectfully submit that this decision is in error and should be reversed.

In Case No. S05AS2066 -- Garland v. Paul and EHCA Cartersville, et al. -- the State Court of Fulton County ruled that both O.C.G.A. § 9-10-31(c) and § 9-10-31.1(a) are constitutional. Amici respectfully submit that this decision should be affirmed.

On August 24, 2005, this Court ordered that the two cases be consolidated and scheduled oral argument for October 11, 2005.

IV. ARGUMENT AND CITATION OF AUTHORITY

A. O.C.G.A. § 9-10-31(c) And O.C.G.A. § 9-10-31.1(a) Are Constitutional.

The Georgia Constitution's provision regarding cases involving joint tortfeasors does not bar application of either of the venue statutes under attack here. The Constitution states that a case "may be tried in either county" when joint tortfeasors are sued. The use of "may" necessarily means that the provision is "permissive." Therefore, the legislature is not prevented from providing a method for determining which of several permissible venues is most appropriate for the trial. Williamson v. Schmid, 237 Ga. 630, 632, 229 S.E.2d 400, 403 (1976) ("may" is "generally construed as permissive" and does not constrict the legislature's authority to enact laws).

Significantly, the Constitution does not state that a case "may be tried in either county, as chosen by claimant." A case "may" be tried in one of several

permissible venues. There is no requirement that venue must be the venue chosen by the claimant at the onset of the case. Likewise, there is no prohibition in the Constitution which prevents a case from being transferred to the county which has the most logical connection to the facts of the case (such as, for example, the venue where the injury complained-of occurred). Instead, the Constitution leaves the decision regarding where to place venue among the constitutionally permissible counties in the hands of the legislature and the courts. Ga. Const. art. VI, § II, para. VIII.

The General Assembly, therefore, was not restricted from enacting a method choosing the appropriate venue. O.C.G.A. § 9-10-31(c) and § 9-10-31.1(a) are examples of the General Assembly legislating within the Constitution's broad directive that trial courts may transfer venue of a matter "as provided by law."[1]

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[1] The cases relied on by the plaintiffs, as well as the State Court of DeKalb County in declaring O.C.G.A. § 9-10-31(c) unconstitutional -- Glover v. Donaldson, 243 Ga. 479, 254 S.E.2d 857 (1979); Gault v. National Union Fire Insurance Co., 208 Ga. App. 134, 430 S.E.2d 63 (1993) and Southern Railway Co. v. Wooten, 110 Ga. App. 6, 137 S.E.2d 696 (1994) -- have no application here. In each of those cases, the venue statute was struck as unconstitutional because it attempted to place venue in a predetermined county for a single defendant regardless of the connection of that venue to the case or co-defendants. Much like the result plaintiffs seek here by asking for the unconditional right to pick the venue for the duration of a case, that statute eliminated constitutionally permissible venues which were more logically related to the facts of the case. That statute, therefore, violated the directive that

Moreover, this Court and the Court of Appeals have already approved of, and adopted for certain situations, the common law doctrine of forum non conveniens enshrined in O.C.G.A. § 9-10-31.1(a). For example, in AT&T Corp. v. Sigala, 274 Ga. 137, 549 S.E.2d 373 (2001), this Court invoked its inherent authority to maintain the orderly and efficient administration of justice by holding that in cases where a non-resident alien brought suit in Georgia for injuries occurring out-of-state, the doctrine of forum non conveniens could be applied. If this Court can require that the doctrine of forum non conveniens must be applied to out-of-state plaintiffs, surely the General Assembly can require that the doctrine apply in all civil cases involving Georgia residents. Cf. Sigala, 274 Ga. at 143, 549 S.E.2d at 379 (Benham, J. dissenting) (legislative branch is the "appropriate source of authority" for courts to be given right to invoke forum non conveniens).[2]

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a case against joint tortfeasors "may" be tried in either county because it forced cases into only one county.

With O.C.G.A. § 9-10-31.1(a), however, no venue is "ruled out" if there is a logical connection between the venue and the facts of the case. A case "may" be tried in either county if convenience and justice dictate that the county is the most appropriate. With O.C.G.A. § 9-10-31(c), a logical connection is required (the site of the injury) before a case may be transferred.

[2] Further, the Court of Appeals, in a decision issued in May 2005, considered O.C.G.A. § 9-10-31.1(a). While not explicitly addressing its constitutionality, the Court of Appeals remanded the matter to the Superior Court to "comply with the terms of the newly enacted statute" and thus tacitly approved of the new

In short, nothing in the Georgia Constitution prevents the General Assembly from providing a method for protecting parties from suit in potentially hostile venues that have little connection to the facts of the lawsuit. Nothing gives claimants the unconditional right to determine the ultimate venue for cases involving joint tortfeasors. The venue statutes should be ruled constitutional.

B. The Georgia Constitution's Venue Provisions Are Meant To Permit Trial Courts To Transfer Cases To Constitutionally Permissible Venues.

The unmistakable prime directive of the Georgia Constitution is to protect parties from being hauled into venues which bear no relation to the facts and which are inconvenient and inefficient for purposes of litigating the case. See, e.g., Williams v. Williams, 259 Ga. 788, 387 S.E.2d 384 (1990) (purpose of Georgia Constitution's venue provisions is to protect defendants from being subject to suit in a "foreign, and perhaps hostile court"). For example, the Georgia Constitution requires that all civil cases involving a single defendant must be tried in the defendant's home county. Ga. Const. art. VI, § II, para. VI. Indeed, several other provisions addressing divorce and equity cases, and suits against makers or endorsers of promissory notes, all link venue to the defendant's residence. Id. at paras. I, III & V.

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forum non conveniens statutory provision. Hewett v. Raytheon Aircraft Co., 273 Ga. App. 242, 614 S.E.2d 875 (2005).

These provisions reflect an overriding purpose of protecting Georgia citizens and promoting administrative efficiency through venue requirements. See Bonner v. Bonner, 272 Ga. 545, 546, 533 S.E.2d 72, 73-74 (2000) (purpose of Constitution's venue provisions is to protect defendants from having to respond to suit in a "foreign, and perhaps hostile court"). Cf. Flowers Industries, Inc. v. Baker & Confectionary Union, 565 F. Supp. 286, 291 (N.D.Ga. 1983) ("[v]enue statutes ... are designed to protect defendants from inconvenience with regard to the forum where the case may be tried and to place the trial in a place having a logical connection with the parties to the litigation"; "concepts of fairness and convenience" must be considered).

Indeed, the Georgia Constitution expressly empowers the General Assembly to pass laws allowing transfer of cases to appropriate venues. Article VI, § II, para. VIII states:

> Paragraph VIII. Power to change venue
>
> The power to change the venue in civil and criminal cases shall be vested in the superior courts to be exercised in such a manner as has been, or shall be, provided by law.

The import of this provision is clear: the General Assembly is charged with enacting statutory venue provisions that it deems necessary to promote fairness and efficiency in the administration of justice. The Georgia Code has numerous examples of venue statutes that allow a trial court to transfer a case to a more

appropriate venue. See, e.g., O.C.G.A. § 9-10-50 (case may be transferred if impartial jury cannot be obtained); O.C.G.A. § 14-2-510 (allowing corporate defendant to transfer case to their principal place of business); O.C.G.A. § 14-3-510(a)(b) (similar provision for not-for-profit companies).

Claimants here argue that they have the absolute right to determine which of the available venues is the venue for trial, and that claimants' choice cannot be disturbed by the General Assembly or the trial court because the Constitution allegedly forbids changing the initial choice of venue. This argument is utterly lacking in merit. Not one provision of the Constitution gives a claimant the unfettered right to have a case tried in the county of a claimant's choosing, or provides that once a claimant chooses a permissible county, that venue may not subsequently be transferred by order of the trial court. Moreover, the argument flies in the face of the Constitution's venue provisions, all of which clearly reflect an intent to protect parties from having to defend cases in remote venues and generally require that venue choices be logically connected to the facts of the case and the residence of the defendant. See Sigala, 274 Ga. at 138, 549 S.E.2d at 376 and Flowers, 565 F. Supp. at 291.

In short, the Georgia Constitution recognizes that a claimant's choice of forum is not inviolate and that the venue rules are meant to protect defendants

from having to defend cases in remote venues. The venue rules should be interpreted to further this purpose.

C. The Venue Statutes Promote The Georgia Constitution's Interest In Promoting Fairness And Efficiency In Our Judicial System.

The venue statutes considered here were enacted to remedy an abusive litigation strategy employed by certain claimants to sue marginally-related parties to a dispute for purely strategic reasons. These abusive tactics previously allowed these claimants to obtain venue in high-verdict, plaintiff-oriented venues without fear of transfer to a more appropriate venue.

The venue statutes before the Court provide essential protection for Georgia citizens and businesses from parties and their counsel who "shop" for perceived "plaintiff-friendly" counties that have little to do with the facts of the case, are inconvenient to witnesses and parties and clog the already congested dockets of courts responsible for resolving disputes in these counties. O.C.G.A. § 9-10-31(c) allows medical malpractice actions to be transferred to the county of a defendant's residence if the malpractice occurred in that county. O.C.G.A. § 9-10-31.1(a) grants courts discretion to transfer venue in any case to a "county of proper venue" in this state when required by the interests of justice or the convenience of the parties and witnesses.

Without these statutes, Georgia citizens and businesses and Georgia commerce will be forced to return to a system that permitted and even condoned the abusive litigation strategy these statutes were designed to remedy. Any citizen who lacks a meaningful connection with the dispute can be used as a "straw man" in this abusive litigation strategy. These citizens will be forced to incur needless litigation costs and inconvenience. Those citizens who are the legitimate targets of litigation will also be forced to incur unnecessary litigation costs and the added inconvenience of traveling to venues remote from their homes and the sites of the dispute in order to defend themselves. Moreover, the harassment and intimidation created by these tactics is calculated to force the settlement of cases that perhaps should not be settled and the settlement of otherwise meritorious cases on unjustified terms.

A judicial system that would permit itself to be "gamed" in such a fashion cannot be defended, much less sanctioned, on a constitutional basis. This "gaming the system", if allowed to continue, will cause incalculable costs to Georgia businesses and the courts, cost the State of Georgia and its citizens opportunities for economic growth, and frustrate the Georgia Constitution's interest in promoting fairness and efficiency.

Moreover, such a system breeds institutional inefficiency. If cases are not heard locally, and cases are instead repeatedly filed in only certain perceived

"plaintiff-friendly" jurisdictions, the result will be an influx of cases filed in these counties, and increased docket congestion.

As a matter of due process, fairness and improving judicial efficiency, local disputes should be decided locally. As recognized by this Court in AT&T Corp. v. Sigala:

> Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not be imposed upon the people of a community which has no relation to the litigation ... . There is a local interest in having localized controversies decided at home.

274 Ga. at 138, 549 S.E.2d at 376 (emphasis added, citation omitted) (noting that when courts are required to adjudicate disputes that have little connection to the chosen forum, issues such as court congestion and jury duty can favor a venue change). Georgia citizens should not be forced to serve on juries when their community has no factual relation to the litigation. Parties should be able to defend themselves to their local peers, not strangers across the state.

The problems created by having a judicial system which allows claimants to harass parties through choice of venue is not new, as explained by the U.S. Supreme Court in Gulf Oil Corp. v. Gilbert:

> [General venue] statutes are drawn with a necessary generality and usually give a plaintiff a choice of courts, so that he may be quite sure of some place in which to pursue his remedy. But the open door may admit those who seek not simply justice but

> perhaps justice blended with some harassment. A plaintiff sometimes is under temptation to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconvenience to himself.
>
> ***
>
> [T]he problem is a very old one affecting the administration of the courts as well as the rights of litigants, and both in England and in this country the common law worked out techniques and criteria for dealing with it.

330 U.S. 501, 508 (1947). In response to the "venue choice problem", most states and the federal court system adopted the forum non conveniens doctrine to shift venue when convenience or the interests of justice dictates.

In light of the potential to harass parties through venue selection, Georgia citizens should have a due process right not to be hauled into a far-away court to defend themselves before a potentially hostile jury. See Gilbert, supra, at 507 ("It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy."); Cf. Groppi v. Wisconsin, 400 U.S. 505 (1971) (statute which categorically prevented change of venue in criminal cases ruled unconstitutional: "A fair trial in a fair tribunal is a basic requirement of due process", citation omitted).

The disputes at issue here are perfect examples of the inefficiency bred by the lack of a forum non conveniens statute for cases with alleged joint-tortfeasors. The Turner matter, Case No. S05A1560, alleges that the medical

malpractice forming the basis for the lawsuit occurred in Bartow County, Georgia, where all but one of the defendants -- Emory Healthcare, Inc. -- and the plaintiff reside. Yet the case was filed in DeKalb County State Court on the basis that Emory Healthcare, Inc. (an indirect minority owner of the defendant hospital) had its registered agent located in DeKalb and was alleged to be vicariously liable for the alleged malpractice.[3] Likewise, the Garland matter, Case No. S05A2066, is another medical malpractice action in which the injury and alleged malpractice are alleged to have occurred in Bartow County, but the case was filed in Fulton County State Court. This was because one of the six healthcare providers resided in Fulton County (but practiced, and was alleged to have treated the plaintiff, in Bartow County, where the plaintiff lived). In neither case is the selected venue the locale where the alleged malpractice occurred or where the main defendants resided.[4]

In both cases, therefore, the majority of defendants were hauled into a county where they did not reside, and were forced to defend a case based on facts which arose in a different county. In both cases, the defendants were potentially subject to a verdict from a foreign jury and not one comprised of

[3] See Brief of Appellant EHCA Cartersville, LLC at 4-5.
[4] See Brief of Appellant Darryl Garland at 3-4.

their local peers. This is not the fair administration of justice contemplated by the Georgia Constitution. See Sigala, supra, and Gilbert, supra.

The two venue statutes at issue propose a rational and fair means to solve this glaring problem. In both cases, the venue statutes would permit the case to be transferred to the venue where the alleged malpractice occurred and where the vast majority of the witnesses and defendants reside. These venue statutes thereby remove the incentive to sue marginally-related parties, encourage plaintiffs' counsel to focus on suing only those who bear true responsibility for the loss, allow local disputes to be decided locally, encourage efficiency and judicial economy, and carry out the primary constitutional directive that defendants be sued in the county of their residence. The statutes, in short, promote fairness and due process in our trial courts. They should be ruled to be constitutional.

V. CONCLUSION

The Amici respectfully request that this Court reverse the decision of the State Court of DeKalb County in EHCA Cartersville, LLC v. Turner, Case No. S05A1560, affirm the decision of the State Court of Fulton County in Garland v. Paul, et al., Case No. S05A2066, and declare that O.C.G.A. § 9-10-31(c) and § 9-10-31.1(a) are constitutional.

Respectfully submitted,

POWELL GOLDSTEIN LLP

By: _____

John T. Marshall
State Bar No. 471700
William V. Custer
State Bar No. 202910
Eric P. Schroeder
State Bar No. 629880

Counsel for Amicus Curiae

POWELL GOLDSTEIN, LLP
Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, Georgia 30309-3488
Tel: (404) 572-6600
Fax: (404) 572-6999

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing **BRIEF OF AMICI CURIAE GEORGIA CHAMBER OF COMMERCE, BELLSOUTH CORPORATION, CINGULAR WIRELESS LLC, COCA-COLA BOTTLERS' ASSOCIATION, COCA-COLA ENTERPRISES, INC., GEORGIA-PACIFIC CORPORATION, GEORGIA POWER COMPANY, THE HOME DEPOT, INC., AND UNITED PARCEL SERVICE, INC.** by United States Mail, postage prepaid, to the following:

Daniel S. Reinhardt, Esq.
C. LeeAnn McCurry, Esq.
Michael E. Johnson, Esq.
TROUTMAN SANDERS LLP
Bank of America Plaza, Suite 5200
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216

Terrence C. Sullivan
Rachel Fuerst, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
950 East Paces Ferry Road
Suite 3000
Atlanta, Georgia 30326-1382

Laura M. Shamp, Esq.
BROWN & SHAMP
225 Peachtree Street
Suite 1410
Atlanta, Georgia 30309-1515

John Marigliano, Esq.
HALL, BOOTH, SMITH & SLOVER
1180 W. Peachtree St., NW, Suite 900
Atlantic Center Plaza
Atlanta, Georgia 30303-1515

Thomas S. Carlock, Esq.
David F. Root, Esq.
Eric J. Frisch, Esq.
CARLOCK, COPELAND, SEMLER & STAIR, LLP
285 Peachtree Center Avenue
2600 Marquis Two Tower
Atlanta, Georgia 3030-1235

Daniel J. Huff, Esq.
HUFF, POWELL & BAILEY, LLC
1355 Peachtree Road, Suite 2000
Atlanta, Georgia 30309

Philip C. Henry, Esq.
Wendy G. Huray, Esq.
HENRY, SPIEGEL, FRIED & MILLING, LLP
950 East Paces Ferry Road, Suite 2450
Atlanta, Georgia 30326-1386

Rolfe M. Martin, Esq.
OWEN, GLEATON, EGAN, JONES & SWEENEY, LLP
1230 Peachtree Street, Suite 1400
Atlanta, Georgia 30309

Thurbert E. Baker, Esq.
Attorney General, Dept. of Law
40 Capital Square, S.W.
Atlanta, Georgia 30334-1300

This 5th day of October, 2005

Charles M. Cork, III, Esq.
GAMBRELL & STOLZ, LLP
P.O. Box 5047
Macon, Georgia 31208-5047

This 5th day of October, 2005

Eric P. Schroeder
State Bar No. 629880
POWELL GOLDSTEIN, LLP
Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, Georgia 30309-3488
Tel: (404) 572-6600
Fax: (404) 572-6999

Counsel for Amicus Curiae Georgia
Chamber of Commerce

::ODMA\PCDOCS\ATL\920648\2

TAB A

STATEMENT OF AMICI CURIAE

GEORGIA CHAMBER OF COMMERCE

The Georgia Chamber of Commerce represents more than 3900 diverse businesses across the State of Georgia and is dedicated to representing the interests of businesses and citizens in this state. The Chamber is very interested in this case because the Chamber is concerned that a ruling that the venue statutes under consideration are unconstitutional will have a profoundly negative impact on Georgia commerce and businesses.

BELLSOUTH CORPORATION

BellSouth Corporation provides wireline communications, including local, long distance, broadband, and data services to customers in nine southeastern states. BellSouth has a strong interest in this case because it believes that a ruling upholding the constitutionality of the venue statutes under consideration will work to strengthen Georgia's business environment.

CINGULAR WIRELESS LLC

Cingular Wireless LLC ("Cingular") provides a wide array of wireless services for individual, business and governmental users. It is the largest provider

of wireless voice and data communications services in the United States in terms of customers. Cingular's interest in this case stems from its belief that the venue statutes under consideration promote fair and efficient litigation, and that a ruling that these venue statutes are unconstitutional will hurt Georgia's businesses and citizens.

COCA-COLA BOTTLERS' ASSOCIATION

The Coca-Cola Bottlers' Association provides service and business solutions to every bottler of Coca-Cola products in the United States, as well as a number of foreign bottlers. The Coca-Cola Bottlers' Association is very interested in this case because it is concerned that a ruling that the venue statutes under consideration are unconstitutional will have a profoundly negative impact on Georgia commerce and businesses.

COCA-COLA ENTERPRISES, INC.

Coca-Cola Enterprises, Inc. ("CCE") is the world's largest marketer, producer, and distributor of products of The Coca-Cola Company. CCE distributed 2 billion physical cases or 42 billion bottles and cans of our products in 2004. CCE believes that the venue statutes under consideration promote fairness and due process in Georgia trial courts, and it is concerned that a ruling that the statues are unconstitutional will hurt Georgia commerce.

GEORGIA-PACIFIC CORPORATION

Georgia-Pacific Corporation is one of the world's leading manufacturers and marketers of tissue, packaging, paper, building products and related chemicals. Georgia-Pacific is interested in this case because it believes that a finding that the venue statutes under consideration are unconstitutional will severely impact Georgia's ability to provide a competitive business environment.

GEORGIA POWER COMPANY

Georgia Power Company provides electric service to over two million customers in 153 Georgia counties. Georgia Power's interest in this case stems from its belief that the venue provisions under consideration positively affect Georgia's business environment, and that a finding that the statutes are constitutional will further strengthen that environment.

THE HOME DEPOT, INC.

The Home Depot, Inc., headquartered and founded in Georgia, is the world's largest home improvement retailer. The Home Depot is very interested in this case because it believes that a finding that the venue statutes under consideration are unconstitutional would severely impact Georgia business and commerce.

UNITED PARCEL SERVICE, INC.

United Parcel Service, Inc. ("UPS") is a package delivery company which provides transportation, logistics, and financial services in the United States and internationally. UPS is interested in this case due to the negative impact that a ruling declaring O.C.G.A. § 9-10-31.1(a) unconstitutional may have on Georgia commerce and the citizens and businesses of Georgia.

TAB B

O.C.G.A § 9-10-31(c) states:

> (c) In any action involving a medical malpractice claim as defined in Code Section 9-9-60, a nonresident defendant may require that the case be transferred to the county of that defendant's residence if the tortious act upon which the medical malpractice claim is based occurred in the county of that defendant's residence.

O.C.G.A. § 9-10-31.1(a) states:

> (a) If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties and witnesses a claim or action would be more properly heard in a forum outside this state or in a different county of proper venue within this state, the court shall decline to adjudicate the matter under the doctrine of forum non conveniens. As to a claim or action that would be more properly heard in a forum outside this state, the court shall dismiss the claim or action. As to a claim or action that would be more properly heard in a different county of proper venue within this state, the venue shall be transferred to the appropriate county. In determining whether to grant a motion to dismiss an

action or to transfer venue under the doctrine of forum non conveniens, the court shall give consideration to the following factors:

(1) Relative ease of access to sources of proof;

(2) Availability and cost of compulsory process for attendance of unwilling witnesses;

(3) Possibility of viewing of the premises, if viewing would be appropriate to the action;

(4) Unnecessary expense or trouble to the defendant not necessary to the plaintiff's own right to pursue his or her remedy;

(5) Administrative difficulties for the forum courts;

(6) Existence of local interests in deciding the case locally; and

(7) The traditional deference given to a plaintiff's choice of forum.