STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPREME COURT

DEBORAH L. KEDY, LEGAL
REPRESENTATIVE FOR THE ESTATE
OF BRIAN SCALLION,

V.

No. 05-332-M.P.

A.W. CHESTERTON COMPANY, *ET AL.*

BRIEF OF
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
AMERICAN TORT REFORM ASSOCIATION,
PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA,
COALITION FOR LITIGATION JUSTICE,
NATIONAL ASSOCIATION OF MANUFACTURERS, AND
AMERICAN INSURANCE ASSOCIATION
AS *AMICI CURIAE* IN SUPPORT OF
PETITIONER, GENERAL ELECTRIC COMPANY

Appeal from the Providence County Superior Court (C.A No. PC 04-1552)

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INTEREST OF *AMICI CURIAE*

Amici curiae are six national associations that share a substantial common interest in the fair and effective administrative of justice. This case is of significant interest to *amici* because it provides the opportunity for Rhode Island to recognize the inherent power of Rhode Island courts to decline jurisdiction over cases that have little or no connection to the State of Rhode Island and that would be more appropriately decided elsewhere.

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation, representing an underlying membership of more than three million companies and professional organizations of all sizes and in all industries. In addition to the several hundred Chamber members located in Rhode Island, countless others do business within the state and are directly affected by its litigation climate. The Chamber advocates the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus* briefs in cases that raise issues of vital concern to the nation's business community.

Founded in 1986, the American Tort Reform Association ("ATRA") is a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than a decade, ATRA has filed *amicus curiae* briefs in cases before federal and state courts that have addressed important liability issues.

The Pharmaceutical Research and Manufacturers of America ("PhRMA") is an association comprised of the country's leading research-based pharmaceutical and biotechnology companies. PhRMA's member companies are devoted to inventing medicines that will allow

patients to live longer, healthier, and more productive lives and have led the way in the search for new cures. PhRMA members alone invested an estimated $43 billion in 2006 in discovering and developing new medicines. PhRMA's mission is to advocate for public policies that encourage the discovery of life-saving and life-enhancing new medicines for patients by pharmaceutical and biotechnology research companies.

The Coalition for Litigation Justice, Inc. ("Coalition") was formed in 2000 as a nonprofit association to address and improve the asbestos litigation environment. Established by insurers, the Coalition's mission is to encourage fair and prompt compensation to deserving current and future asbestos claimants by seeking to reduce or eliminate the abuses and inequities that exist under the current civil justice system.[1] The Coalition files briefs in important matters, such as this one, that that may have a significant impact on the asbestos and other toxic tort litigation environment.

The National Association of Manufacturers ("NAM") is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all fifty states. The NAM's mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media, and the general public about the importance of manufacturing to America's economic strength.

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[1] The Coalition for Litigation Justice includes ACE-USA companies, Chubb & Son, a division of Federal Insurance Company, CNA service mark companies, Fireman's Fund Insurance Company, Liberty Mutual Insurance Group, and the Great American Insurance Company.

The American Insurance Association ("AIA"), established over 140 years ago, is a national trade association representing major property and casualty insurers writing business nationwide and globally. AIA members collectively underwrote over $450 million in direct property and casualty premiums in Rhode Island in 2005. AIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the state and federal levels and files amicus briefs in cases before state and federal courts on issues of importance to the insurance industry and the insurance marketplace.

STATEMENT OF ISSUE PRESENTED

Whether Rhode Island courts have inherent authority to apply the common law doctrine of *forum non conveniens*, applied in federal courts and the courts of nearly every other state, to dismiss claims of plaintiffs who never lived or worked in Rhode Island, in a case in which the alleged injury occurred, and the witnesses and evidence are located, exclusively outside of Rhode Island, and where the claim can be brought in the plaintiffs' home country.

STATEMENT OF THE CASE

Amici adopt Petitioner's summary of the dispute in question.

INTRODUCTION AND SUMMARY OF ARGUMENT

When nonresident or foreign litigants choose to file claims in a distant jurisdiction, it is almost invariably a sign that there is something fundamentally wrong taking place. It is one of the basic presuppositions of the American justice system—and the doctrine of *forum non conveniens*—that parties will be inclined to bring their cases in their home forum. When plaintiffs instead choose to bring their actions in some out of the way forum, something is surely amiss. As shown below, that which is amiss is not beyond the power of Rhode Island courts to correct.

This case provides the opportunity for Rhode Island to recognize the inherent power of its courts to decline jurisdiction over cases that have little or no connection to the State that are more appropriately decided elsewhere. State and federal courts have recognized the doctrine of *forum non conveniens*, some based on statutory grounds, but most based on their inherent authority to do so. They have applied this doctrine to dismiss claims based on their consideration of the convenience of the parties, the availability of witnesses and evidence, the lack of familiarity with the applicable law, the potential to delay court access for state residents as a result of the burden placed on already crowded dockets, the unfair cost of the foreign litigation imposed on local taxpayers, the inappropriateness of shopping for favorable law, judges, or juries, and the availability of an alternative forum. Rhode Island has never rejected the doctrine; rather this Court has not had an appropriate case in which to apply it. This lack of clarity regarding the doctrine's availability has allowed "imported litigation" to flow into Rhode Island courts so long as a named defendant can be found within the State.

The case before this Court provides a prime example of the danger of such imported litigation and the opportunity to formally acknowledge the doctrine. It involves claims filed by thirty-nine lifelong Canadians alleging injuries stemming from exposure to asbestos. None of the Plaintiffs have ever lived in Rhode Island. None of the plaintiffs were exposed to asbestos in Rhode Island. The Plaintiffs' employment, exposure, injuries, and medical treatment occurred in Canada. All of the employers, worksites, co-workers, exposures, medical witnesses and fact witnesses are located in Canada. Each of the Plaintiffs currently receives compensation from the Canadian government's Workers' Compensation Board. The Plaintiffs have sued corporations that are not incorporated or headquartered in Rhode Island and established jurisdiction and venue over them simply by virtue of their doing business in the state. They have chosen Rhode Island

based on the more favorable treatment they expect to receive in the judicial system of the United States, rather than in their home country, and because Rhode Island is the only state in which the law has not developed to favor immediate dismissal of such a lawsuit on *forum non conveniens* grounds.

Amici urge this Court to adopt the principle that its courts have inherent power to decline jurisdiction over claims unrelated to Rhode Island and to provide guidance to lower state courts as to when it is appropriate to exercise such authority. The actions of the Supreme Court of the United States and numerous state high courts in applying *forum non conveniens* clearly demonstrate that there is no need for legislative action to embrace this common law doctrine. Should this Court fail to recognize the applicability of this doctrine, the Court risks opening Rhode Island to a flood of litigation from other states and foreign counties that have little or no connection to Rhode Island. Asbestos claims have a history being susceptible to forum shopping, making application of the doctrine particularly important in this case. Rhode Island should not advertise itself as the world's forum for potentially thousands of asbestos claims and other imported litigation.

ARGUMENT

I. The Origin and History of *Forum Non Conveniens*

A. Early Application of the Doctrine in England and the United States

The doctrine of *forum non conveniens* is said to have developed in early Scottish practice where courts declined to hear cases when justice dictated that the parties avail themselves of other forums. *See* Edward L. Barrett, Jr., *The Doctrine of Forum Non Conveniens*, 35 Cal. L. Rev. 380, 386-87 (1947); Robert Braucher, *The Inconvenient Federal Forum*, 60 Harv. L. Rev. 908, 909-11 (1946) (examining application of the doctrine in Scotland and England since the

1830s). During this period, for example, Scottish and British courts dismissed claims such as those involving a French shipper suing a French ship-owner in a Scotch court for loss of cargo on a journey from Scotland to France, an alien domiciled in India against an Indian solicitor in a British court for breach of a trust agreement made in India, and a Scotsman suing a Scotch bank in an English court for false representations in the prospectus of a Scotch company. *See* Paxton Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 Colum. L. Rev. 1, 20-21 (1929) (citing cases). As one commentator concluded:

> To sum up the English and Scottish practice, the plea of *forum non conveniens* will be sustained where there is another available and more appropriate forum, in which the ends of justice would be better served in view of the interests of all the parties, by eliminating the vexatious or oppressive character of the pending proceedings and by removing any unfairness to either party which would result from trial in the forum seized of the case.

Joseph Dainow, *The Inappropriate Forum*, 29 Ill. L. Rev. 867, 884 (1934); *see also Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 249 n.13 (1981) (recognizing this history and citing Braucher and Blair as authority).

The doctrine arrived in the United States as part of the judiciary's inherent powers, though it was not referred to by name prior to the twentieth century. Rather, it was routinely applied by courts "with such little consciousness of what they were doing as to remind one of Moliere's M. Jourdain, who found he had been speaking prose all his life without knowing it." Blair, 29 Colum. L. Rev. at 21-22. When early American courts exercised their inherent power to dismiss cases more appropriately heard in another jurisdiction, they did so on the basis of the unavailability of witnesses, the unfairness to a state's own citizens who would experience delays in access to their courts and pay the expense of the foreign litigation, and the dissimilarity between the foreign law and American law.

For instance, when a Canadian resident sued a Michigan corporation for a tort committed in Canada, a Michigan court dismissed the claim due to the "danger of injustice" since witnesses and evidence were outside of the country and possibly unreachable as well as the potential importance of foreign law to the outcome. *See Great Western Ry. Co. v. Miller*, 19 Mich. 305, 1869 WL 3643 (Mich. 1869). A federal court in New York found that a resident of Germany could not pursue a breach of contract claim against an English company arising from a contract entered into in Canada for the carriage of goods from Quebec to Manchester, by assigning the claim to an agent in New York, because "all the substantial reasons for prosecuting the suit in Canada rather than in this jurisdiction, remain as before." *Goldman v. Furness, Withy & Co.*, 101 F. 467, 468 (S.D.N.Y. 1900). As early as 1904, the Supreme Court of the United States upheld the dismissal by a Texas court of a wrongful death claim arising from an accident in Mexico brought under Mexican law where "[t]he defendant always can be found in Mexico on the other side of the river, and it is to be presumed that the courts there are open to the plaintiffs . . . ." *Slater v. Mexican Nat'l R.R. Co.*, 194 U.S. 120, 129 (1904). As these examples illustrate, courts frequently dismissed cases where the parties included aliens or foreign corporations, not as a result of inhospitality to foreigners, but on the basis that there is a high probability that the local forum selected is inappropriate unless special circumstances make it reasonable to entertain the action. *See* Roger S. Foster, *Place of Trial – Interstate Application of Intrastate Methods of Adjustment*, 44 Harv. L. Rev. 41, 53-54 (1930) (citing several decisions supporting this principle rendered between 1793 and 1916).

The lack of a unified body of case law recognizing the doctrine of *forum non conveniens* in these early years may be due to the rare need for its use during this period. For many years, the U.S. Constitution itself effectively limited suits lacking a connection to the forum

jurisdiction. *See Pennoyer v. Neff*, 95 U.S. 714 (1877) (holding that a court may not exercise personal jurisdiction over a defendant unless the defendant is physically present in the state). The Commerce Clause was also invoked as a means of limiting cases where the parties had little or no connection to the forum jurisdiction. *See Davis v. Farmers Coop. Equity Co.*, 262 U.S. 312 (1923) (finding that trial of a claim in Minnesota in which all parties and the action were from Kansas would pose an unreasonable burden on interstate commerce given the time and expense of bringing distance witnesses, and therefore finding that a statute providing jurisdiction over the defendant, an interstate carrier, could not be constitutionally applied). This changed as interstate and international commerce became the norm and laws more broadly permitted jurisdiction over corporations that do business in the state. *See* Dainow, 29 Ill. L Rev. at 868 ("[A]s a result of the extension of the businesses of corporations state lines, and state statutes providing for local jurisdiction over them, there appeared more and more veraciously imported actions between nonresidents.").[2] Surely, in today's global marketplace there is even greater need for courts to exercise discretionary authority to decline jurisdiction when a claim is more appropriately heard in another forum, even if a broad state venue law and the U.S. Constitution would permit it to hear the case.

In a seminal 1929 article, Paxton Blair coined the phrase, *forum non conveniens*, and advocated for its increased use by courts to divert a flood of litigation that may be more appropriately tried elsewhere. *See* Blair, 29 Colum. L. Rev. at 1. Mr. Blair noted the

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[2] *See also* Comment, *Forum Non Conveniens, A New Federal Doctrine*, 56 Yale L.J. 1234, 1234 (1946) (recognizing that the doctrine of *forum non conveniens* rose as a reaction to state laws providing plaintiffs with wider choices of forum, such as those providing jurisdiction over nonresidents doing business in the state); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) (holding that personal jurisdiction may be maintained upon minimum contacts, such that the suit does not offend "traditional notions of fair play and substantial justice").

increasingly frequent practice of suing corporations in jurisdictions alien to the defendant's domicile, the plaintiff's residence, and where the cause of action arose, stemming from a "desire to sue where the verdicts are the largest." *Id.* at 34. After engaging in a thorough evaluation of the historic, constitutional, and public policy basis supporting *forum non conveniens*, Mr. Blair urged its more frequent use given the effect of "imported controversies" on the apportioning of courts and judges to the population, congestion on court dockets, and the expense placed on local taxpayers. *Id.* Mr. Blair did not call for legislative action. Rather, he recognized:

> [N]ew legislation is not needed before any benefit can be expected to flow from the remedies we propose; for the doctrine in question involves nothing more than an appeal to the inherent powers possessed by every court of justice—powers, that is to say, which are incontestably necessary to the effective performance of judicial functions.

Id. at 1.

B. The U.S. Supreme Court Recognizes the Inherent Power of Courts to Decline Jurisdiction Over Cases Better Heard in Another Forum

Despite the common application of the doctrine under various rationales and names, courts in the United States did not wholeheartedly embrace their ability to decline jurisdiction over cases more rationally heard in another forum into the early twentieth century. *See* Roger S. Foster, *Place of Trial in Civil Actions*, 43 Harv. L. Rev. 1217, 1239 (1929). This hesitancy was "partly owing to a distrust of discretionary power and partly owing to supposed constitutional difficulty" as to whether a court with jurisdiction has any choice but to exercise it. *Id.* Many courts did not adopt the doctrine on the mistaken rationale that limiting the access of residents of other states to local courts violated the Privileges and Immunities Clause of Article IV of the U.S. Constitution. *See* Barrett, 35 Cal. L. Rev. at 389-90 (citing cases).

In 1929, the Supreme Court of the United States dispelled any confusion when it made clear that states may constitutionally limit the ability of nonresidents to bring actions in state

courts in a case arising under the Federal Employers' Liability Act (FELA). *See Douglas v. New York, N.H. & H. R.R. Co.*, 279 U.S. 377 (1929). In that case, a New York statute provided that a foreign corporation or nonresident could only sue a foreign corporation in New York if the defendant foreign corporation conducted business in New York. *See id.* at 386. In upholding that law, Justice Holmes, writing for the Court, recognized, "[t]here are manifest reasons for preferring residents in access to often overcrowded Courts, both in convenience and in the fact that broadly speaking it is they who pay for maintaining the Courts concerned." *Id.* at 387. The Court squarely rejected a constitutional challenge under Privileges and Immunities Clause. *See id.*

A flurry of legal scholarship followed the *Douglas* decision recognizing the inherent authority of both federal and state courts to apply the doctrine and its increasing importance as commerce spread across state lines. In an influential law review article, Yale Law Professor Roger S. Foster recognized the problem of allowing lawsuits against defendants wherever they may be "found" and the challenges in addressing this problem through legislation due to political inertia and the inflexibility of statutes to adapt to widely varying facts. *See* Foster, 44 Harv. L. Rev. at 52-54. "The best hope is that the courts will feel free to take appropriate action without specific legislation authorizing them to do so. It is submitted that authority for such action is implicit in well-established common law principles." *Id.* at 52; *see also* Dainow, 29 Ill. L. Rev. at 870 (recognizing that "hard and fast mechanical rules eventually become unsuitable and inadequate," that the "complexity of situations must progressively increase," and therefore "[t]here is only one sufficiently elastic method of assuring adjustment and that is by reposing the determination of the border-line situations in the discretion of the court").

By 1941, Justice Frankfurter referred to *forum non conveniens* as a "familiar doctrine" and as a "manifestation of a civilized judicial system . . . firmly imbedded in our law." *Baltimore & Ohio R.R.. Co. v. Kepner*, 314 U.S. 44, 55 (1941). The Supreme Court closed any outstanding questions as to the authority and propriety of federal courts to control filings by nonresident plaintiffs through application of *forum non conveniens* in a pair of cases in 1947. In *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), a Virginia resident sued a Pennsylvania corporation four hundred miles away in a federal court in New York City for a negligence action arising in Lynchburg, Virginia. Justice Jackson, in affirming the dismissal of the action with instructions that it be filed in Virginia, set forth a nonexclusive list of private and public interest factors that a court may consider in deciding whether to dismiss a case under the doctrine. *See id.* at 508-09; *infra* Section III.A. Federal courts and many state courts continue to consider these factors today.

In a companion case, *Koster v. Lumbermens Mutual Casualty Co.*, 330 U.S. 518 (1947), the Supreme Court emphasized that even where a defendant is technically a resident of the forum state because it is incorporated in that state, it is not precluded from invoking the doctrine of *forum non conveniens* if the forum will result in substantial inconvenience to the defendant and the plaintiff has failed to advance a satisfactory reason as to why claim should be tried in the forum selected. As the Court explained:

> Under modern conditions, corporations often obtain their charters from states where they no more than maintain an agent to comply with local requirements, while every other activity is conducted far from the chartering state. Place of corporate domicile in such circumstances might be entitled to little consideration under the doctrine of *forum non conveniens*, which resists formalization and looks to the realities that make for doing justice.

Id. at 527.

Four justices dissented in *Gilbert*. Two argued that the Court's adoption of the doctrine invaded the legislative domain. *See* 330 U.S. at 515 (Black, joined by Rutledge, JJ, dissenting). Two others suggested in *Koster* that grouping cases where dismissal is proper under the doctrine is only "at the expense of analysis." 330 U.S. at 837 (Reed and Burton, JJ, dissenting). These minority views have long been discredited. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 248-49 (1981) (recognizing that although federal *forum non conveniens* law was not "fully crystallized" until *Gilbert*, the doctrine has a long history). Recently, the Supreme Court unanimously held, in what it called a "textbook case" for immediate *forum non conveniens* dismissal, that federal courts may exert its authority under the doctrine where a foreign tribunal is plainly the more suitable arbiter of the case before even considering whether it possessed personal or subject matter jurisdiction. *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. --, No. 06-102, Slip Op. at 1, 11-12 (Mar. 5, 2007).

II. The Inherent Authority of Courts to Apply *Forum Non Conveniens* is Accepted Throughout the United States

State courts have inherent power to apply the doctrine of *forum non conveniens*. *See* Barrett, 35 Cal. L. Rev. at 402 ("[T]here are no federal constitutional or statutory provisions preventing the widespread application of the doctrine of *forum non conveniens* in both state and federal courts."). In fact, "the doctrine did not originate in federal but in state courts." *See Gilbert*, 330 U.S. at 505 n.4; *see also Piper Aircraft*, 454 U.S. at 248 n.13 ("The doctrine . . . originated in Scotland . . . and became part of the common law of many States.").

Today, the availability of the doctrine is firmly established in forty-eight states and the District of Columbia. *See* Adoption of *Forum Non Conveniens* in the States, Appendix of *Amici*

Curiae.[3] Rhode Island has not yet adopted the doctrine of *forum non conveniens*, which may be due to the lack of an appropriate case to apply it before this Court. This case presents such an opportunity.

A. States Have Long Recognized Their Power to Limit Imported Litigation

At least as early as 1817, there are examples of state courts exercising discretionary power to deny their courtrooms to actions over which it had jurisdiction, but more properly belonged in another court. *See* Braucher, 60 Harv. L. Rev. at 914 (citing *Gardner v. Thomas*, 14 Johns. 134 (N.Y. 1817)). In New York, courts were early flooded with foreign litigation, leading to development of its jurisprudence declining jurisdiction over foreign tort cases to protect access of the state's citizens to their own courts and to protect New York taxpayers from the burden of funding foreign litigation. *See* Note, *New Limitations on Choice of Federal Forum*, 15 U. Chi. L. Rev. 332, 339 (1947) (citing cases). As New York courts have long recognized:

> It is the well settled rule of this state that, unless special reasons are shown to exist which make it necessary or proper to do so, the courts will not retain jurisdiction of and determine actions between the parties residing in another state for personal injuries received in that state. . . . The reason of the rule is obvious,--because the courts of this state should not be vexed with litigations between non-residents over causes of action arising outside of our own territorial limits. Our courts are not supported by the people for any such purpose. . . . It already appears that it is against the settled policy of the state to permit our courts to be used by non-residents for the redress of personal injuries received in the state of their domicile, unless special reasons are shown therefor.

Ferguson v. Neilson, 11 N.Y.S. 524, 524 (Sup. Ct. 1890); *see also Collard v. Beach*, 81 N.Y.S. 619 (App. Div. 1903) (declining jurisdiction of tort action occurring in another jurisdiction between nonresidents).

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[3] Only in Idaho does the availability of *forum non conveniens* appear uncertain. *See* Appendix.

Many states around the country have followed this sound practice for many years, particularly in situations involving foreign nationals and actions arising abroad. *See, e.g.*, *Universal Adjustment Corp. v. Midland Bank, Ltd.*, 184 N.E. 152, 158 (Mass. 1933) (finding that the doctrine of *forum non conveniens* is the law of Massachusetts and "prevails generally," citing various state, federal and English court decisions); *Great Western Ry. Co. of Canada v. Miller*, 19 Mich. 305, 1869 WL 3643, at *6 (Mich. 1869) ("[W]here the parties are not residents of the United States, and the trespass was committed abroad, the right of action in our courts can only be claimed as a matter of comity"); *Disconto Gesellschaft v. Umbreit*, 106 N.W. 821, 823-24 (Wis. 1906) ("To hold that two foreigners may import, bodily, a cause of action, and insist, as a matter of right, that taxpayers, citizens, and residents shall await the lagging steps of justice in the ante-room, while the court hears and decides the foreign controversy, seems, on its face, to be unreasonable, if not absurd."); *see also Jackson & Sons v. Lumbermen's Mut. Cas. Co.*, 168 A. 895, 897 (N.H. 1933) (finding "manifest that on every phase of the case the facts are against entertaining jurisdiction here" where the plaintiff was an Ohio corporation, the defendant did business in Ohio, a related case was litigated in Ohio, and the claim was subject to Ohio law).

The fact that this Court has remained silent on the availability of *forum non conveniens* does not affect its ability to invoke its inherent authority to apply these sound principles. States

that had previously rejected the doctrine, either due to constitutional doubts pre-*Gilbert*[4] or for other reasons, and aligned with the minority of states at the time "have since reversed their position and embraced the *forum non conveniens* doctrine in some form." *Werner v. Werner*, 526 P.2d 370, 376-78 (Wash. 1974) (overruling *Lansverk v. Studebaker-Packard Corp.*, 338 P.2d 747 (Wash. 1959) and recognizing *forum non conveniens* as an "inherent discretionary power of the courts"). This Court has not previously had an opportunity to consider the availability of *forum non conveniens*. This case provides such an occasion.

Rhode Island's lower courts have indicated a willingness to recognize their inherent power to decline jurisdiction on *forum non conveniens* grounds. In *Groff v. America Online, Inc.*, No. PC 97-0331, 1998 WL 307001 (R.I. Super. May 27, 1998), the Superior Court reasoned:

> Although neither party has referred to any [*forum non conveniens*] decision from the Supreme Court of Rhode Island, that Court has held that when the Rhode Island Rules of Civil Procedure and Rhode Island case law are silent, it is allowable to refer to the body of law that has addressed the question, particularly the Federal Rules of Civil Procedure which formed the basis of our rules.

Id. at *6 (citing *Ciunci, Inc. v. Logan,* 652 A.2d 961, 962 (R.I. 1995)). Although *Groff* dealt with the specific application of the contractual forum selection clause, the court discussed the balancing of public and private interests set forth in *Gilbert*. Furthermore, the court based its

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[4] Since *Gilbert*, state and federal courts have almost uniformly found that the Privileges and Immunities Clause does not prevent courts from applying *forum non conveniens* rules to limit the accessibility of courts to residents of other states. *See, e.g., Price v. Atchison, T & S.F. Ry. Co.*, 268 P.2d 457 (Cal. 1954); *Qualley v. Chrysler Credit Corp.*, 217 N.W.2d 914, 915 (Neb. 1974); *Gore v. United States Steel Corp.*, 104 A.2d 670, 675 (N.J. 1954); *Rosenthal v. Unarco Indus., Inc.*, 297 S.E.2d 638, 641 (S.C. 1982). *But see Crown Equip. Corp. v. Morris*, 633 S.E.2d 292 (W. Va.), *cert. denied*, 127 S. Ct. 833 (2006) (invalidating venue statute barring a nonresident plaintiff from bringing an action in West Virginia, unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in West Virginia under the Privileges and Immunities Clause).

decision to follow to the jurisdiction stated in the forum selection clause, in part, on a weighing of the "private interest factors." *Id.* The lower court did, however, stop short of explicitly recognizing the availability of *forum non conveniens* in Rhode Island. This Court should take the next step and align with the overwhelming majority of states that formally acknowledge the judiciary's inherent authority to apply the doctrine of *forum non conveniens*.

B. Inherent Authority is the Source of the Common Law Doctrine

In the vast majority of states, application of the doctrine of *forum non conveniens* is clearly rooted in the inherent power of the courts to decline jurisdiction over cases that are more appropriately decided in the court of another state or country. *See Appendix.*

State high courts have recognized their inherent authority to apply the common law doctrine of *forum non conveniens* on many occasions. For example, the Supreme Court of Georgia proclaimed, "Following the majority of states, we adopt the doctrine of *forum non conveniens* and hold that Georgia courts may exercise their inherent power and dismiss cases involving nonresident aliens when an adequate alternative forum exists and dismissal serves the interests of justice and convenience of the parties." *AT&T Corp. v. Sigala*, 549 S.E.2d 373, 375 (Ga. 2001).

States generally invoke this authority in the absence of any statutory guidelines. The Supreme Court of Illinois, for instance, adopted the doctrine upon a determination that, "[w]hile in Illinois we are without any statutory authorization, we find that such authority to transfer a case under the doctrine of *forum non conveniens* exists at common law, and, therefore, statutory authorization is unnecessary as it only recognizes and codifies a right that previously existed at common law." *Torres v. Walsh*, 456 N.E.2d 601, 605 (Ill. 1983). The Supreme Court of Utah similarly held:

> There is no provision in our statutes or our rules of procedure expressly authorizing the dismissal of an action on the basis of *forum non conveniens.* However, as part of the inherent power that our district courts have, as courts of general jurisdiction, they undoubtedly could refuse to exercise jurisdiction if convinced that it would place an unreasonable burden upon some or all of the parties, or upon the court, to try the case here.

Summa Corp. v. Lancer Indus., Inc., 559 P.2d 544, 546 (Utah 1977).

This formal acknowledgement of common law authority is equally clear across other states and frequently reiterated. *See, e.g., State v. Johnson*, 932 P.2d 380, 383 (Kan. 1997) ("*Forum non conveniens* is part of the common-law of the State of Kansas..."); *Radeljak v. DaimlerChrysler Corp.*, 719 N.W.2d 40, 42 (Mich. 2006) ("The doctrine is not derived from statutes; rather, it is a common-law doctrine created by courts."); *Civil Southern Factors Corp. v. Bonat*, 322 A.2d 436, 438 (N.J. 1974) ("The doctrine of *Forum non conveniens*, an equitable principle, is firmly embedded in the common law of this State."); *Rothluebbers v. Obbe*, 668 N.W.2d 313, 317 (S.D. 2003) ("[T]he doctrine of *forum non conveniens* is alive and well in the State of South Dakota."). While application of the doctrine to a specific set of facts may vary to some degree among states, a court's inherent authority is rarely in question. As the Supreme Court of Tennessee stated when adopting the doctrine:

> Even in some of the cases rejecting the doctrine the rejection is not on lack of authority, but for other reasons. This power is inherent in the courts since in some cases, due to various factors, the interest of justice so demand. It results and we so hold courts of general jurisdiction in Tennessee have inherent power to apply the doctrine of *forum non conveniens* as a ground for refusal to exercise jurisdiction over a cause of action arising beyond the boundaries of Tennessee.

Zurick v. Inman, 426 S.W.2d 767, 771 (Tenn. 1968).

C. Legislative Codification of *Forum Non Conveniens* Principles in Some States or Contexts Does Not Reflect a Lack of Inherent Authority

Some state legislatures have codified principles of the common law doctrine of *forum non conveniens* in a state's civil code or rules of procedure. Such laws provide a party with