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HOUSE JUDICIARY COMMITTEE

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PUBLIC HEARING ON HOUSE BILL 1552
VENUE IN PERSONAL INJURY ACTIONS

BEFORE:

HONORABLE RONALD MARSICO, MAJORITY CHAIRWOMAN
HONORABLE THOMAS CALTAGIRONE, MINORITY CHAIRMAN
HONORABLE MATTHEW BRADFORD
HONORABLE DOM COSTA
HONORABLE BRYAN CUTLER
HONORABLE SHERYL DELOZIER
HONORABLE EUGENE DePASQUALE
HONORABLE BRIAN ELLIS
HONORABLE DEBORAH KULA
HONORABLE MARK KELLER
HONORABLE BERNIE O'NEILL
HONORABLE JOHN SABATINA
HONORABLE RICK SACCONI
HONORABLE TODD STEPHENS
HONORABLE MARCY TOEPEL
HONORABLE RONALD WATERS
HONORABLE JESSE WHITE

STAFF ALSO PRESENT:

DAVID TYLER
RYAN BOOP

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CHAIRMAN MARSICO: Good morning everyone. Call the meeting to order. Michelle. Would you take the roll please?

ROLL CALL TAKEN

CHAIRMAN MARSICO: Well, good morning everyone. Today we are holding a hearing on House Bill 1552, Printer's Number 903, which has been introduced by Representative Brian Cutler, Member of the Committee. House Bill 1552 amends the Judicial Code by adding a new section relating to personal injury actions. The new section establishes that a TORT action for damages which alleges death or personal injury may be filed only in the county in which the cause of action arose. In a minute I will ask Representative Cutler to provide remarks about the bill. But before I do that I want to give just a little bit of history. In 2002, the General Assembly passed Act 127, which established a requirement that medical malpractice cases be brought only in the county in which the cause of action arose. That legislation was passed in response to a finding that medical malpractice claims were often filed in counties which only, had only marginal nexus with the parties or the claim. This resulted with a burden being placed on the courts in certain counties to hear cases which more properly should have been decided in a forum that had the most connection to the alleged negligence. They caused delays in cases and ultimately the ability of the courts to ensure justice. Following passage of Act 127, and its incorporation by the Supreme Court, to the Rule 1006, of the *Rules of the Civil Procedure*, Chief Justice Castille, publically noted in 2008, that the legislation and rule changes made by the court had a significant impact on the number of medical malpractice claims that were filed annually. The Chief Justice stated and I am quoting, *ongoing review and enhancements to our procedures will ensure that both*

plaintiffs and defendants can rely on accessible court system where professional liability actions are partially and promptly resolved. In 2010, the Chief Justice again commented, *labeling the continued trend in reducing the number of medical malpractice claims in the Commonwealth as the result of these changes as an encouraging sign.* Our duty, as Members of this Committee and the General Assembly, is to find ways to continue improving the system wherever we can to ensure that justice is dispensed impartially and properly. I'm looking forward to the testimony here this morning and also to hearing the views of whether House Bill 1552, will play a role in meeting that objective. Representative Cutler, I believe you have some remarks.

REPRESENTATIVE CUTLER: Thank you, Mr. Chairman. First of all I would like to thank you for the opportunity to have the hearing on this bill. I appreciate the opportunity to hear input from the parties who are interested. I would like to echo your comments in regarding some of the past history involving this bill. I do think that, as you have pointed out, we've seen a history of medical malpractice decreases. The filing numbers have decreased significantly since 2002 and it seems that the Supreme Court, among other interested parties, has recognized the value this has in expediting our judicial process and insuring that justice is able to be met with those individuals seeking recourse through the system. Mr. Chairman, I think it's time and this is why I've introduced House Bill 1552. I think it's time to provide the same kind of access to other individuals who are using the personal injury system as it currently exists in the civil system. I understand that there are some parties that have some concerns about it; I am certainly willing to engage in the discussion and the hearing and the taking of the statements on that, with the eye towards making possible changes to make this a more

understandable one. And most importantly, two; that it would be more implacable in insuring the outcome we all want. And that is the opportunities for individuals to have the ability and access to courts.

Mr. Speaker, Mr. Chairman, sorry; I almost gave you a promotion there. So I did want to point out that as a General Assembly we have a significant duty. We have a significant duty to fund the courts and we also have a significant duty to ensure our citizens, those individuals that we represent, also have access to those same courts. So as we look to balance the very limited resources that we have available to us. I think one of the things we should look at is the jurisdiction of the courts, Mr. Chairman, and evaluate whether or not this should be appropriately changed. I think that there is significant constitutional authority as well as statutory authority, previously, where we have outlined or otherwise limited the jurisdiction of multiple courts. And this most recent effort would simply be taking a look at the jurisdiction and the venue provisions to ensure that these courts and their resources are used most efficiently. So with that, Mr. Chairman I will defer any further comments to the time after testimony. And thank you for the opportunity to be here. Thank you.

CHAIRMAN MARSICO: Chairman Caltagirone, my good friend; want to make some comments?

CHAIRMAN CALTAGIRONE: Yes, I just want to publically thank you at my request to hear this hearing so that we could have all parties participate in these proceedings. Thank you.

CHAIRMAN MARSICO: Okay. Before we introduce our first witness I want to recognize a guest that Representative Brian Ellis has here today. Chuck Teeters, welcome

to the Capitol; welcome to the hearing. Are you shadowing Ellis today? Oh that's going to be; is it going to be all day? You don't have to answer. Our first witness will be Attorney Scott Cooper. Good Morning. Scott Cooper is an attorney with Schmidt Cramer Injury Lawyers. Attorney Cooper specializes in personal injury law with an emphasis in motor vehicle accident insurance cases. Mr. Cooper is the President-Elect of the Pennsylvania Association for Justice, which was previously known as Pennsylvania Trial Lawyers Association. Additionally Attorney Cooper also chairs the Associations Legislative Policy Committee. The Members of our Committee may recognize Attorney Cooper; he's been here before many times at the Capitol. We welcome you and you may begin.

SCOTT COOPER: Thank you, Chairman Marsico. In addition, just so the members of the Committee know, I've also dealt in the courts with auto cases with venue issues concerning --- objections and forum non-convenience as part of litigating the cases. I've also argued certain appellate cases on that issue. But to begin with, we want to thank Chairman Marsico and Mr. Caltagirone for the opportunity to speak today on House Bill 1552. We want to thank you again, but also hope you understand after I speak why we are opposed to it and why it should not be voted out of this committee, in our opinion. Not only is House Bill 1552, outside the powers of the General Assembly because it's unconstitutional, but it's not necessary and would lead to several logistical problems in the trial courts and adverse consequences to injured victims including inconveniences. I'm just going to elaborate on 3 problems with the legislation and then I'll answer any questions anyone has. One; we oppose the bill because simply it's not necessary and doesn't allow for injured victims to bring a claim in the county where he or

she resides. Two; the law is inconsistent with other venue rules already established by the Supreme Court through its Rules Committee and would also lead to conflicts with jurisdiction in other cases, particularly un and underinsured, that are unfair and impractical. Three; as I stated the law is unconstitutional because it usurps the rule-making power of the Pennsylvania Supreme Court, under Article 5 Section 10, of our Commonwealth's Constitution. To expand briefly; first; House Bill 1552, makes no provision for filing any suit in the county where the plaintiff resides. We were back here this past spring on the Joint and Several Liability Issue and one of the things cited repeatedly was the 2011, Legal Reform Coalition Survey, which many members of this committee and the General Assembly pointed out, that there was something about 82% wanted a change in the Joint and Several Liability Law. That same study found that 86% of the people thought that venue laws should be that law suits can only be filed in the county where the defendant resides or where injury or damages occur. Clearly that is broader than this bill here today. 86% again is higher than the percentage who actually wanted the change the Joint and Several Liability Laws and it actually is supported by the Legal Coalition Survey of which I believe the National Business Council and the American Tort Reform Association would also agree with. Speaking of the American Tort Reform Association; second; according to their own position, they would actually place venue where a person lives or where they were injured or where the defendant's principle place of business is located. Again we were concerned, a few months ago with this same committee, with fairness when it came to Joint and Several Liability Laws. So one would ask the question, what's wrong with allowing a disabled plaintiff who's confined to a bed or wheelchair to file a lawsuit in their home county, so that they don't

need to potentially prosecute or pursue their case across the state? Already in place we have certain protections for businesses if they feel they're being harassed in one county or another by way of forum non convenience laws. And also the courts are doing what they are suppose to do and moved cases out of counties if they do not think they belong in that county. Just this past Friday, in Shultz Vs MMI Products, the Pennsylvania Superior Court affirmed a Philadelphia County trial court decision which moved a case from Philadelphia County to Lehigh County, based on improper venue. So therefore our position is 86% of the population and a major group which advocates this type of venue legislation has already indicated that this specific law is not needed. Second; the law is inconsistent with already established venue rules in Pennsylvania and would create logistical issues. For instance the venue rules for District Magistrates already allow for venue in certain injury claims, if they're under a dollar threshold. The District Magistrate venue is that the claim can be filed consistent with where our venue rule is right now, where a defendant resides, or where the cause of action arose. Passing this legislation is obviously not consistent with the venue rules for District Magistrates. This law also would leave certain people of Pennsylvania without any jurisdiction for their case. For instance the law doesn't cover situation where a person is injured in an out-of-state accident with a Pennsylvania resident who caused the injury. This happens, for example, in single car auto accidents. The person leaves the State of Pennsylvania with the driver, both from Pennsylvania and I have a case now where that happened in Virginia; the person ended up in the hospital in Virginia, injured. Their case is clearly against the person driving the car who's from Pennsylvania. Under this legislation there would not be any venue for the person to sue in Pennsylvania. In addition there's no definition of

what cause of action arose means in the legislation. Also the proposed legislation would add complications in un and underinsured motorists cases. In more and more of these types of insurance claims, which do arise for personal injury compensation, the insurance policies themselves mandate that lawsuits be filed against the insurance company, but specifically say that they must be filed in the county where the insured resides, not in the county where the cause of action arose. Now, in this case, if a litigant and in a lot of these cases now, people are filing third party, which is against the other driver and against the insurance company. A person would have no way of knowing where to file a case or even if they can file the case against both the third party and the insurance company. Last and I think this is quite obvious, we oppose the law because it's unconstitutional under article 5 section 10. Our constitution vests the sole authority to pass the procedure rules through the Supreme Court, Civil Rules Committee. In that Schultz case last Friday, the Superior Court again reaffirmed half-way through that decision, that the rules committee is the sole rule making authority for the rules of civil procedure and venue. We hope that the Commonwealth, that this Committee, the House Judiciary Committee, of all Committees, is not going to start the process of passing unconstitutional legislation by voting the bill out. Again I have tried to briefly state why we're opposed to the bill, but again, please be very wary of even voting this out of the Committee. Thank you again and I will be happy to answer any questions.

CHAIRMAN MARSICO: Thank you very much for being here, for your testimony. And before I turn it over to questions by the committee I wanted to recognize that Representative Waters, Representative Stephens, and Representative Keller have joined us here this morning. I'm not going to set any strict ground rules for questions;

we're going to have some flexibility here. We will go back between the majority party and the minority party, back and forth, rotate, that way if that's okay with everyone? Representative DePasquale; for your questions.

REPRESENTATIVE DePASQUALE: Thank you Mr. Chairman. While I tend to agree with your Supreme Court analysis on the Constitutionality; let's just, for argument sake because you never know how the Supreme Court will rule on something, let's go into what would happen if this were in the real world and becomes law. My concern on this is that; I think a well to do, someone with financial resources plaintiff, this may not impact them as much as somebody with limited financial resources, somebody that maybe gets injured in say Pittsburgh or New Castle but they live in the eastern part of the state. And the idea of just traveling across the state to file the lawsuit, I think that then they would just give up on it, so to speak. But you've done this for a living, am I off-base on that concern or I know that at some level throwing out a softball but I want to try to get at in the real world; how would this work? Again my theory is that somebody with limited financial resources is not going to; they may just view it as, I'm not going to travel across the state to just go file this lawsuit. But tell me if I'm off base on that concern?

SCOTT COOPER: No, it's a valid concern and I think that is something that plays into every persons' determination of what type, of whether they are going to file a case or not. And that happens a lot of times in Pennsylvania when I represent someone who's from another state. So let's use that. If a person if from Florida (I've had certain cases where a person from Florida) and they come into Pennsylvania to file a lawsuit, that's one of the considerations. That they're going to have to come up and travel and pay

for either airfare or train or drive or hotel, for not only depositions but the trial and things like that. From a practical standpoint that's one of the reasons why the way venue rule is now, is actually fair. Actually I think you could also add to make it consistent with the ATRA where you make it where the plaintiff resides too which would even be fairer. But if we're going to keep it the same, there's actually reasons why, granted you want to be sometimes in Philadelphia I understand, but there are cases where I can represent someone who is suing someone who lives in Dauphin County, where they'd rather sue in Dauphin County than sue in Philadelphia. The example I can give you; if a person is hurt by a driver from Dauphin County who is drunk and the person is insured and they have a catastrophic injury, it's a no brainer. That the person is going to receive adequate compensation, hopefully, depending on the insurance company. For convenience sake and locality and for witnesses and doctors and things like that, you're going to want to be in Dauphin County as opposed to Philadelphia. You may have high verdict potential but to get your client the right compensation and their money as quick as possible with as little inconvenience. So that is one of the practical, it's not only the money to go across the state but where the doctors are located and where the witnesses are located. If you're going to have for instance, everyone knows that on a fall weekend in central Pennsylvania, Penn State when they have a home game becomes the third largest city in the state, I guess, just the stadium itself. If there's a higher proportion of accidents up there someone from West Moreland County or York County, you get into an accident up there, everyone in your family is going to have to go up there to testify in trial. The doctors may have to, if you can't get them to do a deposition. Everyone is going to have to go up there; it's more expense and it also increases the cost to the system.

REPRESENTATIVE DePASQUALE: The only thing to add to the commentary is that's; it's one thing when you're somebody from Florida and gets injured in Pennsylvania, cause each state's court system is different. But Pennsylvania, even though we have 67 counties we are one unified judicial system and I don't know why we would be limiting the venue issue when simply, that could be handled through current procedures that already exists.

SCOTT COOPER: Right, it already exists and I guess that's one of the most egregious effects of something like this, unfortunately is, the example of people in Pennsylvania get into an accident in another state and now you're taking away their jurisdiction to even file anything in Pennsylvania. I have a case right now where a woman was in an accident in Virginia, the driver of the car is from Pennsylvania, lives in Pennsylvania, fell asleep and drove off the road. She was in Hershey Rehab ultimately for a month. So now if you follow this through, where is this everyone going to go? Virginia; to file the lawsuit because you can't file in Pennsylvania, which also would beg another constitutional question of whether it would violate due process by taking away our jurisdiction in Pennsylvania.

CHAIRMAN MARSICO: Okay, Representative Stephens.

REPRESENTATIVE STEPHENS: Thank you Mr. Chairman. Thank you for your testimony. I had wanted to get your thoughts on this issue that a constituent brought to my attention. I'm in Montgomery County, suburban Philadelphia, and he has a franchise there, he has a Philly Pretzel Factory, not located in Philadelphia. There was a slip and fall in one of his stores, he doesn't own any stores in the City of Philadelphia but the franchise headquarters is located in Philadelphia. He has now had to deal with all his

litigation in Philadelphia because that's where the action was brought. The plaintiff is not a resident of Philadelphia, he is not a resident of Philadelphia, none of his stores are in Philadelphia, but simply because of the franchise being located in Philadelphia, he's there. Do you think that's the appropriate place for that particular litigation to unfold and if not, what suggestion would you make to help remedy that situation? By answering the first question, yes, then you got off the hook on the second question.

SCOTT COOPER: The first part of the question; it really depends on the situation of what profits, even though they don't necessarily do any business in Philadelphia, there are certain business relationships and things that a lot of times give you the venue in Philadelphia. I think it's fair maybe to file in Philadelphia, but there are protections that the franchisee or I guess that's what you would call the owner of the business has, that he could tell his lawyer to do, which people are doing all the time, is moving the case under forum non-convenience from Philadelphia to Montgomery County. And that's happening. There were two cases, Brook versus Comcast, where Comcast would logically, you would think, would be sued in Philadelphia cause they have that big building and everything; great TV my kids loved it and everything, but that case was filed in Philadelphia. The venue was technically there but that case was moved from Philadelphia to Cumberland County under the forum non-convenience. So there are protections that the franchisee has that his lawyer can raise to get the case and that's actually, and there is another case, Wimble versus Parks, where the case was moved from Philadelphia to Bucks County. And the trial judges in Philadelphia are moving cases out and it's an abuse of discretion standard which is very high to overturn on appeal. So I

think is it right to sue under the rules that the Supreme Court has established? *Yes*. Can it be moved? *Yes*.

REPRESENTATIVE STEPHENS: Are those 4 non-convenience rules and I'm not familiar on the civil side; are they Common-law or are they codified somewhere in the rules of civil procedure? How; where, do I find them?

SCOTT COOPER: It's in 1006, in the rule. It's about forum and that was actually one of the American Tort Reform Association positions. Is the whole thing about venue and the reason I think, and I can only speculate because I am obviously not a member of the organization. Actually I probably should be then I get all their stuff but is their concern that is, a person, a plaintiff can go in and sue anywhere? Now I'm not saying, let's make it you can go sue in all 67 counties and that also some states don't have forum non-convenience laws. Our forum non-convenience law, it looks in the consideration where it happened, where the witnesses are, how much business is done there, and granted the plaintiff has, can pick and choose but there are ways to get the case moved and that happens all the time. The Schultz case again, it came out last Friday, that was a Judge Platt decision with Mary Jane Boes and I forgot who else was on it; that moved the case properly from Philadelphia to Lehigh County. So there are protections within in the rules of civil procedure.

REPRESENTATIVE STEPHENS: Thank you.

CHAIRMAN MARSICO: Representative Kula.

REPRESENTATIVE KULA: Thank you Mr. Chairman. I guess just a statement to start out with. As a former member of the, I was a District Judge prior to this; so the venue rules, you know, came into play all the time. But as a Member of the Special Court

Judges Association, I know if there was some procedural administrative. You know we have the ability to sit down with the Rules Committee and discuss maybe a change that we thought should be accomplished. And it seemed to be a very efficient way of handling any rule changes. I just have great concern about legislatively being able to change administrative or procedural rules that will affect everyone that deals in the judiciary. The one thing that comes to mind on this legislation for me is what about service? I mean are you seeing in this legislation problems with making service because I know that sometimes can be a difficult procedure to follow?

SCOTT COOPER: I didn't even think of that until now. But that is a great point. A lot of times now when you file the lawsuit, that's when it, bringing up what Representative DePasquale said, one of the issues in a case are costs that are born if you have to file in the county where the accident happens and the defendant lives in another county. Now you're going to have to file in one county and that Sherriff is going to have to deputize a Sherriff in another county and you're going to have multiple counties. So it's going to increase costs to begin with but, in addition, you only have as a plaintiff, 30 days to serve the summons once you file the lawsuit. A lot of Sheriffs, I guess most Sheriffs, quite frankly and I don't blame them for it, are not sitting around waiting for Writs of Summons or complaints to go serve defendants with lawsuits. They have other more important stuff to do; they maybe go out one day a week. So by the time the case is filed, it gets to the Sherriff, then it goes from say Erie County down to Philadelphia County, I won't even do that, let's do Dauphin because at least that's less legal hassle. It could be 2 weeks, then you have to go reinstate the complaint and then it's going to be stale and you're going to have 3 months before the person's been served. So it's an

excellent point as far as service of process because you can; you have to serve the defendant in Pennsylvania personally. It cannot be by mail unless they're out-of-state and then if you have to serve them by publication. It brings another instance, because when you're serving a person by publication you have to, you're filing in the newspaper in the county where the case was filed. So now you're going to have someone in York County or Dauphin County hearing about a lawsuit that was filed against them if they subscribe to the Pittsburgh Post Gazette.

REPRESENTATIVE KULA: I agree. And as someone who has had to effect service through the procedural rules that we have now, I just really have great concern about this legislation. Thank you, Mr. Chairman.

CHAIRMAN MARSICO: Representative Cutler.

REPRESENTATIVE CUTLER: Thank you, Mr. Chairman. As I was reading your testimony here; you say, *therefore the even the legal coalition survey does not support this bill*. And one of the questions in that survey was under question 11. Let me if I may read that. *Under Pennsylvania law practice known as venue shopping allows attorneys to get trials moved to counties that have a reputation for handing more generous jury awards to victims and personal injury cases should state law be changed so that lawsuits can only be filed in the counties where the defendant resides or where the injury or damage has occurred?* And according to the survey, it says 86% was *yes*, 9% were *no* and 5% were undecided. So my question to you is; wasn't it about defendant or place of accident? Wasn't it about whether venue shopping should be stopped?

SCOTT COOPER: *No*. I actually, quite honestly, represent how I think it was an unfair and misleading question because it gives the impression that right now attorneys

can move from one county to the next by their choice, which is not really what happens. Right now the plaintiff has the county and I think it also gives the impression that right now the state law is actually broader than that last sentence; which is really a summary of what the current law is. I would think, if I was reading it, I would think someone could think, well it's right now where the current law, where the plaintiff resides. Whereas, this law's saying well the plaintiff can change it anywhere they want. Now do you want to change the law? So I think it was an unfair question. But if my interpretation of this is that 86% of the people agree with that last sentence.

REPRESENTATIVE CUTLER: Okay. Very good. I'm not going to debate you on it, you know as far as that goes it's just that you know I think, it's how anybody decipheres how a question is posed but it was part of the question and of course I think it basically states very clearly that they were in favor of stopping the venues shopping.

SCOTT COOPER: I'm not going to get into it because I already got yelled at by Representative Schroder last time for asking a question. But I just think it doesn't, it's written by a legal coalition group and we get into details as far as if there is a leading purpose. You read the last sentence and it summarizes what 1006, is right now.

REPRESENTATIVE CUTLER: Okay, thank you. Thank you Mr. Chairman.

CHAIRMAN MARSICO: Representative White.

REPRESENTATIVE WHITE: Thank you Mr. Chairman. My question, I guess I need to set it up a little bit is, what we're hearing today is kind of a group of sentences with an implied conclusion; which I think we're hearing; that this sort of rule is implemented in malpractice cases period. Medical malpractice suits have declined, period, therefore A equals B, and I think that the thought is what I'm hearing here is, that

because this is the, this happened in medical malpractice that it would automatically reduce those horrific plaintiff awards that we keep hearing about all the time. And I guess my question is preliminarily; what do you think the reason is for the reduction in the medical malpractice claims?

SCOTT COOPER: I think it was; it's multifaceted. It starts initially with the M-care obviously. But there was a lot of facets to M-care; the collateral source issue, the minors cases, there's a different statute of limitations on that, there's certificate of merit, there was the venue that the Supreme Court did, there was patient safety I think has been a big thing with the Patient Safety Authority and that's what, one of the things that this legislature did was at the same time pass patient safety. That's there's been a bigger recognizing that there's, that there were problems in the system, so it was a whole bunch of things working together, I think at the same time. If you look just across the board jury verdicts and less cases are being filed just because, I get a lot of people who say I don't want to sue, if I have to go to court I'm not going to sue. I think that it's multifaceted and I think that everyone is say Philadelphia, Philadelphia just, that's the main problem, in 2010, 47.6% of the jury verdicts and non-jury verdicts that's judge and non-jury verdicts were in favor of defendants in Philadelphia. And of jury verdicts in 2010 plaintiffs' verdicts were 180 from juries, but defense verdicts were 206. So the plaintiffs are not fairing so good in Philadelphia County, if you're looking at it from that perspective.

REPRESENTATIVE WHITE: I guess that one of the, the reason I asked that question is, whenever I looked at this bill, a lot times I, being here I've tended to examine things through the lens of maybe we shouldn't be over-regulating and posing government regulations on peoples' lives. And I think this is a rule or a proposal that could have a far-

reaching impact on an average person's life. And in order to be in support of something like that I internally have to ask myself, is there a, does the benefit of that outweigh the active of doing it? And I've yet to see anything and maybe you can enlighten us as to, is there some sort of epidemic of this forum shopping or is there an epidemic problem that would need to be addressed by this bill?

SCOTT COOPER: No, the courts are getting it right with forum non-convenience. And I think they've been more hyper-vigilant, not being a Judge but I've seen it in the different cases where you may have venue but you're still going to have to deal with a forum non-convenience motion if you're a plaintiff. And actually and that's a real concern if I'm a plaintiffs' lawyer in a case because I may be able to, because obviously there's more than 2 counties where a case can be filed; sometimes there's 3. Because you have in Representative Stephens case you, could have Montgomery County, you could have Philadelphia, and then you could have, you could identify the person who dropped the thing and the person slipped on in say Lackawanna County or something, you could have more. That the defendant is going to get the choice of where they want to move the case to, under forum non-convenience and you've got be careful what you wish for. You could end up having venue but end up being in a worse jurisdiction for your client than you thought you would end up to begin with.

REPRESENTATIVE WHITE: Along those lines, has there been any appellate court decision in Pennsylvania that's ruled that the legislature has the Constitutional authority to change venue?

SCOTT COOPER: There's the; which everyone is familiar with, the North Central Pennsylvania Trial Lawyers versus Weaver, the Commonwealth Court Decision,

the Schultz Decision, from last Friday clearly says it in there that the power is with the Rules Committee to establish the procedural rules. And I think there's another case Conner versus Schultz, that from 2003, that dealt with whether the Supreme Court could apply the rule retroactively. It had nothing to do with it the unconstitutional, but, is there a Supreme Court case, *no*. But the Supreme Court did have the chance in the Weaver case and it was mooted out by their decision but they had granted the petition so they could have just ruled on it then.

REPRESENTATIVE WHITE: And my last question is, a lot of times, one of the phrases we hear through this building a lot, is the phrase *unintended consequences* and that's usually a good reason not to do something. What I'm seeing here and I'd like your opinion on it, is I think that this bill almost is a; falls into a different category, which is the unspoken intended consequences and I think that there are in looking at this I think there are. This is being put out there as a bill designed to help people but in fact there may be some unspoken intended consequences and I was curious to get your opinion on that and see what your thoughts were?

SCOTT COOPER: Quite honestly, I'm uncomfortable with the word *intend*, only because I know Representative Cutler and I don't think he would intend, but I'm just ...

REPRESENTATIVE WHITE: I agree with you and *intend* might not be the right word; maybe just *unspoken* consequences.

SCOTT COOPER: I think and it's really like, the devil is in the details in a lot of this stuff. For example, I don't think anyone would envision what would happen in the situation where the person is injured in an out-of-state accident, that they would not have jurisdiction. I would hope not. I don't think anyone would think any of that stuff. That

anyone would say that, *well we know that the insurance policies say you have to sue the company where you reside but we're going to do a rule that's opposite*. You know it's the effects, or even for instance, what happens if you have a Joint and Several Liability defendant; which was one of the problems that came up in the venue rule, and you have a bar which everyone knows now is an exception potentially in the Joint and Several Liability. So you may have a Dauphin County bar, person drives up into Perry County and gets into the accident with someone else; now you have the accident happen in Perry County, the bar is in Dauphin County, which, where do you sue? All you're going to end up creating is more laws; more law suits because there is going to be more legal issues that are going to work their way up.

REPRESENTATIVE WHITE: Thank you very much.

CHAIRMAN MARSICO: Representative Ellis.

REPRESENTATIVE ELLIS: Thank you very much Mr. Chairman. Mr. Cooper, thank you for coming to testify today. I just want to kind of touch on what Representative Cutler was talking about and Representative White as well. Representative Cutler has introduced this legislation because he believes there's a flawed system that needs to get better. And we wanted to start the process and one of the things he even said in his early remarks is, *we want to invite the conversation and move forward*. You had brought up a few examples; the cause of action not being out of state or the examples you used, what we would like to see or what I would like to see are suggestions on how we can clarify that. Because I don't believe that the system we have right now is perfect and a lot of that, somebody said, *is there a problem?* Representative White said, *is there an inherent problem?* Well I say, definitely there is, because 86%, of the people think there is a

problem. Actually less than 20% of the people surveyed thought that we don't have too many lawsuits. So there is a perception problem and perception is often reality. So what I'm asking is do you know how Representative Cutler can correct the language to make sure these issues are taken care of? Or is it your position no matter what we do to it, you're comfortable with the law? It is right now and it doesn't need to be changed at all.

SCOTT COOPER: I'm comfortable with the rule. That's the problem is that there is nothing I would be willing to suggest because it's unconstitutional for the Supreme Court. If the legislature has a concern, then it's for the, the legislature can go to the Rules Committee or the Supreme Court and say, you know we have a concern under the Constitution, please do this. Just like the legislature and then if the Rules Committee acts and the Supreme Court acts; so be it. Just like the Supreme Court asks the Legislature a lot of times., I have a case that just came down from the Supreme Court last week where there has a been a problem with first responders not receiving underinsured motorist coverage and the Supreme Court basically begged in the legislation to correct the problem, that's happened for 9 years, that they felt doesn't have their power; so that's for the Legislature to do; so each body, I think, has their own job to do.

REPRESENTATIVE ELLIS: Okay and I appreciate that but the reality for us; we represent roughly 62,000 people each and if you stay in office long enough, eventually, you're going to run into a person who's faced a situation, a litigation situation where they have been on the wrong side of it. So we view it very much as a serious problem and we believe it's within our jurisdiction. And I would encourage you, in future testimony as we go on if you could, please make suggestions for us as well as, just telling us what is wrong.

SCOTT COOPER: The one suggestion I'd make is expand it to where the plaintiff resides. Have the rule 1006 and say where the plaintiff resides.

REPRESENTATIVE ELLIS: Okay. I appreciate that. Thank you very much.

CHAIRMAN MARSICO: Representative Cutler.

REPRESENTATIVE CUTLER: Thank you Mr. Chairman. To go off Representative Ellis' point, if we would expand the language to include where the plaintiff resides, would you and your organization be supportive of those changes and then therefore supportive of the bill?

SCOTT COOPER: No, not this bill. If it just says where the cause of action arose or the setting aside that I think you know we're opposed to it because it's unconstitutional. No, because that's not the rule. It should be if you want to put, where the cause of action arose, where the defendant does business or lives, or where the plaintiff resides; that I think is fair. I'd give the plaintiff the choice of suing where they reside.

REPRESENTATIVE CUTLER: Then you would support those three parameters or changes?

SCOTT COOPER: Well I think you get into the devil in the details. You know it's like one of those things; everything is well-intentioned then it goes up to legislative reference, comes back and you throw a comma in and a comma can change everything, as everyone learned 7 years ago.

REPRESENTATIVE CUTLER: Right, and I certainly agree with that and I appreciate your attention to detail Mr. Cooper. In regards to the contention that this bill is unconstitutional as drafted, I want to kind of frame out, if I can, why I think it is an

acceptable use of legislative authority. But I would also be interested in your view point as we go here, if that's okay? So you contend that House Bill 1552, as drafted, is unconstitutional. You've said that publically and I know you've said it on your blog and I've seen it in a variety of different forms. And that the issue that you have with me, obviously I'm an attorney, I'm an officer of the court we've had that discussion. While I certainly think I'm protected by legislative privilege to engage in this debate but your point that you raise for me and other attorneys is that venue is really a procedural issue and that under the Constitution of Pennsylvania the power to make procedural rules is vested solely in the Supreme Court. Is that correct?

SCOTT COOPER: Rules of Civil Procedure, yes.

REPRESENTATIVE CUTLER: Okay, so if there is an exception contained in the Constitution that authorizes the legislature to act in a variety of ways in regards to venue or jurisdiction which as I alluded to in my opening comments, that we have done previously, whether it be through dollar amounts, through the District Justice Court system, I know we have also changed by statute. We'll get into this a little later because I know we disagree. But we also changed the statute in regards to medical malpractice causes of action. If we have that rule making authority under the Constitution would you agree then that's it's not in conflict with the rule making authority of the Supreme Court?

SCOTT COOPER: I'd have to see the exception if there's a specific exception that says the Legislature has the power to prescribe venue rules, if there is one ...

REPRESENTATIVE CUTLER: The reason I bring it up Mr. Cooper, is any opinion that you cite in the Northwest Trail Attorneys Opinion, they actually make reference to it. It says in the absence of a counter veiling constitutional provision such as

Article 1, Section 11, authorizing the legislature to act in regard to venue in a particular area, the matter is committed exclusively to the party of the Supreme Court which obviously is what your organization is hanging its hat on and what really was the ground work for the underlined case. Is that a fair assumption?

SCOTT COOPER: You lost me.

REPRESENTATIVE CUTLER: I'm sorry; well you're saying on one hand that we can't do it because it's not constitutional. But yet on the other hand, even the Commonwealth Court recognized that barring the legislative ability to limit jurisdiction that they can only operate within whatever pieces we put in place as far as restrictions go. In fact I don't think we have to look any further than the decent of that opinion to find that, because it talks about Article 5, Section 5, the Pennsylvania Constitution, provides, quoting from the decent *there shall be one court of common pleas for each jurisdictional judicial district, having such divisions and consisting of such numbers of judges as shall be provided by law, so we can obviously change the number of judges, one of whom shall be the President Judge and having unlimited original jurisdiction in all cases, except as otherwise provided by law.* So I would argue that we do have the ability to limit jurisdiction of courts. We've done it multiple times through the legislative process, through the constitution and I'd be interested in your opinion of whether or not the legislature can act under this provision of the constitution and otherwise limit the jurisdiction of Commonwealth Courts.

SCOTT COOPER: There is a difference between venue and jurisdiction. So we're dealing with a venue bill as opposed to potentially jurisdiction. Jurisdiction is the ability to even just sue in Pennsylvania to begin with. So the legislature has the authority

to do something when it comes to jurisdiction; just the ability to sue in all 67 counties but not when it comes to venue. There are two different issues and I'm not a Supreme Court scholar, so I've never litigated a Supreme Court case and like Supreme Court constitution type thing.

REPRESENTATIVE CUTLER: Would you agree though?

SCOTT COOPER: But I think jurisdiction is not the same as venue. Jurisdiction gets you into Pennsylvania Court, venue says where you can. It's almost like what I think ATRA and everyone is worried about, is having venue in all 67 counties. That's why jurisdiction is different than venue.

REPRESENTATIVE CUTLER: Understood; and I will admit I have looked at both avenues. Both venue and jurisdiction; because I do believe as Representative Ellis alluded to, that there is an issue in the Commonwealth. Obviously we went from a relatively high number of filings in regards to medical malpractice cases. They have significantly dropped across the Commonwealth, as noted by the Supreme Court, and I'd actually like to quote from their press release I believe it was dated 2008, because I think that they also recognize our ability to have that concurrent limitation on jurisdiction. Because they said the latest statistics provide additional evidence and actually I think this would go to Representative White's question in regards to whether or not there was a crisis and it says *it provides additional evidence that a sharp drop in medical malpractice litigation which began in 2003 was not a temporary correction but a sustained response to the procedural rules changes adopted by the Supreme Court and the statutory changes enacted by the General Assembly.* And I recognize that we're on different sides of the issue in regards to the case which you are citing. I believe it was the Weaver case but I'm

sure that the Supreme Court needed to take up that petition at that time because they had already addressed it both via rule making as well as we had already done so via statute. And more importantly I don't think that's it's such a subtle judicial decision because there's Superior Courts that quote, and I'm quoting from Forester versus Hanson, this court being a Superior Court however, is not bound by any decision of the Commonwealth Court. Moreover the appellant makes no argument concerning the Constitution ability of Section 5101.1; so I certainly think, barring some further action on it, I'm not sure it's a settled matter. And back to the point of jurisdiction, would you agree with me that unlike venue which sometimes falls under the authority of Legislature pursuant to the Constitution and sometimes like in the Weaver case is determined to fall under the rule making authorities of the courts that the jurisdiction of the Courts is actually very different? We as a Legislature do in fact have the authority and that ability to make those changes and/or recommendations. To your point, I believe you made the distinction that venue is whether or not that you can file a case whereas jurisdiction says whether or not the court can even hear a case to begin with.

SCOTT COOPER: Correct; that's what; in fact the Schultz case last week, they go into a discussion about jurisdiction is substantive law and venue as procedural law. And that's the important difference in this whole debate. The Hanson case specifically says that you would in the Forester versus Hanson, the Pennsylvania Supreme Court which has sole responsibility for promulgation of rules regarding venue. That's what the Forester venue and then last week their discussing in Schultz the difference between venue and jurisdiction and they actually talk about McGinley versus Scott which is a

1960 case that says, *jurisdiction is substantive, venue is procedural* so that's the problem with a venue bill.

REPRESENTATIVE CUTLER: Alright, thank you Mr. Cooper. That will be all for right now, Mr. Chairman. Thank you.

CHARIMAN MARSICO: Chairman Caltagirone asked me to actually put a pinch hitter in for DePasquale. Representative Sabatina is going to pinch hit for DePasquale; sounds like a bocce team to me.

REPRESENTATIVE SABATINA: Thank you Mr. Chairman. I'm sure there's a compliment in there somewhere. My question is basically for Representative Cutler, if that's alright. Representative Cutler, I don't know if I'm missing something or what but what differentiates your bill from Senate Bill 138 back in 2002?

REPRESENTATIVE CUTLER: Actually Representative Sabatina, I would have to take a look at the bill, if you don't mind, real quickly.

REPRESNTATIVE SABATINA: Basically, and I will get to the root of the question is, if the court found that Senate; if your bill and Senate Bill 138 are substantially similar and the court found Senate Bill 138, unconstitutional I just don't know? How; what your plan is to get over that unconstitutional hump?

REPRESENTATIVE CUTLER: Actually, Representative Sabatina I, that goes back to my prior point, I'm not sure that it's a settled judicial matter because of the conflicting court cases that we have under, in regards to that. In addition you have in the interim; you have intervening action by the Supreme Court to promulgate rules in regards to venue. So I certainly think it's an issue which as I opened with to begin with today, I wanted to have the discussion on the issue. Just by way of time-line, the decision by the

Commonwealth Court in the Weaver case was argued April 1, 2003; decided on June 18, 2003, and the opinion was actually published on June 25, of the same year. On January 27, six months before that the Supreme Court had issued the order amending Rule 1006. So that's the intervening action in regards to the medical malpractice issue. That's why I'm not sure that it's a settled matter, specifically to the medical malpractice issue, whether or not it's the rule or the legislation. I would argue that given the comments by the Chief Justice of the Supreme Court, he credited the legislative changes in 2008, as taking part in that 7 year downturn of cases. So obviously there is some validity to us to limit jurisdiction of certain cases before them. That's why I'm not convinced and I do think that this bill is somewhat different because there has been intervening action, I think it's an open question and I think, as we discussed earlier, I think there is enough precedence where the General Assembly has limited jurisdiction of the courts that we can and more importantly should take action on this item. Specifically, and one of the items I forgot before we limited the jurisdiction in regards to the Gaming law, while I was not here, that is an issue where we gave the Supreme Court; extreme, exclusive jurisdiction over that matter. The court has made rulings, I believe more than 15 actually, 17 sticks in my mind but don't quote me on that number, rulings on that law and if there was not our ability to limit their jurisdiction I'm sure in one of those opinions they would have said, *you can't limit our jurisdiction on this and it should proceed to the normal, the normal court procedures*. That's why I believe that this bill is different; that's why I believe more importantly we should enter into the discussion here before us.

REPRESENTATIVE SABATINA: Do you; can you point or name any other case law that contradicts the Weaver case or ...

REPRESENTATIVE CUTLER: It would be the intervening action of the Supreme Court by rule in addition the court issued another order making the rule applicable to cases filed as of January 1, 2002.

REPRESENTATIVE SABATINA: Which rule are you referring to?

REPRESENTATIVE CUTLER: 1006, the Venue Provision. And to that point, there almost 6 months before the Commonwealth Court held 5101.1 was unconstitutional for encroaching on Supreme Courts' rule making authority. The Supreme Court itself incorporated the actual statute that we had passed and referenced it in its definitions to define the terms in its amended Rule 1006. The Supreme Court, of course, had the authority and I would argue, also the obligation under article 2 section 10C to suspend the statute at the belief that it was unconstitutional. Not only did it not do that, it actually incorporated the statute into its' very own rule. Given that the Supreme Court embraced the statute prior to the Commonwealth Court decision, I don't believe that that decision has any effect. More importantly, I'd like to get into a matter that is actually quoted in the underlining decision. It says that the Supreme Court has the ultimate authority for rule making and for deciding whether or not, how that is impacted. If that is in-fact the case, I would argue that the Commonwealth Court actually had no jurisdiction to rule in the matter in the first place and I think that would be another reason perhaps why they did not take it up. Because it would be like an executive level employee or one of our staffers dictating how we do our job as co-equal branches of government. You know, I think we all would agree that as a legislative body we can speak, but yet we would not let our staffers take any professional action on our behalf and to a lesser extent I think that would apply also to the Supreme Court and the variety of court systems that are under it;

because it would be like asking the Secretary of Education whether or not a law that was signed by the Governor was in fact an effective law. They don't have the authority to make that decision, therefore it likewise is inapplicable. I would argue in this case if the rule making authority is solely with them and their ability to declare what the jurisdiction of what the venue is, then that has to come from the Supreme Court and they have not yet spoken on this issue. But for the rule which actually codifies our statute.

REPRESENTATIVE SABATINA: That's an interesting point. Don't you think that if the Supreme Court Rule Making and Venue Making Committee thought that your bill or your idea was a good idea; don't you think that they would implement that instead of just leaving things as the status quo?

REPRESENTATIVE CUTLER: If you have any additional information on the courts position on this, I would love to engage in this. That's the whole reason for the hearing.

REPRESENTATIVE SABATINA: I'm just assuming that because the status quo remains that, that's the idea of the court; that's the best thing for them and since they haven't interjected...

CHAIRMAN MARSICO: Let me interrupt here. There will be time to interrogate the prime sponsor tomorrow at the voting meeting and afterwards, if you like. We have to move on here to Panel two. So Attorney Cooper, thank you very much for coming here, taking your time, we appreciate your testimony.

Panel two has two witnesses; please join us at the table. Attorney Mark Behrens is an attorney with Shook, Hardy & Bacon. Attorney Behrens has extensive experience in product liability law, defense litigation, liability reform, and counseling in the prevention

of liability exposure. He has served on the adjunct faculty of the American Universities Washington College of Law, and is a member of the American Law Institute. In the fall of 2010, Attorney Behrens taught advanced torts as a distinguished visiting practitioner and a residence at Pepperdine University of Law in California. Additionally in panel two, we also have David Patti, who serves as the President and CEO of the Pennsylvania Business Council. Mr. Patti has more than 25 years of government, political, and public affairs experience and has an intimate understanding of how the current state of civil litigation is affecting the businesses that are operating in this Commonwealth. Also how it is affecting those businesses that may be considering coming into the state. Thank you both for being here. Mr. Behrens you may begin first.

MARK BEHRENS: Thank you, Mr. Chairman and Members of the Committee. It's an honor to be here with you today and I too agree it's a good idea to have a hearing such as this and get the issues out. And I look forward to responding to some of the comments made by the previous witness. I've got a written statement that I will submit for the record and I know we're running a little late today so I'll try to keep my comments to about 5 minutes or so. Then I would be happy to stay as long as you like to answer any questions you have. Since there was a reference made earlier to Penn State football game, I thought I'd talk a little bit about home field advantage. Home field advantage in sports means something, you know the Steelers would much rather play at home than on the road. The Eagles certainly would prefer to play in Philadelphia than go up to the Meadowlands and I know the Packers like to play in Greenbay. Probably the most extreme example when I thought of this; I put in my remarks, was our NBA basketball team the Wizards, they're horrible, but at home they're actually la little better

than 500; they actually are okay at home, but last year they lost 26 games in a row on the road. Home field advantage means something; you're closer to your family, your fans and your facilities. Well in the legal system it works the same way. Normally, the normal course in litigation is, people do sue where they live. And that's typically where the cause of action would arise. Other than the extreme example of somebody that goes to the football game on the weekend and gets in a car accident; for the most part, people do tend to sue where they live. In fact the framers of the Constitution were so afraid of that local bias, people sue there for the same types of reasons that sports teams do. They think they're going to get an advantage. They think they're going to get an advantage from the local jurors who can connect with somebody from their own community. They think they can get an advantage from the local judge who can connect with them, especially if the defendant may be an out-of-state corporation. So people will normally look to take advantage of that in litigation. In fact the framers of the Constitution were so afraid of that potential for local bias that they created the Federal District Courts and gave them diversity of citizenship jurisdiction, to allow defendants to get the case out of that local state court when it involves a local plaintiff. So when you see people who are giving up that natural advantage and instead choosing to sue in a faraway place or in a different county than they live, then that tells you something is wrong here. Nobody would give up; voluntarily give up that natural home court advantage unless they thought they were going to get a better deal someplace else. And in Pennsylvania that better deal occurs in Philadelphia and that's where the plaintiffs are going. We heard a lot about the other witness talking about; well the bill doesn't allow you to sue where you live, we're here today because people aren't doing that now. We're here today because people aren't

suing where they live; they're suing in Philadelphia, even though they don't live there. They weren't exposed to something there. They didn't get in an accident there. They're suing there because they can find a tenuous relationship to some defendant in a case. That's the whole reason we're here today, so I want to clear through some of that fog. I think if everybody sued where they live you wouldn't have forum shopping abuse and Philadelphia wouldn't be named the number one judicial hell hole in the United States by businesses surveyed throughout the country by the American Tort Reform Foundation. What is going on here is totally counter to the natural course of litigation and it's going on because people think they can gain the system and get an advantage. Our position is that's just not right. The system should be fair. The playing field should be level. In terms of is their empirical evidence, obviously about a year ago ATRA polled its' membership, which is a cross section of non-profits, businesses large, medium and small for all over the country, and they all said that Philadelphia, to them, was the worst place to be sued in the entire United States. But about a week ago I saw there was a study that came out from a professor at George Mason Law School in Virginia, where they did, he did empirical evidence, went and looked at court filings and he provides data which I see is part of the record here today to verify empirically what our members tell us is going on is in fact going on. And there is forum shopping; cases are being brought in Philadelphia far out of proportion to the population that lives there. This makes it hard to attract employers into the State. I've got to tell you, as someone who goes around the country and I work around tort reform, measures around the country, being home to the number one judicial hell hole in the United States is not really welcoming to employers. And I really credit the General Assembly earlier this year in passing the Fair Share Act that sent a message

around the country that Pennsylvania cares about jobs and is willing to do what it takes to compete; to get them. This is a very modest reform but it's an important one because venue, forum shopping is probably the number one problem that is causing Philadelphia and the State to have this legal black eye. And this very modest approach would solve that. Frankly, there was a lot of talk about this polling, about 86% of people. I'm kind of surprised that the numbers were not higher. I could write the polling like this; if you go to your constituents and you say, *how do you feel about having your hard earned tax dollars go to support a court system for plaintiffs from other states?*, I bet 99% would say that's wrong. I bet if you went to your constituents and said, *how do you feel serving, taking time off of work or taking time away from your families to go serve on a jury to hear a case that has nothing to do with your county?*, I bet 99% or more would find that offensive. People don't like serving on juries as it, to begin with. But if you tell them, *okay you're going to take time off work and if you're self-employed, you're not going to get paid to serve on a jury of a case that has nothing to do with your county*, people would find that offensive and this reform does that. There is also a lot of talk about, *oh the horror stories about how this would work in practice?*; We don't have to guess how it would work in practice because the Medical Liability Rule has been around for almost 10 years now and it's worked fine. There hasn't been all kinds of litigation about, how do we apply this here or what are courts going to do, in terms of where the litigation is I looked at. Your venue rule now, it's about a page with a bunch of sub-headings, that's what generates litigation. Having a clear rule that says you have one place to sue where the cause of action arose, that's going to reduce litigation, not foster litigation. It's the current system that is litigation generating. There was also discussion, a lot of discussion about

the constitutional points; I'll touch on that and I think the prior witness did acknowledge that the Pennsylvania Supreme Court has never ruled on this issue. It is an unsettled issue before them. What's out there is a Commonwealth Court that's not binding on the state. There was a decent in the case, as Representative Cutler pointed out, who knows where the Pennsylvania Supreme Court is going to be on this. I went out and looked at the record when the legislature first considered the same issue in the Med M Care context. There was a lot of discussion on the floor about the Constitutional issues and the majority of the legislature all concluded that the legislature has the power to do this. The legislature clearly has the power to decide the jurisdiction of the courts and I think this is an extension of that. So the legislature has been through this before and it answered in the affirmative that the legislature has the power to do this and went forward. In pointing to an unsettled Commonwealth case, I don't think is entirely persuasive or certainly determinative of the issue. And I think it's also important to show what the experience in the Medical Liability Reform was when the legislature passed the M-Care legislation and made a policy statement. This is what we believe venue should be in medical liability cases. Soon there after the Supreme Court did amend rule 1006 to add a #1 that used the exact language the legislature came up with and adopted it as their rule. There was a co-operation of the courts and the legislature in that regard. The court thought they had the power to do this by rule making but they adopted the policy position of the legislature and I think that is a sound model that could apply here. This, I think, is something the legislature can do but it may also prompt judicial action when the court looks at your policy and adopts it as their own. Last thing I'll say is, a lot was talked about on forum non-convenience, well if you don't like Philadelphia you can move; you can't; look we're

here today because people don't find it to be the number one judicial hell hole in the country because it's easy to get out of. The plaintiffs' choice of forum is paramount, it's almost impossible to get out of Philadelphia, I can get 3 cases that will tell me anything, but there are literally hundreds if not thousands of cases in Philadelphia. We've got clients in all kinds of litigation in Philadelphia. They would love to get out of there; it's just not an option. So don't buy that argument that you just file a motion and you get out of there. In fact, defendants don't even file the motions because they get denied so often.

DAVID PATTI: Good morning. I would like to thank Chairman Marsico and Chairman Caltagirone for calling this hearing and for all of you on the Committee who have taken time to study this important issue. It is my belief that venue shopping is a very real threat to Pennsylvania's economic competitiveness. As the Chairman said in his introduction, I'm David Patti, the President and CEO of the Pennsylvania Business Council. Well it's my pleasure today to not only testify in behalf of PBC but also on behalf of a very broad coalition of business, non-profit, local government interests. They form a very broad based coalition in the state that includes the Pennsylvania Chamber of Business and Industry, Pennsylvania Manufactures Association, National Federation of Independent Businesses of Pennsylvania, and the Insurance Federation of Pennsylvania. I'm not a lawyer; I'm an economist and a numbers-cruncher by training. But I do know the phrase that the lawyers like to use; *hearsay evidence is not admissible in a court room*. Perhaps not, but in business decision making, reputation is everything. And Pennsylvania's reputation as a state with the nations' top judicial hell hole is legendary. Big jury awards, permissive court rooms, especially in Philadelphia, lure law suits. Business leaders make conscious decisions to avoid locating facilities or making

transactions that will bring them into such a venue or forum if they can help it. Rules that allow attorneys to bring actions on behalf of their clients in a venue, regardless of the proximity to the alleged injury or loss, destroy the economic competitiveness of that region. It's the illegal equivalent of knowing that nice people don't go into certain neighborhoods after dark. You don't want to go there if you don't want to get mugged. One reason job creators avoid doing business in Pennsylvania is that our legal climate and the ability to shop for venues is a major part of the problem. As my colleague, Mark Behrens provided you in his outstanding testimony, his written testimony provided and he elaborated on, we know that Pennsylvania has a problem. I want to talk not about the legal issues but the economic context. When I first came to Harrisburg as a Senate staffer in 1985, I was employed as a research analyst for Economic Development. I spent 18 years on the Board of Directors of the Berks County Industrial Development Authority, often working with Representative Caltagirone, four years as the Chairman of the Authority. I served in the Ridge Administration as Deputy Secretary of DCED and as the CEO of Team Pennsylvania. Of course, I've spent 19 years running business associations. I've spent my professional life trying to create and protect jobs in Pennsylvania. I can tell you, with that experience, the most important thing to business persons in making decisions is predictability. They want to know what to expect in any given situation, whether it be taxation, regulation, employment law, infrastructure or legal climate; business leaders want to make a decision where they can predict with some certainty the outcome. They need a reasonable expectation that the rules of law will be uniform throughout a state. There are so many things that they can't predict; market fluctuations, demand for goods, prices, weather, natural disasters and more, that the

desire for fair, consistent, uniform and predictable public policy is very acute. A legal system, in which litigation outcomes are perceived as random, results swinging between wild extremes, is frightening to business decision makers. The ability to shop for a friendly venue in Pennsylvania is one more factor that makes our litigation outcomes unpredictable and our state less desirable as a business location. In 2007, the Pennsylvania Business Council undertook an effort to aggregate and analyze many of the various comparative studies of state business climates. We updated that research in 2010. What it told us was, that Pennsylvania's legal climate was an attribute which ranked very poorly among the other states, across studies, liberal and conservative, studies from academics business groups, Pennsylvania was consistently in the bottom third among states for its' legal climate. And frankly this did not come as a surprise to us; we knew this was important and making, fixing Pennsylvania's legal climate a major policy goal of PBC. In a few weeks we will be announcing the first results of our project undertaken with the cooperation and support of the Pennsylvania Chamber, to build a model of Pennsylvania's competitive position that will allow us to rank ourselves annually against other states with a consistent set of measures and to bench-mark the performance of Pennsylvania policy makers year over year with simple consistent measures. To build this model our team selected variables used by site selection professionals. When they make their recommendations to clients for new business locations, we validate this list of variables by surveying senior executives to understand the weight they give to factors as they compare Pennsylvania to other business location opportunities. Given dozens of factors of which to choose, factors that include elements of business tax policy, environmental regulations, health care costs, work force education and training,

infrastructure and proximity to customers. Legal climate was a highly weighted factor, with Joint and Several Liability threshold caps on non-economic damages, statute of repose for product liability and venue shopping being specific decision factors that our business leaders cited and ranked. Now this probably should be no surprise in 2007, Mackenzie and Company National Report found that among all U. S. executives surveyed, litigation risks were second only to availability to qualified workers in determining where to establish their operations. As I said in business decision making, reputation matters and Pennsylvania's legal climate is not regarded as particularly good. Mark explained the concept of judicial hell holes in his written testimony provides more information about where Pennsylvania stands. The Pacific Research Institute compared legal climates of the States and research done in 2010. They aggregated 13 different variables to form an index of the states. Pennsylvania ranked 46th; only Florida, Illinois, New York and New Jersey ranked worse. Not surprisingly judicial hell holes are one of the 13 variables. The 2010 PRI numbers are based on 2009 hell hole rankings. So since Pennsylvania moved up in those lists, we've moved down in the PRI numbers since then. Things are getting worse not better thanks to our venue shopping problem. The top states in PRI's 2010 index were Alaska, Hawaii, North Carolina, South Dakota and North Dakota, Virginia; an emerging powerhouse was ranked number 8. Texas frankly was not ranked as highly as we might think but I suspect that you have heard about the reputation for Texas, as a great climate in which to do business and one that has a great legal climate. Studies show that doctors have moved to Texas in droves because of the better legal climate. Texas' overall business climate has consistently been ranked among the best over the last 10 years. As we know, Texas has added tens of thousands of jobs to its'

State throughout the last decade. Statistics credit Texas for creating 129,000 jobs in 2010 alone. Frankly I do not believe that Texas and Governor Perry created new jobs. I do think that Texas and Governor Rick Perry were absolutely masterful at convincing everyone else in the country that business can do well in Texas and that they have moved jobs from around the country to Texas. One statistic from the tax foundation showed that just from California to Texas alone in 2008, 32,000 people moved in search of work. So said, reputation is everything. I was in Austin 3 weeks ago and was able to spend a little time with Aaron Demerson, who's the Executive Director of Economic Development in the Office of the Governor. He's the equivalent to being the head of the Governor's action team for Rick Perry. He was telling me about how he had just, last month, been in New York for the US Open; the tennis championships, where he has a pavilion every year, where he lures East Coast firms to come take a look at Texas. He said, *yea, one of the things I tell them about is we got a great climate for legal cases, you want to come to Texas because we're a legal climate.* Perception is reality; Texas, North Carolina, Virginia are among the states perceived to have good legal climates. Add to this their low business taxes, right to work laws and competitive environmental regulations and it is clear why their increasing in population employment while Pennsylvania still struggles in doldrums. Pennsylvania took a major step forward this year when it adopted the Fair Share Act, reforming our Joint and Several Liabilities. That will help the perception of Pennsylvania's legal climate immeasurably. Now this Committee has the opportunity to take another giant step forward, end the perception that plaintiffs can shop for venues denying defendants justice, fairness and predictability. As Mark detailed for you, we know that ending venue shopping in medical malpractice cases had a profound impact in

stabilizing our medical legal climate and instill greater fairness, uniformity of law and predictability. The plaintiffs bar and Governor Rendell both acknowledged these facts in their press releases over the last several years. We can do the same for the Pennsylvania business, non-profit and local government communities by extending those same reforms to a civil litigation. In the last 2 decades, 11 of 50 states have made statutory reforms to limit or end venue shopping. This includes the highly competitive states such as Texas, South Carolina, Mississippi, Georgia and Tennessee. Since 1993, Texas has implemented 6 statutory changes dealing with venue shopping. Derek Bok the President Emeritus of Harvard University and former law school dean commented: *Law suits often have their greatest effect on people who are neither parties to the litigation nor even aware that they're going on.* Bok was right; the 6 million Pennsylvanians that make up Pennsylvania's work force are counting on you to improve our State's legal climate so you can protect their jobs. In summation; venue or forum shopping is a problem. Suits should be brought where the damage or loss allegedly occurred because the decision should be made by those persons who had the greatest connection to the case. Cases should be heard in the fairest most appropriate forum not the most favorable one for either the plaintiff or the defendant. Pennsylvania needs a liability system that's grounded in uniformity and predictability, including where cases are brought and how damages are accessed. On behalf of Pennsylvania's business, non-profit and local government communities but most importantly on behalf our nearly 13 million citizens who seek economic opportunity and security, I urged this committee to approve House Bill 1552, when you meet tomorrow. Thank you.

CHAIRMAN MARSICO: We have a few questions, according to Chairman Caltagirone. Representative DePasquale is back in the lineup for questions. Representative White is on deck. Actually he will be after our side over here.

REPRESENTATIVE DePASQUALE: Thank you. Our unemployment rate has sky rocketed since Fair Share became law but it's not because of the Fair Share becoming law it's because of the Governor's massive education cuts so if we want to have economic opportunity for everybody I don't believe that the track we're heading on with education cuts is the way to get there because if you don't have an educated work force I don't think we're going to be that economically competitive and that's not to throw it on you. I'm just making a broader statement on that. That's number one. Number two; I think this is just only because it keeps coming up. There's an 85%, the survey I keep hearing about which is not a poll but it is a survey of business leaders that 85% are concerned about this and we keep citing that that's a reason to act on this. Now if you polled my house you would conclude then that 100% of people in the United States are Steelers fans because all 4 of the people that live in my house are Steelers fans. So it doesn't mean it's popular with the same 85% with the public. But since I keep hearing this 85% I have 4 proposals that poll at above 80%, so I'm hoping that at some point to get a vote on these; that would be a ban on texting while driving which polls at 91%, a gift ban which polls at 94%, disclosure for robo calling which polls at 80%, and direct stock holder vote before a direct corporate donation which polls at 85% so...

CHARIMAN MARSICO: None of those questions are in this committee.

REPRESENTATIVE DePASQUALE: I just keep hearing this 85% is a reason to act. So hopefully...

DAVID PATTI: Are you asking me a question?

REPRESENTATIVE DePASQUALE: No, I'm using this as an opportunity to...

DAVID PATTI: Because I would love to address it.

REPRESENTATIVE DePASQUALE: Hopefully, you're one of the 91% that supports banning texting while driving as well.

DAVID PATTI: No. I'm one of the offenders. I'm under oath, I presume, so I'll confess.

REPRESENTATIVE DePASQUALE: But you can still support the bill that would crack down on it.

DAVID PATTI: No. But, first of all it wasn't us who were citing that statistic. It was the others testifying here that were citing that statistic.

REPRESENTATIVE DePASQUALE: No it just kept coming up so I felt the need to address it.

DAVID PATTI: If you were going to look at that, if you really want to get into that which is superfluous. But it's making a classical quantitative error. Which is, he's taking an; or statement and assuming that the number applies to either sides of the, or statement which you can't do. It's, we don't know. It could be 85 and 1, we don't know so the inference that all of those people that answered were for one side of that question is...

REPRESENTATIVE DePASQUALE: I just; this isn't a knock on you guys. It's just whenever I hear polling numbers is the reason to act and by the way, sometimes we've all, you've been called on a poll. There are issues; you're going to be in the minority on, issues in the majority on. I just, I think we've got to be careful as that's the

sole reason to act. But I do recognize one of the things you brought up with David, which I think is right on, and that is, I do think reputation has an impact and I think there's areas of Pennsylvania's business climate that we do have, I think our workforce is something that we get good marks on but I do think that some of these issues that you talked about...

DAVID PATTI: We looked at 202 statistics in the very first model we did in 2007 and we've updated it and the reason we are building our own is because different associations and organizations, and academics changed their models all the time so we wouldn't have one consistent one, you're right, actually education work force is very high, infrastructure business taxes legal climate very low, most of the things we were in the middle. The statistics and polling you should look at are the ones I cited on the people who make decisions about where to put billions in investment are saying they don't believe in Pennsylvania. Those are important statistics because those polls count with dollars.

REPRESENTATIVE DePASQUALE: And I do think that that is a fair point. I think there has been actually the Association for Justice threw some ideas on here on how this legislation could be improved while at the same time striking the balance between fairness and at the same time getting at the issue that you're talking about. Because I do recognize it on the Med-Mal issue; you know, done with the Democratic Governor, but granted, he bragged about a lot of those changes that were made. So I'm not discounting the issue but I think if we worked together on this we may be able to strike a fair balance. I can just tell you that, as drafted right now, I think it tips the balance too far the other

way, but I hear what you're saying and I don't completely discount that. I don't discount at all the idea whether it is right or wrong; reputation can drive dollars.

DAVID PATTI: And debating amendments is something that is perfectly part of the process.

CHAIRMAN MARSICO: We're going to go to Representative White.

REPRESENTATIVE WHITE: Be in York tomorrow. Thank you Mr. Chairman. I do want to take issue with the claim that business isn't being driven to Pennsylvania as a result of our legal climate. I represent Washington County which was just a couple weeks ago declared as having the third highest job growth in the entire nation. The entire Nation. Washington County Pennsylvania and I meet with those businesses moving in there all the time and never once have I heard someone say we would have come here sooner but that legal climate it's just too tough. I just want make that point, from my point of view; that's just not something I've ever heard and it's an area where, like you said, statistics can drive it. And I can tell you that statistics show that there are areas in Pennsylvania where businesses are coming and things are booming. So I would just put that out there. I take issue with that. I guess my question is hearing about the judicial hell hole of Philadelphia and about the experiences where forum non-conveniences is being denied; I guess my question would be for Attorney Behrens. Just from your own personal experience how many times have you ever had a judge deny a motion for forum non-convenience?

MARK BEHRENS: Representative my practice is in public policy and appellate work. I teach. I'm not trying cases in Philadelphia. Our firm does hundreds if not thousands pharmaceutical cases. I know I follow, I've written more probably about

anybody on asbestos litigation issues. Those are two of the sort of mass torts that are handled by the Center for Complex Litigation and all of the lawyers involved in that tell me they cannot get dismissed from Philadelphia. The plaintiffs choice under the Permissive Venue Rule is paramount and so those motions are not granted and frankly the judges I think have made clear at conferences and so forth they don't like lawyers filing motions that are just going to create more paperwork for them to read when people know what the outcome is going to be. So those cases are not dismissed from Philadelphia. That's why they continue to be named the judicial hell hole.

REPRESENTATIVE WHITE: So you are saying that judges, from my experience, I'm an attorney myself, from my experience; usually if a judge doesn't want to hear a matter and you gave them an opportunity to dismiss it away, it seems your logic is a little circular because you're saying that a judge wouldn't want to deal with a motion that would allow them to never have to deal with the case, is that what you're saying?

MARK BEHRENS: I think the issue in Philadelphia is at the appellate law, that those trial judges have to live under, gives the plaintiffs choice of forum, is the paramount consideration. So if they can find a defendant and venue is proper there, the trial judge doesn't really have that discretion to say, *I just don't feel like hearing this because the appellate courts have told them the plaintiffs' choice of venue is paramount*, and they'll be reversed. So they don't do that.

REPRESENTATIVE WHITE: But you're saying there are factors that would allow for a removal under forum non-convenience. But you're just saying that they are, because of those cases that don't fall under that established rule; then attorneys don't even file the motion?

MARK BEHRENS: That's correct.

REPRESENTATIVE WHITE: And you've never filed one?

MARK BEHRENS: That's correct.

REPRESENTATIVE WHITE: Are you licensed in Pennsylvania?

MARK BEHRENS: No sir.

REPRESENTATIVE WHITE: Okay. I guess my question would be, you talked about the current Rules of Civil Procedure and you brought up this reference of kind of home field advantage and you implied to the committee and everybody that was here that, under the current law, the plaintiffs have the ability to, kind of, establish a home field advantage. Is that a correct summary of your opinion?

MARK BEHRENS: Yea. Normally people will sue where they live. That's sort of the normal course of action or where, often time, that's where the course of action arose. Most of the time it's the same place but the issue in Pennsylvania is, that that's not what's happening. People aren't suing where they live or where the cause of action arose, they're suing in Philadelphia.

REPRESENTATIVE WHITE: So, if I live in Washington County and the cause of action arises in Dauphin County and the defendant is also from Dauphin County, would I have the ability to file suit in Washington County?

MARK BEHRENS: Today, yes.

REPRESENTATIVE WHITE: Under current rules?

MARK BEHRENS: Today, yes, but not under the bill.

REPERSENTATIVE WHITE: Because I'm looking at Rule 1006, in the Pennsylvania Rules of Civil Procedure and I'm not seeing anything in there that would

allow that. What it say is, *an action accept as otherwise provided by a subdivisions, an action against an individual may be brought by in and only in a county in which the individual may be served or in which the cause of action arose or where a transaction occurrence took place out of which a cause of action arose or in any other county authorized by law.* And I won't read it, as you had mentioned this is a one page rule. I see nothing in here that would permit me to establish this home field advantage you're talking about under current law. And I can say that, as someone who lives in Washington County, practices in Washington County, and helped get a lot of the judges in Washington County elected; I would love to have that kind of home field advantage. But it's not something that's available to me under current law. Am I misinterpreting that?

DAVID PATTI: If I may intervene? A non legal issue; Judge Moss from Philadelphia has been quoted in different journals telling attorneys to bring their cases to Philadelphia, that they'll get a better outcome. If she's advertising her county, she must think she has a home field advantage to sell. So I don't know what she knows that the judges in Washington County don't know. Maybe she can share it with them. But she's advertising Philadelphia as a place to come. She's coined a phrase; she's called it *economic development*, she has also called it *legal tourism*, and that she's helping bring legal tourism to Philadelphia.

REPRESENTATIVE WHITE: That doesn't answer my question. The point that was brought up was that under the current law, the plaintiffs could establish a home field advantage by shopping for venue. And a clear reading of the rules, The Pennsylvania Rules of Procedure, say that that absolutely is not true.

DAVID PATTI: What we saw in medical malpractice was very, very extenuating the transactions. So that a doctor practiced in Lancaster County, the patient was in Lancaster County, the procedure happened in Lancaster County, but the billing service for the doctor was in Philadelphia and so the case was brought in Philadelphia. I know that was one of the things that, in fact, the court talked about when they made the rule in 2003. There are similar antidotes and I don't have any of the cases in front of me to quote you. We can probably find them but there are similar antidotes, that business transaction portion of the rule is being stretched beyond most people's reasonable comprehension of what that probably was supposed to mean.

REPRESENTATIVE WHITE: As you just referenced that was in a medical malpractice case.

DAVID PATTI: But I think it goes to Representative Stevens's example with the pretzel vendor.

REPRESENTATIVE WHITE: Well, with all do respect, I would say that the example you brought up was a med-mal case and then in your explanation just now you actually just said it, *the court recognized that those special kind of cases required special kind of rules*. And the courts altered the rule to address the problem. So again this takes me back to, I think what I'm hearing here is, using the legacy of problems with med-mal in the past to justify personal injury and civil actions in the present. And you're using evidence that really doesn't apply to the current situations to justify wanting to make this rule change. So I'm going to go back to my original question. Can someone cite for me anywhere in case law or under the Rules of Pennsylvania Civil Procedure where under the example I gave, would I be able to venue shop and file claim in my home county?

MARK BEHRENS: Representative, I don't think they can. I went back and I re-read the rules; I may have misspoken before. Usually though, the plaintiff's residence typically is where the cause of action arose. You see it in the medical liability context. Most people don't drive two counties away to go to a doctor. They go to a doctor in their local town. Most people, if they have a product liability claim, they go to the local pharmacy that's in their county. They buy the drug; they take it at home; so most of these, hypothetical are get a little, I don't know maybe far afield from the reality that for most people the cause of action is the plaintiffs' home court advantage. They buy the product from a local store, they go to a local pharmacy and they go to a local doctor. It's not really usual that people drive across the State to a different county to go to a pharmacy or something like this. So, in most cases, I'm looking at where the cause of action arose and the typical case is the plaintiff's home court advantage.

CHAIRMAN MARSICO: Okay we're going to go to the next question. Representative Bradford.

REPRESENTATIVE BRADFORD: Kind of on the same idea because I know we've talked a lot about perception and antidotes and, kind of, ideas of what different options are out there or what is pushing this legislation. But I appreciate your frankness in what seems to boil down to, and I think you know I don't want to speak for you but both of you, kind of, said, *at the end of the day this is about Philadelphia and avoiding venue in Philadelphia County*. Is that a fair assessment?

DAVID PATTI: Philadelphia was the County cited by the judicial hell hole report. Specific Research Institute.

REPRESENTATIVE BRADFORD: We're past the judicial hell hole. What's the, what are, kind of, what makes up a judicial hell hole as a legal matter?

MARK BEHRENS: That's a good question. I'm council to ATRA and I'll actually refer some questions also to ATRA's staff person. Darrin McKinney is here, so he can tell you exactly...

REPRESENTATIVE BRADFORD: What is ATRA?

MARK BEHRENS: American Tort Reform Association.

REPRESENTATIVE BRADFORD: Who funds that?

MARK BEHRENS: It's a broad-based organization of over 300 businesses and non-profits, businesses large, medium and small. It's an umbrella organization. They get support from corporate members as well as non-profits and insurers. I mean it's pretty much a cross section of people that would be potential defendants in lawsuits.

REPRESENTATIVE BRADFORD: Apparently they'll be getting Scott's membership check later today I guess ----- a lot of little old ladies, a lot of multinational corporations...

MARK BEHRENS: Well if they're small business owners if they belong to a non-profit; the blood banks and so forth, those are all ATRA members.

REPRESENTATIVE BRADFORD: How many blood banks?

MARK BEHRENS: I think the American, the Blood Banks Association, but there are a number of non-profits.

REPRESENTATIVE BRADFORD: I guess what I am saying is a lot of these words are being thrown out. What is the legal definition of a legal hell hole?

MARK BEHRENS: ATRA's members are polled every year, and they're asked to, a hell hole is a place where defendants believe that they cannot get a fair trial.

REPRESENTATIVE BRADFORD: Defendants believe that?

MARK BEHRENS: Those are the members being polled; they believe that they cannot get a fair trial because of the way the law is being applied in that jurisdiction. ---Statistically it has included measures of number of lawsuits per capita, compared to other jurisdictions in the State. So Philadelphia County, if you look at lawsuits per capita, far exceeds that state average. It has looked at jury awards compared to state averages and compared them. A number of awards, one of the statistics that the Pacific Research Institute uses when they look at venue issues and legal climate issues, overall is number of awards over one million dollars. So first of all, urban areas are more likely to fall into those than non-urban areas. Rep. Bradford, Why is that? It's clear that, although in Mississippi, it's where the court houses are so you're going to get more practices of attorneys if the venue can be moved. That's where the attorneys are. It's where the corporate headquarters are so some of those suits won't get moved because the corporate headquarters are there. But Mississippi has always, depending on what you said, badly or poor or well, but Mississippi has been high in the past. West Virginia has been high in the past so it's not exclusively East Coast big cities. It's not necessarily New York, Washington, Philadelphia.

REPRESENTATIVE BRADFORD: In a prior life I worked at a big firm and we defended a case in Rogers County Mississippi so I know some of the jurisdictions. Let me ask you, kind of, on the venue specific issue in front of us, can we contort venue anyway we want? Do you believe it's a constitutional matter? I was

reading your CV on the Federal Society web site. Do you believe we can contort as a constitutional matter under the Pennsylvania Constitution, do anything with venue; can we just say since this is Philadelphia specific, except for Philadelphia County the current rules apply in which case you just cannot go into Philadelphia, can we do that constitutionally?

MARK BEHRENS: Well you're bound by other provisions; provisions of the constitution, that do set limits on legislative power. There are provisions...

REPRESENTATIVE BRADFORD: But on venue, could we do that?

MARK BEHRENS: I think if you were to do it specific to Philadelphia you would run into questions that would come up about special legislation. You know, I've seen in zoning...

REPRESENTATIVE BRADFORD: First class cities; can we just carve out first class cities?

MARK BEHRENS: Well I've seen zoning things have been done like that in the zoning context. As long as you have a general classification that anybody could potentially come into that class, legislatures can generally rule on that area. But to say, to identify one county for special treatment would probably create some concerns.

REPRESENTATIVE BRADFORD: But you've conceded that Philadelphia County is what's driving this here in Pennsylvania. And what I guess I'm wondering about is, does the legislature, in your opinion, have the ability to contort venue to pursue policy goals? Is venue a rightful area for the legislature to use as it sees fit to pursue a tort reform goal? Do you believe that is constitutional?

MARK BEHRENS: Yes, I do, for a number of reasons. One...

REPRESENTATIVE BRADFORD: Not jurisdiction, venue.

MARK BEHRENS: Right. I looked at the bill and it doesn't say to amend rule 1006, of the Rules of Civil Procedure. It says to amend Title 42 of the Code. That's a legislative issue. So, yes I do believe the case of 1006

REPRESENTATIVE BRADOFRD: You believe you can read those and they don't' at all conflict? You think that the existing Rules of Civil Procedure are not in any way affected by this proposal? We're over-riding Rules of Civil Procedure. Are we not?

MARK BEHRENS: Well, you're setting forth a legislative statement about where venue can be in the state. And I think the legislature can do that.

REPRESENTATIVE BRADFORD: We can over ride the Civil Rules? We can over ride the Rules of Civil Procedure. The Supreme Court has to show us deference to re-write the Rules of Civil Procedure?

CHAIRMAN MARSICO: We need to move on. The bill does not rewrite the Rules of Civil Procedure, the bill abrogates it. I appreciate your questions and have given you ample time to answer those, ask those questions and ample time for response. So we can move on and have Representative Cutler.

REPRESENTATIVE CUTLER: Mr. Chairman, actually I would like to pick up on that line of last questioning. And the reality is, yes, there are areas where we as a General Assembly, can influence the rules. For example; if we remove the jurisdiction of a certain court on a certain matter, much like we did with the medical malpractice rules, they would have to comply their rules to be consistent with the rest of the statues and the rest of the constitutional provisions. And again, I know that the first

testifier relied heavily on this case, Article 5, Section 5B, does in fact, give the General Assembly the ability to limit jurisdiction as it sees fit. And that's the disqualifier, if you will. It says that the Court of Commonwealth, Commonwealth Court shall have jurisdiction but as limited by law and law is a function of the General Assembly.

MARK BEHRENS: And if I may Representative? Yea, it might, we can interpret something in the Constitution, maybe the court would, and maybe they would not share the Representative Bradford or Representative DePasquale or Representative White's interpretation. It wouldn't be the first time that this General Assembly passed a law in the judicial realm; youth testifying by video tape, not confronting their accuser directly comes to mind and somebody said it was against the Constitution. We changed the Constitution. We've done that before if we think it's the right thing to do for judicial procedure. That's not that surprising or different. It wouldn't be the first time the General Assembly tried to say, *let's make good public policy and we'll let the law catch up with public policy*. I don't think we want to be so tied by, *well, this is the law and this is the rules*. I think we all learned in the fourth grade, this little model that says well the legislature makes the laws. The executive branch carries out the laws. And the judicial branch interprets the laws. And all of you know from your experience now, that's nonsense. You all make public policy; all three branches of government. There's a lot of movement in between the branches. Certainly in 2002 and 3, what we saw was that the Court followed the General Assembly and said you know we could strike this down but we'll just do the same rule because they agreed with the public policy. If what this Committee does is brings forward and what this hearing does is bring forward good arguments about public policy and the majority of the House and the majority of the

Senate and the Governor agree with that. We may get public policy, whether or not it ultimately gets challenged, whether or not it ultimately needs some constitutional revisions, that we'll have to see. But that doesn't mean you shouldn't be moving in to make what you believe to be good public policy.

REPRESENTATIVE CUTLER: Thank you. And furthermore, actually the provision that the trial court rested on in the Weaver case, it goes on to say that the Supreme Court shall have the power to prescribe general rules governing practice procedure and conduct of all courts. But we can't stop there. If you keep reading the rules it says; *if such rules are consistent with this constitution and neither abridges, enlarges nor modifies the substantive rights of any litigant. nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace.* I think it's important to recognize that very same provision of the Constitution that the majority is relying on, in the Weaver case, recognizes the right of the General Assembly to limit jurisdiction. And I would argue also in the descending opinion he actually, the descending judge actually, extends that to venue as well. I would also like to answer the question regarding this appearance of; simply you end up in the wrong court. You can place this, the motion of forum non-convenience in and then, *bing, bang, boom*, you're out. When in reality, that is not the judicial threshold that is required when that motion is made. *If*, and I'm quoting from Delmarva Power and Light Company, *a court will not dismiss a forum non-convenience unless justice strongly militates in favor of relegating the plaintiff to another forum.* This is especially true when the plaintiff has chosen to litigate in his or her home forum. And then furthermore, and this was in 2008, so I do think it's a little bit more timely, it says, *because the standard applicable to the petition*

to transfer venue on forum non-convenience grounds already tips the scales heavily in the plaintiffs favor, the court need not express leeway the relative convenience to the forum to both sides, that was *Wilson v LaVeen*. And Mr. Chairman I just wanted to thank everybody. I know that this discussion has been heated at times, I certainly appreciate it. That was actually the impetus for working on this piece of legislation requesting the hearing and I'm glad that we had the opportunity for it. But I would like to close and I want to thank you gentleman, for providing some fine data. I just invite all the Members who are still here to take a look at the figure 10, which outlines the medical malpractice case filings by Philadelphia and all other counties and we've noticed a noticeable decrease in those areas. At the same point flip back to figure 8, page 26, of their testimony and while all other counties, the total number of civil cases has remained relatively the same, Philadelphia has continued to climb almost three-fold. As compared to the other underlining issues and I would argue if the wait time in these forums substantially is against the litigants that who are seeking there. Then, *yes*, we do have an obligation or duty to step in and re-evaluate what the jurisdiction requirements as we can under the Constitution. We've done it before; we've done it with the gaming laws. We've don it in regards to the Justice of the Peaces and the different provisions there. The Constitution expressly gives us the ability to limit the jurisdiction on the Commonwealth Courts and I do think that we need to continue to have this discussion. I look forward to working with the Members of the Committee as well as the testifiers who were so generous with their time today and just want to thank you all for coming. Thank you Mr. Chairman.

CHAIRMAN MARSICO: Thank you Chairman Caltagirone for final comments.

CHAIRMAN CALTAGIRONE: I've been re-reading some of World War Two history and this kind of reminds me of General Montgomery with *A Bridge too Far* at Nijmegen, and I think this is a stretch a little bit too far. We keep talking about apples and oranges here and you know jurisdiction and venue. I personally, my own opinion, feel that it's the exclusive power of the Supreme Court to deal with venue and we will probably not hear the last word on this yet, even if this legislation happens to become law. Thank you Mr. Chairman.

CHAIRMAN MARSICO: Thank you Mr. Chairman. Thank you testifiers, for being here; for your time and your input. I do want to point out to the Members and to the public that included in your handouts, the handouts today, is written testimony from the *Pennsylvania Bar Association*, written testimony opposing House Bill 1552. And also Mr. Behrens, I believe referenced a report which is also included in your packets and that is the *International Center for Law and Economics Report*. So once again, both for being here and previous testifier, Attorney Cooper, for your time and your input, appreciate it. This concludes the hearing.

The above is a full and accurate transcript of proceedings produced by the Office of the Chief Clerk of the Pennsylvania House of Representatives.

Nedra Applegate, Chief Clerk's Office