IN THE SUPREME COURT OF FLORIDA

CASE NO. 84,329

KINNEY SYSTEM, INC.,

Petitioner,

vs.

THE CONTINENTAL INSURANCE COMPANY,

Respondent.

_____/

ON CERTIFICATION FROM THE
FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

AMICUS CURIAE BRIEF OF THE ACADEMY OF FLORIDA TRIAL LAWYERS IN SUPPORT OF THE RESPONDENT'S POSITION

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I
STATEMENT OF THE CASE AND FACTS

The Academy adopts and incorporates the factual counterstatement of Respondent Continental Insurance Company.

II
ISSUE ON REVIEW

WHETHER *HOUSTON v. CALDWELL* FORBIDS THE ASSERTION OF A MOTION TO DISMISS ON THE GROUND OF FORUM NON CONVENIENS IF ONE OF THE PARTIES TO THE ACTION IS A NON-FLORIDA CORPORATION HAVING ITS PRINCIPAL PLACE OF BUSINESS IN FLORIDA, IS REGISTERED TO DO BUSINESS IN FLORIDA, OR IS DOING BUSINESS IN FLORIDA.

III
SUMMARY OF THE ARGUMENT

The Academy of Florida Trial Lawyers respectfully submits that the important policies reflected in *Houston v. Caldwell,* 359 So. 2d 858 (Fla. 1978), which applies when any party to an action "is a resident of Florida," *id.* at 861, require application of the *Houston* rule to any corporation which maintains a permanent, ongoing presence in Florida. That includes Florida corporations, non-Florida corporations registered to do business in Florida, non-Florida corporations with their principal places of business in Florida, and non-Florida corporations which are subject to general jurisdiction in Florida because of a continuing presence here. *Houston* reflects the recognition that Florida has an interest in the assertion of claims by and against individuals and enterprises which have a continuing, ongoing presence in Florida. It is precisely for this reason that the *Houston* rule focuses upon residence—not citizenship. *Houston* recognizes that in the overwhelming majority of such cases, the time-consuming judicial administration of the forum-non-conveniens doctrine would be a waste of time, because the contacts with the litigation do not overwhelmingly predominate somewhere else. Therefore, *Houston* opted for a bright-line rule in cases involving Florida residents, in preference to the

laborious task of counting contacts.

Petitioner Kinney has conceded that the rationale of *Houston* is properly applicable both to Florida corporations and to non-Florida corporations with their principal places of business in Florida. But Kinney has failed to recognize that the same policies are implicated in cases involving corporations which are registered to do business in Florida (and therefore have consented to the exercise of general jurisdiction to adjudicate actions against them whether or not they arise from contacts in Florida), and in cases involving unregistered corporations which have a continuous and systematic presence here, and thus also are subject to general jurisdiction.[1/] Florida has a paramount interest in litigation involving both such types of corporations, which have purposefully and systematically injected themselves into the economic life of this state; and in the vast majority of cases involving such corporations, the contacts will not so overwhelmingly predominate in some other jurisdiction as to justify a forum-non-conveniens transfer. Under any reasonable definition of the word "residence", registered non-Florida corporations and corporations which systematically do business here are residents of this state.

Moreover, as we will note at the end of this brief, we believe that the Florida Legislature in numerous contexts has declared that such corporations are residents of this state. Regarding registered non-Florida corporations, § 607.1505(2), Fla. Stat. (1993) directs that a registered corporation "has the same but no greater rights and has the same but no greater privileges, and

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[1/] A court may constitutionally exercise "general jurisdiction" over a non-resident whose contacts with the forum are pervasive, systematic and continuous; and in such cases "connexity" is not required—the cause of action need not arise out of the defendant's contacts with the forum. "Specific jurisdiction" is based on more-attenuated contacts, through which the defendant has purposefully availed himself of the protection and benefits of the forum; but connexity is required. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73 & n.15, 105 S. Ct. 2174, 85 L. Ed. 2d 528, 541 & n.15 (1985); *White v. Pepsico, Inc.*, 568 So. 2d 886, 888 (Fla. 1990).

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. . . is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character." That statute directs that Florida corporations and registered foreign corporations must be treated the same; and in a variety of different contexts, the Florida Statutes treat such corporations the same. The position advocated by Kinney would necessarily treat such corporations differently, in direct violation of the Florida Statutes. And as we will note, the Florida Statutes also provide, in a variety of different contexts, that non-Florida corporations doing business here regularly, even if not registered, are residents of this state. Although *Houston* is a judge-made rule, its contours are defined in part by these legislative pronouncements. Kinney's position would violate those contours.

At bottom, the *Houston* rule applies to Florida residents, and all of the various corporations implicated are in fact—in all practical ways—residents of Florida. Not surprisingly, therefore, the underlying objectives of the *Houston* rule would be served by application of that rule to such corporations. That is the fundamental truth which Kinney has failed to rebut. It requires approval of the District Court's decision in the instant case.

IV
ARGUMENT

HOUSTON v. CALDWELL FORBIDS THE ASSERTION OF A MOTION TO DISMISS ON THE GROUND OF FORUM NON CONVENIENS IF ONE OF THE PARTIES TO THE ACTION IS A NON-FLORIDA CORPORATION HAVING ITS PRINCIPAL PLACE OF BUSINESS IN FLORIDA, IS REGISTERED TO DO BUSINESS IN FLORIDA, OR IS DOING BUSINESS IN FLORIDA.

As Petitioner Kinney has acknowledged, the doctrine announced by this Court in *Houston v. Caldwell*, 359 So. 2d 858 (Fla. 1978) depends upon the residence of one or more of the parties to the action—not upon their citizenship. *Houston* held that "the doctrine of forum non conveniens is inapplicable to any suit properly filed in this state where either party is a resident of Florida." 359 So. 2d at 861. As the Court is aware and as Kinney has acknowledged, a

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citizen of another state nevertheless may be a resident of Florida, and therefore subject to the *Houston* rule. In this light, Kinney has been forced to concede (*see, e.g.*, brief at 11) that at the least, *Houston* forbids the assertion of a forum-non-conveniens motion if one of the parties is a non-Florida corporation with its principal place of business in Florida.

In light of that concession, one of the three sub-issues certified by the district court is not contested. As the Court repeatedly has recognized, an appellate court will consider only those arguments for reversal assigned by the appellant; any issues not raised are waived. *See Dober v. Worrell,* 401 So. 2d 1322 (Fla. 1981); *Gifford v. Galaxie Homes of Tampa, Inc.*, 204 So. 2d 1 (Fla. 1967). The appellant's assignment of error must take the form of a separate argument in text, supported by appropriate authority.[2/] In the instant case, Kinney has conceded that *Houston* applies to non-Florida corporations with their principal places of business here, thus removing the issue from consideration.

Moreover, Kinney's concession cannot be countermanded by the amicus briefs filed in support of Kinney's position, because an amicus curiae has no standing to raise an argument which is not raised and briefed by the appellant himself. *See Higbee v. Housing Authority of Jacksonville,* 143 Fla. 560, 197 So. 479, 485 (1940); *Acton v. Ft. Lauderdale Hospital,* 418 So. 2d 1099, 1101 (Fla. 1st DCA 1982), *approved,* 440 So. 2d 1282 (Fla. 1983). It is for this reason that the underlying propriety of the *Houston* rule also is not an issue properly before this Court. The district court did not certify any such question to this Court, and Kinney has chosen not to argue any such question in its brief. To the contrary, "Kinney leaves to the various

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[2/] *See Rodriguez v. State,* 502 So. 2d 18 (Fla. 3d DCA 1986); *Singer v. Borbua,* 497 So. 2d 279 (Fla. 3d DCA 1986), *review dismissed,* 503 So. 2d 328 (Fla. 1987). *See generally United States v. Restrepo,* 986 F. 2d 1462 (2d Cir.), *cert. denied,* _____ U.S. _____, 114 S. Ct. 130, 126 L. Ed. 2d 94 (1993); *Sanjour v. Environmental Protection Agency,* 299 U.S. App. D.C. 304, 984 F. 2d 434, 437 n.3 (1993); *G. Heileman Brewing Co. v. Joseph Oat Corp.*, 848 F. 2d 1415, 1419 (7th Cir. 1988).

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presentations of amici the debate whether Florida should depart in whole or part from *Houston* and *Swain* . . ." (Kinney's brief at 20 n.6; *see also* Kinney's brief at 11 n.1). Kinney's failure to raise and brief the issue is a waiver, which cannot be countermanded by the amicus briefs. Thus, the propriety of the *Houston* rule is not an issue which is properly before this Court.

In light of the foregoing, the two sub-issues properly before the Court are whether *Houston* applies if any party to an action is a non-Florida corporation registered to do business in Florida, or if any party is a non-Florida corporation doing business in Florida in a general jurisdictional sense. We will consider those two sub-issues below.

A. The Policies Underlying Houston v. Caldwell *Apply Equally to Non-Florida Corporations With Their Principal Places of Business in Florida, Which are Registered to do Business in Florida, and Which are Subject to General Jurisdiction in Florida Because of a Continuing Business Presence Here.*[3/]

Throughout its brief, Kinney represents that the Third District Court's limitation of the *Houston* rule has been endorsed by all of the other Florida district courts, and that the Fourth District Court's analysis is but a lonely wave in a sea of contrary authority.[4/] Kinney's representation is alarmingly false. Outside of the Third and Fourth Districts, no Florida court has addressed the issue, directly or indirectly. Kinney has represented (brief at 9) that only a

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[3/] It is necessary to revisit the policies underlying the *Houston* rule in order to determine whether they reasonably extend to non-Florida corporations either registered to do business here or doing business here in a general jurisdictional sense. In reviewing the wisdom of *Houston* for this purpose, we do not intend to imply that the instant case presents an opportunity for revisiting the propriety of the *Houston* rule. *See supra* pp. 4-5.

[4/] *See, e.g.,* Kinney's brief at 9 ("The decisions of the Fourth District . . . are incompatible with precedent of the [Supreme] Court and all the other district courts of appeal that have considered the issue directly or indirectly"); *id.* at 17 ("[A] corporation's principal place of business has been the touchstone analysis of other district courts considering the issue, either directly or indirectly, before or after *Houston*"); *id.* at 19 ("collective consensus of Florida decisions is to treat a corporation's principal place of business as its residency"; this is the "defining characteristic of corporate residency"; Fourth District decisions "aberrant").

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few months after *Houston*, this Court characterized a corporation's principal place of business "as the standard for amenability to suit against a forum challenge," in *Seaboard Coast Line R. v. Swain,* 362 So. 2d 17, 18 (Fla. 1978). That statement is false. *Swain* reiterrated that the *Houston* rule applies to Florida residents, and held that a corporation with its principal place of business in Florida satisfied that standard. The decision says nothing to suggest that the *Houston* rule is limited to such corporations, nor do either of the two district-court decisions which Kinney has cited (brief at 17) for the proposition that a corporation's principal place of business is the "touchstone analysis" outside of the Third and Fourth Districts.[5/]

Only the Third and Fourth District Courts have spoken to this question. The one non-Florida decision which purports to characterize Florida law on the issue is *Sibaja v. Dow Chemical Co.,* 757 F. 2d 1215, 1217 (11th Cir.), *cert. denied,* 474 U.S. 948, 106 S. Ct. 347, 88 L. Ed. 2d 294 (1985), which reads *Houston* and its progeny to apply the doctrine to a corporation registered to do business in Florida. As the court in *Sibaja* recognized, it is the Fourth District Court's analysis—not the Third District's—which is consistent with the policies underlying the *Houston* rule.

1. The Nature of a Forum-Non-Conveniens Motion. In order to understand the

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[5/] Like *Swain*, *Adams v. Seaboard Coast Line R. Co.,* 224 So. 2d 797 (Fla. 1st DCA 1969) (also mischaracterized by the AT&T, etc. amici, brief at 4, 6) concerns a corporation with its principal place of business in Florida, and finds that corporation to be a resident for purposes of the rule subsequently adopted in *Houston*. *Adams* holds that such a corporation "[f]or all intents and practical purposes . . . occupies the same position as does a Florida citizen or a Florida corporation." It does not suggest, in any way, that residence in this context is limited to such corporations, or speak to the question at all. Similarly, *Datamatic Services Corp. v. Bescos,* 484 So. 2d 1351, 1360 n.2 (Fla. 2d DCA 1986) merely cites *Swain* for the proposition that "a Florida corporation with its principal place of business in Florida is considered a Florida resident" for purposes of the *Houston* rule. The decision expressly declined to address the question of "whether the *forum non conveniens* doctrine could apply to a Florida corporation which has its principal place of business in another state." *Id.* That hardly establishes "a corporation's principal place of business [as] the touchstone analysis . . ." (Kinney's brief at 17)—the "collective consensus of Florida decisions . . ." (Kinney's brief at 19).

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wisdom of *Houston v. Caldwell*, we need to review the parameters of a typical motion for dismissal based on forum non conveniens. As the Florida and federal courts have recognized repeatedly, such a motion to dismiss must be distinguished fundamentally from a motion to transfer venue, in which the transferor court retains the power of maintaining the viability of the action. In contrast, as the Court pointed out in *Houston*, 359 So.2d at 860, regardless of what steps the transferor court might take to assure the viability of an alternative forum before dismissing a case for forum non conveniens, there is never any guarantee.[6/] It is not surprising, therefore, that the trial court's typical exercise of discretion is significantly constricted on this issue:

> It should be borne in mind that we are not here dealing with a mere procedural mechanic by which an action is transferred from one forum to another without prejudice to either of the parties. We are here dealing with a final judgment dismissing a complaint which has been filed in a proper forum in accordance with the venue of this state, the effect of which might well be to either destroy the cause of action or greatly prejudice the rights of the plaintiff. Under these circumstances a trial court is required to exercise a much higher standard of discretion in passing upon such a motion to dismiss the action than is otherwise required in the disposition of procedural motions having a less drastic effect upon the substantive rights of the parties.

Adams v. Seaboard Coast Line R. Co., 224 So.2d 797, 801 (Fla. 1st DCA 1969).[7/]

[6/] The Court noted in *Houston* that even if the trial court determines that the defendant is subject to suit in another jurisdiction, "such a determination by the trial court does not have a binding effect on the courts of the more convenient forum." 359 So.2d at 860. Indeed, even if the defendant stipulates that he is amenable to suit elsewhere, such a stipulation may not be binding. Almost all of the amici have offered such a stipulation on behalf of Kinney, but none has made any attempt to demonstrate that such a stipulation would be at all meaningful. *See* AT&T, etc. brief at 28-29; Chamber of Commerce brief at 19; Product Liability brief at 6, 21.

[7/] *Accord, Piper Aircraft Co. v. Reyno,* 454 U.S. 235, 253, 102 S. Ct. 252, 70 L. Ed. 2d 419, 434 (1981); *Norwood v. Kirkpatrick,* 349 U.S. 29, 31-32, 75 S. Ct. 544, 99 L. Ed. 789, 793 (1955); *All States Freight, Inc. v. Modarelli,* 196 F.2d 1010, 1011 (3d Cir. 1952); *Jiffy Lubricator Co. v. Stewart-Warner Corp.*, 177 F.2d 360, 361-62 (4th Cir. 1949), *cert. denied,*

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As the quotation above makes clear, notwithstanding the plaintiff's right to choose his forum, and notwithstanding the Draconian nature of a dismissal, the trial courts of most states, and of the federal system, do possess some limited discretion to dismiss a case in which the contacts predominate in favor of another jurisdiction, on the theory that in such cases the plaintiff apparently has chosen a theoretically-available forum for an improper purpose--that is, he has imposed unacceptable burdens upon himself, his opponents, and the judicial system, in order to obtain some strategic advantage. As the U.S. Supreme Court put it in *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 507, 67 S. Ct. 831, 91 L. Ed. 1055 (1947): "[T]he open door [to the courthouse] may admit those who seek not simply justice but perhaps justice blended with some harassment. A plaintiff sometimes is under temptation to resort to a strategy of forcing the trial at a more inconvenient place for an adversary, even at some inconvenience to himself."

In these rare and extreme cases, the defendant can secure a dismissal, but only if he sustains his burden of demonstrating, taking all relevant factors into consideration, that the contacts in the case strongly predominate in favor of the proposed transferee jurisdiction. As the Supreme Court put it in *United States v. National City Lines, Inc.,* 334 U.S. 573, 589 n.35, 68 S. Ct. 1169, 92 L. Ed. 1584, 1594 n.35 (1948), a "'mere balance of convenience' in favor of the defendant would be insufficient to justify application of the doctrine of forum non conveniens." To the contrary, the court continued, a dismissal or transfer is warranted only to avoid vexatious and oppressive consequences. *Id.*[8/] At bottom, the question is whether, taking

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338 U.S. 947, 70 S. Ct. 484, 94 L. Ed. 584 (1950).

[8/] *See Piper v. Aircraft Co. v. Reyno,* 454 U.S. 235, 255, 102 S. Ct. 252, 70 L. Ed. 2d 419, 435 (1981); *Gulf Oil Corp. v. Gilbert,* 330 U.S. at 508, 67 S. Ct. 831, 91 L. Ed. 1055; *Factors Etc., Inc. v. Pro Arts, Inc.,* 579 F. 2d 215, 218 (2d Cir. 1978), *cert. denied,* 440 U.S. 908, 99 S. Ct. 1215, 59 L. Ed. 2d 455 (1979); *Willemijn Houdstermaatschaapij B.V. v. Apollo Computer, Inc.,* 707 F. Supp. 1429 (D. Del. 1989); *Calva v. American Air Lines, Inc.,* 177 F. Supp. 238, 239 (D. Minn. 1959).

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all relevant factors into consideration, litigating the case in the alternative forum would be ***substantially*** more convenient for the parties and the court.[2/]

Given the extreme nature of a forum-non-conveniens dismissal, the heavy burden imposed upon the moving party, the enormous amounts of time required in the trial and the appellate courts to adjudicate such motions, and the rare number of cases in which they have merit, the *Houston* rule reflects the reality that in the vast majority of cases involving Florida residents, it would be impossible for the defendants to establish that Florida is such an attenuated forum that dismissal is warranted for compelling and substantial reasons. In any type of case, as AT&T and the other corporate amici tell us, dismissal is appropriate only if the contacts elsewhere are "unusual and compelling" (brief at 29). In light of the plaintiff's right to choose his forum, and the state's interest in controversies involving its residents, it is simply not worth the substantial judicial resources which would be expended to entertain such motions in cases involving Florida residents. Thus, while recognizing that a case-by-case analysis "may be a reasonable policy," this Court in *Houston* chose to endorse the *Adams* rule instead, 359 So. 2d at 860-61:

> While we recognize that the approach presented by the district court in this case (following the New York courts) may be a reasonable policy, we decline to adopt it for several reasons. The dismissal of a suit is a drastic remedy which should be ordered only under the most compelling of circumstances. Under Florida law, the plaintiff's choice of venue is usually favored if the election is one which has been properly exercised under the applicable statutes. Although an action filed in one Florida county may be transferred to another county for the convenience of parties, or of witnesses, or in the interest of justice, the courts of

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[2/] *See Piper Aircraft Co. v. Reyno,* 454 U.S. at 249, 102 S. Ct. 252, 70 L. Ed. 2d at 431-32; *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 508, 67 S. Ct. 839, 91 L. Ed. 1055 (1947); *Williams v. Green Bay & Western R. Co.,* 326 U.S. 549, 557, 66 S. Ct. 284, 90 L. Ed. 311 (1946); *Johnston v. State,* 112 Fla. 189, 150 So. 278 (1933); *Atkins v. State,* 100 Fla. 897, 130 So. 273 (1930).

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> this state are without similar authority to transfer a suit to a forum in another state. Although under the district court's position it is essential for a trial court to make a finding that the defendant is amenable to process in the more convenient forum prior to entering a motion to dismiss, such a determination by the trial court does not have a binding effect on the courts of the more convenient forum. In addition, the question of amenability of the defendant to process in another state may often times be quite complicated, and its resolution may involve great expenditure of judicial labor. In comparison, the rule of law as set forth in *Adams*, although less flexible, is just, is serving well, and is easier to apply. If venue has been properly established because one of the parties is a resident of this state, then the suit may not be dismissed because another state may be more appropriate. We believe the certainty of resolution of the dispute outweighs the possible benefits achieved by dismissal in favor of a more convenient forum. This state has a fundamental interest in resolving controversies involving its citizens. In light of this disposition, we need not treat constitutional issues urged by the parties.
>
> Accordingly, we hold that the doctrine of forum non conveniens is inapplicable to any suit properly filed in this state where either party is a resident of Florida.

Houston thus reflects the recognition that allowing administration of the forum-non-conveniens doctrine by the trial courts, and review by the appellate courts, in cases involving Florida residents, in the vast majority of cases would be a waste of time. Given the contacts which are inherent in the recidence of one or more parties in the forum, *Houston* recognizes that in the vast majority of such cases the moving party will not be able to satisfy his heavy burden of demonstrating that the contacts in the case overwhelmingly predominate in favor of transfer. Of course there may be a handful of exceptions—cases in which a balancing of the contacts will overwhelmingly predominate in favor of some other jurisdiction. Kinney and the amici have carefully chosen such exceptions for the Court's consideration. But in the vast majority of cases, the task of counting contacts will be a waste of the Florida courts' time. And in addition to the important administrative advantage of a bright-line rule, the Court also noted in *Houston*,

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359 So. 2d at 860-61, that Florida "has a fundamental interest in resolving controversies involving its citizens."[10/]

Without question, these considerations apply no less to a non-Florida corporation with its principal place of business in Florida (a point Kinney has conceded), to a non-Florida corporation registered to do business here, or to a non-Florida corporation which has an ongoing existence here. Given the defendant's permanent commercial association with the state—in the form of its principal location here or its registration to do business here, and with it the acceptance of jurisdiction here; or given its systematic and ongoing participation in the stream of commerce here—it is unlikely that a balancing of contacts between the litigants, the cause of action and Florida will not simply tip the balance slightly in favor of some other jurisdiction, but instead overwhelmingly predominate in another jurisdiction, such that the balance of contacts points overwhelmingly to another forum. That may happen in some small minority of cases, but in the overwhelming majority the defendant's permanent association with Florida will preclude any assertion of an overwhelming mandate in favor of some other jurisdiction. In contrast, as we note next, the federal rule which Kinney and its amici have advocated is based upon an entirely different set of considerations.

2. *The Federal Rule.* In the federal system, as Kinney and the amici have observed repeatedly,[11/] the residences of the parties is only one of the many factors to be balanced, and

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[10/] Although Kinney and the amici all have stressed that *Houston* was decided 16 years ago, and that alot has changed since then, we think that advances in technology and communications only underscore the wisdom of the *Houston* rule. Those advances, as AT&T and the corporate amici point out (brief at 7), may have complicated the definition of a corporation's residences; but they also make it less difficult for a multi-state corporation, which is resident here but also based elsewhere, to defend an action here. For a corporation with a continuous presence here, advances in technology and communications only make it less burdensome to defend here.

[11/] *See* Kinney's brief at 20-21; Department of Commerce brief at 5; Chamber of Commerce brief at 4; AT&T, etc. brief at 4, 12; Product Liability brief at 5-11.

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it is not necessarily dispositive that one or more parties may be a resident of the state in which the federal district court is located.[12/] Of course, the federal rule is not binding upon a Florida court;[13/] and the federal system is significantly different from a state system, because the notion of state sovereignty has little or no relevance within the federal system. To the contrary, there is only one United States District Court for the entire nation, which in turn is sub-divided into various geographic districts. (Thus, for example, subpoena power in the federal system is based on distance--not on state boundaries.) In that context, because the issue of forum non conveniens is a procedural issue, determined by federal law in both federal-question and diversity cases, notions of state sovereignty are simply not relevant. And for the same reason—that the system consists of one court for the entire nation—there is no administrative consideration analogous to that which motivated this Court in *Houston*. One way or another, the case will be litigated within the same system; thus the court is properly less concerned with the plaintiff's choice of forum, and more concerned with the overall balance of efficiency within the nationwide system as a whole.

Therefore, as the Supreme Court held in *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 508-09, 67 S. Ct. 839, 91 L. Ed. 1055 (1947), the federal court must focus upon two general considerations. First, the federal court looks to the private interests of the litigants, including their ease of access to sources of proof, the availability of compulsory process, the cost of obtaining the attendance of witnesses, the possibility of viewing the premises, and other practical

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[12/] *See Piper Aircraft Co. v. Reyno,* 454 U.S. at 249, 102 S. Ct. 252, 70 L. Ed. 2d at 432; *Koster v. (American) Lumbermen's Mutual Casualty Co.,* 330 U.S. 518, 527, 67 S. Ct. 828, 91 L. Ed. 1067 (1947).

[13/] *See Pope v. Atlantic Coast Line R. Co.,* 345 U.S. 379, 384, 73 S. Ct. 749, 97 L. Ed. 1094, 1099 (1953); *Adams v. Seaboard Coast Line R. Co.,* 224 So.2d 797, 799 (Fla. 1969) ("The [federal] statute is applicable only to trial courts in the federal judicial system and has no binding effect on the courts of the various states of this union").

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problems relating to the ease of the trial; and second, the federal court looks to public factors bearing on the administration of cases in the federal system, including court congestion, the forum court's familiarity with the substantive law to be applied, the avoidance of unnecessary problems in conflict of laws or the application of foreign law, the unfairness of burdening citizens in an unrelated forum with jury duty, and the "local interest in having localized controversies decided at home." *See Piper Aircraft Co. v. Reyno,* 454 U.S. at 241 n.6, 102 S. Ct. 252, 70 L. Ed. 2d at 427 n.6. Even this last factor--the "local interest in having localized controversies decided at home"--focuses not upon the sovereign interest of the state in which the federal district court happens to be located, but rather upon the federal court's interest (one of many) in adjudicating a matter of local interest. There is little or no place in this calculus for the sovereign interests of a state, or for the administrative convenience of a bright-line rule, because those interests are simply not implicated.[14/]

3. Application of the Houston *Rule to Registered Non-Florida Corporations, and to Non-Florida Corporations with a General Business Presence in Florida, Will Not Produce any Adverse Results.* Kinney has raised four policy challenges to the application of *Houston* in this context.

First, Kinney argues that a reflex application of *Houston* to registered non-Florida corporations, and to Florida corporations doing business here, will deny the Florida courts the flexibility inherent in the doctrine of forum non-conveniens. Kinney's brief is replete with

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[14/] A good example is provided by the Chamber of Commerce (brief at 19 & n.12)—*In re: Union Carbide Corp., Gas Plant Disasters at Bhopal, India in December 1984*, 809 F.2d 195 (2d Cir.), *cert. denied,* 484 U.S. 871, 108 S. Ct. 199, 98 L. Ed. 2d 150 (1987), in which the federal court denied a U.S. forum to residents of India, notwithstanding that defendant Union Carbide has its principal place of business in New York. That outcome may comport with the criteria underlying the doctrine in federal court, but a state court unquestionably has an interest in adjudicating an accusation of such wrongdoing by one of its residents. It is precisely such an interest which the *Houston* rule vindicates. *See Houston*, 359 So.2d at 860.61.

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references to the flexibility inherent in a case-by-case approach.[15/] It seems ironic that Kinney would argue against the application of *Houston* on the ground of flexibility. The Court in *Houston* specifically noted that the rule adopted, "although less flexible, is just, is serving well, and is easier to apply." 359 So. 2d at 861. The *Houston* rule sacrifices flexibility for larger objectives. In this context, it is hardly an argument against the application of *Houston* that the rule is less flexible than a case-by-case approach. The relevant question is whether those objectives will be served by the recognition that corporations registered to do business in Florida, and corporations regularly doing business in Florida, are residents of this state. As we have noted, all of the policies which underly *Houston* are equally applicable to such corporations.

Second, Kinney has argued repeatedly (*see* Kinney's brief at 10, 19, 22, 25-26; *see also* AT&T, etc. brief at 5, 23, 25) that application of *Houston* to such corporations would eviscerate the doctrine of forum non conveniens in Florida. Kinney asserts that "[s]uch immunity to *forum non conveniens* has the practical affect [sic] of collapsing the entire doctrine into the question of minimum contacts for suit, by blurring the difference when a multistate corporation is sued" (Kinney's brief at 10). But even apart from the irony that Kinney would oppose application of a doctrine which forbids invocation of the forum-non-conveniens analysis, on the ground that it forbids invocation of the forum-non-conveniens analysis, Kinney's reports of the demise of that doctrine are a bit exaggerated. As the Court stressed in *Houston*, the doctrine is inapplicable (and thus the jurisdictional question is controlling) only in a category of cases in

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[15/] *See, e.g.*, Kinney's brief at 2 (Fourth District's "resolution . . . handcuffs the opportunity to apply the doctrine flexibly to a host of cases"); *id.* at 10 ("flexible common law remedy," "flexible application"); *id.* at 20 ("flexibility of *forum non conveniens* law"); *id.* at 24 ("pragmatism to which application of *forum non conveniens* should strive"; "practical approach"); *id.* at 27 (Fourth District's view "inflexible"). *See also* Chamber of Commerce brief at 4; AT&T, etc. brief at 16, 33; Product Liability brief at 6, 14.

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which it is virtually certain that a motion to dismiss for forum non conveniens would fail. In those cases, the jurisdictional question would end up controlling anyway. But the forum-non-conveniens issue persists in other cases. It remains applicable whenever a non-Florida plaintiff invokes Florida's long-arm jurisdiction to sue an individual who does not live in Florida, or a corporation which does not have a general and continuous business presence here. These cases cover the wide variety of contacts which are subject to the assertion of long-arm jurisdiction under § 48.193, Fla. Stat. (1993), including the conduct of a business venture here; the commission of a tortious act here; the ownership of real property here; a contract for insurance here; certain domestic-relations contacts; causing injury to persons or property here; or breaching a contract by failing to perform an act required to be performed here. In all of these cases, notwithstanding that the defendant may be subject to jurisdiction here, the doctrine of forum non conveniens will remain applicable.

Third (brief at 14, 19, 21, 22), Kinney argues that the application of *Houston* to such corporations would make Florida "a haven for suit on causes of action accruing elsewhere" (p. 14), and thus would "increase the congestion of Florida courts" (p. 19). *See also* Department of Commerce brief at 10; Chamber of Commerce brief at 12; AT&T, etc. brief at 19-23; Product Liability brief at 4, 28. The amici also argue that cases which would be dismissed but for the *Houston* rule are more complicated to litigate, involving difficult choice-of-law questions, problems accessing witnesses and documents, and problems of translation (Chamber of Commerce brief at 14-15; AT&T, etc. brief at 22, 23; Product Liability brief at 24-26, 32-33).[16/] These arguments necessarily assume that the *Houston* rule already has increased court congestion, by attracting complex lawsuits against individuals who are residents

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[16/] Of course, none of these problems will go away if the case is transferred elsewhere. Because the case involves a Florida resident, all of these problems will simply travel with the case wherever it goes. The amici's position would simply place the burden on some other court.

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of Florida, and against Florida corporations. But Kinney has cited no evidence that the *Houston* rule has had such an effect, and thus that application of the rule to registered non-Florida corporations or to corporations doing business here will have a similar effect.[17/] Moreover, the *Houston* rule necessarily reflects this Court's judgment that suits against Florida residents belong in Florida, both because of Florida's interest in the behavior of its residents, and because the balance of contacts in the vast majority of such cases will not overwhelmingly predominate in some other jurisdiction. In this context, it is a bit incongruous for Kinney to argue for exclusion from the "congestion" of Florida's courts a class of cases which this Court has said belong here because of Florida's interest in such cases. If, as we have argued, these types of actions are amenable to the objectives which underlie the *Houston* rule, then they should hardly be excluded on the ground that the rule will keep them in Florida. That is precisely what the rule intends to do.

Finally on this point, Kinney and the amici have ignored completely the significant amount of court congestion which the *Houston* rule has prevented, in the form of countless hours of litigation which would otherwise be devoted to the forum-non-conveniens issue in our trial and appellate courts. As AT&T and the other corporate amici have demonstrated (brief at 19-22), the number of civil actions in Florida has increased significantly in the past 15 years. In the tort field, the length and complexity of those actions has increased exponentially after *Fabre v. Marin*, 623 So.2d 1182 (Fla. 1993), as plaintiffs find no reason to settle with parties who will

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[17/] The Chamber of Commerce contends (brief at 12) that the *Houston* rule has attracted the asbestos litigation to Florida, in which "[t]he vast majority of the claimants . . . are out of state residents allegedly injured out of state," and "[t]he vast majority of defendants are neither Florida corporations nor headquartered in Florida." No citation is offered for these statements, which presumably reflect the Chamber's intuition. The asbestos cases are discussed, with supporting citations, in the amicus brief (in support of the plaintiff's position) of Carnival Cruise Lines, Inc., Home Shopping Network, Inc., and Ivax Corporation. The asbestos cases have been filed throughout the United States, and are concentrated in a number of non-Florida courts. The Chamber of Commerce's representation to the contrary is false.

end up on the verdict form anyway; and as the litigants spend countless hours debating the asserted fault of non-parties, or of parties who were brought into the action only because of *Fabre*. These cases, and others, would be still longer and more complex if the circuit courts were engaged case by case in counting the contacts with all implicated jurisdictions. In this light, Kinney's prediction of a net gain in court time if *Houston* were constricted can only amount to pure guesswork.

Fourth and finally, directly contradicting its third argument, Kinney contends (brief at 19-20) that the inclusion of such cases in the *Houston* rule would "deter, rather than increase the business activities of foreign corporations in Florida." *See also* Department of Commerce brief at 4-7, 8-9, 11-12; Chamber of Commerce brief at 14 & n.8, 17; AT&T, etc. brief at 16 n.14, 18 n.19; Product Liability brief at 34-35. If that were true of course, then Kinney should be able to demonstrate that the *Houston* decision, made in 1978, has deterred business enterprises from incorporating in Florida—a status which unquestionably makes them subject to the *Houston* rule. And yet, Kinney can point to no evidence that the *Houston* rule has deterred corporations from originating or incorporating here. (AT&T and the other corporate amici tell us that "Florida has emerged as a center for international business as well as a major point of entry" (brief at 16 n.14)). Given Florida's booming economy, it would be difficult to make such a showing. And if *Houston* has not deterred incorporation in Florida, there is no reason to believe that the Fourth District Court's application of *Houston* would deter corporations from registering to do business here, or from doing business here.[18/]

[18/] In addition to the four policy arguments discussed above, some of the amici have raised two additional policy arguments not raised by Kinney (and thus not properly before the Court, *see supra* p. 4). One is that the litigation of actions which otherwise would be dismissed in deference to greater contacts with a foreign nation is an affront to that nation under principles of international comity, and thus disrupts American foreign policy (*see* AT&T, etc. brief at 31; Product Liability brief at 33). No authority is offered for these assertions, which if at all true would justify Congressional legislation mandating dismissal of such actions, even from state

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B. *The Florida Legislature Has Determined That Non-Florida Corporations Registered to do Business Here, And Non-Florida Corporations Doing Business Here in a General Jurisdictional Sense, Are Residents of Florida.*

1. The Florida Legislature has Directed that a Non-Florida Corporation Registered to do Business in Florida "Has the Same But No Greater Rights and has the Same but No Greater Privileges as . . . a Domestic Corporation of Like Character." Therefore, so long as the Rule of Houston v. Caldwell *Applies to a Florida Corporation, it must Apply in Like Manner to a Non-Florida Corporation Registered to do Business in Florida.* Section 607.1505(2), Fla. Stat. (1993) provides: "A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this act is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character." Under the *Houston* rule, a domestic corporation does not have the right to invoke the doctrine of forum non conveniens. Under § 607.1505(2), a registered non-Florida corporation "has the same but no greater rights . . . ."

The statute's prescribed equality of treatment has been enforced by the legislature and

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courts—legislation which would survive constitutional scrutiny in light of its foreign-policy objectives. In this light, the amici are pleading in the wrong forum. We think the absence of such legislation may reflect the recognition that all of the American states employ choice-of-law rules (Florida balances the contacts issue-by-issue in tort cases, *see Bishop v. Florida Specialty Paint Co.*, 389 So. 2d 999 (Fla. 1980)) which ensure the application of foreign law when appropriate to the point at issue. The amici's professed concern for American foreign policy is illusory at best.

Second, one amicus has contended that the *Houston* rule fragments litigation, because defendants may be unable to implead assertedly-culpable parties not subject to jurisdiction here (Product Liability brief at 27). But after *Fabre v. Marin*, 623 So.2d 1182 (Fla. 1993), even such non-parties end up on the verdict form anyway. Beyond that, the amicus is assuming that forcing the case into some other jurisdiction would make it easier to implead all implicated parties—an assumption for which the amicus has offered no support. The answer is that Florida defendants have the right to file actions for contribution in other jurisdictions, if they feel overly burdened by a judgment entered in Florida.

by the Florida courts in a variety of different contexts, many of them concerning venue and jurisdiction. For example, § 607.1507, Fla. Stat. (1993) requires that a registered corporation maintain a registered office and a registered agent in the state, and provides that the location of that office and agent constitute the corporation's residence for venue purposes. Section 47.011, Fla. Stat. (1993) provides for venue only where the defendant resides, the cause of action accrued, or the property in litigation is located—a provision which "shall not apply to actions against nonresidents"; but § 47.051 provides that "[a]ctions against foreign corporations doing business in this state shall be brought in a county where such corporation has an agent or other representative, where the cause of action accrued, or where the property in litigation is located." As this Court has stated, these provisions conjoin to provide that "a corporate defendant 'resides', within the meaning of [the statutes] in the county or counties specified . . . ." *Enfinger v. Baxley,* 96 So. 2d 538, 540 (Fla. 1957). *Accord, State ex rel. Bernhart v. Barrs,* 152 Fla. 631, 12 So. 2d 576 (1943). In contrast, as the venue statutes imply by exclusion, a corporation which is not a resident of Florida has no venue privilege at all, and therefore may be sued in any county. *See Hollywood Memorial Park, Inc. v. Rosart,* 124 So. 2d 712, 713 (Fla. 3d DCA 1960). For venue purposes, therefore, registered non-Florida corporations are residents; and the *Houston* rule applies to residents. Consistent with the requirement of § 607.1505(2), Florida corporations and registered non-Florida corporations are treated identically.

Similarly, for jurisdictional purposes, § 48.081(3), Fla. Stat. (1993) provides for service upon a non-Florida corporation registered to do business here by serving its registered agent here, or in his absence by serving any employee at the corporation's place of business—thus providing for service and for the assertion of jurisdiction over non-Florida corporations registered here in the same manner as for Florida corporations. Contrary to Kinney's mis-reading of the Florida Statutes (brief at 26-27), this jurisdictional identity between Florida

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corporations and ***registered*** non-Florida corporations existed well before the legislature (in 1984) promulgated § 48.081(5), Fla. Stat. (1993), which abolished the "connexity" requirement for asserting long-arm jurisdiction over a corporation which is ***not*** registered to do business here, so long as that unregistered corporation "engages in substantial and not isolated activities within this state, or has a business office within the state and is actually engaged in the transaction of business therefrom . . . ." The connexity requirement has never applied to registered non-Florida corporations. That was the direct holding of this Court in *White v. Pepsico, Inc.*, 568 So. 2d 886, 889 (Fla. 1990):

> Pepsico argues that because the legislature expressly excluded the connexity requirement in section 48.081(5), it must have intended to include the requirement in section 48.081(3). That argument is not persuasive. Subsection (5) addressed corporations actually conducting business in Florida from their Florida offices. On the other hand, subsection (3) addressed corporations that may not have been conducting business from a specific business office in Florida, but that had been licensed to do business in Florida and had designated an agent for the express purpose of accepting service of process on behalf of the corporation.
>
> While each section addressed different factual situations, they both solved the same problem: they gave the legislature sufficient assurance that the corporation did substantial business in Florida and had somebody present to accept service of process here, consistent with due process of law. By formally qualifying to do business in Florida and registering an agent pursuant to section 48.091(1) and chapter 607 of the Florida Statutes (1983), a foreign corporation submitted itself to the jurisdiction of Florida courts because it acknowledged that it did sufficient business in Florida to make it amenable to suit and service of process here. . . .
>
> Pepsico alternatively argues that subsequent history of the service of process statutes proves that connexity had been required because the legislature expressly abolished the connexity requirement by amendment in chapter 84-2, Laws of Florida. We disagree. The 1984 amendments did not even purport to alter section 48.081(3), the statute underwhich Pepsico was served. Instead, the connexity amendment in 1984 applied to section

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48.193, a long-arm statute that conferred personal jurisdiction for single acts enumerated by that statute.

This Court in *White* thus approved the decision in *Junction Bit & Tool Co. v. Institutional Mortgage Co.*, 240 So. 2d 879, 881 (Fla. 4th DCA 1970), holding that the Florida Statutes do not require connexity when the defendant is a corporation registered to do business here. Contrary to Kinney's representation (brief at 26), jurisdiction over registered non-Florida corporations has never required connexity, but has always treated registered non-Florida corporations in the same manner as Florida corporations. Therefore, to use Kinney's words (brief at 27, emphasis in original), it is not "the Fourth District [which] has made *residents* of a host of corporations who have obtained a license to do business"—it is the Florida Legislature which has done so. Consistent with the requirement of § 607.1505(2), the legislature has properly held that Florida corporations and registered non-Florida corporations must be treated identically for the purposes of jurisdiction and service of process.[19/]

All of these provisions of the Florida Statutes are faithful to the requirement of

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[19/] Kinney's confusion is also illustrated by its contention (brief at 26 n.10) that the assertion of jurisdiction over registered non-Florida corporations invokes the minimum due-process analysis of *Venetian Salami Co. v. Parthenais,* 554 So. 2d 499 (Fla. 1989) and analogous federal decisions. As the district court made clear in *Junction Bit*, which was approved by this Court in *White*, the voluntary act of registering to do business here, constituting a consent to suit here, necessarily forecloses any due-process challenge to the assertion of jurisdiction: "We believe . . . that such minimum contact would seem patently established where, as here, the foreign corporation has actually qualified under Florida law to transact business in this state and has appointed a resident agent for service of process as required by [the Florida Statutes]." *Junction Bit,* 240 So. 2d at 882.

The statutory requirement of equal treatment of Florida corporations and registered non-Florida corporations is also found outside of the area of venue and jurisdiction. For example, § 95.051(1)(a), Fla. Stat. (1993) provides that any applicable statute of limitations is tolled by the absence from the state of the person to be sued. However, this Court held in *Roess v. Malsby Co.*, 67 So. 226, 227 (Fla. 1915) that the tolling provision does not apply to a foreign corporation registered to do business here, because such a corporation is a resident of Florida for purposes of the statute of limitations.

§ 607.1505(2) that a registered Florida corporation has "no greater rights and has the same but no greater privileges as . . . a domestic corporation of like character." Kinney has addressed this point in a single paragraph (brief at 26), invoking the district court's conclusion in *National Rifle Association of America v. Linotype Co.*, 591 So. 2d 1021, 1022 (Fla. 3d DCA 1992)—a conclusion offered with no explanation—that "the fact that the defendant as a foreign corporation was qualified to do business in Florida under Section 607.1501, Florida Statutes (Supp. 1990), does not make the defendant a resident of Florida for forum non conveniens purposes where, as here, the defendant's principal place of business or corporate headquarters is not in Florida." In light of the language of § 607.1505(2), the obvious response is: "Why not?" The statute does not say that a registered non-Florida corporation has the same rights and the same privileges, "except of course for the application of *Houston v. Caldwell.*" It says that a registered non-Florida corporation has "no greater rights" and "no greater privileges;" and the allowance of a motion to dismiss for forum non conveniens unquestionably would constitute a greater right.

Therefore, although the legislature has not usurped the Court's prerogative to administer the defense of forum non conveniens in Florida, it has defined the contours of that prerogative, by proscribing any conferral of "greater rights" or "greater privileges" upon registered non-Florida corporations than the rights and privileges enjoyed by Florida corporations. Clearly the position advocated by Kinney would run afoul of that statutory requirement.[20/]

2. *The Florida Legislature Has Also Determined That Non-Florida Corporations*

[20/] Even if the Florida Statute were not directly inconsistent with Kinney's position, this Court has counseled that "when the legislature has actively entered a particular field and has clearly indicated its ability to deal with such a policy question, the more prudent course is for this Court to defer to the legislative branch." *Bankston v. Brennan,* 507 So. 2d 1385, 1387 (Fla. 1987). Without question, the adoption of Kinney's position would not constitute deference to the clearly-articulated legislative objective.

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Doing Business Here in a General Jurisdictional Sense, Even if Not Registered, Are Residents of Florida. Moreover, and notwithstanding that § 607.1505 applies only to registered Florida corporations, we believe that the legislature has indicated elsewhere that corporate residence in Florida is not confined to those corporations which are registered to do business here. For purposes of jurisdiction, for example, the legislature has recognized that even an unregistered non-Florida corporation is a resident, subject to general jurisdiction even for causes of action not arising from its contacts with Florida, if the corporation "engages in substantial and not isolated activities within this state, or has a business office within the state and is actually engaged in the transaction of business therefrom . . . ." § 48.081(5), Fla. Stat. (1993). Similarly for venue purposes, as we have noted above, the legislature has created a venue privilege not just in corporations registered to do business here, but in "foreign corporations doing business in this state," which may be sued only "in a county where such corporation has an agent or other representative, where the cause of action accrued, or where the property in litigation is located." § 47.051, Fla. Stat. (1993). The statute thus creates a venue privilege even in unregistered non-Florida corporations which "reside" in Florida, as this Court made clear in *Enfinger v. Baxley,* 96 So. 2d 538, 540 (Fla. 1957), in holding that "a corporate defendant 'resides', within the meaning of [the statute] in the county or counties specified . . . ."

The same common-sense definition of residence is found in other statutory contexts. For example, § 220.03(1)(e), Fla. Stat. (1993) defines a corporation subject to income taxation as including "all domestic corporations; foreign corporations qualified to do business in this state or actually doing business in this state . . . ." And § 76.04(4), Fla. Stat. (1993), which allows attachment on a debt when the debtor "[r]esides out of the state," has been held to be inapplicable to an unregistered non-Florida corporation doing business here, even if its principal place of business is outside of Florida. *See, e.g., Hordis Brothers, Inc. v. Sentinel Holdings, Inc.,* 562 So. 2d 715, 716-17 (Fla. 3d DCA 1990) ("The fact that Hordis is incorporated in

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Pennsylvania, and has its principal place of business outside of Florida, is of no moment; the inquiry here is one of presence in this jurisdiction"). In this context too, an unregistered non-Florida corporation subject to general jurisdiction in Florida is a resident of this state, and thus is subject to the rule announced in *Houston v. Caldwell*. With respect to both registered and unregistered non-Florida corporations doing business here, therefore, the position advocated by Kinney would fly in the face of clear legislative directives.

In light of the foregoing, the Academy respectfully submits that the application of *Houston v. Caldwell* to non-Florida corporations registered to do business here, and to Florida corporations doing business here in a general jurisdictional sense, would not produce any results which were not intended by this Court in *Houston*. The dispositive question, as we have emphasized, is whether the application of *Houston* to such cases would serve the objectives of the rule. As we have demonstrated, those objectives are no less applicable to such corporations than they are to Florida corporations, or to corporations with their principal places of business in Florida. Moreover, as we have demonstrated, the Florida legislature has acknowledged in a variety of contexts that all such corporations are residents of this state. They are residents in every meaningful sense of the word. The *Houston* rule applies to Florida residents, and the corporations in question are in fact Florida residents. Thus, the *Houston* rule applies.[21/]

V
CONCLUSION

It is respectfully submitted that the opinion of the Fourth District Court of Appeal should be approved.

[21/] At the end of its brief (pp. 28-33), Kinney has devoted six pages to its contention that if the *Houston* rule is not applicable, the instant case should be dismissed on the ground of forum non conveniens. That is a question which the Fourth District Court did not consider, because it held that the *Houston* rule was applicable. In this context, the Academy respectfully submits that if the Court finds that the *Houston* rule is not applicable, the propriety of a forum-non-conveniens dismissal should be considered in the first instance by the Fourth District Court of Appeal.

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VI
CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 2nd day of December, 1994, to: RAOUL G. CANTERO, III, ESQ., Adorno & Zeder, P.A., Counsel for Respondent, Continental Insurance Co., 2601 South Bayshore Drive, Suite 1600, Miami, Florida 33133; ARTHUR J. ENGLAND, JR., ESQ., and CHARLES M. AUSLANDER, ESQ., Counsel for Kinney System, Inc., Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., 1221 Brickell Avenue, Miami, Florida 33131; MITCHELL W. BERGER, ESQ., Counsel for amicus curiae, Florida Chamber of Commerce, Berger, Shapiro & Davis, P.A., 100 N.E. 3rd Avenue, Suite 400, Ft. Lauderdale, Florida 33301; FRED O. GOLDBERG, ESQ., Counsel for amicus curiae, AT&T, etc., 1221 Brickell Avenue, Suite 1780, Miami, Florida 33131; WENDY LUMISH, ESQ., Counsel for amicus curiae, Product Liability Advisory Counsel, Popham Haik Schnobrich & Kaufman, Ltd., 100 SE 2nd Street, Suite 4000, Miami, Florida 33131; ROBIN C. NYSTROM, Florida Department of Commerce, 535 Collins Building, 107 W. Gaines St., Tallahassee, Florida 32399-2000; and to BARRY R. DAVIDSON, ESQ., Counsel for amicus curiae, Florida Department of Commerce, Coll, Davidson & Carter, 201 South Biscayne Boulevard, Suite 3200, Miami, Florida 33131.

Respectfully submitted,

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