



GEORGIANS

FOR LAWSUIT REFORM

Amicus Curiae Policy for Georgians for Lawsuit Reform

Georgians for Lawsuit Reform (“GLR”) occasionally provides the perspective of the business community to courts on legal and policy issues affecting Georgia businesses through the submission of amicus curiae briefs. The purpose of GLR's intervention in such cases is to ensure that the courts are fully informed about the relevant issues that may impact Georgia businesses and to ensure that Georgia's legal system remains economically competitive with other states. Unlike the parties, who typically focus on the specific facts of a case and argue for a particular outcome, GLR plays a neutral role, addressing only the legal and policy issues.

1. The Approval Process.

The initial determination that an amicus brief is to be filed is made by the Judicial Affairs Committee of GLR (the “Committee”).

All requests for amicus briefs will be directed to the Staff member assigned to the Committee. The Staff member may decline any amicus request which in the Staff member's opinion is clearly not suitable on its face for an amicus brief. If the request is suitable, however, the Staff member will then distribute the request to the Committee and solicit their input.

The Committee may establish an Amicus Review Subcommittee of no less than three nor more than five persons to review requests for amicus briefs and to make recommendations regarding such requests to the full Committee. The Committee also regularly monitors leading cases involving business-related issues and may, on its own initiative, recommend that GLR file an amicus brief.

If a recommendation of the Amicus Review Subcommittee or a member of the Committee is approved by majority vote of the Committee, the Board of Directors of GLR must then consider whether to approve of GLR's participation in the relevant litigation.

If approval is given by the Board of Directors to prepare and file an amicus brief, GLR Staff, in consultation with the Committee, will then select and retain counsel to prepare the brief.

The Committee and GLR Staff will also supervise the preparation of the amicus brief. Before filing, the proposed amicus brief must be distributed to the entire Committee and its members must be given a

reasonable time in which to provide comments. The final approval for the contents of the amicus brief is to be made by the Chair of the Committee.

2. Suitable Matters for Amicus Briefs

GLR typically limits the submission of briefs to the appeal stage of any case, but on rare occasion, the GLR has participated at other stages as well when the particular circumstances so warrant.

The kinds of matters for which intervention by the GLR may be appropriate include:

- a. The views of GLR have been specifically requested by the tribunal; or
- b. The question to be addressed directly affects the interests of Georgia businesses generally and not merely a single business; or
- c. The matter involves, relates to or potentially affects a law that would be reasonably likely to advance the strategic goals and objectives of GLR.

3. Factors Affecting Whether to File an Amicus Brief.

The following factors shall be considered by the Committee in determining whether to recommend the filing of an amicus brief:

- a. The significance of the legal issues involved in the case, both in the jurisdiction in which the case is pending and in other jurisdictions.
- b. Whether the case involves primarily legal, as opposed to factual, disputes.
- c. Whether the legal issue involved in the case is settled law or is the subject of a conflict between courts within the state or the country.
- d. The seniority or level of the tribunal before which the case is pending (e.g., trial court vs. the Supreme Court of Georgia).
- e. Whether other business entities are filing briefs as amicus curiae, or are or may be involved in the case, and, if so, their identity (e.g., those representing a particular industry sector or public interest group).
- f. The quality of and positions taken in other briefs submitted in the case by the parties and any other amici, including in prior stages of the litigation.
- g. The public interest, if any, in the legal issues involved in the case.
- h. Whether any request was made in accordance with GLR's procedures and in sufficient time to permit the preparation of a quality brief.
- i. The interests of members of GLR in the dispute.

j. Whether a party actively strives to improve the legal climate in Georgia.

Parties making requests for amicus briefs should, to the extent appropriate, explain why their request is appropriate with reference to these factors and any other factors the requesting party believes are relevant. Parties are also asked to indicate whether the issues in the case are likely to have broader impact on Georgia businesses and to explain those issues fully so that the Committee can make an informed judgment.

4. GLR Counsel

Amicus briefs will be prepared by either counsel on staff with GLR or counsel retained independently by the Committee for the particular litigation.

Any counsel selected to represent GLR must be competent, well-respected in the state, and free from conflicts of interest related to the parties or the issues.

Counsel preparing a brief on behalf of GLR must agree to do so on a pro bono basis.

5. Conflict of Interest Policy

To ensure the independence and objectivity of GLR's amicus process, Committee members will not participate in the discussion or vote on any request that relates to a case in which they have a conflict of interest.

Such a conflict of interest would arise (a) when the participant or the participant's company or firm: (i) is a party to the case; (ii) is related to a party to the case (e.g., a parent, subsidiary or affiliate for a corporate party, or a spouse, child, parent or other close relative for an individual party); (iii) has a direct financial interest in the outcome of the case; or (iv) represents an entity that is a party, is related to a party, or has such a direct financial interest; or (b) when a conflict would arise under any ethical rule otherwise applicable to the participant, such as rules of professional conduct imposed by a bar in the member's jurisdiction or the jurisdiction in which the case is pending.

As long as there is no conflict of interest pursuant to the preceding principles, Committee members are not precluded from participating in the consideration of a case merely because the participant's company, firm, or related entity, or a client of the participant's firm, has an interest in, or has taken a position regarding, an issue relevant to the case, or is a member of the same industry as one or more of the parties to the case.

It is important to emphasize that the Committee generally will recommend taking the position that it believes best advances GLR's mission and strategic objectives, which includes the goals of supporting the interests of Georgia businesses. The Committee expressly reserves the right to recommend positions that are different from those requested by the parties and different from individual members of GLR if doing so is in the best interests of Georgia businesses generally.

6. Procedure for Requesting a Filing by GLR

a. Timing of Requests: GLR takes the filing of amicus briefs very seriously and can only make submissions when the process has been timely initiated to allow careful consideration and drafting as well as full adherence to this Policy. Assessment of issues and preparation of amicus filings require substantial effort and time in the Committee, by the Board of Directors, and by GLR staff. This process requires significant commitments by member volunteers who contribute their time and expertise on a pro bono basis.

These commitments make it extremely difficult for requests to be considered and acted upon in less than 30 days, and even simple requests often demand up to 60 days to handle properly. Complex cases, such as those before the highest court of a jurisdiction involving novel issues of law, or multi-jurisdictional proceedings, or the necessity of obtaining translations, demand even more time to review. Accordingly, requests should be made as early as possible, preferably at least 30 days in advance of any filing deadlines. GLR strongly suggests that requesters contact the appropriate Committee Staff member as early as possible in the history of a case—even if a ruling has not yet been issued—if they believe that GLR’s involvement may be appropriate.

b. How to Make a Request: A requester may solicit consideration by GLR of a possible filing by submitting an electronic request to the Committee to the attention of the appropriate Staff member listed below:

Kade Cullefer
270 Peachtree St., NW
Suite 2200
Atlanta, GA 30303
kcullefer@galawsuitreform.com

The request should take the form of a letter or email that fully explains the basis for the request. Although there is no page limit, parties are encouraged to make their requests as succinctly as possible—a few pages is often all that is required—to facilitate the Committee’s prompt review of the request. The request should include:

- The case name, caption, number, and identity of the tribunal;
- A list of all litigants, counsel and other interested parties involved in the case, to facilitate conflict of interest clearance by Committee members;
- A brief summary of the procedural and decisional history of the case;
- A description of the issue(s) the requester would like GLR to address in its filing, and the requester’s recommendation on the position GLR should take (along with references to supporting case law);
- A discussion of whether the case is likely to have an impact beyond the parties, including any impact on other parties, or more generally within the relevant industries;

- A discussion as to why the issues are of significance to GLR and its membership, and how GLR's participation in the case is likely to make a material contribution to a decision;
- Identification of any risks to GLR in seeking to participate as amicus;
- The full briefing schedule, including the deadline for making the requested filing, or if the briefing schedule has not yet been set or finalized, the anticipated briefing schedule;
- Electronic copies of the opinion(s) of the lower tribunal(s);
- Electronic copies of both parties' briefs and supporting evidence related to the issue on which the requester seeks GLR's intervention, including in prior stages of the litigation, if available; and
- Electronic copies of any other material that the requester believes would be helpful to the Committee's consideration.

While the request is pending, the parties should keep the Committee apprised through the Committee Staff member of any material developments in the case that might impact the Committee's consideration of the request, including both as to the merits and as to the timing.

c. The Committee May Require That the Request be Submitted to the Other Parties: The Committee may, in its discretion, require that a copy of the request be sent by the requester to counsel for the other part(ies) to the case particularly if the dispute is between members of GLR. If such a requirement is imposed, the other part(ies) generally shall have five (5) business days from their receipt of the request to submit to the Committee any response, which may include a request that GLR file an amicus brief or other submission in support of a different position, or may explain why the party believes an amicus brief or other submission from GLR would be unwarranted. In special circumstances, the Committee may invite the parties to present their requests at a Committee meeting.

d. Confidentiality: Once a request is made, in order to maintain GLR's independence, the amicus process will proceed confidentially. GLR will not disclose its deliberations to the parties.