The challenges described in this paper are ongoing. This paper is merely an overview of the future – much of which will have occurred by the time the reader reads this.

CONSTITUTIONAL CHALLENGES TO SB3

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A cursory review of the recently enacted tort reform provisions (collectively referred to as "SB3") demonstrates that the bill was drafted in a rather sloppy fashion and, as such, there is a great deal of confusion in the language of the legislation. While not a good thing for those of us who have to practice law under the new provisions, it does provide the basis for a number of constitutional challenges to the bill as a whole, as well as the various parts. Certainly, there are some very serious concerns with the Bill's compliance with the Constitution of Georgia -- as well as the federal Constitution, and there will undoubtedly be numerous opportunities for challenging those provisions as they begin to be implemented more and more. This paper will very briefly address the procedure for making a challenge, and the potential basis for challenging the provisions of SB3 specifically.

I. Is it Worthwhile to Challenge a Statute on Constitutional Grounds?

While it is true that courts are not quick to declare a statute invalid on constitutional grounds, if a legislative act fails to comport with constitutional principles, it should be challenged. "Legislative acts in violation of [the Georgia] Constitution or the Constitution of

the United States are void, and the judiciary shall so declare them." Ga. Const., Art. I, § II, ¶ V. "It is a grave matter for [a] court to declare void an act of the co-ordinate legislative department." *Middleton v. Moody*, 216 Ga. 237, 240, 115 S.E.2d 567 (1960). However, it is nevertheless "the duty of the court to declare acts of the legislature in undoubted conflict with the Constitution to be void." *Frankel v. Cone*, 214 Ga. 733, 737-38, 107 S.E.2d (1959). This is the essence of the "checks and balances" nature of our governmental structure. It is the role of the court to look beyond the findings of the legislature to ensure that the legislative branch does not act contrary to constitutional ideals. *Smith v. Kennestone Hosp.. Auth.*, 262 Ga. 566, 570 (1992) ("We acknowledge the General Assembly's finding that a rational basis exists, but we must reach our own determination, independent of that finding, of whether the classification in question can be sustained.")

II. Procedural Requirements for Making a Constitutional Challenge

Before proceeding with a challenge, it is important to make sure that the case is in the proper posture for the court to consider the constitutionality of the law at issue, and that all procedural requirements are met. This may mean that a great deal of leg work for the challenge will have to be done long before the issue can even be raised.

A. Ripeness and Standing

In order for any court to consider a constitutional challenge, the party initiating the challenge must have standing to do so, and the issue must be ripe for adjudication (the "case or controversy" standard). Typically, this means that the provision at issue will adversely affect some right of the party if applied. The court will not consider the challenge if the claim is hypothetical, as this would result in an impermissible advisory opinion. "Georgia courts do not concern themselves with the solution of academic problems." *Board of Tax Assessors of Ware*

County v. Baptist Village, 264 Ga. App. 848, 854, 605 S.E.2d 436 (2004). It is important to note that a constitutional challenge will not be considered as a matter of course. In fact, a "constitutional question will not be decided unless it is essential to the resolution of the case." *Bell v. Austin*, 278 Ga. 844, 607 S.E.2d 569 (2005).

Just like with any other claim initiated in court, the challenger must show actual or future harm; in other words, there must be an injury. The court will not consider a hypothetical situation, or what "might" occur if the statute is applied. *See, e.g. Kumar v. Hall*, 262 Ga. 639, 423 S.E.2d 653 (1992) (because none of the situations argued by the party challenging the provision applied to him, the party lacked standing to raise the issue and the court would not consider it). While this makes sense, courts can be extremely specific in what it deems an issue relevant to the resolution of the case. *E.g. C.W. Matthews Contracting Co. v. Gover*, 263 Ga. 108, 428 S.E.2d 796 (1993) (defendant lacked standing to challenge statute prohibiting evidence of the failure to wear a seatbelt on grounds it applied to front seat versus back seat passengers).

Ripeness and standing is determined at the time the suit is filed. It need not be maintained throughout all stages of the litigation.

B. Jurisdiction

Except in limited circumstances, the Supreme Court has exclusive jurisdiction of constitutional construction. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. II(1). However, the issue must first have been raised and ruled upon in the trial court. *See, e.g., Osborn v. Goldman*, 269 Ga. App. 303, 603. S.E.2d 695 (2004) (holding if constitutional challenge to medical malpractice statute of repose had been raised and ruled on in the trial court, and if it presented an unresolved question, the jurisdiction would be in the Supreme Court). With respect to the trial court hearing the case, a party may challenge a state statute on constitutional grounds in any case

in which the court otherwise has jurisdiction. *Schneider v. Susquehanna Radio Corp.*, 260 Ga. App. 296, 303, 581 S.E.2d 603 (2003) (state court had jurisdiction to consider constitutionality of Telephone Consumer Protection Act; exclusive jurisdiction was not in the Superior Court). However, if the challenge is made by way of a declaratory judgment action, it must be initiated in Superior Court, which has exclusive jurisdiction over such actions.

C. Making A Record

The constitutional issue must be raised in the record and at the earliest opportunity to do so. While it is not entirely clear when the "earliest opportunity" may be, the court has indicated that it is too late to raise the issue in a motion for reconsideration, motion for new trial, or on appeal, unless that was the first opportunity. *Perez-Castillo v. State*, 275 Ga. 124, 562 S.E.2d 184 (2002). Significantly, the issue must be raised in writing; it may not be done by oral request during a hearing on a motion. *Gant v. Gant*, 254 Ga. 239, 240, 327 S.E.2d 723 (1985). Although the constitutional issue may be raised in any number of motions or briefs, perhaps the most straightforward is to simply make a motion to declare the statute unconstitutional. *Blackston v. State Dep't of Natural Resources*, 255 Ga. 15, 18, 334 S.E.2d 679 (1985) (brief in response to motion to dismiss); *Keck v. Harris*, 277 Ga. 667, 594 S.E.2d 367 (2004) (complaint for modification of child support sought determination that the guidelines were invalid under the supremacy clause.)

D. Be Specific

Courts will not consider a constitutional challenge merely by reference to a constitutional provision alleged to have been violated. *O'Neal v. State*, 237 Ga. App. 51, 53, 513 S.E.2d 50

(1999). The party must be specific in identifying the issue, as outlined by the Georgia Supreme Court in *Cobb County Bd. Of Commissioners v. Poss*, 257 Ga. 393, 395, 358 S.E.2d 900 (1987):

> In order to raise a question as to the constitutionality of a "law," at least three things must be shown: (1) the statute or the particular part or parts of the statue which the party would challenge must be stated or pointed out with fair precision; (2) the provision of the Constitution, which it is claimed has been violated must be clearly designated; and (3) it must be shown wherein the statue, or some designated part of it, violates such constitutional provision.

(citing *Richmond Concrete Prods. Co. v. Ward*, 212 Ga. 773, 774, 95 S.E.2d 677 (1956).

E. Serving the Attorney General

O.C.G.A. § 9-4-7(c) provides: "If a statute of the state, any order or regulation of any administrative body of the state, or any franchise granted by the state is alleged to be unconstitutional, the Attorney General of the state shall be served with a copy of the proceeding and shall be entitled to be heard." In *Daniel v. Federal National Mortgage Assoc.*, 231 Ga. 385, 387, 202 S.E.2d 388 (1973), the Court interpreted this provision to mean that service on the AG is required only in declaratory judgment actions. However, in more recent cases the Court has suggested otherwise. *See, e.g. Eckles v. Atlanta Technology Group, Inc.*, 267 Ga. 801, 485 S.E.2d 22 (1997) (Sears, J., concurring specially); *St. John's Melkite Catholic Church v. Commissioner of Revenue*, 240 Ga. 733, 734, 242 S.E.2d 108 (1978). With respect to challenges to SB3, the Attorney General's office has already amassed a large file of constitutional challenges raised in briefs responding to venue motions, medical authorization requests and expert witness challenges. The best approach is probably to continue to serve the AG, if only to ensure that the "State's lawyer" is aware of the number of challenges that are being raised.

III. Constitutional Provisions Raised by SB3

It is impossible to outline all of the possible constitutional challenges that may be raised in the various provisions of SB3. For example, one could raise any number of challenges to individual provisions in the Bill, and the basis for challenging each may be somewhat different. However, there are some basic principles that apply to any challenge on due process, equal protection, or other grounds, which are discussed very quickly here. Any one of these topics could be the subject of entire seminars. Certainly, for anyone contemplating a challenge, a much more in-depth analysis will be necessary.

As an initial matter, it should be noted that the constitutionality of a statute is presumed, and all doubts must be resolved in favor of the statute's validity. *Albany Surgical Associates, P.C. v. Georgia Dep't of Community Health*, 278 Ga. 366, 602 S.E.2d 648 (2004). That does not mean, however, that one should not try. Furthermore, many of these concepts are interchangeable, or mingled together. For example, while the concept of vested rights is integral to the substantive due process analysis, it is also relevant to the fundamental fairness considerations of procedural due process. Again, when presenting or defending a challenge based on any of the provisions of the Constitution, a thorough review of the case law interpreting that provision is essential.

A. Due Process

Under the Georgia Constitution, "No person shall be deprived of life, liberty, or property except by due process of law. Ga. Const. Art. I. § I, ¶ I. The requirement of due process boiled down to its simplest meaning simply invokes the "fundamental fairness" analysis. Three basic questions arise in any due process analysis: (1) is the statute understandable; (2) does it affect the substantive rights of the parties; or (3) is it a procedural requirement.

1. Vagueness

We are all familiar with the phrase "void for vagueness." This means that a statute must not be written so that persons of "common intelligence must necessarily guess at its meaning and differ as to its application." *Denton v. Con-Way Southern Express, Inc.*, 261 Ga. 41, 402 S.E.2d 269 (1991); *Professional Standards Commission v. Alberson*, 2005 WL 895167 (Ga. 4/19/05). If it is not clear, it may be struck down on vagueness grounds. *Rouse v. Department of Nat. Resources,* 271 Ga. 726, 728-729, 524 S.E.2d 455 (1999). When a statute is challenged as unconstitutionally vague, the court must determine whether it "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *United States v. Petrillo,* 332 U.S. 1, 7-8, 67 S.Ct. 1538 (1947); *Douglas v. State*, 263 Ga. 748, 749, 438 S.E.2d 361 (1994). "On the other hand, when the phrase challenged as vague has a commonly understood meaning, then it is sufficiently definite to satisfy due process requirements." *Rouse*, 271 Ga. 726, 729.

Most of the cases dealing with constitutional provisions are in the criminal arena. Not surprisingly, application of due process with respect to vagueness and uncertainty is not applied as strictly to civil statutes as to those penal in nature; the rule appears to be that a statute may be too vague and uncertain to be capable of enforcement as a penal statute and yet may be sufficiently certain to set forth a rule of civil conduct. To withstand an attack of vagueness or indefiniteness, a civil statute must merely provide fair notice to those to whom the statute is directed and its provisions must enable them to determine the legislative intent.

2. Procedural Due Process

The due process clause guarantees that each person shall be accorded certain "process" if he is to be deprived of life, liberty or property. When the government acts to the detriment of an

individual, one has a right to a fair procedure to determine the basis for, and legality of the action. The level of scrutiny will obviously be greater where a physical liberty is at stake, rather than a property interest – as with a cause of action. Since property is in essence a creature of the state, because the government is free to define or limit property rights, challenging the government for taking away that right is more difficult. The question raised in SB3 is whether an individual with a claim that is adversely affected by the legislation can demonstrate that his or "right" was taken away without due process.

There are two basic questions concerning the procedural protection for property: (1) when is the government depriving someone of his or property interest; and, (2) what constitutes "property?" The Georgia Supreme Court has held that "[a] litigant does have a property interest in her cause of action that she may not be deprived of without due process. A state may, however, consistent with due process, terminate a litigant' claim or appeal for failure to comply with a reasonable procedural or evidentiary rule, such a statute of limitations." *Georgia Department of Medical Assistance v. Columbia Convalescent Center*, 265 Ga. 638, 639, 458 S.E.2d 635 (1995), *cert denied*, 516 U.S. 1046 (1996). The question then becomes, is the right at issue a vested right that may not be infringed without due process. It is likely that the courts will consider a claim that is already in suit to be subject to greater protection than a claim that has merely accrued.

For example, in *National Surety Corp. v. Boney*, 99 Ga. App. 280, 284, 108 S.E.2d 342 (1959), which considered a statutory amendment limiting venue in certain suits, the Court of Appeals held:

> This court is of the opinion that once a right of action is reduced to a petition, filed as a law suit in a court of competent jurisdiction and parties litigant

> served, it then becomes a *vested right* in both the plaintiff and defendant to have said cause tried in that particular court, and such right is not subject to be divested by legislation enacted subsequently to the filing of said action in such court of competent jurisdiction to the detriment of either party.

99 Ga. App. at 284 (emphasis added).

3. **Substantive Due Process**

Substantive due process involves two main concepts: (1) whether the governmental conduct is reasonable; and (2) whether the action infringes upon a "fundamental right." The analysis under the Georgia Constitution is similar to that under the federal constitution, although Georgia perhaps provides even greater rights than afforded under the federal law. "[S]ubstantive due process requires that when governmental action infringes upon a fundamental right, the infringement must be narrowly tailored to serve a compelling state interest." *Barnhill v. State*, 276 Ga. 155, 156, 575 S.E.2d 460 (2003). It further requires that "the statute not be unreasonable, arbitrary or capricious, and that the means have a real and substantial relation to the object sought to be obtained." *Hayward v. Ramick*, 248 Ga. 841, 843, 285 S.E.2d 697 (1982). In other words, "[t]he law must rationally relate to a legitimate end of government." *Id.*

Whether a right is deemed "fundamental," is, in essence fundamental to the analysis. The level of scrutiny the court will give to the provision which is alleged to be unconstitutional will depend on the classification of the right involved. Typically, limitations on liability have not been given a great deal of scrutiny, because they are seen as "classic example[s] of an economic regulation," which is permissible governmental regulation unless it is shown to be irrational for some reason. *Love v. Whirlpool Corp.*, 264 Ga. 701, 705, 449 S.E.2d 602 (1994). In contrast, if it can be shown that the limitation to an individual's right to recover affects a "fundamental

right," the court might then strike it down. *See, e.g. McBride v. General Motors Corp.*, 737 F. Supp. 1563 1579 (M.D. Ga. 1990) (in striking down part of the 1987 punitive damage trot reform statute, the court noted that "awarding compensation for human pain and suffering and the economic losses associated with such injuries," invoked the "right to justice by remedying egregious wrongs," which was a "fundamental right.")

B. Equal Protection

The Georgia Equal Protection Clause states:

> Protection to person and property is the paramount duty of government and shall be impartial and complete. *No person shall be denied the equal protection of the laws*. Ga. Const. Art. I, § I. ¶ II.

The Georgia equal protection clause is construed to be consistent with its federal counterpart, and requires that the State treat similarly situated individuals in a similar manner. *Chatterton v. Dutton*, 223 Ga. 243, 245, 154 S.E.2d 213 (1967). A successful challenge on equal protection grounds generally requires a showing that state action was undertaken with an unreasonable purpose or was arbitrary and capricious. *See Washington v. Davis,* 426 U.S. 229, 239-42, 96 S.Ct. 2040 (1976). Except where suspect classes or fundamental rights are involved, the equal protection clause requires that legislation be rationally related to a legitimate state purpose. *David v. State*, 261 Ga. App. 468, 583 S.E.2d 135 (2003). *See generally Sate of Georgia v. Jackson*, 269 Ga. 308, 496 S.E.2d 912 (1998) (substantive due process requires that when governmental action infringes upon a fundamental right, the infringement must be narrowly tailored to serve a compelling state interest). Thus, even where the legislation provides for classifications that are not equal, it does not violate the equal protection clause so long as the classification is rationally related to and bear s a direct relation to the purpose of the legislation –

unless suspect classes or fundamental rights are involved. *Ciak v. State*, 278 Ga. 27, 597 S.E.2d 392 (Ga. 2004).

SB3 is problematic from the outset, because the stated rationale for the legislation is to address the health care "crisis." Yet, many of the provision go beyond cases within the health care arena and affect all tort cases. *E.g*. Offer of Settlement; Expert Witness Rules; Forum Non Conveniens. Furthermore, because some of the provisions are applied exclusively to tort or injury claims, they are not being applied equally, and there is no rational basis for that disparate treatment. *E.g*. offers of settlement (only applies to tort claims) and expert witness provisions (civil actions only).

C. Protection of Person and Property

The Georgia Constitution contains a number of provisions that provide "extra" protection to person and property, which may be useful in initiating a challenge to the government's infringement of "property" rights in SB3. These will not be discussed at length here, but are as follows:

1. Ga. Const. Art. I, Sec. I. Par. VII:

Citizens, protection of

> All citizens of the United Stats, residents of this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship.

2. Ga. Const. Art. I, Sec. I. Par. X:

Bill of attainder, ex post facto laws; and retroactive laws

No bill of attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed.

3. **Ga. Const. Art. I, Sec. I, Par. XXVIII:**

Enumeration of rights not denial of others

The enumeration of rights herein contained as part of this Constitution shall not be construed to deny to the people any inherent rights which they may have hitherto enjoyed.

D. The Right to Jury Trial

It goes without saying that under the Georgia Constitution "the right to trial by jury shall remain inviolate." Ga. Const. Art. I, § I, ¶ XI. In civil cases, that right exists if it existed at the common law for the applicable class of case when the first Georgia Constitution was adopted in 1798. At common law, parties had the right to have all questions of fact passed upon by a jury; therefore, legislative action depriving or impairing that right is questionable. *See, e.g. Williams v. Overstreet,* 230 Ga. 112, 195 S.E.2d 906 (1973); *Porter v. Watkins*, 217 Ga. 73, 121 S.E.2d 120 (1961). Because some of the provisions of SB3 impairs the jury's fact finding capabilities (the change in the expert witness provisions in O.C.G.A. § 24-9-67.1, for example), the impairment of the right to have the jury decide the case violates the Constitution.

E. Access to Courts

In addition to the right to jury trial, the Georgia Constitution specifically provides for citizens' right to the courts:

> No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state.

Ga. Const. Art, I, § I, ¶ XII. This may seem like a "golden" opportunity to strike down any legislation that affects the right to have your grievance heard in court. However, the courts have not always been so generous. Two interesting cases bear this out.

In *In re Lawsuits of Carter*, 235 Ga. App. 551, 510 S.E.2d 91 (1998), the Superior Court entered an order directing that the clerk of court not file any lawsuit brought by, or on behalf of, an allegedly vexations litigant unless signed by an attorney who certified that the complaint set out a prima facie case. The litigant appealed, and the Court of Appeals reversed, finding that the trial court's order violated the litigant's right of access to courts. Specifically the court stated that the action violated the fundamental constitutional rights of due process of law and "unfettered" access to the courts, which require that every party to a lawsuit be afforded the opportunity to be heard and have his day in court. The Court did note, however, that "no person is free to abuse the courts by inundating them with frivolous suits which burden the administration of the courts for no useful purpose."

Thus, in *Smith v. Adamson*, 226 Ga. App. 698, 487 S.E.2d 386 (1997), the Court held that limitations placed on a pro se litigant's ability to file lawsuits after she was sanctioned for filing a frivolous suit against superior court judges did not deprive her of meaningful access to courts; rather, it was reasonable under the circumstances, given the litigant's history of unsuccessful suits against other public officials.

F. Single Subject Matter

The "single subject matter" rule is perhaps the most obvious means of challenging the provisions in SB3, because the Bill clearly covers many subjects, not all related to the stated purpose of the legislation. However, the single subject matter rule, while frequently invoked, is rarely applied by the courts. Its purpose is to "inhibit omnibus or log-rolling bills that combine matters 'adverse in their nature and having no necessary connection, with the view of combining in their favor the advocates of all, and thus securing the passage of several measures no one of which could succeed upon its own merits.'" *American Booksellers Assoc., v. Webb*, 254 Ga. 399, 400, 329 S.E.2d 495 (1985) (quoting *Central of Georgia RR Co. v. State*, 104 Ga. 831, 846, 31 S.E. 531 (1898)).

In *Crews v. Cook*, 220 Ga. 479, 481-82, 139 S.E.2d 490 (1964), the Court set out the following test:

> To constitute plurality of subject matter an Act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any logical connection with or relation to each other. All that our Constitution requires is that the Act embrace only one general subject; and by this is meant, merely, that all matters treated by the Act should be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one subject. This provision of our Constitution was intended to stop the vicious practice of joining in one Act incongruous and unrelated matters; but any construction of it which would interfere with the very commendable policy or practice of incorporating the entire body of statutory law upon one general subject in a single Act, instead of dividing

> it into a number of separate Acts, would not only be contrary to its spirit, but also seriously embarrassing to honest legislation.

SB3 clearly fits the bill.

In comparison, the Court in *Lutz v. Foran*, 262 Ga. 819, 427 S.E.2d 248 (1993) declined to strike down the 1987 tort reform Act under this analysis. In that case, the question was the professional affidavit requirement in O.C.G.A. § 9-11-9.1 applied to harbor pilots. The plaintiff argued that because the Act addressed medical malpractice, it would be unconstitutional to apply it to licensed harbor pilots. The Supreme Court disagreed, noting that the purpose of the constitutional provision is to require the act's title to "'alert the reader to the matters contained in its body . . . to protect against surprise legislation.'" 262 Ga. At 821 (quoting *Mead Corp. v. Collins,* 258 Ga. 239, 367 S.E.2d 790 (1988)). Because everything in the legislation was reasonably related to malpractice actions against *professionals* in general, the statute was not unconstitutionally applied to the professionals challenging it.

The rationale used by the Court in *Lutz* does not really fit SB3, however. There is no consistent "subject" addressed, other than reforming general tort law. Portions of the bill concern all civil cases (e.g. O.C.G.A. §24-9-67.1; § 51-12-31-33), while others pertain only to medical malpractice actions.

G. Prohibition Against Retroactive Laws

Generally, legislation is considered to apply prospective only, unless the legislative intent to apply it retroactively is clear. O.C.G.A. § 1-3-5. In Section 15 of the Act, the legislature determined that all provisions of SB3 are to be applied to all pending litigation except those are contained in Title 51 governing torts. Thus, the legislature specifically indicated its intent to apply the new rules retroactively. However, application of many of the provisions in the Act to

pending cases would violate the constitutional prohibition against retroactive application. The Constitution clearly states: "No bill of attainder, ex post facto law, *retroactive law*, or laws impairing the obligation of contract or making irrevocable grants of special privileges or immunities shall be passed." Ga. Const. Art I., § I, ¶ X.

In determining whether a retroactive law violates this provision, the courts typically see a distinction between substantive and procedural law. A substantive provision may not be abrogated retroactively; however, a procedural rule may be given retroactive application. Stated another way:

> An act of the General assembly which affects detrimentally some substantial right of a party, or imposes a new duty in respect to transactions or considerations already past, or places an additional burden on pending action, is retroactive and violates our Constitution.

London Guarantee & Accident Co. v. Pittman, 69 Ga. App. 146, 25 S.E.2d 60, 65 (1943).

Again, the analysis seems to be one of fundamental fairness. There is case law suggesting the legislature can modify causes of action before they accrue without denying due process. *E.g. Santana v. Georgia Power Co.*, 269 Ga. 127, 129, 498 S.E.2d 521 (1998) ("[T]he enactment of a statute that delineates or even abolishes a cause of action before it has accrued deprives a plaintiff of no vested right and, thus, does not deny due process. States are free to create immunities and to eliminate causes of actions, and that legislative determination provides all the process that is due.") However, the legislature should not be able to modify causes of action that are already pending, or even just accrued, especially when it will fundamentally affect the viability of the claim in the first place. Certainly, plaintiffs do have vested rights in their cause of action (and defendants have similar rights in their defenses). *Glover v. Colbert*, 210

Ga. App. 666, 668, 437 S.e.2d 363 (1993). Therefore, the legislature should not be permitted to abrogate the right to pursue that claim. *See, e.g., Browning v. Maytag*. 261 Ga. 20, 401 S.E.2d 725 (1991) (product liability claim that accrued before adoption of statute of repose not barred). Timing is everything.

H. Separation of Powers

As a final "catch all" provision, we are reminded that our government is set up to provide for checks and balances among the various branches. No one branch can have exclusive control.

> *Separation of legislative, judicial, and executive powers*
>
> The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided.

Ga. Const. Art. I., § II, ¶ III.

The legislature has the power to adopt laws, but may not infringe on the role of the judiciary in so doing. "The very essence of the doctrine of separation of powers is that neither the judicial branch nor the legislative branch can tell the other how to operate. Thus, since the General Assembly is not empowered by the Constitution to dictate to the judiciary how to write its opinions, or what form its decisions must take, this court may affirm, reverse, transfer or dismiss cases as it deems proper." *Taylor v. Columbia county Planning Commission*, 232 Ga. 155, 157, (1994).

IV. Conclusion

It would be impossible to provide an exhaustive summary of all of the provisions in SB3 that are subject to potential constitutional challenges, or to outline how those challenges are to be

made, in such a short paper. However, hopefully this provides a starting point for what to look for in the Statute and what provisions may provide the basis for striking down (or defending) the Act and its various parts.