No. 12-929

IN THE

Supreme Court of the United States

ATLANTIC MARINE CONSTRUCTION COMPANY, INC.,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT J-CREW MANAGEMENT INC.

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QUESTIONS PRESENTED

1. Does this Court's decision in *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988) require federal courts sitting in diversity jurisdiction to apply 28 U.S.C. § 1404(a) to determine the enforceability of a forum-selection clause selecting an alternate federal forum?

2. If so, how should district courts allocate the burden of proof among parties seeking to enforce or to avoid a forum-selection clause?

PARTIES TO THE PROCEEDING

The following identifies all of the parties before the United States Court of Appeals for the Fifth Circuit.

The Petitioner below was Atlantic Marine Construction Company, Inc. ("Atlantic"). The Respondent below was J-Crew Management, Inc. ("J-Crew"). Because this case involves a mandamus action, the United States District Court for the Western District of Texas is also a Respondent.

J-Crew is a privately-owned corporation. It has no parent company, and no publicly held corporation owns 10% or more of its shares.

TABLE OF CONTENTS

Table of Contents

Table of Contents

Table of Contents

TABLE OF CITED AUTHORITIES

Page

CASES

Page

Page

Page

STATUTES AND RULES

Page

OTHER AUTHORITIES

INTRODUCTION

Since *M/S Bremen v. Zapata Off-Shore Co. (The Bremen)*, 407 U.S. 1 (1972), forum-selection clauses have become ubiquitous, even in non-maritime contracts. In *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988), the Court held that forum-selection clauses designating a federal venue in diversity cases should be evaluated through the prism of 28 U.S.C. § 1404(a),[1] which places judicial restraints on parties' private venue selection. Nevertheless, a number of federal circuit courts allow parties to thwart § 1404(a) by holding that forum-selection clauses render venue "improper" in all but the contractually-specified venue. These courts enforce forum-selection clauses designating a federal venue under Fed. R. Civ. P. 12(b)(3) or § 1406 and reflexively dismiss cases filed in a non-specified venue. This result is directly contrary to the express holding of *Stewart* and, as Judge Higginbotham correctly observed in the Fifth Circuit opinion below, this reasoning would render *Stewart* a "dead letter." Pet. App. 6a n.18.

1. All statutory references are to Title 28, United States Code, unless otherwise noted.

STATUTES AND RULES INVOLVED

This case requires an analysis of the following federal venue statutes in Title 28, United States Code:

> **§ 1391. Venue Generally.**
>
> **(a) Applicability of section.**—Except as otherwise provided by law—
>
> (1) this section shall govern the venue of all civil actions brought in district courts of the United States; and
>
> ***
>
> **(b) Venue in general.**—A civil action may be brought in—
>
> ***
>
> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
>
> (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

§ 1404. Change of Venue.

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

§ 1406. Cure or Waiver of Defects.

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(b) Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

This case also raises an issue under Rule 12 of the Federal Rules of Civil Procedure:

12(b) How to Present Defenses.

Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

***

> 3) improper venue;
>
> ***
>
> A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed.

STATEMENT OF THE CASE

This fact-intensive, $159,000 dispute arises out of a contract between Atlantic—a federal contractor—and J-Crew, a subcontractor Atlantic hired to build a day care center at Fort Hood, in Killeen, Texas. J.A. 7–11.

After J-Crew completed its work on the day care center, Atlantic refused to pay the remaining balance of the subcontract, claiming that the work performed by J-Crew's sub-subcontractors, who are not parties to this suit, did not conform to the project's plans and specifications, or was untimely. J.A. 82–83 at ¶¶ 6–7. J-Crew then filed this diversity action against Atlantic in the Western District of Texas to collect the $159,000 balance of the contract. J.A. 7–15.

One of the dispute resolution clauses in the parties' subcontract stated,

> [T]hat all . . . disputes . . . shall be litigated in the Circuit Court for the City of Norfolk, Virginia, or the United States District Court for the Eastern District of Virginia, Norfolk Division. The Parties hereto expressly consent to the jurisdiction and venue of said courts. J.A. 28.

In response to J-Crew's complaint, Atlantic filed a Motion to Dismiss pursuant to § 1406 and Fed. R. Civ. P. 12(b)(3). Atlantic's Motion was based exclusively on the parties' forum-selection clause.[2] J.A. 49–55. Relying on this Court's decision in *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988), the district court denied Atlantic's Motion to Dismiss. The district court held that venue was proper in the Western District of Texas under § 1391(b)(2), and that the forum-selection clause's enforceability should be determined pursuant § 1404(a), rather than § 1406 or Rule 12(b)(3). Pet. App. 32a–35a.

Atlantic also filed an alternative Motion to Transfer Venue pursuant to § 1404(a), J.A. 49–55. Pet. App 43a. The district court concluded that the private- and public-interest factors encompassed by § 1404(a) militated against transfer to Virginia, Pet. App. 40a, and therefore denied Atlantic's § 1404(a) Motion to Transfer.

In reaching this decision, the district court gave significant—but not dispositive—weight to the parties' forum-selection clause. Pet. App. 39a. As required by § 1404(a), the district court also considered a number of other factors primarily relating to the "practical problems that make trial of a case easy, expeditious and inexpensive," Pet. App. 36a n.2, together with the public interest in having local disputes resolved locally. Pet. App. 40a.

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2. Atlantic's Motion to Dismiss, as it related to the forum-selection clause, was premised only upon 28 U.S.C. § 1406 and Fed. R. Civ. P. 12(b)(3)—not Rule 12(b)(6). J.A. 48.

Under these criteria, the only significant factor favoring transfer to Virginia was the parties' agreement.[3]

In contrast, a wide array of factors undermined Atlantic's transfer attempt:

(1) All of the evidence of J-Crew's allegedly defective work (indeed, the entire project) is located in Texas (J.A. 81-82 at ¶ 3; Pet. App. 38a);

(2) All of J-Crew's witnesses, and all of Atlantic's witnesses who worked on the construction site, are in Texas and have no relationship to the Eastern District of Virginia (J.A. 82 at ¶¶ 5-6, 56-57 at ¶ 2; Pet. App. 37a-39a);

(3) The anticipated non-party witnesses specifically identified by J-Crew (Pace Painting, L.L.C.; Norman Woodworks, L.L.C.; Architectural Division 8, Inc.; Killeen Overhead Doors, Inc.; Ponder Company, Inc.; The Blind Shop; and Newman Sports Flooring) all reside in Texas (J.A. 82 at ¶ 5; Pet. App. 38a);

(4) The non-party witnesses in Texas cannot be compelled to testify in Virginia (Pet. App. 38a);[4]

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3. Although Atlantic claimed that its books and records were in Virginia, all of its witnesses who worked on the site are in Texas and have no relationship to the Eastern District of Virginia. J.A. 56–57, 82 at ¶¶ 5-6; Pet. App. 37a–39a. Regarding the books and records, the district court concluded that inconvenience of transporting Atlantic's records was "minimal." Pet. App. 39a.

4. *See* Fed. R. Civ. P. 45(c)(3).

(5) Atlantic could not identify a single non-party witness who would be inconvenienced by the case being heard in Texas (Pet. App. 39a);

(6) The Western District of Texas is more familiar than the Eastern District of Virginia with governing substantive Texas contract law (Pet. App. 40a); and

(7) The construction project underlying the dispute is of greater interest to the people of Texas than to the people of Virginia because the project is in Texas. Pet. App. 40a.[5]

Based on these facts, and its conclusion that § 1404(a) provided the proper adjudicative framework, the district court denied Atlantic's alternative Motion to Transfer. Pet. App. 40a.

Atlantic then filed a Petition for Writ of Mandamus from the Fifth Circuit Court of Appeals, seeking to compel the district court to dismiss or transfer the case to the Eastern District of Virginia. Pet. App. 2a. The Fifth Circuit, also relying on *Stewart*, held that § 1404(a) was the

5. In addition to Texas' undeniable interest in disputes on construction projects in Texas involving Texas subcontractors, tradesmen, and suppliers, Texas has expressed a strong preference in having its construction disputes decided locally. Texas Business & Commerce Code § 272.001, which applies to contracts for the improvement of real property located within the State of Texas, provides: "If a contract contains a provision making the contract or any conflict arising under the contract subject to another state's law, litigation in the courts of another state, or arbitration in another state, that provision is voidable by the party obligated by the contract to perform the construction or repair."

proper procedural device for enforcing the forum-selection clause and recognized the implicit corollary "that a forum selection clause does not render the venue of an otherwise properly venued claim improper because § 1404(a) is the proper procedural tool for transferring a case only when venue is proper in the chosen district; if venue is improper, § 1406(a) is used to transfer venue." Pet. App. 6a (internal quotation marks omitted).

Judge Higginbotham, writing for the Majority, further reasoned that "private parties should not have the power to transcend federal venue statutes that have been duly enacted by Congress and render venue improper in a district where it otherwise would be proper under congressional legislation." Pet. App. 6a. The Fifth Circuit unanimously denied Atlantic's Petition, holding that the district court did not "clearly and indisputably" err in its decision. Pet. App. 13a.

Atlantic then petitioned this Court for a Writ of Certiorari to review the Fifth Circuit's judgment.

ARGUMENT

District courts are not bound by the desires of private parties in determining the manner in which they adjudicate disputes, but rather they are bound by Congress and by this Court's precedent to consider additional factors so that the interests of justice are served. More specifically, this Court in *Stewart* held that 28 U.S.C. § 1404(a) governs a district court's decision whether to give effect to a forum-selection clause designating a federal venue. *Stewart*, 487 U.S. at 32.

Atlantic now contends that the district court "clearly abused its discretion" by following *Stewart* instead of granting Atlantic's Motion to Dismiss for improper venue pursuant to Fed. R. Civ. P. 12(b)(3) and § 1406. The Fifth Circuit, below, correctly observed that whether § 1406 or § 1404(a) applies turns on whether venue is proper in the court in which the suit was originally filed. If venue is improper in that court, then § 1406 or Fed. R. Civ. P. 12(b)(3) applies. If venue is proper in that court, then § 1404(a) applies. Pet. App. 6a.[6] The district court correctly found venue proper in the Western District of Texas, applied § 1404(a) to this venue dispute, and denied Atlantic's motions.

I. VENUE IS PROPER IN THE WESTERN DISTRICT OF TEXAS.

The United States Constitution empowers Congress to establish the proper venue for disputes in the federal courts. *Stewart*, 487 U.S. at 32 ("[T]he constitutional provision for a federal court system . . . carries with it congressional power to make rules governing the practice and pleading in those courts." (internal citations omitted)); *United States v. Nat'l City Lines, Inc.*, 334 U.S. 573, 588–89 (1948) ("Congress' mandate regarding venue and the exercise of jurisdiction is binding upon the federal courts."). Congress exercises this authority through an intricate and reasoned statutory scheme in which "venue" is defined as "the geographic **specification of the *proper***

6. "Under current law, district courts may transfer cases to other district courts where venue is proper either if the transferee court is more convenient (28 U.S.C. § 1404) or if venue is improper in the transferor court (28 U.S.C. § 1406)." H.R. Rep. No. 104-798, at 32 (1996).

court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts . . . ." 28 U.S.C. § 1390(a) (emphasis added). The "proper" venue for resolution of parties' disputes is then specified in § 1391(a). *See* 28 U.S.C. § 1391(a) ("Except as otherwise provided by law—this section **shall govern** the venue of **all civil actions** brought in district courts of the United States.") (emphasis added).

Atlantic does not, and cannot, dispute that venue in the Western District of Texas is statutorily proper under § 1391(b). The construction work at issue is physically located in the Western District of Texas, as are the seven non-party sub-subcontractors, suppliers, and tradesmen who performed the work. J.A. 81–82 at ¶¶ 3–5. Atlantic's own witnesses with relevant knowledge of the project are themselves located in the Western District of Texas. Pet. App. 37a. Venue is therefore statutorily proper in the Western District of Texas. *See* 28 U.S.C. § 1391(b)(2) (setting proper venue in any "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . .").

Atlantic nevertheless insists that private parties can disregard the intricate venue statutes enacted by Congress and render venue "improper" or "wrong" by private agreement. Private parties do not possess such power. The Fifth Circuit, below, joined the Second, Third, Sixth, and Seventh Circuits[7] in recognizing this

7. *Red Bull Assocs. v. Best W. Int'l, Inc.*, 862 F.2d 963, 967 (2d Cir. 1988) ("The other component of the analysis—the interest of justice—is not properly within the power of private individuals to control. The existence of a forum selection clause cannot preclude the district court's inquiry into the public policy ramifications of

fundamental principle first articulated by Justice Scalia in *Stewart*: "[W]hile the parties may decide who between them should bear any inconvenience, only a court can decide how much weight should be given under § 1404(a) to the factor of the parties' convenience as against other relevant factors such as the convenience of witnesses." *Stewart*, 487 U.S. at 35 (Scalia, J., dissenting on other grounds).

II. PRIVATE PARTIES CANNOT RENDER STATUTORILY PROPER VENUE IMPROPER.

Congress intended that § 1404(a) "place discretion in the district court to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness." *Stewart*, 487 U.S. at 29. The command that venue within the federal courts be determined on a case-by-case basis limits the extent to which private parties, even through a freely-bargained contract, are permitted to refashion the laws of federal procedure that specify where a suit may be brought. 14D Charles A. Wright, et al., *Federal Practice and Procedure* § 3803.1 (3d ed. 2013).

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transfer decisions."); *In re Atl. Marine Constr. Co., Inc.*, 701 F.3d 736, 740 (5th Cir. 2012); *In re LimitNone, L.L.C.*, 551 F.3d 572, 575–76 (7th Cir. 2008) ("Because the Northern District of Illinois was not an improper venue, § 1404(a), rather than § 1406(a), provided the authority for the transfer order."); *Wong v. PartyGaming Ltd.*, 589 F.3d 821, 830 (6th Cir. 2009); *Kerobo v. Sw. Clean Fuels Corp.*, 285 F.3d 531, 535 (6th Cir. 2002); *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995). *But cf. TradeComet.com L.L.C. v. Google, Inc.,* 647 F.3d 472, 478 (2d Cir. 2011).

A. The Court Cannot Permit Deviation from the Congressionally-Mandated Framework.

Congress directs that § 1391 "**shall govern** the venue of **all** civil actions brought in district courts of the United States." 28 U.S.C. § 1391(a) (emphasis added). The use of "shall" in 28 U.S.C. § 1391 signals Congress's intent that venue be determined solely by statute. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) (noting that "shall" is a mandatory term, "which normally creates an obligation impervious to judicial discretion"); *see also Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there."). Atlantic has identified no statutory exception providing private parties the power to disregard Congressionally-mandated venue statutes through contracts. The reason is simple: no exception exists. Atlantic's argument would require the Court to create a novel judicial exception to § 1391, effectively rewriting the statute to read "this section shall govern the venue of all civil actions brought in district courts of the United States, **unless the parties otherwise agree."** There is no evidence that Congress ever intended to give private parties such control.

Atlantic, unable to squeeze within the framework of § 1391, instead offers an overly-broad interpretation of the term "wrong" under 28 U.S.C. § 1406—one that renders venue "improper" in any district other than the venue agreed to by private parties. To support its position, Atlantic relies upon the definition of "wrong" found in Black's Law Dictionary: "[a] breach of one's legal duty" or the "violation of another's legal right." Br. 15 citing *Black's*

Law Dictionary 1751 (9th ed. 2009). This definition, and the circular reasoning that surrounds it, cannot salvage Atlantic's argument. Br. 14–15.

Atlantic, ignoring *Stewart*, starts with the premise that private parties have an absolute right to contractually determine the "right" or "proper" venue and then concludes that any other venue is "wrong." This analysis, however, sidesteps the central issue: whether private parties have a legal right to determine the venue of a dispute in federal court exclusively by contract. This Court's holding in *Stewart* provides the answer: they do not.[8]

B. *Stewart* Requires District Courts to Evaluate Forum-Selection Clauses Through the Prism of § 1404(a).

"We hold that federal law, specifically 28 U.S.C. § 1404(a), governs the District Court's decision whether to give effect to the parties' forum-selection clause and transfer this case to [the district designated in the parties' contract]." *Stewart*, 487 U.S. at 32. This case presents the precise set of circumstances confronted by the Court in *Stewart*: a diversity case filed in a statutorily proper venue pursuant to 28 U.S.C. § 1391, but contrary to a forum-selection clause designating an alternative federal district as the venue for any disputes. There, this Court held that the factors provided for in § 1404(a) governed the enforceability of the forum-selection clause. *Id.* Atlantic has not provided a compelling reason to depart from this established precedent.

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8. The *Black's Law Dictionary* definition of "wrong" is still even less relevant, as it defines "wrong" only as a noun. Congress uses "wrong" in § 1406(a), however, as an adjective to describe the venue in which a case is filed.

1. *Stewart* is Explicit in Its Mandate that § 1404(a) Controls the Enforcement of Forum-Selection Clauses.

The Fifth Circuit correctly noted that the "core of *Stewart* is the directive of Congress that allocation of matters among the federal district courts is not wholly controllable by private contract." Pet. App. 13a. Atlantic nevertheless seeks to minimize the dispositive effect of this Court's opinion in *Stewart* by arguing that the Court's holding is limited to the issue of the supremacy of federal law. In doing so, Atlantic sidesteps the basis of this Court's analysis—that § 1404(a) specifically governs the enforcement of forum-selection clauses designating a federal venue. Br. 10, 22–24. But *Stewart's* command is clear and should not be ignored:

> Section 1404(a) directs a district court to take account of factors other than those that bear solely on the parties' private ordering of their affairs. The district court also must weigh in the balance the convenience of the witnesses and those public-interest factors of systemic integrity and fairness that, in addition to private concerns, come under the heading of the 'interest of justice.' It is conceivable in a particular case, for example, that because of these factors a district court acting under § 1404(a) would refuse to transfer a case ***notwithstanding the counterweight of a forum-selection clause . . . .***

487 U.S. at 30–31 (emphasis added).

Moreover, if Atlantic is correct that a forum-selection clause renders venue "wrong" or "improper" in any district other than the one designated by the parties, then the very foundation of this Court's holding in *Stewart*—that 28 U.S.C. § 1404 was a valid Congressional act specifically addressing enforcement of the forum-selection clause at issue and pre-empting state law—falls apart. *Stewart*, 487 U.S. at 28, 32 ("Applying the above analysis to this case persuades us that federal law, specifically 28 U.S.C. § 1404(a), governs the parties' venue dispute.").

2. This Court's Decision in *Stewart* Does Not Conflict with its Prior Decision in *The Bremen*.

Atlantic's argument is premised upon a faulty assumption: that this Court articulated the proper mechanism to enforce forum-selection clauses designating an alternative federal forum before the Court's seminal decision in *Stewart*. The Court did not. *M/S Bremen v. Zapata Off-Shore Co. (The Bremen)*, 407 U.S. 1 (1972) articulated a presumption of validity for forum-selection clauses in international maritime agreements;[9] it did not address the limits Congress imposed on the parties' ability to contractually determine the propriety of venue within the federal courts. *Stewart* was the Court's first opinion directly addressing the procedural mechanism that should be used to determine the enforceability of forum-selection clauses specifying a federal venue, and it continues to be

9. The Court recently affirmed this view in *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 130 S. Ct. 2433, 2448 (2010) (enforcing forum-selection clause where "[t]he parties sensibly agreed that because their bills were governed by Japanese law, Tokyo would be the best venue for any suit relating to the cargo").

good law. Accordingly, § 1404(a) continues to be the proper procedural mechanism for enforcing a forum-selection clause selecting an alternative federal forum. *Stewart*, 487 U.S. at 28, 32.

Moreover, *The Bremen* arose from a motion to dismiss based on lack of jurisdiction or on forum non conveniens grounds—not for "improper" or "wrong" venue. 407 U.S. at 4; *see also Norwood v. Kirkpatrick*, 349 U.S. 29, 31 (1955) ("The forum non conveniens doctrine is quite different from Section 1404(a). That doctrine involves the dismissal of a case because the forum chosen by the plaintiff is so completely inappropriate and inconvenient that it is better to stop the litigation in the place where brought and let it start all over again somewhere else."). *Stewart*, in contrast, arose from a motion to dismiss under § 1406, or alternatively to transfer venue pursuant to § 1404—precisely the same motion filed by Atlantic in this case. Simply stated, *The Bremen* did not address whether or not venue was proper within the federal courts.

3. The Federal Courts Jurisdiction and Venue Clarification Act of 2011 Resolved Any Doubt as to the Proper Method for Enforcing Forum-Selection Clauses.

Congress directs that multiple considerations govern transfer within the federal court system, placing discretion with the district courts to make this determination on an individualized, case-by-case basis. *Stewart,* 487 U.S. at 35. This has been the law for 25 years, and the Federal Courts Jurisdiction and Venue Clarification Act of 2011 ("Venue Act") reaffirms this view. Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63,

125 Stat. 758; H.R. Rep. No. 112-10, at 24 (2011). Atlantic may be disappointed with the balance struck by Congress in the Venue Act, but the arguable benefits of Atlantic's suggested bright-line rule do not provide a legitimate basis for disregarding Congress's authority to define the proper venue for disputes within its courts.

Atlantic mistakenly seeks refuge in the recent amendments Congress made to § 1404(a) which allow district courts to transfer cases filed initially in a proper venue "to any district or division to which all parties have consented." Br. 11 n.3. Atlantic suggests that Congress intended this amendment to provide parties more flexibility in chosing the venue for resolution of their dispute. Br. 11 n.3. While allowing private parties increased flexibility in venue selection may have been one goal of the § 1404(a) amendment, the legislative history confirms that Congress did not intend to supplant this Court's holding in *Stewart*: that a private party's choice of forum is but one factor for the district court to consider when ensuring that the interests of justice are best served by a particular federal venue.

The House Report to the Venue Act reaffirms that Congress expects district courts to determine whether transfer is warranted on a case-by-case basis, and that the parties' expressed venue preference is only one consideration. In a particularly telling passage, Congress stated "[u]nder the proposed amendment, such transfers would only be possible where [1] all parties agreed ***and*** [2] *only if the court found it to be for the convenience of the parties and witnesses and in the interest of justice.*" H.R. Rep. 112–10, at 24 (2011) (emphasis added). Thus, while Atlantic urges that the enforcement of forum-

selection clauses should not be subject to considerations of "discretionary rules," including convenience of witnesses and the interests of justice, those are precisely the criteria Congress mandates that district courts employ.

Congress's amendment to § 1404(a) does not empower private parties to render venue improper; the propriety of venue is established by § 1391. That amendment, however, does provide courts with statutory authority to approve transfer of a case to an agreed-upon venue. Notably, Congress made numerous amendments to § 1391 in the Venue Act and easily could have provided that a civil action "may be brought . . . in any district or division to which all parties have consented." Alternatively, Congress could have crafted a special exception to the general venue statute, just as it carved out exceptions for removal or maritime actions in § 1390. 28 U.S.C. § 1390(b)–(c); *see Jama v. Immigration & Customs Enforcement*, 543 U.S. 335, 341 (2005) ("We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest."). As a third option, Congress could have set forth a special provision within § 1391 to provide that venue would be ***exclusive*** in a district where all parties have agreed. Ultimately, however, it chose not to do so. [10]

10. Notably, Congress did not make a parallel amendment to § 1406 permitting transfer of a case laying venue in the wrong division or district to "any district or division to which all parties have consented;" rather, an "improper" court still may only transfer the case to a "district or division in which [the civil action] could have been brought." 28 U.S.C. § 1406.

Similarly, Congress has not imbued forum-selection clauses with the same forceful, conclusive effect imparted to arbitration agreements. Congress could have adopted a rule favoring enforcement of forum-selection clauses as it has with arbitration provisions. 9 U.S.C. § 2 ("A written provision in any [contract] evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."). It chose not to do so, instead opting for a flexible case-by-case approach. The fact remains that district courts retain an interest in determining the most efficient and just location within the federal system for cases to be to litigated and decided, unlike when parties select arbitration.

The venue amendments reflect Congress's delicate balancing of multiple concerns: private parties' desire for certainty in their business transactions and potentially countervailing concerns for systemic integrity and the interests of justice. *Stewart* instructs that the parties' forum-selection clause should be given significant weight, as it was in this case; however, even the expanded ability of private parties to contractually determine venue through a forum-selection clause remains subject to the district court's oversight. The core principle of *Hoffman v. Blaski*—that private parties cannot control whether venue is "proper" or "improper"—continues to control. 363 U.S. 335, 344 (1960).

Stewart has served as established precedent for a quarter of a century. Setting it aside now would require a "special justification" beyond a bare belief that it was

wrong. *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989). Moreover, "a party seeking to overturn a *statutory* precedent bears an even greater burden, since Congress remains free to correct the Court's decision . . . ." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 130 S. Ct. 1431, 1446 (2010). The Venue Act reaffirms that Congress has no intention of disturbing this Court's interpretation of § 1404(a) and its application to forum-selection clauses selecting a federal forum. Accordingly, Atlantic faces an exceedingly difficult burden to justify a departure from this Court's settled law, which mandates that § 1404(a) govern the enforcement of forum-selection clauses designating a federal venue as the parties' chosen forum—another burden that Atlantic cannot meet. *Stewart*, 487 U.S. at 25–26.

4. Atlantic's Argument Leads to Absurd Results.

Atlantic's assertion that private parties could render statutorily proper venue "improper" would do extensive and unnecessary violence to the intricate procedural framework that governs the federal courts. A district court's authority to transfer a case, *sua sponte,* to a more appropriate forum in the interests of justice is well-settled. *See Tazoe v. Airbus S.A.S.*, 631 F.3d 1321, 1336 (11th Cir. 2011) (holding that a district court may *sua sponte* transfer a civil action to any other district where it might have been brought if doing so will be convenient for the parties and witnesses and serve the interest of justice.).

The court's authority to transfer a case *sua sponte* is derived from § 1404(a) and § 1406, which allow district courts to transfer a matter "to any other district or

division where it might have been brought." 28 U.S.C. § 1404(a); 28 U.S.C. § 1406. If a forum-selection clause renders every district "improper" except the venue selected by the parties, then the district court would be impotent to transfer a case to a more appropriate forum in the interests of justice. Neither Congress nor established case law empowers private parties with this sweeping command over the courts. Private parties are free to negotiate contracts within the bounds of the law and to allocate any inconvenience of litigation among themselves. Private parties cannot, however, divest district courts of their Congressionally-vested discretion and handcuff the judiciary in the administration of justice.

III. THE DISTRICT COURT PROPERLY APPLIED § 1404(a).

A. The District Court Properly Determined that the Balancing of § 1404(a) Factors Weighed Decidedly in Favor of Retaining Venue in the Western District of Texas.

Atlantic seeks to transform the district court's unremarkable denial of its motion to transfer venue into a monumental miscarriage of justice warranting extraordinary relief. A review of the district judge's order, however, reveals that the court's decision was the result of a reasoned and balanced analysis that gave appropriate consideration to Atlantic's forum-selection clause in accordance with 28 U.S.C. § 1404(a) and this Court's opinion in *Stewart.* Pet. App. 13a ("The district court was plainly conversant with *Stewart*.").

Although the presence of a forum-selection clause is a "significant factor that figures centrally in the district court's calculus," it is not entitled to dispositive consideration. *Stewart*, 487 U.S. at 29–31. Rather, a forum-selection clause is entitled only to "the consideration for which Congress provided in § 1404(a)." *Id.* at 31. While Atlantic contends that the district court's inquiry should begin—and end—with the parties' forum-selection clause, *Stewart* and 28 U.S.C. § 1404(a) mandate that a district court account for factors other than those that bear solely on the parties' private affairs.

The district court conducted a thorough analysis of the private and public interest factors that it was bound to consider by this Court's precedent. Specifically, the district judge considered the forum-selection clause in the parties' contract, the location of Atlantic's books and records, and Atlantic's argument that the Eastern District of Virginia disposes of cases, on average, 2.3 months faster than the courts of the Western District of Texas. The court then balanced these factors against the expense and inconvenience to at least seven non-party witnesses (applying the "100-mile rule" set forth by the Fifth Circuit in *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 317 (5th Cir. 2008)), the problems with securing compulsory process over key witnesses to attend trial, the efficiency in conducting discovery, the Western District's relative familiarity with Texas law, and the importance of the litigation to the people of the Western District of Texas. Critically, the district court's opinion did not consider the inconvenience or expense *to J-Crew* at all, as J-Crew never raised its own convenience in support of its response. Weighing these competing factors, the district

court concluded that the matter should not be transferred to Virginia.[11]

Atlantic now asks this Court to adopt a policy, which it ascribes to *The Bremen*, of reflexively enforcing forum-selection clauses in all diversity cases, absent a showing of fraud or overreaching. Br. 13. This Court expressly rejected the *Bremen* standard in the exact same context. *Stewart*, 487 U.S. 22, 28–29 ("[W]e disagree with the court's articulation of the relevant inquiry as 'whether the forum-selection clause in this case is unenforceable under the standards set forth in *The Bremen*.'"). Such a standard would also contravene this Court's admonishment that forum-selection clauses are not entitled to dispositive consideration. *Id.* at 31.[12]

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11. In affirming the district court's analysis, Judge Higginbotham noted that "[d]ismissal under Rule 12(b)(3) or transfer under § 1406 would deny district courts both a role in making the transfer and its capture of Texas law. While Atlantic Marine bargained for a choice of forum, it failed to obtain a choice of law provision." Pet. App. 6a.

12. In her concurring opinion, Judge Haynes posited that "[h]ad the district court given the forum-selection clause the deference it deserves, it would have transferred the case under either § 1404 or § 1406." Pet. App. 24a. J-Crew submits that under the facts of this case, a decision to transfer could only be reached by giving the forum-selection clause dispositive weight: a result that cannot square with *Stewart*.

B. This Case Presents an Exceptional Set of Circumstances.

Atlantic and the Chamber of Commerce speculate that a parade of horribles will result if forum-selection clauses are not reflexively enforced. But neither § 1404(a) nor this Court's decision in *Stewart* prevent a court from deciding that the parties' contractual agreement, with its emphasis on party autonomy and the fulfillment of commercial expectations, best serves the "convenience of the parties" and the "interest of justice." J-Crew concedes that this will be the result in most cases, as the significant weight accorded to the parties' forum-selection clause will prevail.

This case, however, stands apart from other contract disputes that do not lend themselves to resolution in any specific district and that typically will be decided by party witnesses. The evidence before the district court revealed the exceptional nature of this case: all of the physical evidence is located in and cannot be removed from the Western District of Texas; significant expense and inconvenience to at least seven non-party witnesses would be incurred; serious problems with securing compulsory process over key witnesses to attend trial would be present; concerns over efficiency in conducting discovery that threaten to plague the case; a lack of familiarity with Texas law would lead to inefficient results; and the importance of the litigation to the people of the Western District of Texas would be diminished. Most importantly, this case is unique in that Atlantic's own witnesses with relevant information are themselves located in the Western District of Texas, yet Atlantic still seeks to evade the

courts of that district and transfer the matter to Virginia. J.A. 56–57 at ¶ 2; Pet. App. 37a ("Atlantic concedes that the members of its project-magement team that work on the construction site do not reside in Virginia.").

C. The Burden is on Atlantic, as Movant, to Show Transfer is Warranted Under § 1404(a).

Atlantic, as movant, bore the burden to show transfer was warranted. *Hoffman v. Blaski*, 363 U.S. 335, 366 (1960). The private and public interest factors weigh so decidedly in favor of venue in the Western District of Texas that J-Crew would overcome any burden placed on J-Crew. Consequently, any decision by this Court, regardless of who bears the burden under § 1404(a), will not affect the appropriate venue for this dispute.

1. The Circuit Courts are in Agreement as to the Burden Under § 1404(a).

Atlantic correctly states that the Third and Eleventh Circuits shift the burden in a § 1404(a) analysis to the party seeking to avoid transfer. Conversely, the Fifth and Ninth Circuits place the burden on the movant to demonstrate that transfer is warranted pursuant to § 1404(a), despite the existence of a valid forum-selection clause. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 499 (9th Cir. 2000), *cert. denied*, 531 U.S. 928 (2000). All of these circuits, however, still follow *Stewart* and recognize that forum-selection clauses be given "significant" weight in determining whether to transfer pursuant to § 1404(a).

Critically, the reason the Eleventh Circuit "shifted" the burden to the party opposing enforcement of the forum-selection clause was that the presence of a valid forum-selection clause eliminates the traditional deference given to a plaintiff's choice of forum. *In re Ricoh Corp.*, 870 F.2d 570, 573 (11th Cir. 1989). Neither the Fifth Circuit nor the district court in this case attributed *any* deference to J-Crew's selected forum. Instead, the district court gave the forum-selection clause "significant" weight as directed by *Stewart*. Still, the court found the forum-selection clause was outweighed by the other private and public factors applicable in the § 1404(a) analysis. Pet. App. 39a. While the more appropriate articulation of the standard is that the movant continues to bear the burden of demonstrating that transfer is warranted, the practical effect remains the same regardless of how the burden is articulated.

2. The District Court Properly Placed the Burden on Atlantic to Justify Transfer.

The district court properly held that Atlantic, as movant, bore the burden of establishing the propriety of transfer pursuant to 28 U.S.C. § 1404(a). Pet. App. 9a–10a. The Court in *Stewart* directed that forum-selection clauses receive significant but not dispositive attention:

> The forum-selection clause, which represents the parties' agreement as to the most proper forum, should receive neither dispositive consideration . . . nor no consideration . . . but rather the consideration for which Congress provided in § 1404(a).

Stewart, 487 U.S. at 31.[13] As the Fifth Circuit explained, "[p]lacing the burden on the moving party still allows the court to give the forum-selection clause 'the consideration for which Congress has provided in § 1404, because the district court will consider the forum-selection clause in evaluating both the private and public interest factors.'" Pet. App. 10a.

While the presence of the forum-selection clause may be a "significant factor," as many courts have observed, Atlantic offers no basis beyond *The Bremen* standards, which were considered and rejected by this Court in the context of a § 1404(a) analysis, for shifting the burden of proof or persuasion. *Stewart*, 487 U.S. at 28–29 ("Although we agree with the Court of Appeals that the *Bremen* case may prove 'instructive' in resolving the parties' dispute . . . we disagree with the court's articulation of the relevant inquiry as 'whether the forum-selection clause in this case is unenforceable under the standards set forth in *The Bremen*.'"). As Congress reaffirmed in the legislative history to the Venue Act, "transfers [are] only [ ] possible where all parties agreed ***and*** *only if the court found it*

13. "The presence of a forum-selection clause such as the parties entered into in this case will be a significant factor that figures centrally in the district court's calculus. In its resolution of the § 1404(a) motion in this case, for example, the district court will be called upon to address such issues as the convenience of the selected forum given the parties' expressed preference for that venue, and the fairness of transfer in light of the forum-selection clause and the parties' relative bargaining power. The flexible and individualized analysis Congress prescribed in § 1404(a) thus encompasses consideration of the parties' private expression of their venue preferences." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. at 29–30.

to be for the convenience of the parties and witnesses ***and*** *in the interest of justice*." H.R. Rep. No. 112-10, at 24 (2011) (emphasis added). Thus, the movant still bears the burden to satisfy the district court not only that the parties agreed upon a federal venue, but also that transfer be for the *convenience of the parties and witnesses* ***and*** *in the interest of justice.*

3. The Western District of Texas is the Proper Venue for this Dispute Regardless of the Burden.

Even if the forum-selection clause shifted the burden to J-Crew, the balance of the private and public interest factors weigh so decidedly in favor of retaining venue in the Western District of Texas that the initial allocation of the burden will not affect the result in this case.

Atlantic erroneously concludes that the district court's decision was a result of its placing the burden on Atlantic. Br. 27. It was not. A fair reading of the court's opinion clearly shows that the district court concluded that the private and public interest factors overwhelmingly pointed to the Western District of Texas as the appropriate venue for this dispute. Pet. App. 39a–40a.

Nevertheless, Atlantic insists that if the burden had been placed on J-Crew, the district court would have reached a different result. Br. 25–9. Tellingly, Atlantic omits any discussion of relevant factors that would compel a different result had the burden "shifted" to J-Crew. Both J-Crew and Atlantic submitted affidavits to the district court to aid in analyzing the propriety of transfer under § 1404(a). The facts before the district court included, among

others, the forum-selection clause itself, the inconvenience to the non-party witnesses specifically identified by J-Crew, and the fact that the construction project is of far greater significance to the people of the Western District of Texas than it is to the people of Virginia. Pet. App. 36a–40a. The only way to reach the result sought by Atlantic would be to attribute "dispositive weight" to Atlantic's forum-selection clause—a standard expressly rejected by this Court in *Stewart*—before transfer to the Eastern District of Virginia could be justified. *See Stewart*, 487 U.S. at 31 (noting that forum-selection clauses are not entitled to dispositive weight).

D. The Fifth Circuit Correctly Refused to Disturb the District Court's Discretion.

This Court has admonished that a writ of mandamus is an extraordinary remedy, to be granted only in extreme cases where a petitioner's "right to issuance of the writ is clear and indisputable." *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380–81 (2004). Atlantic failed to overcome this high hurdle to obtaining a writ of mandamus. The Fifth Circuit correctly held neither the district court's denial of Atlantic's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406 nor its denial of Atlantic's Motion to Transfer Venue pursuant to 28 U.S.C. § 1404(a) was in error—let alone the "clear and indisputable" error required to justify a writ of mandamus.

Indeed, even Judge Haynes, while diverging from the Fifth Circuit majority's analysis, adhered faithfully to this Court's standards for mandamus relief, recognizing that Atlantic failed to meet its burden and joining in the majority's core holding. Pet. App. 14a ("I cannot credibly

contend that the right to the writ is 'clear and indisputable' as required for mandamus relief.").

Equally significant, the issuance of a writ of mandamus is a matter vested in the discretion of the court to which the petition is made—in this case, the Fifth Circuit Court of Appeals. *Cheney*, 542 U.S. at 391. Indeed, even if the district court had erred—which it did not—mandamus would only be appropriate if the district court's holding produced "patently erroneous results." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) ("[The Court will] review only for clear abuses of discretion *that produce patently erroneous results*.") (emphasis added). Retaining venue in the Western District of Texas, where the relevant party witnesses are located, where at least seven non-party witnesses are located, where the physical evidence is located, where the forum state has expressed a strong interest in deciding disputes arising from local construction projects, where the district judge found Atlantic's own witnesses with material information to be located, and where the burden on the trial court would be minimized—in short, where the interests of justice are best served—is not a "patently erroneous result."

It has long been recognized that "[t]he determination [of] whether the circumstances warrant transfer of venue is peculiarly one for the exercise of judgment by those in daily proximity to these delicate problems of trial litigation." *Time, Inc. v. Manning*, 366 F.2d 690, 698 (5th Cir. 1966) (internal quotations omitted); *Lykes Bros. S.S. Co. v. Sugarman*, 272 F.2d 679, 680 (2d Cir. 1959). The district court exercised that judgment in this case and, after conducting a balanced and reasoned analysis of the relevant factors, concluded that the Western District of

Texas was the most appropriate venue for this dispute. The Court should not now substitute its judgment for that of the district court's, as doing so would invite extraordinary and unending review of ordinary transfer decisions by every district court in the federal system.

IV. THIS COURT SHOULD AFFIRM THE FIFTH CIRCUIT'S DENIAL OF A WRIT OF MANDAMUS.

A. Forum-Selection Clauses Designating a Federal Venue Should be Subject to Judicial Oversight for the Interests of Justice.

Forum-selection clauses are not ordinary contractual provisions because they could interfere with the orderly allocation of judicial business and injure other third-party interests that were not party to the contractual decision-making process. *Nw. Nat'l. Ins. Co. v. Donovan*, 916 F.2d 372, 376 (7th Cir. 1990).

The choice between how federal courts sitting in diversity will enforce forum-selection clauses is clear: either judges will continue to oversee parties' private venue agreements to ensure that the public's interests are protected and the interest of justice is served; or alternatively, the clauses will be reflexively and dogmatically enforced (contrary to Congress's intent), subject only to review for fraud or undue influence.

This Court recognized that Congress enacted § 1404(a) to "place discretion in the district courts to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness" and "those public-interest factors of systemic integrity [ ] that,

in addition to private concerns, come under the heading of 'the interest of justice.'" *Stewart*, 487 U.S. at 23, 30. Section 1404(a) is the only procedural mechanism that is faithful to Congress's mandate. The flexible approach adopted by Congress requiring district courts to evaluate forum-selection clauses on an individualized, case-by-case basis, taking into account considerations of convenience and fairness does not "*limit*" the district court's review of forum-selection clases as Atlantic contends; rather it is the only enforcement approach that provides district courts with any discretion at all. Br. 22.

B. Applying a § 1404(a) Balancing Test will Limit Forum Shopping.

Atlantic and its amici supporters argue that the Court should disregard the venue statues and reflexively enforce forum-selection clauses to prevent forum shopping. But a forum-selection clause is itself an exercise in forum shopping by the party with the most bargaining power. By affirming that the § 1404(a) balancing test governs the enforceability of forum-selection clauses, the Court would reduce—not encourage—forum shopping because it will force parties to consider public interests when drafting forum-selection clauses. This will limit the number of potential forums that may be contractually selected to those actually intended by Congress. It will also reduce efforts by parties to leverage their private bargaining power to undermine the interests of justice.

Forum-selection clauses are valid devices—even under § 1404(a)—for parties to allocate inconvenience among themselves when the most convenient and just location to resolve a dispute is not readily apparent;

however, only a court can decide how much weight should be given to the parties' convenience relative to other § 1404(a) factors, such as the convenience of non-party witnesses. *Stewart*, 487 U.S. at 35 (Scalia, J., dissenting on other grounds).

Finally, Congress—through the Federal Arbitration Act—has provided private parties with the ability to exercise almost complete control over the manner in which their private disputes are decided. Parties may select arbitration and move forward with absolute certainty as to where a dispute will be resolved. Congress has shown that it intends for arbitration agreements to be routinely enforced, and this Court has gone to great lengths to enforce Congress's mandate; however, using a private dispute resolution system does not impose costs on the public. In contrast, taking advantage of the Federal Court system to resolve private disputes imposes costs on the judiciary and the public as a whole. Accordingly, Congress—through venue statutes, such as § 1391 and § 1404(a)—has mandated that private parties consuming public resources must account for the public's interest and those factors of systemic integrity that are beyond private control.

C. Enforcement of Forum-Selection Clauses through Summary Judgment is Untenable.

Professor Sachs, in his brief as Amicus Curiae, correctly notes that proper venue is determined by statute. Sachs Br. at 3–4. Therefore, private parties cannot contractually render a statutorily proper venue improper. Sachs Br. at 9–10. However, Professor Sachs' argument that forum-selection clauses must be raised as an

affirmative defense and enforced via a Rule 12(b)(6) motion to dismiss or a Rule 56 motion for summary judgment is incorrect in light of this Court's decision in *Stewart*. *See* Sachs Br. at 12–15 (arguing that forum-selection clauses must be treated as an affirmative defense).

This Court has directly addressed "the sticky question of which law, state or federal," governs the enforcement of forum-selection clauses by a federal court sitting in diversity jurisdiction. *Stewart*, 487 U.S. at 25–26. This Court held that "federal law, specifically 28 U.S.C. § 1404(a)," controlled the "respondent's request to give effect to the parties' contractual choice of venue . . . ." *Id.* at 28–29. Professor Sachs' proposed solution is therefore untenable in light of this Court's prior precedent mandating that 28 U.S.C. § 1404(a) govern the enforceability of forum-selection clauses.[14]

D. Atlantic's Concerns about Commerce are Overstated.

Atlantic and its supporters overstate the alleged damage that would be inflicted upon our nation's businesses if the Court were to affirm its prior holding in *Stewart*. Circuit Courts have subjected forum-selection clauses providing for an alternate federal venue to the required § 1404(a) analysis ever since this Court's holding in *Stewart*. *See Red Bull Assocs. v. Best W. Int'l, Inc.*, 862 F.2d 963, 967 (2d Cir. 1988); *Jumara v. State Farm*

14. While Professor Sach's proposed solution to enforce forum-selection clauses though summary judgment poses additional concerns, those issues are not properly before the Court. *See Tylor v. Freeland & Kronz*, 503 U.S. 638, 645–46 (1992) (limiting review to the questions presented by the parties and accepted by the Court).

Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995); *In re LimitNone, L.L.C.*, 551 F.3d 572, 575–76 (7th Cir. 2008); *Kerobo v. Sw. Clean Fuels Corp.*, 285 F.3d 531, 535 (6th Cir. 2002). Still, businesses engaged in interstate commerce have managed to flourish over the past 25 years despite the "discretionary" limits imposed by § 1404(a) upon their right to contract for a designated federal venue.

Nevertheless, Atlantic argues that "[t]o relegate enforcement of forum-selection clauses to a discretionary convenience analysis under Section 1404(a), is to invite error and erode the right to contract." Br. 25. But the need for parties to have contractual certainty is not incompatible with the flexible, case-by-case analysis demanded by § 1404(a)—particularly when Congress has expressed a clear intent that district courts retain a discretionary role in evaluating the proper venue in federal diversity cases.

Atlantic and its allies do not seek certainty; rather their goal is to furnish the most powerful economic participants with an unassailable right to select a forum, without any regard for collateral effects this decision may have on the public or the systemic integrity of the judicial system. Congress's decision to subject forum-selection clauses to the individualized, case-by-case review under § 1404(a) does not eliminate certainty; it merely requires that parties consider factors beyond their own desires—including institutional concerns—in selecting a forum. Parties remain free to contract for an agreed-upon forum within the limits prescribed by Congress. The more consideration parties give to these factors at the outset, the more certain they may be that such a clause will be enforced.

Finally, while the analysis differs, the result under § 1404 and § 1406 will be the same in all but the most exceptional cases. Atlantic simply fails to acknowledge that this case, in which every private and public interest factor relevant to a § 1404(a) analysis other than the forum-selection clause itself, favors the Western District of Texas is, in fact, an exceptional case.

CONCLUSION

J-Crew Management, Inc. requests that this Court affirm the Fifth Circuit's refusal to issue a writ of mandamus directing that this case be transferred to the Eatern District of Virginia and reaffirm that *Stewart* remains good law 25 years after this Court first held that § 1404(a) governs the enforcement of forum-selection clauses designating a federal venue.

Respectfully submitted,

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