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CYNTHIA A. GRANT
SUPREME COURT CLERK

No. 130539

IN THE
SUPREME COURT OF ILLINOIS

PIASA ARMORY, LLC, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, Defendant-Appellant.	)	Interlocutory Appeal from the Circuit Court of the Third Judicial Circuit, Madison County, Illinois No. 2023-LA-1129 The Honorable RONALD J. FOSTER, JR., Judge Presiding.

MOTION TO DISMISS CROSS-APPEAL FOR LACK OF JURISDICTION OR, IN THE ALTERNATIVE, TO CLARIFY THAT BRIEFING WILL PROCEED UNDER RULE 343(a)

Defendant-appellant Kwame Raoul, in his official capacity as Attorney General of Illinois, hereby moves to dismiss plaintiff's cross-appeal for lack of jurisdiction. This appeal rises under Rule 304(a), which authorizes an interlocutory appeal from a "final judgment as to one or more but fewer than all of the parties or claims." Ill. Sup. Ct. R. 304(a). But the decision below does not reflect any "final judgment" adverse to plaintiff on any "claim" — much less any claim advancing the three-readings theory that plaintiff wishes to press — and so plaintiff's cross-appeal should be dismissed.

Alternatively, at a minimum, the Court should clarify that briefing in this appeal will proceed under Rule 343(a), not Rule 343(b)(1), as the three-readings theory plaintiff seeks to advance is at most an alternative basis for affirmance, not a

request for relief denied below, and so no cross-appeal is necessary to advance it if it is properly before this Court.

A supporting record is submitted in support of this motion.

BACKGROUND

1. In 2023, the General Assembly amended the Code of Civil Procedure to provide that venue in constitutional challenges to state statutes, rules, and executive orders is proper only in Sangamon or Cook County. *See* Pub. Act No. 103-5 (2023) (codified at 735 ILCS 5/2-101.5) ("section 2-101.5").

2. Plaintiff, a firearms dealer that resides in Madison County, filed a five-count complaint in that county in August 2023. SR2. Counts I through IV of the complaint challenged the constitutionality of the Firearms Industry Responsibility Act, Pub. Act No. 103-559 (2023) (codified at 815 ILCS 505/2BBBB), which prohibits members of the firearms industry from engaging in certain conduct with respect to the sale, manufacture, and marketing of firearms, on various grounds. SR2-5. Count V challenged the amended venue statute, section 2-101.5, on the sole ground that it violated plaintiff's "federal due process rights." SR9 (¶ 16); *see* U.S. Const. amend. XIV.

3. Because the case challenged the constitutionality of a state statute, the Attorney General moved to transfer venue to Sangamon County pursuant to section 2-101.5. SR11, SR14.

4. In response, plaintiff argued that transfer was inappropriate because section 2-101.5 was unconstitutional because it violated the due-process rights of

those residing outside Cook and Sangamon County. SR49. Plaintiff also argued that, if the circuit court agreed that section 2-101.5 was unconstitutional, it should grant summary judgment to plaintiff on Count V and certify any judgment on that claim for interlocutory appeal under Rule 304(a), which permits an appeal of a partial final judgment — *i.e.*, "a final judgment as to one or more but fewer than all of the parties or claims" in a case — where the circuit court makes "an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. Sup. Ct. R. 304(a); *see* SR50, SR61.[1]

5. Plaintiff separately — and for the first time — advanced an "alternative argument" against transfer, contending that section 2-101.5 violated article IV, section 8 of the Illinois Constitution, which requires that legislation be "read by title on three different days in each house" before passage by the General Assembly. SR59. Plaintiff did not seek summary judgment on this ground, presumably because it had not alleged a claim in its complaint alleging that section 2-101.5 violated the "three-readings" rule.

6. The Attorney General filed a reply in support of his transfer motion defending the constitutionality of section 2-101.5 as applied to plaintiff. SR92. The Attorney General maintained that section 2-101.5 was constitutional as applied; he also explained that, if the circuit court disagreed, and found that section 2-101.5 was unconstitutional as applied, the court should enter summary judgment for plaintiff

[1] Plaintiff's response incorrectly described Count V as Count II, but plaintiff agreed at oral argument that its intent was to move for summary judgment on Count V. *See* SR214 n.*.

on Count V and certify that judgment for appeal under Rule 304(a). SR109-110. The Attorney General did not seek summary judgment with respect to plaintiff's three-readings theory, however, because — again — plaintiff had alleged no claim in the complaint that section 2-101.5 was unconstitutional on that basis.

7. The circuit court entered an order on March 4, 2024, denying the Attorney General's motion to transfer, granting plaintiff's motion for summary judgment on Count V, and certifying that claim for appeal under Rule 304(a). SR214, SR224-25. Although the circuit court noted plaintiff's three-readings argument, it "denied" it as foreclosed by this Court's precedent, emphasizing that its "ruling in this case is in no way based on the Three Readings Rule." SR223-24.

8. On March 13, 2024, the Attorney General filed a notice of appeal under Rules 302(a) and 304(a). SR227.

9. The subsequent day, plaintiff filed a "notice of cross appeal." SR242. Plaintiff did not cite any rule under which this Court would have jurisdiction of its purported cross-appeal. Instead, it cited this Court's opinion in *Caulkins v. Pritzker*, 2023 IL 129453, which it read to "instruct[]" parties pressing three-readings claims to cross-appeal in order to "preserve [those] arguments on appeal." SR242.

ARGUMENT

10. The court should dismiss plaintiff's purported cross-appeal. Rule 304(a) does not apply because the circuit court did not enter a partial final judgment adverse to plaintiff on any ground, much less on plaintiff's three-readings theory, and there is no other basis for this Court to exercise appellate jurisdiction. Alternatively, if the

Court concludes that the three-readings theory is properly before it, it should issue an order clarifying that briefing will proceed under Rule 343(a), not Rule 343(b)(1).

A. The Court should dismiss the cross-appeal.

11. Rule 304(a) permits a party to take an interlocutory appeal of a partial final judgment — *i.e.*, "a final judgment as to one or more but fewer than all of the parties or claims" in a case — where the circuit court makes "an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. Sup. Ct. R. 304(a); *see Johnson v. Armstrong*, 2022 IL 127942, ¶¶ 20-22.

12. Rule 304(a) does not apply here because there is no partial final judgment from which plaintiff could appeal. The only final judgment as to any claim entered by the circuit court is the judgment the court entered in plaintiff's favor on Count V of the complaint, which challenges section 2-101.5 on the ground that it violates plaintiff's "federal due process rights." SR9 (¶ 16). Because that is the only "final judgment as to" any "claim" entered by the circuit court, Ill. Sup. Ct. R. 304(a), that is the only judgment appealable under Rule 304(a), and thus the only issue on appeal. *See Blumenthal v. Brewer*, 2016 IL 118781, ¶ 24 ("By its terms, Rule 304(a) applies only to final judgments or orders.").

13. Plaintiff's notice of appeal suggests that it has filed a cross-appeal in order to preserve the argument that section 2-101.5 violates the three-readings rule set out in article IV, section 8 of the Illinois Constitution. SR242. But plaintiff did not plead a "claim" in its complaint that section 2-101.5 violates article VI, section 8;

the circuit court's opinion does not enter "judgment" on that issue; and so Rule 304(a), by its own terms, does not permit an interlocutory cross-appeal on that issue.

14. Plaintiff's notice of appeal does not identify any other basis on which an interlocutory appeal might be available as to its three-readings theory. Plaintiff cites this Court's opinion in *Caulkins*, SR242, but *Caulkins* is distinguishable multiple times over. First, plaintiffs in *Caulkins* — unlike plaintiff here — pled a three-readings claim in their complaint, and the circuit court entered judgment on that claim for defendants, thus permitting plaintiffs there to cross-appeal, if they had chosen to do so. *See Caulkins*, 2023 IL 129453, ¶ 23. Second, *Caulkins* arose under Rule 303, after a final judgment, and so, had plaintiffs in *Caulkins* cross-appealed, that appeal would have carried with it "all prior non-final orders and rulings," regardless of what plaintiffs had pled in their complaint. *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433 (1979).

15. By contrast, the appeal here arises under Rule 304(a), which is a narrow exception to the rule that "all matters" should be resolved in an appeal from "a single judgment." *In re Marriage of Leopando*, 96 Ill. 2d 114, 119-20 (1983); *see also Carle Found. v. Cunningham Twp.*, 2017 IL 120427, ¶ 16 (Rule 304(a)'s purposes include "discouraging . . . unnecessary piecemeal litigation"). Consistent with that purpose, this Court has repeatedly rejected litigants' efforts to appeal mere "issues" presented by a lower court's decision, instead enforcing the plain text of Rule 304(a), which limits an interlocutory appeal to a "separate *claim*." *In re Marriage of Best*, 228 Ill. 2d 107, 113-15 (2008) (emphasis in original); *see also Carle Found.*, 2017 IL 120427,

¶¶ 15-23; *Leopando*, 96 Ill. 2d at 119-20. The Court should do the same thing here and dismiss plaintiff's putative cross-appeal, which does not arise from the circuit court's resolution of any "claim."

16. That rule is fair to all parties and will not prejudice plaintiff. As a general matter, the denial of a motion to transfer venue is not appealable as of right on an interlocutory basis under any rule of this Court, including Rules 302(a) and 304(a). *See* Ill. Sup. Ct. R. 302(a) (limiting direct appeals to this Court to "judgments" under which a state law has been held invalid); Ill. Sup. Ct. R. 304(a) (similar for interlocutory appeals to the appellate court from partial final judgments). As a result, the circuit court's ruling on the Attorney General's motion to transfer in this case was appealable only because plaintiff alleged a due-process claim against section 2-101.5 in its complaint and obtained a "judgment" on that "claim." *See* Ill. Sup. Ct. R. 304(a). Had plaintiff not done so, the Attorney General would not have been able to seek interlocutory appellate review of the circuit court's decision without relying on Rule 308. *See* Ill. S. Ct. R. 308(a) (party may seek interlocutory review of an order "involv[ing] a question of law as to which there is substantial ground for difference of opinion"). The Attorney General would instead have had to seek review after final judgment, as is the norm in civil litigation. *See* Ill. Sup. Ct. R. 303; *supra* ¶ 14.

17. Having failed to plead a three-readings claim in the complaint against section 2-101.5, however, plaintiff is now in the same position: Although it can obtain interlocutory review of the circuit court's judgment on its due-process claim

under Rule 304(a), it cannot bootstrap into that appeal an issue that it did not plead in its complaint and on which it never obtained a judgment. Instead, plaintiff, too, can seek further review of the three-readings issue after final judgment.

B. Alternatively, the Court should clarify that briefing will proceed under Rule 343(a).

18. Alternatively, if the Court concludes that plaintiff's three-readings theory is appropriately before the Court, it should at minimum clarify that briefing will proceed in this case under Rule 343(a), not Rule 343(b)(1). Rule 343(b)(1) sets out the appropriate briefing schedule for cross-appeals, but — again, presuming plaintiff's three-readings theory is properly before the Court — no cross-appeal was needed here, because plaintiff's three-readings theory at most is a basis on which the Court can affirm the circuit court's judgment, not a basis on which plaintiff could obtain relief that the court denied below.

19. As this Court explained in *Caulkins*, although an appellate court can generally "affirm the judgment on any ground called for by the record, . . . a party seeking to modify an adverse judgment must file a cross-appeal." 2023 IL 129453, ¶ 77. The Court applied that rule in *Caulkins* to hold that plaintiffs there should have filed a cross-appeal to preserve their three-readings claim because, if accepted, it would have resulted in the invalidation of provisions of the challenged statute that were not implicated by plaintiffs' equal-protection claim. *Id.* ¶¶ 77-78. Because the circuit court's judgment was thus "adverse to plaintiffs because it did not invalidate the entire Act as requested" by plaintiffs' three-readings claim, the Court explained, a cross-appeal was required. *Id.*

20. That rule does not apply here. As discussed, *supra* ¶¶ 2-5, plaintiff did not allege in its complaint that section 2-101.5 violated article VI, section 8, and so — unlike the plaintiffs in *Caulkins* — did not seek any relief specifically premised on an alleged violation of that rule. *See Caulkins*, 2023 IL 129453, ¶ 78 (*Caulkins* plaintiffs "requested in count II" that the court "invalidate the entire Act" based on an alleged violation of article VI, section 8). Instead, plaintiff invoked the three-readings rule only in opposition to the Attorney General's motion to transfer venue. As a result, the only relief to which plaintiff would be entitled as to its three-readings theory would be an order affirming the circuit court's denial of the Attorney General's motion to transfer — the same relief that plaintiff obtained below. *See* SR239. And even *had* plaintiff here pled a claim in the complaint alleging that section 2-101.5 violated article VI, section 8, the statute that amended the Code of Civil Procedure to add section 2-101.5 (unlike the statute at issue in *Caulkins*) does not contain other statutory provisions that could conceivably be called into question by an adverse ruling on plaintiff's three-readings theory.

21. For that reason, if plaintiff's three-readings theory is properly before the Court — which it is not — it is because it provides the Court an alternative basis on which to affirm the circuit court's denial of the Attorney General's motion to transfer, not because it would grant plaintiff any relief it was denied below. Under that circumstance, no cross-appeal is required, *see Caulkins*, 2023 IL 129453, ¶ 77, and briefing should proceed under Rule 343(a), not Rule 343(b)(1).

CONCLUSION

For these reasons, the Court should dismiss plaintiff's cross-appeal for lack of jurisdiction. Alternatively, the Court should issue an order clarifying that briefing in this matter will proceed under Rule 343(a).

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

/s/ Alex Hemmer
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Deputy Solicitor General
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No. 130539

IN THE
SUPREME COURT OF ILLINOIS

PIASA ARMORY, LLC, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, Defendant-Appellant.	)	Interlocutory Appeal from the Circuit Court of the Third Judicial Circuit, Madison County, Illinois No. 2023-LA-1129 The Honorable RONALD J. FOSTER, JR., Judge Presiding.

ORDER

THIS CAUSE COMING TO BE HEARD on the motion of Defendant-Appellant Kwame Raoul, in his official capacity as Attorney General of the State of Illinois, to dismiss plaintiff's cross-appeal for lack of jurisdiction, due notice having been given, and the Court being advised in the premises;

IT IS HEREBY ORDERED that said motion is GRANTED/DENIED.

ENTER:

_____ JUSTICE

_____ JUSTICE

_____ JUSTICE

_____ JUSTICE

_____ JUSTICE

_____ JUSTICE

_____ JUSTICE

DATED: _____

Alex Hemmer
Deputy Solicitor General
115 South LaSalle Street
Chicago, Illinois 60603

CERTIFICATE OF FILING AND SERVICE

I certify that on April 1, 2024, I electronically filed the foregoing **Motion To Dismiss** with the Clerk of the Court for the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL System.

Thomas G. Maag
tmaag@maaglaw.com

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Alex Hemmer
ALEX HEMMER
Deputy Solicitor General
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Chicago, IL 60603
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No. 130539

IN THE
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PIASA ARMORY, LLC, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, Defendant-Appellant.	)	Interlocutory Appeal from the Circuit Court of the Third Judicial Circuit, Madison County, Illinois No. 2023-LA-1129 The Honorable RONALD J. FOSTER, JR., Judge Presiding.

SUPPORTING RECORD

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

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VERIFICATION BY CERTIFICATION

I, Alex Hemmer, state the following:

1. I am a citizen of the United States over the age of 18. My current business address is 115 South LaSalle Street, Chicago, Illinois 60603. I have personal knowledge of the facts stated in this verification by certification. If called upon, I could testify competently to these facts.

2. I am a Deputy Solicitor General in the Office of the Attorney General of the State of Illinois and have been assigned to represent Defendant-Appellant Kwame Raoul, in his official capacity as Illinois Attorney General, in this appeal.

3. The documents included in this supplemental supporting record are, to the best of my knowledge, true and correct copies of documents filed in this case.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

Executed on April 1, 2024.

/s/ Alex Hemmer
ALEX HEMMER
Deputy Solicitor General
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EFILED
Case Number 2023LA001129
Date: 8/17/2023 9:08 AM
Thomas McRae
Clerk of Circuit Court
Third Judicial Circuit, Madison County Illinois

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC

Plaintiff,

v.

Kwame Roul, in his official capacity as Attorney General of the State of Illinois,

Defendant.

23LM 2023LA001129

COMPLAINT

COUNT I

COMES NOW, Piasa Armory, LLC, by their attorney, complaining of Kwame Raoul, in his official capacity as Attorney General of the State of Illinois, to wit:

1. Piasa Armory is a dealer of firearms and firearm accessories, located at 3685 East Broadway, Alton, IL 62002 that engages in retail sale of the aforementioned, and advertises among other places at piasaarmory.com.
2. Kwame Routl, named in his official capacity only, is the Attorney General of the State of Illinois, acting under color of state law in the enforcement of HB0218.
3. Governor J.B. Pritzker signed into law HB0218 as codified 815 ILCS 505/2BBB of the Illinois Consumer Fraud and Deceptive Business Practices Act, a copy of which is attached hereto.
4. Under HB0218, a dealer of firearms and firearm accessories, including Piasa Armory, LLC, may potentially be named in a civil action as a defendant by the Attorney General of Illinois for third parties misuse of firearms and firearms products. 815 ILCS 505/2BBB

5. The Protection of Lawful Commerce in Arms Act ("PLCAA") immunizes under federal law civil actions against gun dealers for criminal or unlawful misuse of a qualified product, including firearms, by a third party, subject to narrow exceptions that do not apply. 15 U.S.C. § 7902
6. HB0218 violates the Supremacy Clause of the Constitution of the United States by conflicting with federal law that occupies the field at issue.
7. That this action is brought pursuant to 42 U.S.C. 1983.

WHEREFORE, Piasa Armory, LLC, by their attorney, requests a declaration that 815 ILCS 505/2BBB is unconstitutional, an injunction barring its enforcement, plus any other relief deemed equitable and just, including costs and attorney's fees pursuant to 42 U.S.C. 1988.

COUNT II

COMES NOW, Piasa Armory, LLC, by their attorney, complaining of Kwame Raoul, in his official capacity as Attorney General of the State of Illinois, to wit:

1. Piasa Armory is a dealer of firearms and firearm accessories, located at 3685 East Broadway, Alton, IL 62002 that engages in retail sale of the aforementioned, and advertises among other places at piasaarmory.com.
2. Kwame Routl, named in his official capacity only, is the Attorney General of the State of Illinois, acting under color of state law in the enforcement of HB0218.
3. Governor J.B. Pritzker signed into law HB0218 as codified 815 ILCS 505/2BBB of the Illinois Consumer Fraud and Deceptive Business Practices Act, a copy of which is attached hereto.
4. Under HB0218, a dealer of firearms and firearm accessories, including Piasa Armory, LLC, may potentially be named in a civil action as a defendant by the Attorney General

of Illinois for third parties misuse of firearms and firearms products. 815 ILCS 505/2BBB

5. HB0218 is void for vagueness in that renders unlawful conduct that allegedly "create, maintain, or contribute to a condition in Illinois that endangers the safety or health of the public either unlawful in itself or unreasonable under all circumstances...", 815 ILCS 505/2BBB-(b)(1), leaving uncertain what speech is even targeted, and thus is unconstitutional under the First and 14th Amendments.
6. This action is brought pursuant to 42 U.S.C. 193.

WHEREFORE, Piasa Armory, LLC, by their attorney, requests a declaration that 815 ILCS 505/2BBB is unconstitutional, an injunction barring its enforcement, plus any other relief deemed equitable and just, including costs and attorney's fees pursuant to 42 U.S.C. 1988..

COUNT II

COMES NOW, Piasa Armory, LLC, by their attorney, complaining of Kwame Raoul, in his official capacity as Attorney General of the State of Illinois, to wit:

1. Piasa Armory is a dealer of firearms and firearm accessories, located at 3685 East Broadway, Alton, IL 62002 that engages in retail sale of the aforementioned, and advertises among other places at piasaarmory.com.
2. Kwame Routl, named in his official capacity only, is the Attorney General of the State of Illinois, acting under color of state law in the enforcement of HB0218.
3. Governor J.B. Pritzker signed into law HB0218 as codified 815 ILCS 505/2BBB of the Illinois Consumer Fraud and Deceptive Business Practices Act, a copy of which is attached hereto..

4. Under HB0218, a dealer of firearms and firearm accessories, including Piasa Armory, LLC, may potentially be named in a civil action as a defendant by the Attorney General of Illinois for third parties misuse of firearms and firearms products. 815 ILCS 505/2BBB

5. HB0218 violates the Second Amendment, and Fourteenth Amendment as incorporated to the states, of the United States Constitution by seeking to impose liability that is inconsistent with this Nation's historical tradition. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S.Ct. 2111, 2126 (2022).

WHEREFORE, Piasa Armory, LLC, by their attorney, requests a declaration that 815 ILCS 505/2BBB is unconstitutional, an injunction barring its enforcement, plus any other relief deemed equitable and just, including costs and attorney's fees pursuant to 42 U.S.C. 1988.

COUNT IV

COMES NOW, Piasa Armory, LLC, by their attorney, complaining of Kwame Raoul, in his official capacity as Attorney General of the State of Illinois, to wit:

1. Piasa Armory is a dealer of firearms and firearm accessories, located at 3685 East Broadway, Alton, IL 62002 that engages in retail sale of the aforementioned, and advertises among other places at piasaarmory.com.

2. Kwame Routl, named in his official capacity only, is the Attorney General of the State of Illinois, acting under color of state law in the enforcement of HB0218.

3. Governor J.B. Pritzker signed into law HB0218 as codified 815 ILCS 505/2BBB of the Illinois Consumer Fraud and Deceptive Business Practices Act, a copy of which is attached hereto..

4. Under HB0218, a dealer of firearms and firearm accessories, including Piasa Armory, LLC, may potentially be named in a civil action as a defendant by the Attorney General of Illinois for third parties misuse of firearms and firearms products. 815 ILCS 505/2BBB

5. That at all times relevant, the Illinois Constitution, Article IV, Section 8, requires bills to be read, including their name, on three separate days in each chamber of the general assembly before it may be passed.

6. That in violation of Article IV, Section 8, the Illinois General Assembly took a shell bill, that was to make a punctuation change to the Code of Civil Procedure, gutted it, and replaced all of its text with the presently offending purported statute, and in the process, failed to actually comply with Article IV, Section 8.

7. As a proximate cause, the challenged purported statute is *void ab initio.*

WHEREFORE, Piasa Armory, LLC, by their attorney, requests a declaration that 815 ILCS 505/2BBB is unconstitutional, an injunction barring its enforcement, plus any other relief deemed equitable and just, including costs and attorney's fees pursuant to the Illinois Civil Rights Act of 2003.

COUNT V

COMES NOW, Piasa Armory, LLC, by their attorney, complaining of Kwame Raoul, in his official capacity as Attorney General of the State of Illinois, to wit:

1. Piasa Armory is a dealer of firearms and firearm accessories, located at 3685 East Broadway, Alton, IL 62002 that engages in retail sale of the aforementioned, and advertises among other places at piasaarmory.com.

2. Kwame Routl, named in his official capacity only, is the Attorney General of the State of Illinois, acting under color of state law in the enforcement of HB0218.

3. Governor J.B. Pritzker signed into law HB0218 as codified 815 ILCS 505/2BBB of the Illinois Consumer Fraud and Deceptive Business Practices Act, a copy of which is attached hereto..

4. That Plaintiff brings a constitutional claim challenging said bill.

5. That having been successfully sued on multiple occasions in recent years for violating the constitutional rights of citizens of Illinois, and in violation of their oaths of office, the Illinois legislature and the governor of Illinois passed and enacted, upon the governor's signature on 6-6-2023, 735 ILCS 5/2-101.5.

6. That the purported statute purports to limit access to the Court by citizens of Illinois, who bring constitutional challenges to unconstitutional actions of the State of Illinois, which, on information and belief, is designed expressly to limit Second Amendment and related challenges to forums that the state considers either more friendly to its position, or sufficiently inconvenient to would be Plaintiffs to deter such actions from being filed in the first place, and abolishes *forum non conveniens* for those cases, no matter how inconvenient or inaccessible the forum is to the victim of the constitutional violation, and no matter where the effect of the Constitutional violation took place.

7. The basis purposes of the general venue statute, as opposed to the challenged statute, was to provide a forum that was convenient either to the defendant, by commencing the action near his home, or to the witnesses, by making it possible to litigate the case where the transaction occurred. No challenge is made to the general venue statute.

8. Because venue is merely a matter of procedure, courts generally cannot interfere with the legislature's province in determining where venue is proper (Chappelle v. Sorenson (1957), 11 Ill.2d 472, 476, 143 N.E.2d 18), unless constitutional provisions are violated.

9. A law fixing venue could be so arbitrary or unreasonable as to deprive defendants of due process. (Mapes v. Hulcher (1936), 363 Ill. 227, 231, 2 N.E.2d 63.)

10. As noted in Chambers v. Baltimore & Ohio R.R. Co. (1907), 207 U.S. 142, 148, 28 S.Ct. 34, 35, 52 L.Ed. 143, 146 (the right to sue and defend in the courts is foundational in our governmental system)).

11. In fact, one of the great crimes against the colonies of King George III, prior to the Revolution, as noted in the Declaration of Independence was, in essence, fixing venue in far off and inconvenient lands.

12. The legal rights which a litigant might seek to exercise or protect exist only to the extent they are enforceable through the court system. Depriving a litigant of the opportunity to use the courts effectively makes these legal rights worthless, which is the intent of the statute, so as to allow the state to violate the Constitution with relative impunity.

11. By making forums far off and inconvenient, and with possibly no connection to the dispute, the challenged statute substantially increases the likelihood of an inability to bring a successful constitutional challenge, especially by the infirm and impoverished, the weakest among us.

12. That the potential safeguard, a *forum non conveniens* motion, is foreclosed by statute.

13. Other than to protect the State from meritorious constitutional challenges, of which the State in good conscience has no legitimate interest, it fails to explain the legislature's arbitrary and sudden shift away from its established principles of venue. It would also encourage other State agencies to evade the purposes of the general venue statute by convincing the legislature to insert, as was done in the case at bar, a single sentence in a statute totally unrelated to civil procedure. This would effectively force every party sued by a State agency to "be entirely at [an

agency's] mercy, since such an action could be made oppressive and unbearably costly" (Heldt, 329 Ill.App. at 414, 69 N.E.2d 97), and place venue "in a faraway place where [the party] neither resides nor carries on any kind of activities" (American Oil Co., 133 Ill.App.2d at 261, 273 N.E.2d 17).

14. While Illinois law requires that the Attorney General represent the State, as defined, in litigation matters, the added administrative burden of requiring the AG to defend suit in the county of the county proper under the general venue statute will indeed be negligible.

15. The Attorney General has satellite offices throughout the State and routinely litigates in every county in Illinois. The Attorney General routinely represents many State agencies in every county in Illinois. To require similar procedures in Constitutional Claims would not require the office of the Attorney General to do anything it does not already do. Each of the Attorney General's local offices is already intimately familiar with local rules and procedures. Therefore, any argument that requiring a Plaintiff to file suits only in counties of Cook and Sangamon would grossly inconvenience the Attorney General has no basis in fact.

16. That based on the totality of the circumstances, the challenged venue statute violates federal due process rights under the Fifth and 14th Amendments.

17. This action is brought pursuant to 42 U.S.C. 1983, and is brought in a venue proper under the general venue statute, but in express and intentional violation of the void and unconstitutional 735 ILCS 5/2-101.5.

WHEREFORE, Plaintiff requests this Honorable Court to declare 735 ILCS 5/2-1001.5(a), unconstitutional, a violative of due process, and(1) to deny any change of venue motion based upon 735 ILCS 5/2-101.5, (2) to enjoin Defendant, including his successors in office and successors in authority, and all those under his authority, from challenging the venue of any

action, or moving for a change of venue, based upon 735 ILCS 2-101.5, (3) plus such other further and different relief as allowed by law, plus (4) and award of costs and attorney fees pursuant to 42 U.S.C. 1988.

DATED: August 15, 2023

Respectfully submitted,
By: /s/ Thomas G. Maag
One of Their Attorneys

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EFILED
Case Number 2023LA001129
Date: 10/27/2023 8:38 AM
Thomas McRae
Clerk of Circuit Court
Third Judicial Circuit, Madison County Illinois

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC, Plaintiff, v. KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, Defendant.	No. 2023 LA 1129

ATTORNEY GENERAL'S MOTION TO TRANSFER TO A PROPER VENUE

1. Defendant Kwame Raoul, the Attorney General of Illinois, and improperly sued as "Kwame Roul" and "Kwame Routl," moves to transfer this case to Sangamon County under new section 2-101.5(a) of the Code of Civil Procedure:

> Notwithstanding any other provisions of this Code, if [1] an action is brought against the State or any of its officers, employees, or agents acting in an official capacity [2] on or after the effective date of this amendatory Act of the 103rd General Assembly [3] seeking declaratory or injunctive relief against any State statute, rule, or executive order [4] based on an alleged violation of the Constitution of the State of Illinois or the Constitution of the United States, venue in that action is proper only in the County of Sangamon and the County of Cook.

735 ILCS 5/2-101.5(a).

2. As Plaintiff Piasa Armory, LLC ("Piasa Armory") concedes, Complaint at 8, ¶ 17, section 2-101.5(a) plainly applies to this action. First, Piasa Armory sues the Attorney General in his official capacity. *Id.* at 1, ¶¶ 2–3. Second, the complaint was filed on August 17, more than two months after the statute became effective on June 6. *Id.* at 1. Third, Piasa Armory seeks both declaratory and injunctive relief against the Attorney General concerning the Firearm Industry Responsibility Act ("FIRA"), which amended the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505. *Id.* at 2, 3, 4, 5. Fourth, Piasa Armory contends it is entitled to this

relief because FIRA violates both the United States and Illinois constitutions. *Id.* Thus, the plain language of section 2-101.5(a) compels the Court to grant the Attorney General's motion and transfer this action to Sangamon County.

3. Piasa Armory resists this outcome because, it contends, transferring this action to Sangamon County would violate its due process rights under the United States constitution. Complaint at 8, ¶ 16. But Piasa Armory does not allege any specific facts explaining why it thinks it will be unable to continue prosecuting this action if it is transferred to Sangamon County. This omission is fatal to Piasa Armory's argument.

4. The due process clause of the United States constitution provides the State may not unreasonably close the courthouse doors ***altogether*** to a litigant with a viable claim for relief. Put another way, the State may not unreasonably deprive a litigant of ***any and all*** opportunity to be heard. *E.g., Lewis v. Casey*, 518 U.S. 343, 350 (1996); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 438 (1982); *Boddie v. Connecticut*, 401 U.S. 371, 382–83 (1971); *Williams v. Illinois State Scholarship Commission*, 139 Ill. 2d 24, 63 (1990).

5. Transferring this action to Sangamon County will not deprive Piasa Armory of the ability to challenge the constitutionality of FIRA. It brings facial challenges and asserts claims based on pure questions of law, which do not turn on its individual circumstances and likely will not require its corporate representatives to personally participate in court hearings. And although the Attorney General intends to challenge Piasa Armory's standing to pursue its claims, recently amended Supreme Court Rules 45 and 241 authorize Piasa Armory's representatives to appear remotely; they can even choose to testify via video conference at an evidentiary hearing or trial.

6. In short, Piasa Armory has every right to challenge the constitutionality of FIRA and the ability to do so in Sangamon County consistent with section 2-101.5(a).

WHEREFORE, for these reasons, and as set forth in more detail in the accompanying memorandum, the Court should grant the Attorney General's motion and transfer this action to Sangamon County pursuant to section 2-101.5(a) of the Code of Civil Procedure, 735 ILCS 5/2-101.5(a).

Dated: October 27, 2023

Respectfully submitted,

/s/ Darren Kinkead

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, certify that I will cause to be served copies of the foregoing *Attorney General's Motion to Transfer to a Proper Venue* via electronic mail upon those listed below on October 27, 2023:

Thomas G. Maag
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Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

/s/ Darren Kinkead

Darren Kinkead, ARDC No. 6304847

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IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC, Plaintiff, v. KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, Defendant.	No. 2023 LA 1129

MEMORANDUM IN SUPPORT OF ATTORNEY GENERAL'S MOTION TO TRANSFER TO A PROPER VENUE

Introduction and Summary of Argument

Plaintiff Piasa Armory, LLC ("Piasa Armory") contends the Firearm Industry Responsibility Act ("FIRA"), which amended the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505, violates the United States and Illinois constitutions. Complaint at 1–5. Because Piasa Armory seeks declaratory and injunctive relief against the Attorney General concerning a state statute based on alleged constitutional violations, Defendant Kwame Raoul, the Attorney General of Illinois, has moved to transfer this case to Sangamon County under new section 2-101.5(a) of the Code of Civil Procedure:

> Notwithstanding any other provisions of this Code, if an action is brought against the State or any of its officers, employees, or agents acting in an official capacity on or after [June 6, 2023] seeking declaratory or injunctive relief against any State statute, rule, or executive order based on an alleged violation of the Constitution of the State of Illinois or the Constitution of the United States, venue in that action is proper only in the County of Sangamon and the County of Cook.

735 ILCS 5/2-101.5(a).

There is no question that the plain language of section 2-101.5(a) applies to this action and renders venue in Madison County improper. Piasa Armory concedes as much, Complaint

at 8, ¶ 17, but contends the statute, as applied here, would violate its due process rights under the United States constitution, *id.* at 8, ¶ 16. The Court should reject this argument for multiple reasons.

Piasa Armory points to no case holding a venue statute violates a ***plaintiff's*** right to due process. The right to a proper "venue is a valuable privilege intended to protect a ***defendant***." *Turner v. Commonwealth Edison Co.*, 63 Ill. App. 3d 693, 700 (5th Dist. 1978) (emphasis added); *see Wilson v. Central Illinois Public Service Co.*, 165 Ill. App. 3d 533, 539 (5th Dist. 1988) ("Obtaining the proper venue is an important privilege and is clearly meant to protect the ***defendant*** from being sued in a county arbitrarily selected by the plaintiff.") (emphasis added). And while the Illinois Supreme Court has recognized "[a] law fixing venue could be so arbitrary or unreasonable as to deprive ***defendants*** of due process," Complaint at 4, ¶ 10 (citing *Mapes v. Hulcher*, 363 Ill. 227, 231 (1936)) (emphasis added), it has never reached the same conclusion as to ***plaintiffs***.

Lack of precedent aside, Piasa Armory's attack on section 2-101.5(a) also fails because litigating this action in Sangamon County will not deny it meaningful access to the courts. Piasa Armory brings facial constitutional challenges to FIRA and asserts claims based on pure questions of law. Resolving these questions does not turn on Piasa Armory's individual circumstances and likely will not require its corporate representatives to participate personally in court hearings. And while the Attorney General intends to challenge Piasa Armory's standing to maintain this action, that can be done in Sangamon County without any difficulties. Recently amended Supreme Court Rules 45 and 241 authorize Piasa Armory's corporate representatives to appear remotely; they can even choose to testify via video conference at an evidentiary hearing

or trial. For these reasons, Piasa Armory's ability to prosecute this action in Sangamon County is just as robust as its ability to prosecute this action in Madison County.

Because section 2-101.5(a) is constitutional as applied, the Court should grant the Attorney General's motion and transfer this action to Sangamon County so that court can decide Piasa Armory's separate constitutional challenges to FIRA.

Background

Section 2-101.5(a) was added to the Code of Civil Procedure earlier this year to address a particular circumstance of increasing frequency. The State and its officers have been, and continue to be, named as defendants in constitutional challenges to a wide variety of statutes and other government action. These lawsuits share a few things in common. They are generally facial challenges with statewide implications—meaning plaintiffs argue "the statute is unconstitutional under any set of facts; the specific facts related to the challenging party are irrelevant." *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 29. They are often duplicative—meaning multiple plaintiffs file materially identical challenges in different counties at the same time. *E.g., Rowe v. Raoul*, 2023 IL 129248, ¶ 9. And recently, the merits of these constitutional challenges have ultimately been decided by the Illinois Supreme Court. *E.g., Caulkins*, 2023 IL 129453, ¶ 81 (assault weapons restrictions); *Rowe*, 2023 IL 129248, ¶ 51 (bail reform).

Given the interest in promoting judicial economy and ensuring the just and efficient resolution of litigation, the question addressed by section 2-101.5(a) is where these challenges should be heard in the first instance. The answer is grounded in common sense and experience. Sangamon County is an appropriate forum to resolve facial constitutional challenges with statewide implications. It is the seat of state government. 5 ILCS 190/1. It is where the General Assembly meets, 25 ILCS 5/1, and state officers conduct business, *e.g.,* Ill. const. art. V, § 1. It is

where the Attorney General, who is charged with representing the State and its officers in court, 15 ILCS 205/4, has his main office, *see* illinoisattorneygeneral.gov/Contact.

In recent years, the Illinois Supreme Court has consolidated in Sangamon County a number of facial constitutional challenges with statewide implications. *E.g., Pate v. Pritzker*, No. 127825 (Ill. Nov. 22, 2021), attached as Exhibit 1 (Covid-19 school masking requirement); *Haymaker Enterprises, Inc. v. Pritzker*, No. 126619 (Ill. Nov. 17, 2020), attached as Exhibit 2 (Covid-19 indoor dining restrictions); *Craig v. Pritzker*, No. 126204 (Ill. Aug. 5, 2020), attached as Exhibit 3 (scope of Governor's Covid-19 emergency powers). The court has also transferred such challenges to Sangamon County on its own motion, *Pritzker v. McHaney*, No. 126261 (Ill. Aug. 11, 2020), attached as Exhibit 4 (scope of Governor's Covid-19 emergency powers), and even when there was not an identical challenge already pending there, *Pritzker v. Madonia*, No. 126921 (Ill. Feb. 22, 2021), attached as Exhibit 5 (Covid-19 high school sports restrictions).

For these reasons, section 2-101.5(a) sensibly identifies Sangamon County as a proper venue for lawsuits, like this one, raising constitutional challenges to state statutes and seeking declarative or injunctive relief against state officers.

Legal Standard

"Proper venue is an important statutory privilege." *Bucklew v. G.D. Searle & Co.*, 138 Ill. 2d 282, 288 (1990). "A defendant has the right to insist that a lawsuit proceed in a proper venue, provided the defendant timely raises a venue objection." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005). A venue objection is timely if it is raised by "a motion to transfer to a proper venue" filed "on or before the date upon which [defendant] is required to appear or within any further time that may be granted him or her to answer or move with respect to the complaint." 735 ILCS 5/2-104(b). "Because venue is merely a matter of procedure, courts

generally cannot interfere with the legislature's province in determining where venue is proper, unless constitutional provisions are violated." *Williams v. Illinois State Scholarship Commission*, 139 Ill. 2d 24, 41 (1990) (citation omitted).

"The judiciary's power to declare a statute unconstitutional is 'the gravest and most delicate duty that [courts are] called on to perform.'" *Rowe*, 2023 IL 129248, ¶ 19. "It is not an endeavor that [courts] take lightly." *Id.* "Legislative enactments have a strong presumption of constitutionality, and [courts] must uphold the constitutionality of a statute when reasonably possible." *Caulkins*, 2023 IL 129453, ¶ 28. The "party challenging the constitutionality of a statute bears the burden of clearly establishing a constitutional violation." *Wirtz v. Quinn*, 2011 IL 111903, ¶ 17. "A party has standing to challenge the constitutionality of a statute only insofar as it adversely impacts his or her own rights." *State v. Funches*, 212 Ill. 2d 334, 346 (2004).

Argument

The plain language of section 2-101.5(a) applies to Piasa Armory's constitutional challenges to FIRA. And transferring this case to Sangamon County will not violate Piasa Armory's due process rights.

I. Section 2-101.5(a) applies to this action.

Section 2-101.5(a) provides:

> Notwithstanding any other provisions of this Code, if [1] an action is brought against the State or any of its officers, employees, or agents acting in an official capacity [2] on or after the effective date of this amendatory Act of the 103rd General Assembly [3] seeking declaratory or injunctive relief against any State statute, rule, or executive order [4] based on an alleged violation of the Constitution of the State of Illinois or the Constitution of the United States, venue in that action is proper only in the County of Sangamon and the County of Cook.

735 ILCS 5/2-101.5(a).

As Piasa Armory concedes, Complaint at 8, ¶ 17, section 2-101.5(a) plainly applies to this action. First, Piasa Armory sues the Attorney General in his official capacity. *Id.* at 1, 2, 3, 4. Second, the complaint was filed on August 17, more than two months after the statute became effective on June 6. *Id.* at 1. Third, Piasa Armory seeks both declaratory and injunctive relief against the Attorney General concerning FIRA. *Id.* at 2, 3, 4, 5. Fourth, Piasa Armory contends it is entitled to this relief because FIRA violates both the United States and Illinois constitutions. *Id.* Because each of the conditions set forth in section 2-101.5(a) is satisfied, venue "is proper only in the County of Sangamon and the County of Cook." Thus, the plain language of section 2-101.5(a) compels the Court to grant the Attorney General's motion and transfer this action to Sangamon County.

II. Section 2-101.5(a) does not violate Piasa Armory's due process rights.

Piasa Armory resists this outcome because, it contends, transferring this action to Sangamon County would violate its due process rights under the United States constitution. Complaint at 8, ¶ 16. But it does not allege any specific facts suggesting it will be unable to continue prosecuting this action if it is transferred to Sangamon County. This omission is fatal to Piasa Armory's argument.

A. Due process requires a meaningful opportunity to be heard.

Due process "protect[s] civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982). It requires that "persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971). Thus, the State may not terminate claims because of procedural errors beyond a litigant's control. *Logan*, 455 U.S. at

438. It may not charge fees that prevent indigent women from filing an action for divorce. *Boddie*, 401 U.S. at 382–83. And it may not "interfer[e] with inmates' attempts to prepare legal documents or file them." *Lewis v. Casey*, 518 U.S. 343, 350 (1996) (citation omitted).

A clear principle is apparent from these authorities. The State may not unreasonably close the courthouse doors ***altogether*** to a litigant with a viable claim for relief. Put another way, the State may not unreasonably deprive a litigant of ***any and all*** opportunity to be heard.

This rule is confirmed by the only Illinois Supreme Court precedent holding a statute fixing venue violated a litigant's due process rights. The law at issue in *Williams v. Illinois State Scholarship Commission* set Cook County as the "exclusive venue" for lawsuits brought against student loan borrowers by the state agency tasked with administering those loans. 139 Ill. 2d at 28. The court "admit[ted] that, standing alone, requiring venue to be in a particular county does not necessarily infringe upon [the] right of access to the courts." *Id.* at 63. But the court found the state agency "regularly" obtained default judgments "against [borrowers] who, for all practical purposes, cannot appear" in Cook County because they "are indigent" and "cannot afford the travel costs to [that] distant forum." *Id.* at 42–43, 46. The court also found "there was no evidence that [borrowers] could have defended their interests without making a personal appearance" in Cook County. *Id.* at 64. The court concluded "the burden of an inconvenient forum, when combined with the indigence of the [borrowers]" and other factors, "effectively deprive[s] [the borrowers] of any means of ***defending*** themselves in these actions." *Id.* at 63 (emphasis added); *see Leroy v. Great Western United Corp.*, 443 U.S. 173, 183–84 (1979) ("In most instances, the purpose of statutorily specified venue is to protect the ***defendant*** against the risk that a plaintiff will select an unfair or inconvenient place of trial.") (emphasis added).

B. Piasa Armory has a meaningful opportunity to be heard in Sangamon County.

Transferring this action to Sangamon County, by contrast, will not deprive Piasa Armory of its ability to challenge the constitutionality of FIRA. For starters, Piasa Armory pleads no specific facts establishing it would be forced to abandon its constitutional challenges if section 2-101.5(a) is applied to this action. *See Payne v. Country Mutual Insurance Co.*, 195 Ill. App. 3d 995, 998 (5th Dist. 1990) (courts disregard "conclusions of fact unsupported by allegations of specific fact upon which such conclusions rest"). Piasa Armory does not allege, for example, that its corporate representatives cannot afford to travel to Sangamon County. *Contra Williams*, 139 Ill. 2d at 42–43 ("because [borrowers] are indigent, they cannot afford the travel costs to the distant forum in Cook County"). This failure, on its own, is reason enough to reject Piasa Armory's argument that transferring this action to Sangamon County would violate its due process right to access the courts.

Regardless, it is clear Piasa Armory's constitutional challenge can proceed without impediment in Sangamon County. Piasa Armory argues FIRA's amendments to the Consumer Fraud and Deceptive Business Practices Act are preempted by federal law under the supremacy clause and violate the First and Second amendments to the United States constitution, as well as the three readings rule in the Illinois constitution. Piasa Armory's allegations present pure questions of law—as will generally be the case in facial constitutional challenges subject to section 2-101.5(a). Resolving Piasa Armory's claims will require its lawyer to conduct research, draft briefs, and defend his position in court. But the Sangamon County courthouse is less than a 90-minute drive from counsel's office in Madison County. *See People v. Stiff*, 391 Ill. App. 3d 494, 504 (5th Dist. 2009) (court may take judicial notice of distance between locations using Google Maps). And counsel is no stranger to a Sangamon County courtroom; a month before he

filed this action on behalf of Piasa Armory in Madison County, he filed another Second Amendment action on behalf of a different client in Sangamon County. *See* Complaint, *Stanfield v. Kelly*, No. 2023 CH 20 (July 18, 2023), attached as Exhibit 6. He can prosecute this action there too.

Further, it is doubtful Piasa Armory's constitutional challenges to FIRA will depend in any way on the company's individual circumstances. After all, Piasa Armory has brought a facial challenge, Complaint at 1–5, which means "the specific facts related to the challenging party are irrelevant." *Caulkins*, 2023 IL 129453, ¶ 29. Presumably this is why the complaint contains no factual allegations at all about Piasa Armory's business practices. Thus, even if its claims are tried in Sangamon County, Piasa Armory's corporate representatives likely will not need to be there in person to provide testimony. Again, this will generally be the case in facial constitutional challenges subject to section 2-101.5(a).

To be sure, the Attorney General intends to contest Piasa Armory's standing to bring its constitutional claims. But these facts and arguments can be developed in Sangamon County without any conceivable prejudice to Piasa Armory. Supreme Court Rule 206(h) authorizes remote depositions. Supreme Court Rule 45(c)(1) gives the company's representatives the right "to attend court via the circuit court's available remote appearance technology without any advance approval" for nonevidentiary hearings like statuses and oral arguments. And Supreme Court Rule 241(b) allows those representatives and other witnesses to testify via video conference or telephone at an evidentiary hearing or trial "for good cause shown and upon appropriate safeguards." The committee comments to Rule 241 specifically note that "[t]he use of video conference technology to conduct civil trials and evidentiary hearings increases accessibility to the courts," particularly for parties "who face an obstacle to appearing in person

in court such as illness, disability, or ***distance from the courthouse***" (emphasis added). Thus, good cause for remote testimony "is likely to arise" when a party "resid[es] or work[s] ***far from the courthouse***" (emphasis added).

Expanding the ability to participate remotely in court proceedings is a crucial component of the Illinois Supreme Court's strategic agenda to improve access to the courts. *See Illinois Supreme Court Policy on Remote Court Appearances in Civil Proceedings* at 2–4 (May 2020), attached as Exhibit 7. Rules 45 and 241 reflect that court's conclusion that appearing by video conference is the solution for parties who live far from the courthouse or otherwise struggle to make it in person. *Id.* And the appellate court has confirmed that remote hearings conducted pursuant to these rules can provide adequate due process to all participants. *E.g.*, *In re P.S.*, 2021 IL App (5th) 210027, ¶ 62 ("find[ing] the circuit court used the Zoom videoconference platform to conduct a hearing that protected the rights of the parties, as well as the integrity of the judicial process"). Because of these technological advances allowing remote testimony and appearances from anywhere in the State, it is difficult to conceive of any application of section 2-101.5(a) that would in fact deprive litigants of access the courts.

The due process right to access the courts is violated when the State effectively shutters the courthouse doors—unreasonably depriving litigants of any ability to be heard. *E.g.*, *Lewis*, 518 U.S. at 350; *Logan*, 455 U.S. at 438; *Boddie*, 401 U.S. at 382–83; *Williams*, 139 Ill. 2d at 63. Applying section 2-101.5(a)'s venue requirement to this action will not have that effect. Piasa Armory will be able to prosecute this action in Sangamon County with the same vigor and effectiveness as in Madison County. Section 2-101.5(a) does not violate its due process rights.

C. Piasa Armory's contrary arguments fail to persuade.

The cases Piasa Armory cites in its complaint are entirely inapposite. *Mapes v. Hulcher* allows "a law fixing venue might be so arbitrary or unreasonable as to deprive ***defendants*** of due process of law," 363 Ill. at 231 (emphasis added), a possibility realized decades later in *Williams*, 139 Ill. 2d at 63. But all *Mapes* holds is that it is constitutional to fix venue for claims arising out of an automobile accident in the county where the accident occurred. 363 Ill. at 231. *Heldt v. Watts*, 329 Ill. App. 408, 413 (1st Dist. 1946), and *American Oil Co. v. Mason*, 133 Ill. App. 2d 259, 260–61 (1st Dist. 1971), are merely applications of the rule, not at issue here, that venue is proper in the county where the transaction at issue occurred; what's more, both cases ground their analysis in concern for ***defendants'*** due process rights, *Heldt*, 329 Ill. App. at 415 ("we observe the many safeguards the legislature has thrown around the right of a defendant to be sued in the proper county"); *American*, 133 Ill. App. 2d at 261 (noting "the intent of the legislature to insulate defendants from being sued in a faraway place where he neither resides nor carries on any kind of activities").

Chappelle v. Sorenson is even further afield; it holds it is constitutional for "a city court to send its original process beyond the corporate limits of the city." 11 Ill. 2d 472, 476 (1957). Likewise *Chambers v. Baltimore & Ohio R.R.*, which stands for the irrelevant proposition that a state law restricting access to courts "must operate in the same way on its own citizens and those of other states." 207 U.S. 142, 149 (1907). Simply put, none of Piasa Armory's cases support the assertion that transferring this action to Sangamon County would violate its due process rights.

As a last resort, Piasa Armory points to hypothetical harms section 2-101.5(a) might cause hypothetical third parties. For example, it worries about the statute's effect on "the infirm and impoverished, the weakest among us." Complaint at 7, ¶ 11. And it thinks the requirement to

litigate constitutional challenges in Sangamon County might be "sufficiently inconvenient to would be Plaintiffs to deter such actions from being filed in the first place." *Id.* at 6, ¶ 6. The Court need not concern itself with these allegations. "Generally, if there is no constitutional defect in the application of the statute to a litigant, that person does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations." *Funches*, 212 Ill. 2d at 346; *see CTU v. Board of Education*, 189 Ill. 2d 200, 206 (2000) ("To have standing to challenge the constitutionality of a statute, one must have sustained or be in immediate danger of sustaining a direct injury as a result of enforcement of the challenged statute."). Because section 2-101.5(a) is constitutional as applied here, Piasa Armory cannot avoid its effect by speculating about other scenarios not before the Court.

Conclusion

Piasa Armory will have the opportunity to challenge FIRA's constitutionality in Sangamon County. For all these reasons, the Court should grant the Attorney General's motion and transfer this action to Sangamon County pursuant to section 2-101.5(a) of the Code of Civil Procedure, 735 ILCS 5/2-101.5(a).

Dated: October 27, 2023

Respectfully submitted,

/s/ Darren Kinkead

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, certify that I will cause to be served copies of the foregoing *Memorandum in Support of Attorney General's Motion to Transfer to a Proper Venue* via electronic mail upon those listed below on October 27, 2023:

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lawmaag@gmail.com

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

/s/ Darren Kinkead
Darren Kinkead, ARDC No. 6304847

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IN THE

SUPREME COURT OF ILLINOIS

Jeremy Pate et al., etc.,	Cook County Circuit Court
	Kendall County Circuit Court
Respondents	Macoupin County Circuit Court
	Montgomery County Circuit Court
v.	Sangamon County Circuit Court
	Vermilion County Circuit Court
Governor Jay Robert Pritzker, etc.,	21CH4914
	21CH79
Movants	21MR112
	21MR1259
	21MR255
	21MR432
	21MR91

O R D E R

This cause coming to be heard on the motion of movants, responses and objections having been filed, and the Court being fully advised in the premises;

IT IS ORDERED that the motion to transfer and consolidate pursuant to Supreme Court Rule 384 is allowed. Pursuant to Supreme Court Rule 384, Mark Hughes et al., etc. v. Hillsboro Community School District #3, et al., etc., Montgomery County No. 21 MR 112, Robert Graves et al., etc. v. Governor Jay Robert Pritzker, etc., et al., Kendall County No. 21 MR 255, Julienne Austin, etc., et al. v. The Board of Education of Community Unit School District #300, et al., Macoupin County No. 21 MR 91, Jason Watson et al., etc. v. Hoopeston Area School District #11, et al., etc., Vermilion County No. 21 MR 432, and B.C., a Minor, etc. v. Governor Jay Robert Pritzker, etc., et al., Cook County No. 21 CH 4914, are transferred to the Circuit Court of Sangamon County and consolidated with Jeremy Pate v. Governor Jay Robert Pritzker, etc., et al., Sangamon County No. 21 MR 1259, and Laura Murray, etc., et al. v. Governor Jay Robert Pritzker, etc., et al., Sangamon County No. 21 CH 79.

Order entered by the Court.

FILED
November 22, 2021
SUPREME COURT
CLERK

IN THE

SUPREME COURT OF ILLINOIS

Haymaker Enterprises, Inc., et al.,	)	Clinton County Circuit Court
	)	Cook County Circuit Court
Respondents	)	DeKalb County Circuit Court
	)	DuPage County Circuit Court
v.	)	Kane County Circuit Court
	)	Marion County Circuit Court
Governor Jay Robert Pritzker et al.,	)	McHenry County Circuit Court
	)	Sangamon County Circuit Court
Movants	)	2020MR589
	)	20CH179
	)	20CH287
	)	20CH348
	)	20CH353
	)	20CH596
	)	20CH65
	)	20CH6526
	)	20MR109
	)	20MR1121
	)	20MR140

O R D E R

This cause coming to be heard on the motion of movants, Dr. Ngozi Ezike, Illinois Department of Public Health, and J.B. Pritzker, an objection having been filed by respondent, Haymaker Enterprises, Inc., and the Court being fully advised in the premises;

IT IS ORDERED that the motion to transfer and consolidate pursuant to Supreme Court Rule 384 and for certain other relief is allowed in part. Pursuant to Supreme Court Rule 384, Cook County case No. 20 CH 6526, Shakou, LLC et al. v. Governor Jay Robert Pritzker, etc., et al., Marion County case No. 20 MR 140, Orphan Smokehouse, LLC, etc. v. Governor Jay Robert Pritzker, etc., et al., Clinton County case No. 20 MR 1019, RAD Gaming, Inc., etc. v. Governor Jay Robert Pritzker, etc., et al., Kane County case Nos. 20 CH 348, Fox Fire Tavern, LLC, etc. v. Governor Jay Robert Pritzker, etc., et al., and 20 CH 353, NKG Pingree Grove LLC, etc. v. Governor Jay Robert Pritzker, etc., et al., DuPage County case No. 20 CH 596, SBBL, LLC, etc.

v. Governor Jay Robert Pritzker, etc., et al., McHenry County case Nos. 20 MR 1121, 251 Pub, Inc., etc. v. Governor Jay Robert Pritzker, etc., et al., and 20 CH 287, Niko's Red Mill, Inc., etc., et al. v. Governor Jay Robert Pritzker, etc., et al., DeKalb County case No. 20 CH 65, Haymaker Enterprises, Inc., etc., et al. v. Governor Jay Robert Pritzker, etc., et al., and Sangamon County case No. 20 CH 179, Millertime Partners, LLC, etc. v. Governor Jay Robert Pritzker, etc., et al., are transferred to Sangamon County and consolidated with Sangamon County case No. 20 MR 589, In re Covid-19 Litigation.

FILED
November 17, 2020
SUPREME COURT
CLERK

IN THE

SUPREME COURT OF ILLINOIS

Riley Craig, Keith Ayre, and Chris Schmulback, Respondents v. Governor Jay Robert Pritzker, in his official capacity, Movant Kirk Allen and John Kraft, Respondents v. Governor Jay Robert Pritzker, in his official capacity, Movant Thomas DeVore, Respondent v. Governor Jay Robert Pritzker, in his official capacity, Movant Steve Gorazd and Angela Gorazd, Respondents v. Governor Jay Robert Pritzker, in his official capacity, Movant Daniel English, Respondent v. Governor Jay Robert Pritzker, in his official capacity, Movant	Bond County Circuit Court Clinton County Circuit Court Edgar County Circuit Court Richland County Circuit Court Sangamon County Circuit Court 20MR32 20MR45 20MR48 20MR589 20MR79

O R D E R

This cause coming to be heard on the motion of movant, Jay Robert Pritzker, due notice having been given, and the Court being fully advised in the premises;

IT IS ORDERED that the motion to transfer and consolidate pursuant to Supreme Court Rule 384 is allowed. Pursuant to Supreme Court Rule 384, Kirk Allen et al. v. Governor Jay Robert Pritzker, etc., Edgar County No. 20 MR 45, Thomas DeVore v. Governor Jay Robert Pritzker, etc., Bond County No. 20 MR 32, Steve Gorazd et al. v. Governor Jay Robert Pritzker, etc., Clinton County No. 20 MR 79, and Daniel English v. Governor Jay Robert Pritzker, etc., Richland County No. 20 MR 48, are transferred to the Circuit Court of Sangamon County and consolidated with Riley Craig et al. v. Governor Jay Robert Pritzker, etc., Sangamon County No. 20 MR 589.

Order entered by the Court.

FILED
August 05, 2020
SUPREME COURT
CLERK

130539
126261

IN THE

SUPREME COURT OF ILLINOIS

Governor Jay Robert Pritzker, in his official capacity, Movant v. Hon. Michael D. McHaney, Judge of the Fourth Judicial Circuit, Respondent Darren Bailey	)	Motion for Supervisory Order Clay County Circuit Court 20CH6

O R D E R

This cause coming to be heard on the motion of movant, Jay Robert Pritzker, due notice having been given, and the Court being fully advised in the premises;

IT IS ORDERED that the emergency motion for supervisory order is denied. On the Court's own motion, pursuant to Supreme Court Rule 384, Darren Bailey v. Governor Jay Robert Pritzker, in his official capacity, Clay County No. 20 CH 6, is transferred to the Circuit Court of Sangamon County and consolidated with Riley Craig et al. v. Governor Jay Robert Pritzker, etc., Sangamon County No. 20 MR 589.

Order entered by the Court.

FILED
August 11, 2020
SUPREME COURT
CLERK

130539
126921

IN THE

SUPREME COURT OF ILLINOIS

Governor J.B. Pritzker, Petitioner v. Hon. John M. Madonia, Chief Judge of the Circuit Court of Sangamon County, Lisa Mara Moore, Mandy Worker, Jill Pearson Layne, Kate Benton, and Christine Simmons, Respondents The Illinois High School Association	)	Writ of Mandamus LaSalle County Circuit Court 20MR426

O R D E R

This cause coming to be heard on the motion of petitioner J.B. Pritzker, a response having been filed, and the Court being fully advised in the premises:

IT IS ORDERED: Motion by Petitioner for leave to file a petition for an original writ of mandamus. Denied. The alternative request for a supervisory order is allowed. In the exercise of this Court's supervisory authority, the Circuit Court of Sangamon County is directed to accept jurisdiction of Moore v. Pritzker, case No. 20 MR 426 in accordance with the January 19, 2021 order of the Circuit Court of LaSalle County transferring the case to Sangamon County pursuant to Supreme Court Rule 187.

Order entered by the Court.

FILED
February 22, 2021
SUPREME COURT
CLERK

EFILED
7/18/2023 2:03 PM
Paul Palazzolo
7th Judicial Circuit
Sangamon County, IL

IN THE CIRCUIT COURT
SEVENTH JUDICIAL CIRUCIT
SANGAMON COUNTY, ILLINOIS

EDWARD STANFIELD,	)	
	)	
Plaintiff,	)	**Plaintiff requests trial by Jury of Six**
	)	
v.	)	**Case No.** 2023CH000020
	)	
BRENDAN KELLY, in his official capacity as Director of the Illinois State Police, JUSTIN HARRIS, and the CITY OF ROCHESTER, ILLINOIS,	)	
	)	
Defendant.	)	

COMPLAINT

Comes now Plaintiff Edward Stanfield, by and through his attorneys, Thomas G. Maag and the Maag Law Firm, LLC, and for their cause of action, state as follows:

1. At all times relevant, Plaintiff Edward Stanfield is a citizen and resident of Illinois.
2. At all times relevant, Defendant Brendan Kelly is a citizen and resident of Saint Clair County, Illinois, and is sued in his official capacity as Director of the Illinois States Police.
3. That Defendant Justin Harris is a police officer at the Rochester, Illinois, police Department, is sued individually, and acted under color of state law.
4. That Defendant City of Rochester, Illinois, is a municipality located in Illinois.
5. That the Illinois State Police both enforces criminal laws, and administers the Illinois State Firearms Owners Identification Act, and its related statutes.
6. That prior to the issues relevant to this case, Plaintiff held a valid Illinois State Police Firearms Owners Identification Card.

7. That under Illinois law, a FOID card is generally and usually required in order to possess firearms lawfully.
8. That as a FOID card is generally and usually required in order to possess firearms lawfully, the right to a FOID card must, by implication and necessity, be at least co-extensive with the Second Amendment right to keep and bear arms, as incorporated by the 14th Amendment to the U.S. Constitution. As such, any person deprived of a FOID card on grounds that would violate the Second Amendment for firearms is having their Second Amendment rights violated. Plaintiff previously held a FOID card, and lawfully possessed firearms.
9. That Plaintiff has been convicted of no crimes which purport to limit the right to keep and bear arms.
10. That Plaintiff has not been adjudicated as mentally defective and is not otherwise mentally ill.
11. That no court has ordered the invalidation of Plaintiff's FOID card.
12. That no administrative hearing with notice and opportunity to be heard has ordered the Plaintiff's FOID card be invalidated. Instead, Plaintiff has had an accusation made against him, and the state has ruled against him, in a manner reminiscent of the infamous Starr Chamber, and deprived him of his rights under the Second Amendment.

COUNT I

13. That Defendant Justin Harris, based on an alleged anonymous report, made a clear and present danger report on or about June 12, 2019, concerning Plaintiff, on unknown and unclear grounds.

14. That this report resulted in the Illinois State Police invalidating Plaintiff's FOID card, in 2019, requiring Plaintiff to divest himself of his firearms and ammunition, in order to comply with "the law."
15. That Plaintiff has not been able to restore his FOID card since it was invalidated and has not been able to legally possess any firearm or any ammunition, for any purpose, anywhere in Illinois, since that time.
16. That Defendant Kelly acted pursuant to 430 ILCS 65/8(f), and its related statutes, which purport to allow Defendant Kelly to revoke a FOID card, and thus the ability to lawfully possess or acquire firearms in Illinois, upon receipt of such a notice, and by preponderance of the evidence finding that "a person whose mental condition is of such a nature that is poses a clear and present danger to the applicant, and any other person or persons, or the community."
17. That Defendant is not invited to, or even allowed to, participate in such a hearing, prior to it being ruled upon, and has no notice or opportunity to object, until after having their FOID card revoked.
18. That pursuant to 430 ILCS 65/8.1(d) the identify of the person reporting the alleged clear and present danger is not made available to the victim, and thus, leaves the victim at the mercy of reporters for abuse, for instance, for political reasons.
19. That as of the date of this filing, Plaintiff's FOID card remains invalidated, despite Plaintiff not being given any pre-revocation opportunity to be heard.
20. That as the statute and the conduct of Defendant Kelly implicate the plain language of the Second Amendment, the Statute is facially unconstitutional.

21. In addition, the statute fails the second step of *Bruen*, in that there is no historical analogue from the time of the revolution to disarm an otherwise law abiding citizen, based on an anonymous accusation, with no prior notice or opportunity to be heard.

22. Thus, the statute, as written, is unconstitutional.

WHEREFORE, Plaintiff Humbly requests this Honorable Court enter judgment in his favor, and against Brendan Kelly, an order the immediate restoration of Plaintiff's FOID card, a declaration that 430 ILCS 65/8(f), and its related statutes related to "clear and present danger" reports are unconstitutional, and should be enjoined, plus costs of suit, and pursuant to 42 U.S.C. 1988, attorney fees and litigation costs.

COUNT II

1 – 22. Plaintiff adopts paragraphs 1 through 22 of Count II.

23. In late 2021, Plaintiff arranged for a meeting with the Chief of Rochester Police Department and Defendant Harris, to try to have the Clear and Present Danger report rescinded.

24. That said Chief and Defendant Harris initially agreed to such a meeting, in 2021, but thereafter claimed to be unavailable, and refused to reschedule, such that the suspension remains in effect to this date, and is a continuing civil rights violation as of the date of filing.

25. That while 430 ILCS 65/8.1 purports to limit the liability of Defendant Harris, said state law defense is pre-empted by the Supremacy Clause of the U.S. Constitution, and thus, provides no actual defense to any federal cause of action against said officer.

26. At all times relevant, Defendant Harris had a duty not to violate the Constitutional rights of Plaintiff.

27. That no reasonable police officer in 2019, or in 2021, would think that the right to keep and bear arms can be revoked without notice or opportunity to be heard.

28. In breach of that duty, Defendant Harris acted as heretofore alleged.

29. As a proximate cause of the foregoing, Plaintiff has been damaged in an amount of compensatory damages in excess of $5,000.00.

WHEREFORE, Plaintiff humbly request that this Honorable Court enter judgment in his favor, and against Defendant Justin Harris, in an amount of compensatory damages in excess of $5,000.00, plus punitive damages in an amount not to exceed ten time compensatory damages, plus costs of suit, and pursuant to 42 U.S.C 1988, attorney fees and costs of litigation.

COUNT III

1 – 22. Plaintiff adopts paragraphs 1 through 22 of Count III.

23. That an unknown employee of the Illinois State Police, personally suspended Plaintiff's FOID card, which continues to this date to be suspended, and thus constitutes a continuing injury.

24. That said unknown employee, whose name is unknown to Plaintiff, and who Defendant is unlikely to voluntarily disclose, is personally liable to Plaintiff for money damages, resulting from the violation of Plaintiff's Second Amendment rights.

24. That the Plaintiff has suffered, as a proximate cause, damages for the loss of this FOID card, and the ability to keep and bear arms.

25. That since about May 1, 2019, the Illinois State Police has required law enforcement agencies making clear and present danger reports to enter into a user agreement, a copy of the form of which is attached hereto.

25. That the City of Rochester, Illinois, entered into this agreement, and thereby expressly "agreed to assume, without limitation, all risks of loss and to indemnify .. and any of its employees or officials against any and all actions, losses, expenses and damages...."

26. By virtue of such agreement, Defendant City of Rochester is contractually liable to Plaintiff for all injuries and resulting damages.

WHEREFORE, Plaintiff humbly request that this Honorable Court enter judgment in his favor, and against Defendant City of Rochester, Illinois, in an amount damages which would be equal to that imposed on the employee who personally revoked Plaintiff's FOID card, which would include those, against that person, of compensatory damages in excess of $5,000.00, plus punitive damages in an amount not to exceed ten time compensatory damages, plus costs of suit, and pursuant to 42 U.S.C 1988, attorney fees and costs of litigation.

Dated: 7-17-2023

Respectfully Submitted,
Edward Stanfield,

s/Thomas G. Maag
Thomas G. Maag #6272640
Maag Law Firm, LL
22 West Lorena Avenue
Wood River, IL 62095

618-216-5291
tmaag@maaglaw.com

Illinois Supreme Court Policy on

Remote Court Appearances in

Civil Proceedings

Effective May 2020

I. PREAMBLE

The Illinois Supreme Court recognizes that meaningful access to the courts is essential to ensuring the integrity and fairness of the judicial process and to preserving trust in our legal system. Courts can use technology to improve the administration of justice, increase efficiency, and reduce costs. The Court recently approved a branch-wide Strategic Agenda[1] prepared by the Illinois Judicial Conference, and the first strategic goal is "Accessible Justice & Equal Protection Under the Law." One strategy for ensuring accessible justice is to promote and expand remote access in civil cases, allowing court patrons to have easier access to court services, court and case information, and court appearances.

The widespread popularity of mobile telephones, particularly smartphones and other personal devices, means that more people than ever before have the ability to participate in court proceedings electronically from a location outside of court. Moreover, large numbers of self-represented litigants navigate the civil justice system in Illinois every year. The costs and challenges of travel, childcare, and time off from work can deter them from going to court. For lawyers, the opportunity to appear remotely may allow them to appear efficiently in multiple courthouses and to represent more clients. While improving efficiencies, Remote Court Appearances offer significant cost savings for litigants, lawyers, and witnesses and reduce safety and public health concerns by minimizing the number of people entering the courthouse.

New Illinois Supreme Court Rule 45 and Supreme Court Rule 241 grant courts broad discretion to allow Remote Court Appearances. To improve access to the courts, increase efficiency, and reduce costs, courts should permit Remote Court Appearances to the extent reasonable, feasible, and appropriate. Rule 45 does not require a Case Participant to demonstrate hardship or good cause to appear remotely. Therefore, Remote Court Appearances under Rule 45 should be easy to request and liberally allowed, and courts should ensure that they have removed unnecessary financial and other barriers for Case Participants to appear remotely. The use of Video Conferences for testimony in civil trials and evidentiary hearings may be allowed for good cause and upon appropriate safeguards under Rule 241 (and Telephone Conferences may be allowed in compelling circumstances for testimony). Court have wide discretion under both rules to allow Remote Court Appearances

This Policy is intended to help courts implement, expand, and encourage the use of Remote Court Appearances in civil cases by any or all Case Participants, including judges. The Policy outlines several topics for courts to consider when developing remote appearance procedures and encourages courts to review their existing rules and orders to ensure none of them have the effect of creating financial or other barriers to Remote Court Appearances. Courts should also ensure that the technology available for Remote Appearances complies with the Americans with

[1] The full Strategic Agenda is available at https://courts.illinois.gov/SupremeCourt/Jud_Conf/IJC_Strategic_Agenda.pdf. For more information on the Illinois Judicial Conference, see http://illinoiscourts.gov/SupremeCourt/Jud_Conf/default.asp.

Disabilities Act (ADA). This Policy should help courts to understand when Remote Court Appearances are appropriate and reasonable to promote meaningful access to the courts.

The need for Remote Court Appearances and innovative methods for allowing access to our courts became acute during the COVID-19 crisis. It is hoped that this Policy and Rules 45 and 241 will assist our courts in establishing local rules, orders, and procedures for Remote Court Appearances which will be in place to address not only the ordinary but also extraordinary necessity for Remote Court Appearances and assure the accessibility of our judicial system.

II. DEFINITIONS

1. "Case Participant" – Any individual involved in a civil case including the judge presiding over the case, parties, lawyers, guardians *ad litem*, minors in the care of the Department of Children and Family Services (DCFS), witnesses, experts, interpreters, treatment providers, law enforcement officers, DCFS caseworkers, and court reporters.[2] This term does not include jurors, the public, or members of the media that are not parties or witnesses in a case. Members of the media or their lawyers may be considered Case Participants if they have filed a motion or pleading in a pending case.

2. "Remote Court Appearance" or "Remote Appearance" – Participation by at least one Case Participant in a court proceeding via Telephone or Video Conference.

3. "Telephone Conference," "Telephonic Court Appearance," or "Telephone Appearance" – Simultaneous two-way audio (sound only) communication with Case Participants in two or more different locations on a telephone or other electronic device. This may be done by a simple person-to-person phone call or by use of a conferencing line service that allows multiple people to participate simultaneously from multiple locations.

4. "Video Conference," "Video Court Appearance," or "Video Appearance" – Simultaneous two-way audio (sound) and/or visual communication with Case Participants in two or more different locations via electronic means.

III. BENEFITS OF REMOTE COURT APPEARANCES

Remote Court Appearances in civil proceedings under Rules 45 and 241 provide many benefits to Case Participants, including judges and court personnel, while creating easier access to our courts. For example, Remote Court Appearances:

1. Decrease the time and expense of coming to court. As a result, represented parties will pay less for their lawyers' time and travel and self-represented parties or other Case Participants, will miss less work, pay less for childcare, and pay less for transportation.

2. Increase accessibility to the courts for Case Participants who are:

    a. Living with disabilities and/or debilitating illnesses.

    b. Elderly.

[2] Court reporters must comply with all requirements of the Court Reporter Act 705 ILCS 70.

c. Serving in the military and particularly in deployed status.

d. Confined in a prison or jail.

e. Hospitalized or otherwise suffering from medical conditions.

f. In inpatient treatment for physical health, mental health, or substance abuse reasons.

g. Residing in nursing homes or long-term care facilities.

h. In a different state or country.

i. Residing a far distance from the courthouse or having other difficulties with traveling to the courthouse.

j. Serving other public needs such as medical providers, DCFS caseworkers, therapists, and law enforcement officers.

k. Part of emergency situations requiring courts to limit their operations.

3. Assist lawyers, including legal aid and *pro bono* lawyers who often serve large geographic areas, by providing a more efficient and convenient method for appearing in court. The resulting time savings and reduced travel may allow lawyers to take on more clients and expand their practices into more jurisdictions within Illinois.

4. Reduce the numbers of persons in courthouses which reduces the burden on security, lessens risks to public health and safety, and allows court staff to manage their time more efficiently.

5. Provide the Case Participants with more scheduling flexibility. This could be particularly valuable in critical cases such as emergency orders of protection.

6. Allow judges in rural jurisdictions to hear cases from outlying courthouses in one location minimizing the time they spend traveling to outlying courthouses.

7. Benefit law enforcement, correctional institutions, hospitals, and mental health facilities involved in civil cases by allowing Case Participants to appear from their premises rather than at courthouses and reduce the costs of transportation and security.

8. Allow Case Participants such as witnesses, experts, caseworkers, and treatment providers a more efficient and convenient way to provide testimony and reduce costs relating to witness and expert testimony. Provide caseworkers and treatment providers with time saving measures which allow them to better manage their other duties and cases.

9. Increase public perception of the court system as in step with the myriad of private and public sector institutions which conduct business remotely and as responsive to the needs of the community.

IV. CIRCUMSTANCES FOR REMOTE COURT APPEARANCES

Remote Court Appearances under Rule 45 are appropriate in many types of civil proceedings. Ideally, Remote Court Appearances should be an available option regardless of the type of case, nature of the of hearing, or circumstances of the Case Participant. Some Case Participants may appear by telephone, some by video, and some in person all on the same case. Courts have the discretion to determine how many Case Participants may appear remotely and in what way based on the courts' capabilities.

Non-evidentiary civil court proceedings may be more conducive to Remote Court Appearances, but full trials and evidentiary hearings may also be appropriate for Remote Court Appearances depending on the specific circumstances under Rule 241. When considering a request from a Case Participant to appear remotely for testimony, the Court should take into consideration any hardships such as those outlined in Section III (2) above.

Courts should make all efforts to maintain the transparency and public nature of court proceedings involving Remote Court Appearances. The court also maintains its responsibility in remote proceedings to make an authorized record pursuant to Supreme Court Rule 46 when necessary.[3]

V. TECHNOLOGY SPECIFICATIONS

Successful Remote Court Appearances need proper technology. Courts should assess the current status of their technology, procure new technology as necessary, and identify reliable and affordable solutions (preferably free services) for Remote Court Appearances. Courts should ensure that technology is ADA-compliant and make accommodations as necessary to allow Remote Court Appearances by court patrons with disabilities. Courts should continue to follow the guidance of the Supreme Court regarding the taking of the official court record. The following are minimum technological recommendations for successful Remote Court Appearances.

A. TELEPHONIC COURT APPEARANCES

For Telephonic Court Appearances, at a minimum, a court should have:

1. A telephone or other electronic device that can convey the voices of in-person and remote Case Participants in an audible and understandable manner through internal or external speakers.
2. A call bridge or conference line which is a service that allows multiple Case Participants calling from different devices to participate in the same telephone conversation or proceeding. Free conference services may be available for use.
3. Plain language instructions for Case Participants to dial-in for their appearances and to mute their calls to prevent disruptive background noise.

[3] For example, the proceeding involving Remote Appearances may be recorded through the court's electronic recording system or by a court reporter. The court reporter may appear remotely via Telephone or Video Conference or be in the courtroom while others are appearing remotely.

4. Trained staff to assist in operating equipment and troubleshooting technical issues as needed.

For Telephonic Court Appearances, at a minimum, all other Case Participants appearing remotely should have:

1. A telephone or other electronic device that allows audio (sound) transmission, preferably with a mute function.
2. If the telephone is a cellular phone, it should have reliable service from the location where the Case Participant will be during the call.
3. Case Participants should be instructed that they are not allowed to record the proceeding in any way.

B. VIDEO COURT APPEARANCES

For Video Court Appearances, at a minimum, a court should have:

1. A high-speed internet connection.
2. A wireless router or hard wire connection enabling devices in the courtroom to access the internet.
3. A computer with a webcam or embedded video camera.
4. A screen or screens visible to the judge, the court reporter, the jury (if applicable), the other Case Participants in the courtroom, and the public who are observing court proceedings. The screens do not need to be permanently available and can be moved to the courtroom as needed. The courtroom must be able to accommodate the screens.
5. An online Video Conference service, preferably with the ability to share documents between Case Participants and the ability to allow private conversations between Case Participants in a breakout room. Free conference services may be available for use.
6. Plain language instructions for Case Participants to appear for their Video Appearances and to mute their videos to prevent disruptive background noise.
7. Trained staff to assist in operating equipment and troubleshooting technical issues as needed.

For Video Appearances, Case Participants appearing remotely, at a minimum will need:

1. A computer, telephone, or mobile device with a webcam or embedded video camera, an internal or external microphone, and internal or external speakers.
2. A high-speed internet connection and access to the same Video Conference service used by the court. (Most Video Conference services allow for Case Participants to test their connectivity before the scheduled a Video Conference).

3. Case Participants should be instructed that they are not allowed to record the proceeding in any way.

VI. Rules, Orders, and Requests for Remote Court Appearances in Civil Proceedings

Courts should post signs with information about Remote Appearances prominently in the courthouse, including in the clerk's office. Signs should be written in plain language and should include information about the availability of Remote Court Appearances and the process for requesting them. This information should also be publicized on the court's and clerk's websites and in other publicly available places. Courts should issue and publish a court order, standing order, or local rule detailing information about the process for requesting and participating in a Remote Court Appearance. Courts should also consider procedures to ensure court patrons with disabilities can participate in Remote Court Appearances.

This order or rule should, in plain language, include:

4. The available Remote Court Appearance options based on the court's technological capabilities (Telephone, Video, or both).
5. The technical requirements for Remote Court Appearances.
6. The procedures for requesting a Remote Court Appearance and for seeking relief as a result of missing a Remote Court Appearance.
7. Instructions for how to log in or call into the relevant technology to appear remotely.
8. The process for drafting orders and distributing signed orders to all Case Participants when there is a Remote Appearance.

A request to appear remotely may be made orally in person at any time when parties or their lawyers are present in court or may be made in writing. Additionally, under Rules 45 and 241, courts have the discretion to allow a Remote Court Appearance on its own order.

When ruling on a request to appear remotely where there is an objection, a court may consider:

1. Access to the courts.
2. The court's available technology.
3. Whether any undue prejudice would result.
4. The degree of inconvenience or hardship.
5. Whether there are security or safety concerns for allowing the Remote Court Appearance.
6. Whether the Case Participants have waived personal appearances or agreed to Remote Appearances.
7. The purpose of the court date.
8. Previous abuse of Remote Court Appearances by the requesting Case Participant or objections by the objecting Case Participant.

9. Any other factors or fairness considerations that the court may determine to be relevant. If the court denies the request, it should state the reasons for the denial.

Case Participants should not be penalized for technical failures or difficulties with a Remote Court Appearance. If there is a technical failure or difficulty caused either by the court's technology devices or those of the Case Participants, the remote Case Participants should be allowed to continue the hearing to another date or to seek other appropriate relief from the court, upon good cause shown.

VII. Costs of Remote Court Appearances

Courts should first consider obtaining and using free Telephone or Video Conference services before considering fee-based services. Free services are readily available. In this way, a Remote Appearance will not impose a cost on a Case Participant who is not able to pay that cost or would not otherwise incur a comparable cost if appearing in person.

For example, some courts' telephone lines may already allow for conference calls with speaker phones by making calls directly or obtaining conference call numbers for more than one remote Case Participant. The Access to Justice Division of the Administrative Office of the Illinois Courts (ATJ-AOIC) can assist courts in determining whether there are possible upgrades to their telephone services which would allow for enhanced Telephone Conferences.

Some jurisdictions currently use Telephone or Video Conference services which charge fees. However, to promote access to justice and to remove financial barriers to Remote Court Appearances, courts should consider obtaining and using both paid and free services. Local rules and practices should not prohibit the use of free services for Remote Court Appearances.

Additionally, any fees associated with a Remote Court Appearance should be subject to waiver for Case Participants who cannot afford them. ATJ-AOIC can assist courts in finding Telephone or Video Conference services which are free, charge licensing fees that courts could absorb, or will honor fee waivers. If a court chooses to use a service which requires the payment of fees, the court should consider whether the costs can be waived by the service, paid by another party, paid by the court, or if the court should use a free service instead. The focus should be on increasing accessibility to the courts and not on imposing an additional barrier to a Remote Court Appearance in the form of a fee. The court or circuit clerk shall not impose their own fees for Case Participants to do Remote Court Appearances.

VII. Assistance of the Administrative Office of the Illinois Courts

ATJ-AOIC will assist courts in developing Remote Court Appearance programs including investigating technology, drafting instructions, procedures, or rules, or other assistance necessary to facilitate Remote Court Appearances. Courts should cooperate with ATJ-AOIC in evaluating the ongoing success of Remote Court Appearances including by tracking its usage. Courts shall provide a copy of their Remote Court Appearance procedures to ATJ-AOIC and provide certain tracked information upon request.

Although this Policy discusses only Telephone and Video Appearances, the Illinois Supreme Court Commission on Access to Justice and ATJ-AOIC will study other possible methods for accessing the courts and suggest updates to the Remote Court Appearance Policy based on their studies and

on advancements in technology. Courts should include in their reporting to ATJ-AOIC all ways in which they are enhancing access to court services, court information, and court appearances to help in determining the feasibility of other methods of remote access.[4]

[4] For example, during the COVID-19 crisis, some jurisdictions implemented methods of email correspondence with courts to resolve matters rather than requiring Telephone or Video Appearances for any Case Participant.

EFILED
Case Number 2023LA001129
Date: 11/22/2023 4:16 PM
Thomas McRae
Clerk of Circuit Court
Third Judicial Circuit, Madison County Illinois

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 23-LA-1129**
	)	
Kwame Raoul, in his official capacity as Attorney general,	)	
	)	
Defendant.	)	

RESPONSE TO MOTION TO TRASNFER VENUE, AND CROSS MOTION FOR SUMMARY JUDGMENT AS TO COUNT II

Comes now Plaintiffs, by and through their attorneys, and for their response in opposition to motion to transfer venue, and for their cross motion for summary judgment as to Count II, states as follows:

INTRODUCTION

This case is a civil rights case, under Illinois law, challenging the propriety of the Illinois state Firearms Owners Identification Card, called a FOID. It is Plaintiff's contention that the purported requirement for this card is unconstitutional and illegal. Count I of the Complaint expressly challenges same.

Also unconstitutional and illegal is a more recent pronouncement of the Illinois General Assembly, and the Governor, which, in response to various challenges to their recent spat of unconstitutional statutes and actions, passed HB3062, which was designed, and intended, to make suits for constitutional violations by the State, more difficult to file and prosecute, even when there is no actual inconvenience to the State or its attorneys. Count II of the Complaint

expressly challenges this illegal purported venue statute, and suggests that the general venue statute remains valid and should be applied.

Defendant filed its papers requesting that this Court transfer this case to Sangamon County. Plaintiffs respond in objection, and submits their cross motion for summary judgment, suggesting that HB3062 is unconstitutional. To paraphrase the Captain Kirk character, from the movie Star Trek, either they are going down, or we are. Said another way, if the statute is unconstitutional, this court must declare it to be so, and enter summary judgment on Count II in Plaintiff's favor. If the statute is constitutional, this Court must grant the motion to transfer. There is no middle ground.

APPLICABLE LAW

This is an action under federal law, brought pursuant to 42 U.S.C. 1983.

Our Supreme Court has long held that:

> The constitution does not guarantee to the citizen the right to litigate without expense, but simply protects him from the imposition of such terms as unreasonably and injuriously interfere with his right to a remedy in the law or impede the due administration of justice; * * *."'" (*Ali v. Danaher* (1970), 47 Ill.2d 231, 236 (quoting *Williams v. Gottschalk* (1907), 231 Ill. 175, 179, and *Adams v. Corriston* (1862), 7 Minn. 456, 461); see also *Sanko* v. Carlson (1977), 69 Ill.2d 246, 250.)

Injuriously interfere to a right to a remedy in the law, and impede administration of justice is just what the General Assembly has done in this case. If the right to obtain justice freely is to be a meaningful guarantee, it must preclude the legislature from preventing those who would utilize our courts from being able to utilize most of our courts, including their local courts.

Williams v State Scholarship Commission, 139 Ill.2d 24 (IL 1990), is nearly on all fours with this case. In *Williams*, the State thought it a good idea to require all Illinois guaranteed student loan collection actions to be litigated in Cook County. There was a problem, this was unconstitutional. While perhaps, convenient for the State, as a practical matter it made getting trials on the merits often impossible, which, of course, was a feature of the statue, not a defect. In other words, it was the point of the statute.

It was alleged, in *Williams*, that this practice violated due process and equal protection under both Federal and State constitutional law. Finally, plaintiffs alleged that a statute which defined Cook County as the exclusive venue for all lawsuits involving delinquent and defaulted student loans (Ill.Rev.Stat., 1988 Supp., ch. 122, par. 30-15.12) violated their due process and equal protection rights under the Federal and State Constitutions. The Illinois Supreme Court, not finding the humor in the statute, agreed.

The *Williams* case applied the law, as explained in *Mathews v. Eldridge* (1976), 424 U.S. 319, 334-35, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, 33, for determining whether a statute or governmental policy violates due process. Illinois applies the same due process rules as the federal government, and thus, the analysis is the same. *People v. Caballes*, 221 Ill.2d 282, 303 Ill.Dec. 128, 851 N.E.2d 26 (2006).

Before the State attempts to object and claim, that *Williams* was about lawsuits brought by the state, and this case deals with lawsuits against the state, it must be remembered, as stated in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), due process applies to Plaintiffs as well as Defendants. Certainly no court would sustain a requirement that Constitutional claims against the state or its employees could only be heard in London, England or Paris, France. Certainly, this type of thing was listed, repeatedly, in the Declaration of Independence, as examples of the

Crown's tyranny, resulting in open rebellion and independence of this nation. It is no less so tyrannical a few hundred years post independence.

This *Williams / Matthews* test calls for courts to weigh the costs of requiring a particular set of procedures against the benefits derived from the use of those procedures. In particular, the *Mathews* test consists of three factors:

(1) the private interest that will be affected by the official action;

(2) the risk of erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and

(3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Interestingly, two out of three of these factors mimic the *forum non conveniens* analysis.

As noted in *Williams,* courts generally cannot interfere with the legislature's province in determining where venue is proper (*Chappelle v. Sorenson* (1957), 11 Ill.2d 472, 476, 143 N.E.2d 18), unless constitutional provisions are violated. (*Power Manufacturing Co. v. Saunders* (1926), 274 U.S. 490, 495, 47 S.Ct. 678, 680, 71 L.Ed. 1165, 1168; *People v. Zegras* (1946), 29 Cal.2d 67, 68, 172 P.2d 883, 884; *Johnson v. Nelson* (Iowa 1979), 275 N.W.2d 427, 429; *Willman v. McMillen* (Mo.1989), 779 S.W.2d 583, 585; *Allen v. Smith* (1911), 84 Ohio St. 283, 290, 95 N.E. 829, 830-31; *Deese v. Williams* (1960), 236 S.C. 292, 295, 113 S.E.2d 823, 825; *Knapp v. Knapp* (Tex. Civ.App.1965), 386 S.W.2d 630, 633.) Here, Plaintiffs allege constitutional provisions are violated.

In *Williams*, the Supreme Court noted that the only way a litigant could have protected their rights or presented their claims for a defense was to travel to Chicago and appear in the

case. Aside from the fact that Sangamon county, *one other county*, is added to the list, that is true here as well.

Since the enactment of the statute, while the State initially chose to enforce it to the letter, since that time, even the Attorney General's office has, perhaps, seen the folly of the statute, not in more than once case choosing not to challenge venue when the statute is ignored or challenged, such as in this case. Or perhaps this is simple selective enforcement by the State, which itself violates due process. *Whren v. United States*, 517 US 806 - Supreme Court 199. The statute purports to abolish *forum non conveniens* in constitutional cases, again, leaving only Cook and Sangamon County as possible venues, out of the State's 102 counties, literally 100 counties are excluded from hearing constitutional claims, no matter how closely connected to those counties the litigants or the facts.

The choice to limit Plaintiffs to less then 2% of the courts of the state, are *per se* arbitrary. There is certainly nothing inherent in the judicial system of this state that reposes expertise only in two counties. But, like in *Williams*, it is not just the arbitrariness of establishing venue in only two counties that infringes plaintiffs' right of access to the courts. Like in *Williams*, there are no alternative means of dispute settlement outside the courtroom. If the state violates the constitution, its Springfield, Chicago, live with it, or leave the state. These are the kinds of statutes that encourage persons to opt for option four. The drafters of our constitution chose an option five, judicial review, in any county with an interest in the litigation.

To be blunt, Cook and Sangamon county are inconvenient for most private litigants that do not live in those counties, like Plaintiffs. This is especially so for those that need access to the Courts the most, the poor and disabled among us. Likely witnesses for Plaintiff, Messers. Heeren, Pulaski and Duke, are not residents of either Cook or Sangamon County. All of them

work in Madison County, and Messers Heeren and Duke also live here. Mr. Pulaski has an about 10 minute difference in drive time from Madison to Jersey County. The drive to Sangamon is much more, and the drive to Cook is an all day affair at the shortest.

Plaintiff's counsel is likewise located in Madison County. Defendant maintains an office about 35 minutes drive time from the Madison County Courthouse. Finally, as noted by the Supreme Court, while a court may consider this factor (i.e. the location of Plaintiff's attorney's office), "little weight should be accorded it." *Boner v. Peabody Coal Co.*, 142 Ill.2d 523, 534, 154 Ill.Dec. 662, 568 N.E.2d 883 (1991). The entire point of the statute is, allegedly, to consider the convenience of the attorney general, who never personally will appear in court, and this factor has long been considered minor, at best.

On the other hand, as noted by the Supreme Court in *Williams*, the Illinois Attorney General, already brings actions on the part of other State agencies in every county in Illinois, and has regional offices thorough the state, with lawyers familiar with local courts and local customs. These regional / local offices still exist. Ex. A. To limit Constitutional cases to only two counties, is perhaps, the most efficient form of judge shopping that the state could ever conceive of. If private litigants tried to file all of their cases in only two counties, no matter what the connection to the forum, private litigants would likely be sanctioned. The Supreme Court itself, in *First National Bank v. Guerine*, 198 Ill. 2d 511 (2002), twenty years ago, "a commentator aptly noted:

> "The truth of the matter is that both plaintiffs' counsel and defendants' counsel are jockeying for position by seeking a judge, jury and forum that will enable them to achieve the best possible result for their clients. There is no doubt that in the personal injury context, the plaintiff is seeking a forum where he can recover the

> most money and the defendant is seeking a forum where it will have to pay the least. All other considerations are secondary to both sides."

G. Maag, Forum Non Conveniens in Illinois: A Historical Review, Critical Analysis, and Proposal for Change, 25 So. Ill. L.J. 461, 510 (2001).

The same is true here. The State's statute limiting venue to two counties has nothing to do with anything *other* than the same legislature, who passed these challenged statutes, is jockeying for position by seeking what it perceives as a judge, jury and forum that will enable the *state* to achieve the best possible outcome for the *state*. All other considerations are secondary!

As one legislator noted in passing this statute, "this is a simple effort to make sure that all important, critical constitutional questions end up in the right venue." Ex. B. Of course the "right" venue, in this case, is the one that the *state* thinks will enable the *state* to achieve the best possible outcome for the *state*. The state's conduct is outrageous!

In sum, the state has no legitimate interest in restricting constitutional claims in Illinois only to counties that the majority of the current state legislature think more likely than other counties to sustain their questionable legislation.

The second issue is the risk of erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards. To be blunt, the Legislature, by abolishing *forum non conveniens* for these kinds of cases, has insured that there are no substitute procedural safeguards.

As any court can take judicial notice of, it is far more likely that a given party will win a given hearing, trial or case, if they are able to actually appear in and participate in same. The same goes for the ability to present witnesses. Thus, the farther away and more difficult that the

state makes Plaintiff's appearance, and/or the appearance of witnesses, the more likely the State is to win a given case, actual merits of the case be tossed to the wind, as a court not presented with facts or law has a hard time considering them.

In *Williams*, the Supreme Court found that the fact that default judgments are regularly entered against plaintiffs who, for all practical purposes, cannot appear in Cook County is itself a possible erroneous deprivation. By the same token, if a forum that a Plaintiff is required to file a case in is so far away, that, for all practical purposes, they cannot appear in it, the same result is reached, whether the State has simply discouraged the filing of the case in the first instance, or just made it so hard to appear that the same practical result is achieved.

The Supreme Court in *Williams* stated,

> "We have already stated that filing ISSC's collection suits in a distant forum, combined with the lack of substantive evidence that ISSC offered plaintiffs any alternative means to settle the claims outside of the litigation process, effectively deprived plaintiffs of any meaningful opportunity to be heard in a court of law."

The same is true here. This might not be a mere money collection suit. But it i something *more important* than money, it is a suit over whether a given statute, enacted by the General Assembly, violates the Constitution, the basic law of the land. Every attorney, every judge, every elected official, swears loyalty to the Constitution, and promises to defend it, period. Those in power that may not like a given Constitutional protection may well abuse their authority, and attempt to usurp power by violating their oaths, and making those that would challenge same suffer, be it by making suits be filed only in inconvenient fora, or perhaps even by threatening through their surrogates those that might advocate on behalf of those aggrieved.

Abraham Lincoln is reputed to have stated, "nearly all men can stand adversity, but if you want to test a man's character, give him power." Indeed.

The fact is, both the lawyers for the State, and the lawyers for the Plaintiffs, have the same duty, as does this Court. That duty is not to submit to the political will of the politically powerful, rather, it is to comply with, and defend, even to their own detriment, the weak, the powerless, those that the Constitution and laws of this State, and the United States protect. This may result in the wrath of the powerful and prominent, but it is the duty of the lawyer to do what is right, even when the powerful do not like it. Mandating this case be heard in Cook or Sangamon County, the state might as well select Alexander County, which coincidentally, is closer, in terms of both drive time, and actual mileage, to the Jackson, the capital of Mississippi, than it is to Cook County, Illinois.

The third test is the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

The relevant public interest factors include judicial administration and court congestion, imposing jury duty on the residents of a community unrelated to the litigation, and the local interest in local controversies. See *Gulf Oil*, 330 U.S. at 508-09, 67 S.Ct. at 843, 91 L.Ed. at 1062-63. Another public interest factor concerns the local interest in local controversies. *Dawdy v. Union Pacific RR Co.*, 797 NE 2d 687, 699 - Ill: Supreme Court 2003.

As was true in *Williams*, and is true here, "the statute in question in the case at bar is not a logical extension of the legislature's previous pronouncements regarding venue."

Likewise, as was stated in *Williams*, and is true here, the interest of the State in consolidating all its cases in one or two counties,

> "We characterize the weight of the State's interest in the case at bar the same way the Phillips court did — 'not strong.'"

Again, like in *Williams*, and also true here, "there is nothing in the record to indicate that filing these [] suits in other counties of the State will take any more time or be any more difficult than filing suit in Cook County."

Williams also stated, correctly, that

> "the Attorney General, as ISSC's legal representative, has satellite offices throughout the State and routinely litigates in every county in Illinois. The Attorney General routinely represents many other State agencies in every county in Illinois. To require similar procedures on behalf of ISSC would not require the office of the Attorney General to do anything it does not already do. Each of the Attorney General's local offices is already intimately familiar with local rules and procedures. Therefore, defendants' argument that requiring ISSC to file suits in counties other than Cook would grossly inconvenience the Attorney General has no basis in fact."

The same is still true and true here. Ex. A.

In addition, in *forum non conveniens* cases, courts have routinely found useful the official Illinois Supreme Court annual court reports to show court congestion and the like, or the absence of same. Same, with 2021 information, the most recent available, is submitted here. Ex. D. What is clear from this information is that both Cook County and Sangamon county are congested dockets, with far more cases, both per judge and per resident, than Crawford County, or for that matter, most other Illinois Counties. With a smaller caseload in Crawford County, it is all but certain that a given case will move faster in Crawford County than either Cook or

Sangamon, simply by virtue of the number of hours in the day being limited, and fewer cases per judge filed in Crawford.

ALTERNATIVE ARGUMENT

The Three-Readings Rule and the Enrolled-Bill Doctrine of Article IV, section 8, of the Illinois Constitution (Ill. Const. 1970, art. IV, § 8) sets forth the requirements for the passage of bills in the legislature. Section 8(d) states as follows:

> "(d) A bill shall be read by title on three different days in each house. A bill and each amendment thereto shall be reproduced and placed on the desk of each member before final passage.
>
> Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject. Appropriation bills shall be limited to the subject of appropriations.
>
> A bill expressly amending a law shall set forth completely the sections amended.
>
> The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met." (Emphases added.) Id. § 8(d).

For years, the Illinois Supreme Court has followed the enrolled-bill doctrine. *Friends of the Parks v. Chicago Park District*, 203 Ill. 2d 312, 328 (2003). "This doctrine provides that once the Speaker of the House of Representatives and the President of the Senate certify that the procedural requirements for passing a bill have been met, a bill is conclusively presumed to have met all procedural requirements for passage." Id. at 328-29. Under this precedent, the court has said it "will not invalidate legislation on the basis of the three-readings requirement if the legislation has been certified." Id. at 329.

It is time to end this practice, which, as a practical matter, depending on one's point of view, is either a *de facto* court repeal of a provision of the Constitution, or is a derogation of the Court's duty. Either way, it is unacceptable, and Plaintiff wishes to expressly make this argument here and now, so that it cannot be claimed on appeal to have been waived.

In light of Supreme Court precedent, Plaintiff's while requesting the venue statute at issue be invalidated at violating the three readings rule, acknowledge that this Court, and if heard by the Appellate Court, the Appellate Court, must deny this request. This request is made for purposes of preserving the issue for reconsideration by the Illinois Supreme Court.

In so making this argument, Plaintiffs note *People v. Dunigan*, 165 Ill. 2d 235, 252 (1995), and then Justice Heiple's dissent in same.

Since that case, the Supreme Court has noted the legislature has "shown remarkably poor self-discipline in policing itself in regard to the three-readings requirement." *Friends of the Parks*, 203 Ill. 2d at 329 (citing *Geja's Cafe v. Metropolitan Pier & Exposition Authority,* 153 Ill. 2d 239, 260 (1992) (noting that "ignoring the three-readings requirement has become a procedural regularity"); *Cutinello v. Whitley*, 161 Ill. 2d 409, 425 (1994). That lack of legislative self-discipline continues to this day. See *Orr v. Edgar*, 298 Ill. App. 3d 432, 447 (1998) (leaving to this court "the issue of whether the state legislature may disregard constitutional requirements and maintain the legality of its actions under the auspices of the enrolled bill doctrine"); *New Heights Recovery & Power, LLC v. Bower*, 347 Ill. App. 3d 89, 100 (2004); *McGinley v. Madigan*, 366 Ill. App. 3d 974, 992 (2006); *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶¶ 51-55; *Accuracy Firearms, LLC v. Pritzker*, 2023 IL App (5th) 230035, ¶¶ 36-46; *First Midwest Bank v. Rossi*, 2023 IL App (4th) 220643, ¶¶ 220-41; *Rowe v. Raoul*, 2023 IL 129248, ¶ 8 (noting the plaintiffs raised a three-readings rule claim in the circuit court. In fact, as a practical matter,

it is not that the legislature is exercising *poor* discipline, rather, it knows that, thus, far, the Court's will do nothing about it.

Thus, it is time that the Supreme Court reconsider this doctrine.

CONCLUSION

For the foregoing reasons, this Court should (1) deny Defendant's Motion to Transfer, and (2) Grant Plaintiff's Cross Motion for Summary Judgment as to Count II, finding 735 ILCS 5/2-101.5 to be unconstitutional, and enjoining Defendant from enforcing or attempting to enforce same. In granting summary judgment as to Count II, it is requested that this Court certify same, under Supreme Court Rule 304, and award attorney fees pursuant to the Illinois Civil Rights Act of 2003.

Dated: 11-22-2023

Respectfully Submitted,

s/Thomas G. Maag
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed, suing electronic means, which will send a copy to the following:

Darren Kinkaid, Darren.kinkead@ilag.gov

Dated; 11-22-2023

s/Thomas G. Maag

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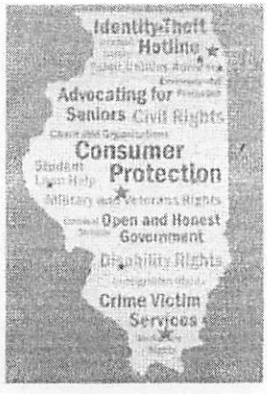

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New law limits venue for constitutional lawsuits to Sangamon, Cook counties

By Editor (https://www.ibjonline.com/author/editor/) | June 7, 2023 | 0 (https://www.ibjonline.com/2023/06/07/new-law-limits-venue-for-constitutional-lawsuits-to-sangamon-cook-counties/#respond)

Pritzker signs bill backed by attorney general and passed with only Democratic support

By PETER HANCOCK
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SPRINGFIELD -- People who file lawsuits in state courts challenging the constitutionality of a state law, administrative rule or executive order will now have to file those cases in either Sangamon or Cook counties.

Gov. JB Pritzker on Tuesday [June 6, 2023] signed House Bill 3062 (https://ilga.gov/legislation/103/HB/PDF/10300HB3062lv.pdf), which applies only to cases brought against the state or any of its officers, employees or agents in which the plaintiff seeks to have a law, rule or action declared unconstitutional or they seek an injunction on the grounds of constitutionality. However, it also specifically exempts cases arising out of collective bargaining disputes.

It cleared the General Assembly with only Democratic support.

The bill came in response to a flurry of lawsuits filed in recent years in courthouses throughout the state challenging such things as Pritzker's COVID-19 mitigation orders, a law that would end cash bail, and, most recently, the state's ban on assault-style weapons and large-capacity magazines.

Senate President Don Harmon, D-Oak Park, who sponsored the bill in the Senate, said those cases typically end up being consolidated, and most of them eventually end up before the Illinois Supreme Court, which sits in Springfield and Chicago.

But he also accused plaintiffs' attorneys in recent cases of selectively choosing where they file their cases in order to improve their chances of finding judges who may be more sympathetic to their cause, a practice Harmon described as "forum shopping."

"And what we have seen recently is similar cases being filed in scores of counties, causing the attorney general to have to defend the same action in multiple counties with forum shopping," he said during floor debate on the bill. "This is a simple effort to make sure that all important, critical constitutional questions end up in the right venue."

But Senate Republican Leader John Curran, of Downers Grove, accused Democrats of engaging in their own brand of venue shopping by restricting constitutional challenges to courts in Springfield and Chicago.

"Courts exist to serve the people, which is why they are located where people live," he said in a statement after Pritzker announced the bill signing. "This legislation is clearly an attempt by the governor and the attorney general to send constitutional challenges to courts that they believe will be more favorable to the administration."

Harmon argued that while Springfield is the state capital, Chicago is also a kind of second seat of state government.

"The statutes are actually replete with jurisdictional references to Cook and Sangamon as the two primary jurisdictions," he said. "I think it's the same reason that I have an office in Springfield and an office in Chicago; Leader Curran has an office in Springfield and an office in Chicago; the governor, the attorney general, all the constitutional officers have an office in Springfield and an office in Chicago. It is essentially an alternative place of government."

Republicans, however, argued that it would inconvenience people who may be aggrieved by a state law or action but don't live anywhere near Springfield or Chicago.

In the House, for example, state Rep. Patrick Windhorst, from the town of Metropolis on the banks of the Ohio River, noted that he lives closer to the state capital of Tennessee than he does to Springfield, and he is almost as close to Atlanta, Georgia, as he is to Chicago.

"So to say if this body passes an unconstitutional law, in order for me or another person in my community to contest that law, I've got to travel a great distance and bear that expense that comes with that, is not fair to the individuals in these communities," he said during floor debate in the House.

The language of HB 3062 originated in the Senate and was inserted as a set of amendments into a House bill that originally dealt with landlord-tenant relations. It passed the Senate on May 19 by a vote of 37-16. The House concurred with the amendments 69-35.

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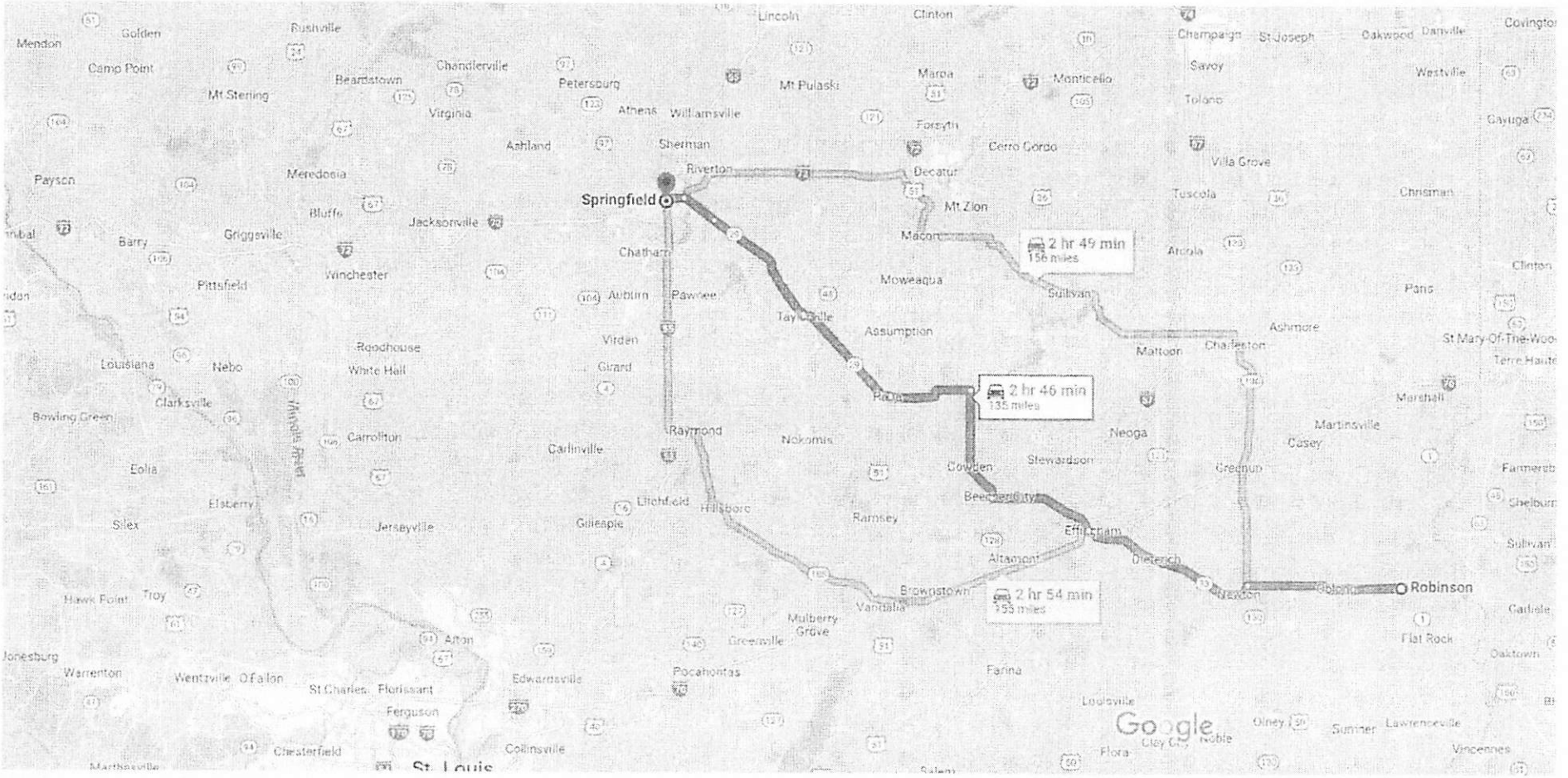

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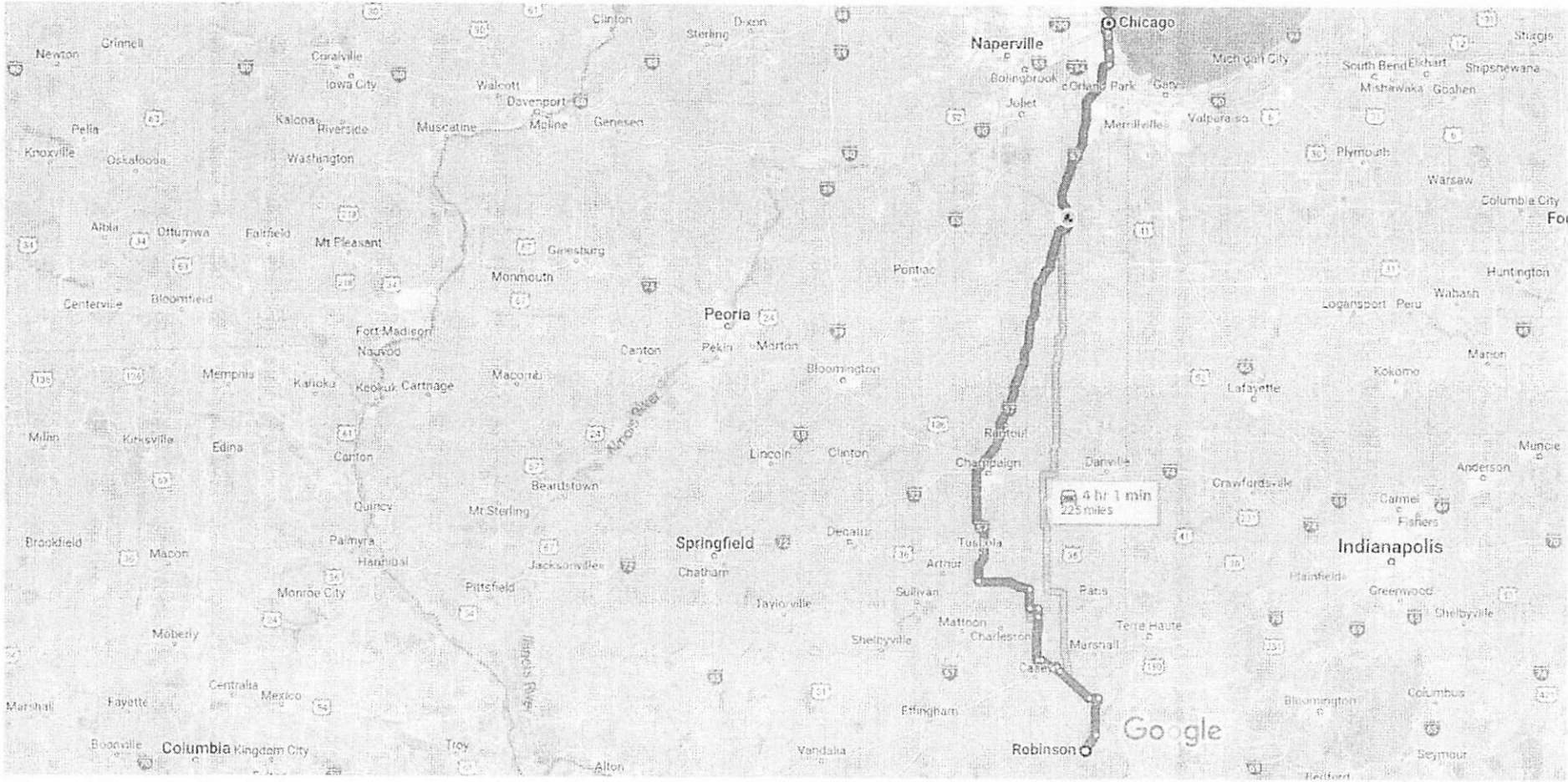

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CASELOAD, CLEARANCE RATE AND STATISTICAL RECORDS OF THE CIRCUIT COURTS OF ILLINOIS

CASELOAD SUMMARIES BY CIRCUIT
CIRCUIT COURTS OF ILLINOIS CALENDAR YEAR 2021

CIRCUIT	BEGINNING PENDING	NEW FILED	REINSTATED	DISPOSED	END PENDING	INCREASE/DECREASE % OF 2021 PENDING CASES
1st	144,443	58,790	67	60,361	140,810	-2.5
2nd	51,563	26,511	38	25,948	51,034	-1.0
3rd	85,661	54,306	640	59,138	82,124	-4.1
4th	42,577	36,325	66	35,210	43,137	1.3
5th	68,777	26,466	181	22,698	72,206	5.0
6th	74,799	45,488	649	42,258	59,709	-20.2
7th	101,160	58,440	22	78,388	101,829	0.7
8th	24,215	21,669	38	22,236	22,843	-5.7
9th	28,092	24,897	7	24,750	29,640	5.5
10th	54,493	45,420	317	41,522	54,856	0.7
11th	38,882	42,885	759	42,247	37,943	-2.4
12th	96,936	106,375	3,601	111,324	95,657	-1.3
13th	22,171	29,824	629	29,678	22,243	0.3
14th	62,014	41,106	11	38,341	63,606	2.6
15th	31,636	27,435	6	27,763	30,728	-2.9
16th	102,258	57,994	112	57,844	102,422	0.2
17th	84,173	56,575	138	58,440	82,290	-2.2
18th	74,590	129,010	12,594	156,719	59,190	-20.6
19th	40,047	83,598	3,735	89,355	37,937	-5.3
20th	134,906	51,806	277	56,202	136,013	0.8
21st	35,343	24,522	1	16,221	43,569	23.3
22nd	18,796	41,509	1,628	44,990	16,864	-10.3
23rd	25,133	20,950	773	24,448	21,769	-13.4
DOWNSTATE TOTAL	1,442,665	1,111,901	26,289	1,166,081	1,408,419	-2.4
COOK COUNTY	1,804,492	522,927	15,453	462,760	1,880,868	4.2
STATE TOTAL	3,247,157	1,634,828	41,742	1,628,841	3,289,287	1.3

CASE FILING RATIO: JUDGE/POPULATION

CIRCUIT COURTS OF ILLINOIS CALENDAR YEAR 2021

Circuit	NUMBER OF COUNTIES	2021 CENSUS POPULATION ESTIMATE	TOTAL NUMBER OF CASES FILED DURING 2021 **	NUMBER OF JUDGES			NUMBER OF CASES FILED PER JUDGE	NUMBER OF CASES FILED PER 1000 POPULATION
				CIRCUIT	ASSOCIATE	TOTAL *		
1st	9	203,604	58,790	13	7	20	2,940	288.7
2nd	12	188,407	26,511	15	6	21	1,262	140.7
3rd	2	278,897	54,306	8	13	21	2,586	194.7
4th	9	233,735	36,325	12	7	19	1,912	155.4
5th	5	168,013	26,466	11	5	16	1,654	157.5
6th	6	362,419	45,488	14	11	25	1,820	125.5
7th	6	311,117	58,440	12	10	22	2,656	187.8
8th	8	135,088	21,669	11	5	16	1,354	160.4
9th	6	152,691	24,897	10	4	14	1,778	163.1
10th	5	330,716	45,420	10	11	21	2,163	137.3
11th	5	286,093	42,885	11	10	21	2,042	149.9
12th	1	688,726	106,375	16	21	37	2,875	154.5
13th	3	190,867	29,824	8	5	13	2,294	156.3
14th	4	259,199	41,106	12	10	22	1,868	158.6
15th	5	163,264	27,435	8	8	16	1,715	168.0
16th	1	531,010	57,994	13	17	30	1,933	109.2
17th	2	334,072	56,575	10	15	25	2,263	169.3
18th	1	917,481	129,010	14	30	44	2,932	140.6
19th	1	693,593	83,598	14	25	39	2,144	120.5
20th	5	358,564	51,806	11	13	24	2,159	144.5
21st	2	135,305	24,522	6	5	11	2,229	181.2
22nd	1	305,888	41,509	8	11	19	2,185	135.7
23rd	2	235,129	20,950	8	5	13	1,612	89.1
DOWNSTATE TOTAL	101	7,463,878	1,111,901	255	254	509	2,184	149.0
COOK COUNTY	1	5,108,284	522,927	237	143	380	1,376	102.4
STATE TOTAL	102	12,572,162	1,634,828	492	397	889	1,839	130.0

* Average nubmer of sitting Circuit Judges

** Total of all cases in all categories: Civil; Domestic Relations; Criminal; Quasi-Criminal ; and Juvenile.

ILLINOIS COURTS

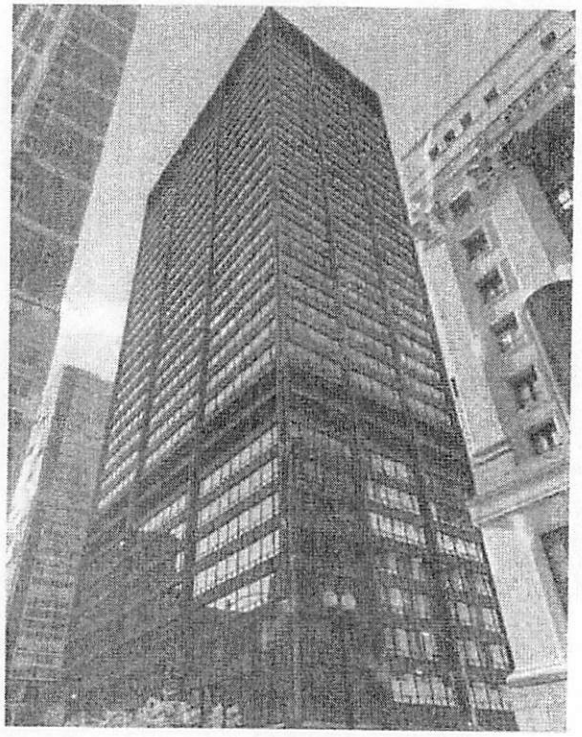
STATISTICAL SUMMARY

ILLINOIS COURTS

ANNUAL REPORT

CIRCUIT COURT OF COOK COUNTY

FIRST APPELLATE DISTRICT



RICHARD J. DALEY CENTER

Timothy C. Evans, Chief Judge

50 W. Washington St., Suite 2600
Chicago, IL 60602

Circuit Population: 5,173,146

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	522,927	15,453	462,760	86.0%	1,880,868
2020	551,051	14,408	418,903	74.1%	1,804,492
2019	853,539	12,223	671,821	77.6%	1,657,936
2018	940,753	13,581	737,147	77.2%	1,463,995
2017	1,004,474	22,332	885,632	86.3%	1,105,634

CIRCUIT JUDGES

Martin S. Agran
Julie B. Aimen
James L. Allegretti
John M. Allegretti
Erin H. Antonietti
Edward A. Arce
Laura Ayala-Gonzalez
Robert Balanoff
Michael B. Barrett
Ronald F. Bartkowicz
Steven James Bernstein
Samuel J. Betar III
Tiana S. Blakely
Carl B. Boyd
Daniel P. Brennan
Tommy Brewer
Janet Adams Brosnahan
Mary M. Brosnahan
Andrea M. Buford
Kathleen Marie Burke
Charles Burns
Krista D. Butler
Thomas J. Byrne
John P. Callahan, Jr.
Thomas J. Carroll
Joel Chupack
Elizabeth Ciaccia-Lezza
Michael R. Clancy
Bonita Coleman
H. Yvonne Coleman
Ann Finley Collins
Ann Collins-Dole
Alison C. Conlon
Donna L. Cooper
Patrick K. Coughlin
Kevin P. Cunningham
John J. Curry, Jr.
Thomas M. Cushing
Paula M. Daleo
Colleen Daly
Adrienne E. Davis
Eulalia De La Rosa
Daniel R. Degnan
Kent Delgado
Anna Helen Demacopoulos
Maire A. Dempsey
Sondra N. Denmark
Grace G. Dickler
Jamie G. Dickler
Thomas M. Donnelly
Daniel P. Duffy
John H. Ehrlich
Jerry A. Esrig
Patricia M. Fallon
Peter A. Felice
Rossana P. Fernandez
Kathy M. Flanagan
James P. Flannery, Jr.
Ellen L. Flannigan
Michael A. Forti
Beatriz Frausto-Sandoval
Carolyn J. Gallagher
Daniel J. Gallagher
John T. Gallagher
William Gamboney
Celia Gamrath
Vincent M. Gaughan
Aleksandra Gillespie
Megan E. Goldish
Peter Gonzalez
Ieshia Gray
Jonathan C. Green
Susanne M. Groebner
Ruth I. Gudino
Catherine M. Haberkorn

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FIRST CIRCUIT JUDGES

Steven M. J. Bast, Timothy D. Denny, Jeffery B. Farris, Carey C. Gill, Amanda B. Gott, W. Charles Grace, Stephen Green, Joseph Leberman, Walden E. Morris, John W. Sanders, Christy Solverson, Sarah K. Tripp, Cord Z. Wittig

FIRST CIRCUIT ASSOCIATE JUDGES

Ralph R. Bloodworth, III, Tyler R. Edmonds, Michael A. Fiello, Jeffrey A. Goffinet, Todd D. Lambert, Michelle M. Schafer, Ella York

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	58,790	67	60,361	102.6%	140,810
2020	57,583	61	55,443	96.2%	144,443
2019	66,348	78	60,045	90.4%	143,585
2018	64,166	98	59,587	92.7%	139,311
2017	69,558	73	64,359	92.4%	136,396

SECOND CIRCUIT JUDGES

Eric J. Dirnbeck, Thomas J. Foster, Matthew J. Hartrich, Robert M. Hopkins, William C. Hudson, Michael J. Molt, Melissa Morgan, Michael J. Valentine, Ray W. Vaughn, Tara R. Wallace, T. Scott Webb, Christopher L. Weber, Johannah B. Weber

SECOND CIRCUIT ASSOCIATE JUDGES

Jerry Crisel, Thomas J. Dinn, III, Kimbara G. Harrell, Sonja L. Ligon, Evan Lee Owens, Mark L. Shaner

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	26,511	38	25,948	97.7%	51,034
2020	24,997	30	21,798	87.1%	51,563
2019	32,422	41	29,669	91.4%	49,262
2018	33,217	20	31,141	93.7%	47,311
2017	37,140	16	35,034	94.3%	46,119

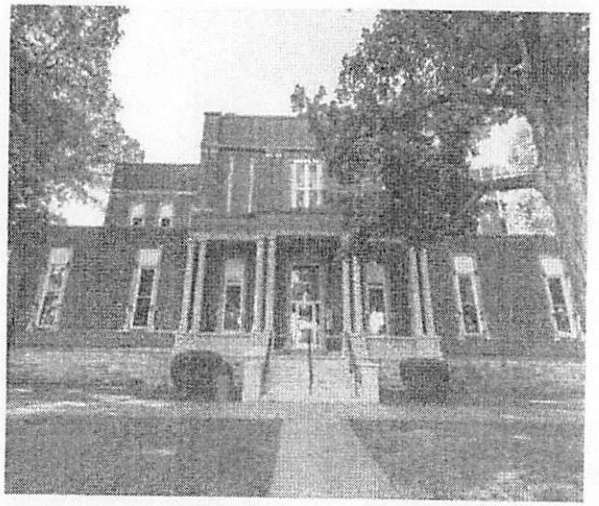
THIRD CIRCUIT JUDGES

Christopher Bauer, Amy Maher, Kyle Napp, Dennis R. Ruth, Sarah D. Smith, Amy Sholar, Stephen A. Stobbs, Christopher P. Threlkeld

THIRD CIRCUIT ASSOCIATE JUDGES

Philip B. Alfeld, Veronica Armouti, Thomas W. Chapman, Angela P. Donohoo, Ronald J. Foster, Jr., Janet Heflin, Anthony R. Jumper, Martin J. Mengarelli, Ronald S. Motil, Neil T. Schroeder, Maureen D. Schuette, Ronald R. Slemer

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	54,306	640	59,138	107.6%	82,124
2020	49,030	500	41,286	83.4%	85,661
2019	74,228	530	69,087	92.4%	77,481
2018	75,198	490	71,693	94.7%	74,133
2017	76,042	431	72,569	94.9%	68,929



Jasper County Courthouse

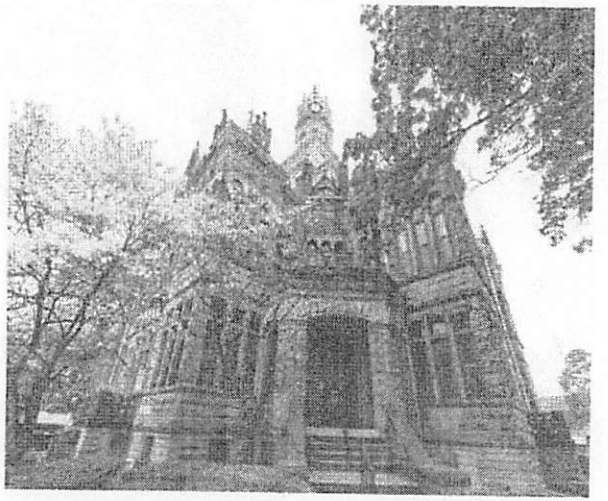
FOURTH CIRCUIT

Fifth Appellate District

Fayette County Courthouse
Douglas L. Jarman, Chief Judge
Circuit Population: 234,868

Alexander (Cairo)
Christian (Taylorville)
Clay (Louisville)
Clinton (Carlyle)
Effingham (Effingham)
Fayette (Vandalia)
Jasper (Newton)
Marion (Salem)
Montgomery (Hillsboro)
Shelby (Shelbyville)

Photo provided by Amy Dawn Whitlock



Edgar County Courthouse

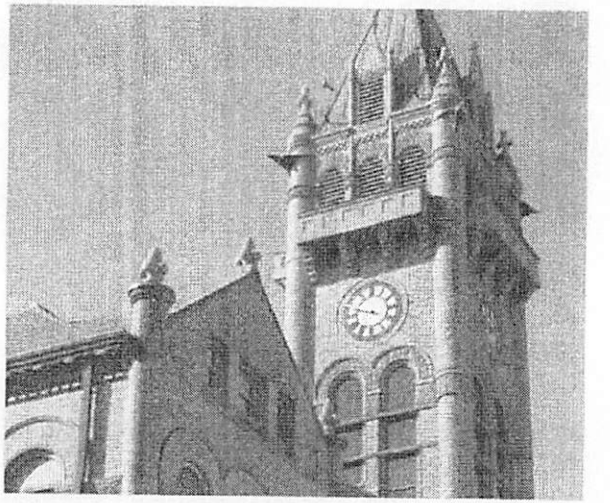
FIFTH CIRCUIT

Fourth Appellate District

Coles County Courthouse
Thomas M. O'Shaughnessy, Chief Judge
Circuit Population: 162,025

Coles (Charleston)
Cumberland (Toledo)
Edgar (Paris)
Vermilion (Danville)

Photo provided by Amy Dawn Whitlock



Champaign County Courthouse

SIXTH CIRCUIT

Fourth Appellate District

Moultrie County Courthouse
Randall B. Rosenbaum, Chief Judge
Circuit Population: 359,360

Champaign (Urbana)
DeWitt (Clinton)
Douglas (Tuscola)
Macon (Decatur)
Moultrie (Sullivan)
Piatt (Monticello)

Bill Status of HB3062 *103rd General Assembly*

Full Text Votes Witness Slips View All Actions Printer-Friendly Version

Short Description: LANDLORD/TENANT-SCREEN REPORT

House Sponsors
Rep. Jay Hoffman - Maurice A. West, II and Joyce Mason

Senate Sponsors
(Sen. Don Harmon, Robert Peters and Mike Simmons)

Last Action

Date	Chamber	Action
6/6/2023	House	Public Act 103-0005

Statutes Amended In Order of Appearance
765 ILCS 705/17 new

Synopsis As Introduced
Amends the Landlord and Tenant Act. Allows a landlord to accept reusable tenant screening reports. Requires a reusable tenant screening report to include all of the following information regarding an applicant: name; contact information; verification of employment; last known address; and results of an eviction history check. Prohibits a landlord who accepts a reusable tenant screening report from charging the applicant a fee for the landlord to access the report or an application screening fee. Provides that the provisions do not affect any other applicable law related to the consideration of criminal history information in housing. Provides that if an ordinance, resolution, regulation, rule, administrative action, initiative, or other policy adopted by a municipality or county conflicts with the provisions, the policy that provides greater protection to applicants shall apply. Provides that the provisions do not require a landlord to accept reusable tenant screening reports.

Senate Floor Amendment No. 2
Deletes reference to:
765 ILCS 705/17 new
Adds reference to:
735 ILCS 5/2-101.5 new

EXHIBIT
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Replaces everything after the enacting clause. Amends the Code of Civil Procedure. Provides that, if an action is brought against the State or any of its officers, employees, or agents acting in an official capacity on or after the effective date of the amendatory Act seeking declaratory or injunctive relief against any State statute, rule, or executive order based on an alleged violation of the Constitution of the State of Illinois or the Constitution of the United States, venue in that action is proper only in the County of Sangamon and the County of Cook. Defines "State". Effective immediately.

Senate Floor Amendment No. 3
Provides that the venue provisions do not apply to claims arising out of collective bargaining disputes between the State of Illinois and the representatives of its employees.

Actions

Date	Chamber	Action

2/16/2023	House	Filed with the Clerk by Rep. Kevin John Olickal
2/17/2023	**House**	**First Reading**
2/17/2023	House	Referred to Rules Committee
2/28/2023	House	Assigned to Housing
3/8/2023	House	Do Pass / Short Debate Housing; 018-000-000
3/8/2023	House	Placed on Calendar 2nd Reading - Short Debate
3/8/2023	House	Added Co-Sponsor Rep. Travis Weaver
3/8/2023	House	Removed Co-Sponsor Rep. Travis Weaver
3/15/2023	House	Added Chief Co-Sponsor Rep. Maurice A. West, II
3/15/2023	House	Added Chief Co-Sponsor Rep. Travis Weaver
3/15/2023	House	Remove Chief Co-Sponsor Rep. Travis Weaver
3/16/2023	**House**	**Second Reading - Short Debate**
3/16/2023	House	Placed on Calendar Order of 3rd Reading - Short Debate
3/22/2023	**House**	**Third Reading - Short Debate - Passed 113-000-000**
3/22/2023	House	Added Co-Sponsor Rep. Joyce Mason
3/23/2023	Senate	Arrive in Senate
3/23/2023	Senate	Placed on Calendar Order of First Reading
3/23/2023	Senate	Chief Senate Sponsor Sen. Ram Villivalam
3/23/2023	**Senate**	**First Reading**
3/23/2023	Senate	Referred to Assignments
4/12/2023	Senate	Assigned to Judiciary
4/19/2023	Senate	Do Pass Judiciary; 008-001-000
4/19/2023	Senate	Placed on Calendar Order of 2nd Reading April 20, 2023
4/20/2023	**Senate**	**Second Reading**
4/20/2023	Senate	Placed on Calendar Order of 3rd Reading April 25, 2023
5/11/2023	Senate	Rule 2-10 Third Reading Deadline Established As May 25, 2023
5/12/2023	Senate	Rule 2-10 Third Reading Deadline Established As May 19, 2023
5/17/2023	Senate	Senate Floor Amendment No. 1 Filed with Secretary by Sen. Don Harmon
5/17/2023	Senate	Senate Floor Amendment No. 1 Referred to Assignments
5/18/2023	Senate	Senate Floor Amendment No. 1 Assignments Refers to Executive
5/18/2023	Senate	Senate Floor Amendment No. 2 Filed with Secretary by Sen. Don Harmon
5/18/2023	Senate	Senate Floor Amendment No. 2 Referred to Assignments
5/18/2023	Senate	Senate Floor Amendment No. 2 Assignments Refers to Executive
5/18/2023	Senate	Alternate Chief Sponsor Changed to Sen. Don Harmon
5/18/2023	Senate	Senate Floor Amendment No. 2 Recommend Do Adopt Executive; 008-004-000
5/18/2023	Senate	Senate Floor Amendment No. 1 Postponed - Executive
5/18/2023	Senate	Senate Floor Amendment No. 3 Filed with Secretary by Sen. Don Harmon
5/18/2023	Senate	Senate Floor Amendment No. 3 Referred to Assignments
5/19/2023	Senate	Senate Floor Amendment No. 3 Be Approved for Consideration Assignments
5/19/2023	Senate	Recalled to Second Reading
5/19/2023	Senate	Senate Floor Amendment No. 2 Adopted; Harmon
5/19/2023	Senate	Senate Floor Amendment No. 3 Adopted; Harmon
5/19/2023	Senate	Placed on Calendar Order of 3rd Reading
5/19/2023	**Senate**	**Third Reading - Passed; 037-016-000**
5/19/2023	Senate	Senate Floor Amendment No. 1 Tabled Pursuant to Rule 5-4(a)

5/19/2023	House	Arrived in House
5/19/2023	House	Placed on Calendar Order of Concurrence Senate Amendment(s) 2, 3
5/19/2023	Senate	Added as Alternate Co-Sponsor Sen. Robert Peters
5/22/2023	House	Chief Sponsor Changed to Rep. Jay Hoffman
5/22/2023	House	Senate Floor Amendment No. 2 Motion Filed Concur Rep. Jay Hoffman
5/22/2023	House	Senate Floor Amendment No. 3 Motion Filed Concur Rep. Jay Hoffman
5/22/2023	House	Senate Floor Amendment No. 2 Motion to Concur Referred to Rules Committee
5/22/2023	House	Senate Floor Amendment No. 3 Motion to Concur Referred to Rules Committee
5/24/2023	House	Senate Floor Amendment No. 2 Motion to Concur Referred to Judiciary - Civil Committee
5/24/2023	House	Senate Floor Amendment No. 3 Motion to Concur Referred to Judiciary - Civil Committee
5/24/2023	Senate	Added as Alternate Co-Sponsor Sen. Mike Simmons
5/25/2023	House	Senate Floor Amendment No. 2 Motion to Concur Recommends Be Adopted Judiciary - Civil Committee; 009-003-000
5/25/2023	House	Senate Floor Amendment No. 3 Motion to Concur Recommends Be Adopted Judiciary - Civil Committee; 009-003-000
5/25/2023	House	Senate Floor Amendment No. 2 House Concurs 069-035-000
5/25/2023	House	Senate Floor Amendment No. 3 House Concurs 069-035-000
5/25/2023	House	House Concurs
5/25/2023	House	Passed Both Houses
6/6/2023	House	Sent to the Governor
6/6/2023	House	Governor Approved
6/6/2023	House	Effective Date June 6, 2023
6/6/2023	**House**	**Public Act 103-0005**

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IN THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
CRAWFORD COUNTY, ILLINOIS

JIM PHIPPS, MICHAEL WILKES, KORY ROBINSON and GREG CLARK,	)	
Plaintiff,	)	
v.	)	**Case No. 23-CH-6**
BRENDAN KELLY, in his official capacity as Director of the Illinois State Police,	)	
Defendant.	)	

SWORN STATEMENT OF THOMAS MAAG

Comes now Thomas Maag, and states as follows:

1. My name is Thomas G. Maag, I am one of the attorneys for Plaintiff's in this case.
2. I am familiar with the Circuit Courts of Crawford, Sangamon and Cook counties, and have appeared in all three courts in the past.
3. Cook County is extremely inconvenient to me, and as such, as a practical matter, I avoid cases that are filed in Cook County circuit court.
4. That Sangamon County is closer to my office than Crawford County, however, the difference is not substantial, and in fact, the difference in drive time from my home to either Sangamon or Crawford County is less than 30 minutes.
5. Crawford County is a convenient forum for me to handle and try the above styled case.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: 11-1-2023

Thomas Maag

EXHIBIT
F

THE PEOPLE OF THE STATE OF ILLINOIS ex rel. LISA MADIGAN, Attorney General of the State of Illinois, Plaintiff-Appellant,

v.

EVA LOVENE LEAVELL, d/b/a L&L SUPPLY COMPANY, Defendant-Appellee.

No. 4-08-0019

Appellate Court of Illinois, Fourth District.

Filed February 18, 2009.

JUSTICE TURNER delivered the opinion of the court:

In September 2007, the State filed a two-count complaint against defendant, Eva Lovene Leavell, doing business as L&L Supply Company, alleging multiple violations of the Illinois Oil and Gas Act (Oil Act) (225 ILCS 725/1 through 28.1 (West 2006)) and seeking injunctive relief, as well as civil penalties. That same month, defendant filed a motion for change of venue or, in the alternative, to transfer on the basis of forum non conveniens. In October 2007, the State filed a response, contesting defendant's motion. After a December 2007 hearing, the trial court granted defendant's motion and transferred the case to White County.

In January 2008, the State petitioned this court for leave to appeal pursuant to Supreme Court Rules 306(a)(2) and 306(a)(4) (210 Ill. 2d Rs. 306(a)(2), (a)(4)). We denied the petition, and the State appealed to the supreme court. By supervisory order, the supreme court directed us to grant the State's petition and to hear the appeal on its merits. People ex rel. Madigan v. Leavell, 228 Ill. 2d 552, 886 N.E.2d 1027 (2008) (nonprecedential supervisory order on denial of petition for leave to appeal). We have done so and affirm the trial court's judgment.

I. BACKGROUND

The State's September 2007 complaint set forth the Department of Natural Resources (Department) previously issued defendant permits authorizing her to operate oil production and injection wells in accordance with the terms of the permits. Count I of the complaint specifically asserted defendant violated the Department's orders by failing to repair or plug wells, which the Department later plugged or repaired after the issuance of a final administrative decision. In September 2003, the Department sent defendant a letter demanding reimbursement of the funds it expended in plugging or repairing her wells plus statutory interest. The State listed nine wells for which it still sought reimbursement for work the Department had done. In addition to reimbursement plus interest, the State sought (1) a finding defendant violated the Oil Act by failing to comply with a final administrative decision to plug or repair wells, (2) the imposition of civil penalties, (3) a preliminary injunction for defendant to cease operation under current permits until the Department has been reimbursed, (4) a permanent injunction for defendant to cease and desist from further violations, and (5) costs of the suit.

Count II alleged the Department issued a final administrative decision in April 2002, finding defendant's wells to be abandoned for nonpayment of fees. Defendant had yet to plug the abandoned wells that were the subject of the April 2002 decision. The State again sought (1) a violation finding, (2) civil penalties, and (3) preliminary and permanent injunctions.

In its complaint, the State also indicted venue was appropriate in Sangamon County based on the Department's issuance of final administrative decisions to defendant there.

In her September 2007 venue motion, defendant asserted the subject of the State's current suit had been the subject of five or more cases filed in White County, Illinois. Defendant also noted (1) she did not reside in Sangamon County and (2) none of the wells that were the subject of the lawsuit were on property located in Sangamon County. Further, defendant resided and did business in White County, and the wells and witnesses were located in White County or near it. As to venue, defendant contended Sangamon County was not a proper venue under either prong of the venue statute contained in section 2-101 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-101 (West 2006)). With respect to forum non conveniens, defendant addressed both private and public interests. As to private interests, defendant noted that, to view the premises at issue, a trip between 160 and 205 miles from Springfield to White or Crawford County would be required, but it would be a short drive from White County. Defendant also reiterated the facts that she, the likely witnesses, and the wells at issue were located in or near White County. Regarding public interests, defendant noted Sangamon County circuit court was "much more congested" than the White County circuit court. Defendant also contended the people of White County had "much more interest" in this case than the people of Sangamon County.

Defendant attached to her motion maps showing the distance between Springfield and Carmi, Illinois (203.65 miles), and Springfield and Robinson, Illinois (163.49 miles). She also presented the 2005 annual report of the Illinois courts, showing the caseloads of the various circuits in Illinois. Defendant further submitted affidavits by her and her son, Stanley Leavell, in support of her following contentions: (1) Sangamon County was not near her residence, her place of business, her witnesses, and the property at issue and (2) a trial in Sangamon County would be inconvenient.

The State responded Sangamon County was a proper place of venue under section 11 of the Oil Act (225 ILCS 725/11 (West 2006)) since the Department issued final administrative decisions against defendant in Sangamon County. It contended the specific venue statute contained in the Oil Act was controlling over the general venue statute contained in the Procedure Code.

As to forum non conveniens, the State asserted the plaintiff's choice of forum should be given deference and noted the Department was located in Sangamon County. It also asked the circuit court to take notice of the fact the Department brought all of its oil-and-gas cases in Sangamon County and cited two recent cases. The State also contended defendant failed to prove the private- and public-interest factors strongly favor transfer. According to the State, the relative ease of access to sources of proof favored Sangamon County because the nature of proof was documentary rather than testimonial and a view of the premises would not be appropriate in this action. Moreover, the State urged the congestion of court dockets should be afforded minimal weight.

At the December 2007 hearing, the parties neither presented evidence nor asked the trial court to take judicial notice of anything. After hearing the parties' arguments, the court granted the motion, stating "[t]here is absolutely no reason that I see that this matter should be in Springfield." The court then transferred the matter to "Dwight [sic] County, along with the rest of the cases involving these two parties."

II. ANALYSIS

A. Motion Taken With the Case

In August 2008, defendant filed a motion to strike pages 4 through 65 of the appendix to the State's brief. Defendant asserts those pages were not presented to the circuit court and thus she never had an opportunity to submit exhibits and documents in opposition. The contested pages include the following: (1) Department administrative decisions and violation notices regarding the wells at issue, (2) docket sheets for circuit court cases in White County, (3) a map showing the drive between Carmi and Robinson, (4) an excerpt from the 2006 annual report of the Illinois courts, and (5) a table of contents for the supporting record on appeal. In the alternative, defendant seeks leave to submit new evidence of her own.

The State responds, asserting this court (1) should deem the appendix materials a supplement to the record under Supreme Court Rule 366 (155 Ill. 2d R. 366(a)(3)) or (2) take judicial notice of them (see Dawdy v. Union Pacific R.R. Co., 207 Ill. 2d 167, 177-78, 797 N.E.2d 687, 696-97 (2003) (mileage between two locations); IFC Credit

Corp. v. Rieker Shoe Corp., 378 Ill. App. 3d 77, 81, 881 N.E.2d 382, 386 (2007) (documents in the public records of other courts); Hermesdorf v. Wu, 372 Ill. App. 3d 842, 850, 867 N.E.2d 34, 41 (2007) (written decisions contained in the record of an administrative tribunal)). The State notes the documents are offered as background information and are not directed at the merits of its arguments. However, in its brief, the State does cite to some of the materials in its argument section.

While this court may take judicial notice of some of the items contained in the State's appendix, we decline to do so. Contrary to the State's assertion the material is simply background information, the material is evidence in support of its position that the State failed to bring to the trial court's attention. That fact is demonstrated by the State's occasional citation to the material in the argument section of its brief. The State should have presented this evidence to the trial court in opposition to defendant's motion. We decline to allow the State to relitigate the matter on appeal. Thus, we strike pages 4 through 65 of the State's appendix, except for page 54, which contains the table of contents for the supporting record. That page was required by Supreme Court Rule 342(a) (210 Ill. 2d R. 342(a)). Accordingly, defendant's motion to strike is granted in part and denied in part.

B. Venue

The State first argues Sangamon County was a proper venue for its enforcement action against defendant. Where the facts are undisputed surrounding the matter of venue, the issue becomes one of law, which we review de novo. Boxdorfer v. DaimlerChrysler Corp., 339 Ill. App. 3d 335, 339, 790 N.E.2d 391, 394 (2003). Moreover, the venue question in this case involves statutory construction, which we also review de novo. O'Casek v. Children's Home & Aid Society of Illinois, 229 Ill. 2d 421, 440, 892 N.E.2d 994, 1007 (2008).

Section 2-101 of the Procedure Code (735 ILCS 5/2-101 (West 2006)) contains a venue provision that provides, in pertinent part, the following:

> "Except as otherwise provided in this [a]ct, every action must be commenced (1) in the county of residence of any defendant *** or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose."

While the drafting of the Procedure Code brought together many separate venue provisions, "not all statutory provisions governing venue were incorporated into the [Procedure] Code." 1 C. Nichols, Illinois Civil Practice §9.4, at 356 (2001). The Oil Act is one of the acts that contains its own venue provision. Section 11 of the Oil Act (225 ILCS 725/11 (West 2006)) provides, in pertinent part, the following:

> "[T]he Department, through the Attorney General, *** shall bring an action in the name of the People of the State of Illinois against such person in the circuit court of the county wherein any part of the land or any activity which is the subject matter of such action is located, or a final administrative order was entered, to restrain such person from continuing such violation or from carrying out the threat of violation."

Defendant agrees with the State that certain administrative orders were issued in Sangamon County and acknowledges Sangamon County is a proper venue under section 11. However, she contends the two venue provisions must be applied together, leaving White County as the only county that satisfies both venue provisions. In the alternative, defendant contends section 2-101 of the Procedure Code is the only applicable venue provision.

The cardinal rule of statutory construction requires courts to ascertain and give effect to the legislature's intent. The statutory language, given its plain and ordinary meaning, best indicates the legislature's intent. Abruzzo v. City of Park Ridge, 231 Ill. 2d 324, 332, 898 N.E.2d 631, 636 (2008). Thus, when the statutory language is clear and unambiguous, a court must give effect to the statute's plain meaning. People v. Benton, 322 Ill. App. 3d 958, 960, 751 N.E.2d 1257, 1260 (2001). Further, courts considered statutes that relate to the same subject to be in pari materia and construe them together. Benton, 322 Ill. App. 3d at 961, 751 N.E.2d at 1260. "Moreover, a court will avoid an interpretation of a statute that would render any portion of it meaningless or void." McNamee v. Federated Equipment & Supply Co., 181 Ill. 2d 415, 423, 692 N.E.2d 1157, 1161 (1998).

Defendant contends the statutes can be read in harmony since one county, White County, would be an acceptable venue under both statutes. However, assuming arguendo Sangamon County is an improper venue under the general venue provision, defendant's interpretation renders the "final administrative order" language meaningless. Conflicting statutes will be construed together "if such an interpretation is reasonable." Abruzzo, 231 Ill. 2d at 332, 898 N.E.2d at 636. Here, defendant's suggested interpretation is not reasonable as it renders a part of section 11 of the Oil Act (225 ILCS 725/11 (West 2006)) meaningless.

Illinois courts in other cases have addressed similar situations in which a specific venue provision is at odds with the general venue provision of section 2-101 of the Procedure Code (735 ILCS 5/2-101 (West 2006)). In Foley v. Greer, 333 Ill. App. 3d 500, 503, 775 N.E.2d 665, 668 (2002), the Fifth District addressed the venue provision of the Uniform Arbitration Act (710 ILCS 5/17 (West 1998)), which required court actions to be filed in the county where a previous arbitration hearing was held. Citing the Third District's holding in Mazur v. Quarters Designs, Inc., 248 Ill. App. 3d 873, 875, 619 N.E.2d 763, 764 (1993), the Foley court concluded the specific venue statute of the Uniform Arbitration Act was the applicable venue provision. Foley, 333 Ill. App. 3d at 503, 775 N.E.2d at 668. The Mazur court, which also addressed the Uniform Arbitration Act's venue provision, based its holding on the statutory-construction rule that, where two statutes relate to the same subject, the particular statute prevails over the general one. Mazur, 248 Ill. App. 3d at 875, 619 N.E.2d at 764, citing People ex rel. Myers v. Pennsylvania R.R. Co., 19 Ill. 2d 122, 129, 166 N.E.2d 86, 90 (1960).

Defendant contends Foley is distinguishable because the Uniform Arbitration Act provides for only one county to be a proper venue and thus is a local action. On the other hand, the "final administrative order" language provides for a transitory action. We disagree with defendant's distinction. It is still a fundamental rule of statutory construction that, when a general statutory provision and a specific statutory provision, either in the same or in another act, relate to the same subject and are in conflict, "'the specific provision controls and should be applied.'" Mattis v. State Universities Retirement System, 212 Ill. 2d 58, 77, 816 N.E.2d 303, 313 (2004), quoting Knolls Condominium Ass'n v. Harms, 202 Ill. 2d 450, 459, 781 N.E.2d 261, 267 (2002). The distinction alleged by defendant has no effect on the aforementioned rule. Moreover, if an arbitration hearing has not been held, the Uniform Arbitration Act's venue provision permits an action to be brought in other counties based on the defendant's residence or place of business, and if the defendant residence and business are outside Illinois, then the action can be brought in any Illinois county. 710 ILCS 5/17 (West 2006). Thus, venue under Uniform Arbitration Act is not always limited to one county.

Citing People v. One Residence Located at 1403 East Parham Street, 251 Ill. App. 3d 198, 202-03, 621 N.E.2d 1026, 1030 (1993), defendant also asserts the general venue provision should control in this situation because it was the statute that was last amended. We again disagree. The general venue provision was the last amended provision with regard to the specific venue provision of the Uniform Arbitration Act as well, since that provision has not been amended since its creation in 1961 (1961 Ill. Laws 3844, 3848-49 (§17) (effective August 24, 1961)). Moreover, as stated earlier, the drafting of the Procedure Code incorporated many separate venue provisions, but not all of them. 1 C. Nichols, Illinois Civil Practice §9.4, at 356 (2001). Thus, an implicit repeal of the specific venue provision is inconsistent with the formation of the Procedure Code.

Accordingly, we find the specific venue provision of section 11 of the Oil Act (225 ILCS 725/11 (West 2006)) is the applicable venue provision in this matter, and thus Sangamon County is a proper venue.

C. Constitutionality of Section 11 of the Oil Act

Defendant also asserts that, if venue in Sangamon County is proper, then section 11 of the Oil Act is unconstitutional under article I, section 8, of the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, §8) and the sixth and fourteenth amendments to the United States Constitution (U.S. Const., amends. VI, XIV). The State asserts defendant has forfeited this argument because she failed to raise it in the trial court.

Our review of the record shows defendant did not present this constitutional argument to the trial court. A party may not raise constitutional issues for the first time on appeal, and a reviewing court will deem such issues forfeited.

Alarm Detection Systems, Inc. v. Village of Hinsdale, 326 Ill. App. 3d 372, 385, 761 N.E.2d 782, 794 (2001). Moreover, our supreme court has declared that "'cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort.'" People v. Hampton, 225 Ill. 2d 238, 243, 867 N.E.2d 957, 960 (2007), quoting In re E.H., 224 Ill. 2d 172, 178, 863 N.E.2d 231, 234 (2006). Accordingly, we decline to address this issue.

D. Forum Non Conveniens

The State also argues the trial court erred by finding the case's transfer to White County was warranted based on forum non conveniens. The State initially raises the legal questions of whether (1) White County is a proper venue under section 11 of the Oil Act for its enforcement action and (2) the doctrine of forum non conveniens applies to this action. If the aforementioned questions are answered in the affirmative, then the State contends the court abused its discretion by finding that, under forum non conveniens doctrine, the facts warranted a transfer to White County.

Defendant asserts the State has forfeited its legal contentions by failing to raise them in the trial court. However, "forfeiture acts as a limitation on the parties, not the courts." Doe A. v. Diocese of Dallas, 379 Ill. App. 3d 782, 792, 885 N.E.2d 376, 384 (2008). Accordingly, we will address the State's legal contentions because they are important in determining whether a transfer to White County based on forum non conveniens was proper.

1. White County

The State asserts White County is not a proper venue under section 11 of the Oil Act (225 ILCS 725/11 (West 2006)) because not all of the wells are located in White County. This contention also raises an issue of statutory construction, and thus our review is de novo. O'Casek, 229 Ill. 2d at 440, 892 N.E.2d at 1007.

Besides the county where a final administrative order was entered, section 11 of the Oil Act (225 ILCS 725/11 (West 2006)) also provides for venue in the county "wherein any part of the land or any activity which is the subject matter of such action is located." Here, the parties agree some of the wells, but not all of them, are located in White County. Thus, part of the land at issue is located in White County, and the repair or plugging of some of the wells also occurred in White County. The fact some other wells and other activity took place in other counties does not defeat venue in White County. The plain language of the statute states "any activity" and "any part of the land." 225 ILCS 725/11 (West 2006). Since part of the land and some activity took place in White County, that county is a proper place of venue for this entire action under section 11 of the Oil Act. To hold otherwise would allow the State to lump numerous violations related to land and/or activity in different counties together to avoid the "land" and "activity" provision of the venue statute. Such a construction would defeat the statute's plain language.

2. Applicability

The State contends the doctrine of forum non conveniens does not apply to this enforcement action. Whether the doctrine applies is a question of law that we review de novo. See Community Merchant Services, Inc. v. Jonas, 354 Ill. App. 3d 1077, 1083, 822 N.E.2d 515, 521 (2004).

The forum non conveniens doctrine is rooted in "fundamental fairness and sensible and effective judicial administration." Continental Casualty Co. v. Michigan Mutual Insurance Co., 183 Ill. App. 3d 778, 781, 539 N.E.2d 431, 433 (1989). The doctrine presupposes the existence of two forums under which jurisdiction is proper. Continental, 183 Ill. App. 3d at 781, 539 N.E.2d at 433. In this case, at least two counties are proper places of venue. Thus, the doctrine's applicability is not defeated by the existence of only one proper forum.

Moreover, we disagree with the State that a venue statute must be a general one for the doctrine to apply. We acknowledge the United States Supreme Court's Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507, 91 L. Ed. 1055, 1062, 67 S. Ct. 839, 842 (1947), in which it stated: "The principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute." (Emphasis added.) However, the Supreme Court later addressed the specific venue provision of the Federal Employers' Liability Act (45 U.S.C. §56 (2000)) and held states were free to decide the availability of the forum non conveniens doctrine in suits under that act according to the state's own local law. Missouri ex rel. Southern Ry. Co. v. Mayfield, 340 U.S. 1, 5, 95 L. Ed. 3, 8, 71 S. Ct. 1, 3 (1950). Thus, the fact the states were to decide the applicability of forum non conveniens to a specific venue statute indicates the Supreme Court did not limit the doctrine's applicability to general venue provisions.

Last, we note this court's decision in Midland Coal Co. v. Knox County, 268 Ill. App. 3d 485, 487, 644 N.E.2d 796, 797 (1994), is distinguishable from this case. There, we addressed the Administrative Review Law (735 ILCS 5/3-101 through 3-112 (West 1992)). Midland Coal, 268 Ill. App. 3d at 487, 644 N.E.2d at 797. The venue provision of the Administrative Review Law expressly stated the forum non conveniens doctrine was inapplicable to actions brought under the act. See 735 ILCS 5/3-104 (West 1992) ("The court first acquiring jurisdiction of any action to review a final administrative decision shall have and retain jurisdiction of the action until final disposition thereof"). We note that statute still expressly provides for the inapplicability of the doctrine. See 735 ILCS 5/3-104 (West 2006).

Accordingly, the forum non conveniens doctrine is applicable to the suit at issue in this appeal.

3. Merits

Last, the State contends the trial court erred by transferring the suit to White County based on forum non conveniens.

In ruling on a forum non conveniens motion, a trial court possesses considerable discretion. Langenhorst v. Norfolk Southern Ry. Co., 219 Ill. 2d 430, 441, 848 N.E.2d 927, 934 (2006). Thus, a reviewing court will only reverse the trial court's decision if the appellant demonstrates the trial court abused its discretion in balancing the relevant factors. A trial court abuses its discretion only when no reasonable person would take the view it adopted. Langenhorst, 219 Ill. 2d at 442, 848 N.E.2d at 934. A trial court also abuses its discretion in transferring a case under the doctrine when "the potential trial witnesses are scattered among several counties, including the plaintiff's chosen forum, and no single county enjoys a predominant connection to the litigation." First American Bank v. Guerine, 198 Ill. 2d 511, 526, 764 N.E.2d 54, 64 (2002).

Our supreme court has indicated the discretionary power provided by the forum non conveniens doctrine "should be exercised only in exceptional circumstances when the interests of justice require a trial in a more convenient forum." (Emphasis omitted.) Langenhorst, 219 Ill. 2d at 442, 848 N.E.2d at 934. "'In most instances, the plaintiff's initial choice of forum will prevail, provided venue is proper and the inconvenience factors attached to such forum do not greatly outweigh the plaintiff's substantial right to try the case in the chosen forum.'" Guerine, 198 Ill. 2d at 520, 764 N.E.2d at 60, quoting Peile v. Skelgas, Inc., 163 Ill. 2d 323, 335-36, 645 N.E.2d 184, 190 (1994). While the aforementioned standard is a difficult one for defendants to meet, legitimate transfers are permitted where the balance of relevant factors strongly favors litigation in another forum. Langenhorst, 219 Ill. 2d at 443, 848 N.E.2d at 935.

The relevant factors to be considered in applying the forum non conveniens doctrine are divided into private- and public-interest factors. Langenhorst, 219 Ill. 2d at 443, 848 N.E.2d at 935. Private-interest factors include (1) the parties' convenience; (2) the relative ease of access to testimonial, documentary, and real-evidence sources; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive. Langenhorst, 219 Ill. 2d at 443, 848 N.E.2d at 935. The following are the public-interest factors:

> "(1) the interest in deciding controversies locally[,] (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation[,] and (3) the administrative difficulties presented by adding litigation to already congested court dockets." Langenhorst, 219 Ill. 2d at 443-44, 848 N.E.2d at 935.

A court is to neither weigh the private-interest factors against the public-interest factors nor emphasize any one factor; rather, it must consider all relevant factors and evaluate the total circumstances in determining whether the defendant has proven the balance of factors strongly favors transfer. Langenhorst, 219 Ill. 2d at 443-44, 848 N.E.2d at 935. Additionally, we note "[e]ach forum non conveniens case must be considered as unique on its facts." Langenhorst, 219 Ill. 2d at 443, 848 N.E.2d at 935.

As to the private-interest factors, defendant submitted affidavits by her and her son, Stanley, and maps showing the distance between Carmi and Robinson (the county seats of White and Crawford Counties, respectively) and Springfield. That information indicated (1) defendant and Stanley reside in Carmi; (2) she and Stanley would testify at trial; (3) a trial in Sangamon County would be "extremely inconvenient" for both of them, as it is 203.65 miles from Carmi; (4) a trial in White County would be convenient for both of them; (5) several of the wells at issue are located in White County; (6) the wells not located in White County are located in counties near or adjoining White County; (7) none of the wells are located in Sangamon County; and (8) she and Stanley have absolutely no connection to Sangamon County.

Defendant contends the only connection to Sangamon County is that the attorney for the State's office and the Department's main office are located there. The State alleges the nature of proof is documentary rather than testimonial and thus the sources of proof favor Sangamon County since the documents are located there. It further argues a view of the wells and the availability of witnesses are not important in this case.

Based on the aforementioned facts, the parties' convenience and the ease of access to evidentiary sources favor White County. Some of the wells at issue are located there, and it is near the counties where the other wells are located. It is also defendant's residence and the residence of the only other witness mentioned at the trial-court level. Moreover, White County is a significant distance from Sangamon County, making Sangamon County an inconvenient location for the only noted witnesses and any site views. Additionally, while the State contends the evidence in this case is only documentary (which is questionable based on its appellate argument the Department's employees are located in Sangamon County), defendant contends both the viewing of the wells and witnesses are necessary to her defense. Clearly, documentary evidence is easier to transport and make available at trial than witnesses and site views. Last, we note the third factor really does not come into play in this case as all of the practical problems appear to be addressed by the first two factors.

Regarding the public-interest factors, we initially note our earlier rejection of the State's argument the Oil Act prohibits it from filing a single enforcement action in one of the various counties where the pieces of land at issue are located. Thus, a lawsuit in White County does not require multiple actions in other counties.

The local-interest factor substantially favors White County. Defendant set forth in her affidavit that the wells at issue are located in White County or a nearby county and she and her witness reside there as well. Defendant also conducted her business in White County. Accordingly, White County has a significant interest in the Department's actions affecting wells in its county as well as one of its citizens and a business located there. Moreover, we disagree with the State that White County has no interest at all in the decisions regarding the wells in other counties. Defendant, the owner of the wells, and her business are located in White County. Sangamon County has little interest in this action involving a nonresident and property not located there.

Regardless of whether defendant is entitled to a jury trial, one of the counties at issue must bear the trial expense of this action. As stated in the previous section, Sangamon County has no specific interest in this litigation outside the facts a final administrative decision was entered there and the legislature permits venue there based on that decision. White County has a substantial interest in this litigation. Thus, when compared to White County's significant interest in this matter, it is unfair to impose the trial-related expenses of this litigation on the residents of Sangamon County. The State also attempts to downplay this factor by asserting the trial burden in this case is not great. However, the State recognizes some of the issues are contested, and defendant indicates her desire to contest the State's allegations. In any event, a burden would still exist on Sangamon County, which has little connection to and little interest in the litigation. Additionally, we note the State cites no authority for its contention Sangamon County courts' familiarity with these types of cases makes placing the expense burden on Sangamon County residents fair.

As to the congestion of the courts, defendant presented evidence that Sangamon County had a total of 74,018 and 71,650 new cases in 2005 and 2006, respectively. Defendant's evidence also indicates that in 2005, the entire Seventh Circuit, in which Sangamon County is located, received 103,026 new cases, disposed of 106,274 cases, and had 37,633 pending civil cases. That same year, the entire Second Circuit, in which White County is located, received 55,062 new cases, disposed of 51,565 cases, and had 9,518 pending cases. Thus, while the Seventh Circuit had a better rate of disposing cases in 2005 than the Second Circuit, the pending number of civil

cases for the two circuits indicates the Seventh Circuit is the more congested docket. Additionally, we note that, in analyzing forum non conveniens issues, "the trial court is in the better position to assess the burdens on its own docket." Langenhorst, 219 Ill. 2d at 451, 848 N.E.2d at 939.

Here, the evidence presented in the trial court indicates the witnesses were not scattered over several counties and White County had a predominant connection to the action. Moreover, all of the relevant factors favor White County as opposed to Sangamon County. Some factors such as the local interest in the litigation, substantially favor White County. Thus, we find a reasonable person considering the totality of the circumstances and all of the relevant factors could have found the inconvenience of Sangamon County greatly outweighed the State's venue choice and a transfer to White County was strongly favored. Accordingly, we conclude the trial court did not abuse its discretion by transferring this case to White County under the doctrine of forum non conveniens.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.

McCULLOUGH, P.J., and KNECHT, J., concur.

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC Plaintiff, v. Kwame Roul, in his official capacity as Attorney General of the State of Illinois, Defendant.	23LM____

SWORN STATEMENT OF THOMAS G. MAAG

COMES NOW, Thomas G. Maag, and states as follows:

1. My name is Thomas G. Maag, I am the attorney for Plaintiff in this case.
2. I am a resident of Madison County, and my office is in Madsion County.
3. I am familiar with the Circuit Court's of Cook, Sangamon and Madsion Counties. I have driven to, and appeared in all three counties in the past.
4. Cook county is extremely inconvenient to me. So much so that I no longer accept cases from Cook County and present have no such cases. I can literally drive to Memphis, Tennessee is less time, legally, than I can to Cook County, Illinois.
5. My office is about a 30 minute drive to the Madison County Courthouse. It is very convenient for me.
6. I routinely see persons I recognize that attorneys for the Attorney General appearing in Madison County. Some of them actually live in Madison County.
7. While Sangamon County is not nearly as inconvenient for me as Cook County, it is still a 90 minute drive, each way, from my office.
8. Madison County is a convenient forum for me to handle this case.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: 11-22-2023

Thomas G. Maag

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC

Plaintiff,

v.

Kwame Roul, in his official capacity as Attorney General of the State of Illinois,

Defendant.

23LM____

SWORN STATEMENT OF SCOTT PULASKI

COMES NOW, Scott Pulaski, and states as follows:

1. My name is Scott Pulaski, I am the owner of the Plaintiff in this case.
2. I am a resident of Jersey County, and my business is located in Madsion County.
3. Most, if not all of Piasa's employees are residents of Madison County.
4. Cook county is extremely inconvenient for me. I conduct no business in Cook County.
5. My business is about a 30 minute drive to the Madison County Courthouse. It is very convenient for me.
6. While Sangamon County is not nearly as inconvenient for me as Cook County, it is still a 90 minute drive, each way, from my business. I do no business in Sangamon County, and have no records of Plaintiff's in said county. Madison County is a convenient forum for me to try this case.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: 11-22-2023

Scott Pulaski

Scott Pulaski

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Case Number 2023LA001129
Date: 12/20/2023 1:16 PM
Thomas McRae
Clerk of Circuit Court
Third Judicial Circuit, Madison County Illinois

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC, Plaintiff, v. KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, Defendant.	No. 2023 LA 1129

ATTORNEY GENERAL'S REPLY IN SUPPORT OF HIS MOTION TO TRANSFER TO A PROPER VENUE AND RESPONSE IN OPPOSITION TO PIASA ARMORY'S CROSS MOTION FOR SUMMARY JUDGMENT AS TO COUNT V[1]

Piasa Armory concedes section 2-101.5 renders Madison County an improper venue for its constitutional challenge to FIRA. Complaint at 8, ¶ 17; Response at 2. But it insists transferring this case to Sangamon County, which ***is*** a proper venue under section 2-101.5, would violate its due process rights. Response at 2–11. Piasa Armory also contends section 2-101.5 is unconstitutional because the bill enacting it violated the three readings rule in the Illinois constitution. *Id.* at 11–13. Neither of these arguments provides a basis to deny the Attorney General's motion to transfer to a proper venue.

I. Transferring this action to Sangamon County pursuant to section 2-101.5 will not violate Piasa Armory's due process rights.

The Attorney General's motion established that transferring this action to Sangamon County pursuant to section 2-101.5 will not violate Piasa Armory's due process rights. Due process requires that "persons forced to settle their claims of right and duty through the judicial

[1] Piasa Armory moves for summary judgment on count II, which it says "challenges this illegal purported venue statute." Response at 2. This is likely a typo; in fact, count V challenges the constitutionality of section 2-101.5. Complaint at 5-9. There also appears to be a related typo on the first page of Piasa Armory's response. It brings constitutional challenges to FIRA, not the FOID card.

process must be given a meaningful opportunity to be heard." *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971). Piasa Armory will have a meaningful opportunity to be heard in Sangamon County because its challenge to FIRA likely will not require the personal participation of its corporate representatives—but, if it does, they can be deposed and appear in court remotely from Madison County pursuant to Supreme Court Rules 45, 206, and 241. And unlike the student loan borrowers in *Williams v. Illinois State Scholarship Commission*, 139 Ill. 2d 24, 42–43, 64 (1990), Piasa Armory has not shown it is "indigent" and "cannot afford the travel costs to" Sangamon County—or that it cannot "defend[ ] [its] interests without making a personal appearance" there.

Rather than rebut these arguments, Piasa Armory simply ignores them. Its response refuses even to acknowledge the Supreme Court Rules authorizing its corporate representatives to participate remotely in every aspect of the suit. Instead, Piasa Armory insists *Williams* "is nearly on all fours with this case" (when in fact it is distinguishable in every material respect), Response at 3, and misapplies the three factors set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976), used to identify the requirements of due process (which do not "mimic the *forum non conveniens* analysis" in any meaningful sense), Response at 4. Neither tack is persuasive.

A. *Williams* is distinguishable in every material respect.

Start with Piasa Armory's misunderstanding of *Williams*. Piasa Armory believes *Williams* "is nearly on all fours with this case," Response at 3, because:

> In *Williams*, the Supreme Court noted that the only way a litigant could have protected their rights or presented their claims for a defense was to travel to Chicago and appear in the case. Aside from the fact that Sangamon [C]ounty, *one other county*, is added to the list, that is true here as well.

Id. at 4–5. In fact, it is not true at all; *Williams* is distinguishable in every material respect.

For one thing, Piasa Armory's corporate representatives do not need "to travel to [Springfield] and appear in the case" to "protect[ ] [its] rights or present[ ] [its] claims."

Response at 4–5. Piasa Armory's facial constitutional attack on FIRA presents a pure question of law. Because it contends "the statute is unconstitutional under any set of facts[,] the specific facts related to [itself] are irrelevant." *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 29. Thus, it is difficult to conceive of any reason why Piasa Armory's corporate representatives would need to participate personally to prosecute its claims.[2] This case will likely be resolved on the basis of legal arguments presented by Piasa Armory's lawyer, who does not dispute he is capable of appearing on its behalf in Sangamon County. *See, e.g.,* Complaint, *Stanfield v. Kelly*, No. 2023 CH 20 (Sangamon Cty. July 18, 2023), attached to memorandum as Exhibit 6 (Piasa Armory's lawyer appearing in Sangamon County earlier this year).

Piasa Armory resists this conclusion but offers no facts or argument to undermine it. True, it says its corporate representatives would have to endure a longer drive to appear in Sangamon County than they would in Madison County, where they work. Response at 5–6.[3] But Piasa Armory does not explain why the specific challenge it has brought to FIRA would require its corporate representatives to do this; it identifies them as "[l]ikely witnesses" but does not say what they intend to testify about. *Id.* That is a far cry from the student loan borrowers in *Williams*, who presented evidence that default judgments were entered against them in Cook County because they were unable to travel there themselves or hire lawyers to appear there for them. 139 Ill. 2d at 45. On this basis alone, *Williams* is distinguishable.

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[2] Piasa Armory identifies "[Messrs.] Heeren, Pulaski and Duke" as its "[l]ikely witnesses" but does not say who they are. Response at 5. Mr. Pulaski has submitted a sworn statement, attached without an exhibit number or letter to the very last page of Piasa Armory's response, explaining he is "the owner of the Plaintiff in this case." The Attorney General assumes Mr. Heeren and Mr. Duke are likewise corporate representatives of Piasa Armory; their particular roles do not matter for purposes of this motion.

[3] But not much longer. Mr. Pulaski says it takes him about 30 minutes to drive to the Madison County courthouse and about 90 minutes to drive to the Sangamon County courthouse. So Piasa Armory's due process argument reduces to an assertion that it is deprived of meaningful access to the courts just because its owner would have to spend an additional 60 minutes in the car.

And the case still would be distinguishable even if Piasa Armory's corporate representatives were required to be deposed or testify in a Sangamon County courtroom. When the Illinois Supreme Court issued *Williams* in 1990, physical appearances were mandatory; the technology did not exist to facilitate remote appearances, so they generally were not permitted. Thus, if student loan borrowers were unable to set foot in Cook County, they were "effectively deprived . . . of any 'meaningful opportunity' to defend themselves." 139 Ill. 2d at 42–43. It was not possible to present argument or testimony in a Cook County courtroom while sitting at a kitchen table in, say, Madison County.

But the world looks very different today. The technology to facilitate remote appearances has improved dramatically, and the practice has been fully embraced—in fact, encouraged—by the judiciary. Supreme Court Rule 206(h) authorizes remote depositions. Supreme Court Rule 45(c)(1) gives Piasa Armory's lawyer and corporate representatives the right "to attend court via the circuit court's available remote appearance technology without any advance approval" for nonevidentiary hearings like statuses and oral arguments. And Supreme Court Rule 241(b) allows Piasa Armory's corporate representatives to testify via video conference or telephone at an evidentiary hearing or trial "for good cause shown and upon appropriate safeguards." These rules were designed specifically to remove barriers to access for litigants who live far from the courthouse. *See Illinois Supreme Court Policy on Remote Court Appearances in Civil Proceedings* at 2–4 (May 2020), attached to memorandum as Exhibit 7. And it is beyond dispute that remote appearances can be structured in a way that provides due process to all participants. *E.g., In re P.S.*, 2021 IL App (5th) 210027, ¶ 62. So, unlike the student loan borrowers in *Williams*, Piasa Armory's corporate representatives could testify in a Sangamon County courtroom, if necessary, from their workplace in Madison County.

Piasa Armory has no response to this conclusion either. Tellingly, it chooses to ignore these Supreme Court Rules and the very possibility of its corporate representatives' appearing remotely in Sangamon County. And no wonder. Due process entitles Piasa Armory to "'a meaningful opportunity to be heard,'" *Williams*, 139 Ill. 2d at 42–43, and technological advances mean litigants now have a meaningful opportunity to be heard remotely in every county in Illinois. This reality eviscerates Piasa Armory's due process challenge to section 2-101.5.

Remote appearances aside, *Williams* remains distinguishable for yet another reason. The Illinois Supreme Court did not find a due process violation there merely because the student loan borrowers would have to spend some additional time on the road driving to and from Cook County. *Contra* Response at 5–6. Rather, the borrowers presented evidence to show they were "indigent" and therefore could not "afford the travel costs" to Cook County. 139 Ill. 2d at 42–43. And it was the borrowers' penury that caused the court to hold "the burden of an inconvenient forum" was sufficiently severe to deprive them of meaningful access to the courts. *Id.* at 63.

Piasa Armory does not suggest it is comparably impoverished—much less establish it by evidence. So, unsurprisingly, its response is devoid of any assertion that it cannot afford to have its corporate representatives travel to Sangamon County; it merely complains it would take them longer to get there. Response at 5–6. Perhaps recognizing this slight annoyance is insufficient to deprive it of meaningful access to the courts, Piasa Armory attempts a pivot. It worries Sangamon County is "especially" inconvenient "for those that need access to the Courts the most, the poor and disabled among us." *Id.* at 5. And it fears the General Assembly might someday require constitutional challenges to be filed in Alexander County—or maybe even London. *Id.* at 3, 9. But these contentions run afoul of the longstanding rule that "[a] party has standing to challenge the constitutionality of a statute only insofar as it adversely impacts his or

her own rights" and may not argue the statute "would be unconstitutional if applied to third parties in hypothetical situations." *State v. Funches*, 212 Ill. 2d 334, 346 (2004). Piasa Armory does not claim its representatives are poor and disabled. The Attorney General's motion must be resolved on the basis of Piasa Armory's circumstances, not anyone else's. Further, section 2-101.5 does not authorize this action to be transferred to Alexander County or London; nor has the Attorney General made such a request. The Attorney General's motion must be resolved by applying Illinois law as it currently exists, not as it might exist in a hypothetical future.[4]

All this goes to show *Williams* is distinguishable in every material respect. Unlike those student loan borrowers, Piasa Armory has not established its corporate representatives' personal participation is necessary to prosecute its constitutional challenge to FIRA. But even if it was, technological advances unavailable to the *Williams* borrowers mean Piasa Armory's corporate representatives can be deposed and testify in a Sangamon County courtroom without leaving their Madison County workplace. And remote appearances aside, the *Williams* borrowers were too poor to afford travel expenses to a distant courthouse; Piasa Armory, by contrast, simply would prefer its corporate representatives to have a slightly shorter drive.

These distinctions matter because the Illinois Supreme Court made it clear "that, standing alone, requiring venue to be in a particular county does not necessarily infringe upon [the] right

[4] Piasa Armory also suggests consolidating constitutional challenges in Sangamon and Cook counties is a bad policy—and a decision affirming the constitutionality of section 2-101.5 could embolden the General Assembly to adopt more bad policies concerning venue. *E.g.*, Response at 9. But it is a matter of perspective whether a law reflects good policy—and it is the perspective of the legislature, not the judiciary, that counts. *Roselle Police Pension Board v. Roselle*, 232 Ill. 2d 546, 557 (2009) ("the policy arguments [plaintiffs] advance are properly addressed to the legislature rather than this court"). The judiciary's "role is not to judge the wisdom of legislation but only to determine when it offends the constitution." *Rowe v. Raoul*, 2023 IL 129248, ¶ 19. And finding Piasa Armory's due process rights are not violated in the particular circumstances present here will not preclude the judiciary from fulfilling this role in the future if section 2-101.5 is applied in different circumstances—or if another venue statute is enacted addressing a different category of cases. "[I]t will be time enough to consider any such problems when they arise." *Oswald v. Hamer*, 2018 IL 122203, ¶ 43.

of access to the courts." *Williams*, 139 Ill. 2d at 63. It was only "the burden of an inconvenient forum, when ***combined*** with the indigence of the [student loan borrowers]" and other factors, that caused the Illinois Supreme Court to find unconstitutional the statute setting Cook County as the exclusive venue for lawsuits brought by the state loan servicing agency. *Id.* at 63–64 (emphasis added). Put another way, if any of the borrowers' circumstances had been different—if they were not indigent, for example, or if they had not shown their failure to appear in Cook County had led to the entry of default judgments—then the Illinois Supreme Court would have found no due process violation in the challenged statute. Thus, the case provides no support to Piasa Armory here. Its failure to show it is like the *Williams* borrowers in any material respect is fatal to its due process arguments against transfer to Sangamon County.

B. Piasa Armory misapplies the *Mathews* factors used to identify the requirements of due process.

Piasa Armory's next error is to misapply the *Mathews* factors used to identify the requirements of due process. 424 U.S. at 334–35. "Per *Mathews*, when evaluating a procedural due process challenge, [courts] should consider (1) the government's interest in the procedure, including the function involved and the fiscal or administrative burdens that the additional or substitute procedure would entail, (2) the private interest affected by the governmental action, and finally (3) the risk of an erroneous deprivation of said interest through the procedures being contested and the probable value, if any, of additional or substitute procedural safeguards." *People v. Deleon*, 2020 IL 124744, ¶ 27. The Illinois Supreme Court applied these three factors in *Williams* to guide its constitutional analysis of the challenged venue statute. 139 Ill. 2d at 63. Ultimately, though, its holding turned on whether the statute deprived borrowers of meaningful access to the courts. *Id.* (citing *Boddie*, 401 U.S. at 377).

1. The *Mathews* factors do not mimic the *forum non conveniens* analysis in any meaningful sense.

Rather than engage the *Mathews* factors, however, Piasa Armory announces that "two out of three of [them] mimic the *forum non conveniens* analysis"—and then proceeds to apply a *forum non conveniens* analysis to this case. Response at 4. Piasa Armory cites no authority for this "bait and switch" approach—and none exists. Despite some superficial similarities—both the *Mathews* factors and the *forum non conveniens* analysis consider the "private interest," for example—the objects of these inquiries are entirely distinct. There is no logical reason why the private interest at stake in considering the type of process required should be identical to the private interest at stake in considering whether to transfer a lawsuit from one county to another. To the contrary, the private interest in a due process analysis generally looks to the rights the litigant wishes to invoke, *e.g., In re M.H.*, 196 Ill. 2d 356, 365 (2001) ("interest of a parent in the control, custody, and care of her child"), whereas the private interest in a *forum non conveniens* analysis looks to the "practical problems that make trial of a case easy, expeditious, and inexpensive," *First American Bank v. Guerine*, 198 Ill. 2d 511, 516 (2002).

By applying a *forum non conveniens* analysis instead of the *Mathews* factors, Piasa Armory's response addresses the wrong question. For instance, it cites *Dawdy v. Union Pacific R.R.*, 207 Ill. 2d 167, 181–82 (2003), a *forum non conveniens* case, for the proposition that "the local interest in local controversies" is a relevant consideration for the Court in evaluating its due process challenge to section 2-101.5. Response at 9. But Piasa Armory offers no authority asserting that "the local interest in local controversies" is a relevant consideration under the *Mathews* factors or in otherwise evaluating a due process challenge—because it's not. Thus, Piasa Armory's arguments miss the mark. Its *forum non conveniens* analysis does not show its due process rights would be violated if this case were transferred to Sangamon County.

Not only does Piasa Armory's resort to the *forum non conveniens* doctrine address the wrong question, it is also unpersuasive on its own terms, given that the doctrine is increasingly outdated. More than two decades ago, the Illinois Supreme Court recognized the world has changed in ways that fundamentally undermine the doctrine's continuing relevance. *See First American*, 198 Ill. 2d at 525 ("Today, we are connected by interstate highways, bustling airways, telecommunications, and the world wide web. Today, convenience—the touchstone of the forum *non conveniens doctrine*—has a different meaning."). Those changes have only accelerated as this century progresses. The technological advances that make remote appearances available—even encouraged under the Supreme Court Rules—were unthinkable 40 years ago when that court first applied the *forum non conveniens* doctrine to intrastate transfers in *Torres v. Walsh*, 98 Ill. 2d 338, 350 (1983).

As the benefits supplied by the *forum non conveniens* doctrine decrease, the costs it extracts only increase. Both the supreme court and appellate court acknowledge "the application of the doctrine to intrastate transfers [can] result[ ] in a 'frustrating litigation quagmire' consisting of a 'battle over minutiae.'" *Wilton v. Illini Manors, Inc.*, 364 Ill. App. 3d 704, 706 (5th Dist. 2006) (quoting *First American*, 198 Ill. 2d at 519, and *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 335 (1994)). Members of the General Assembly have reached the same conclusion. In the legislative debates regarding section 2-101.5, one of its sponsors—Representative Jay Hoffman—argued persuasively that "[*f*]*orum non conveniens* is a relic." See Transcript at 64 (May 25, 2023), attached as Exhibit 8. So even if Piasa Armory was correct to invoke *forum non conveniens* (and it is not), any argument rooted in that doctrine would fail for the additional reason that it no longer serves a practical purpose even in cases not governed by section 2-101.5.

2. A proper application of the *Mathews* factors demonstrates transferring this action to Sangamon County will not violate Piasa Armory's due process rights.

A proper application of the *Mathews* factors demonstrates transferring this action to Sangamon County will not violate Piasa Armory's due process rights.

i. The government interest strongly favors transfer.

Start with the government interest. Sangamon County is an appropriate forum to resolve facial constitutional challenges with statewide implications. It is the seat of state government. 5 ILCS 190/1. It is where the General Assembly meets, 25 ILCS 5/1, and state officers conduct business, *e.g.,* Ill. const. art. V, § 1. It is where the Attorney General, who is charged with representing the State and its officers in court, 15 ILCS 205/4, has his main office, *see* illinoisattorneygeneral.gov/Contact. And it is where the Illinois Supreme Court has consolidated in recent years a number of facial constitutional challenges with statewide implications. *See* Memorandum at 4 (citing examples). Madison County, by contrast, does not host these functions of state government. The Attorney General does not maintain an office there. Nor has the supreme court consolidated any facial constitutional challenges in Madison County. For all these reasons, transferring this action to Sangamon County will promote the government's interest in judicial economy and the just and efficient resolution of litigation. *See Mathews*, 424 U.S. at 348 ("Government's interest, and hence that of the public, in conserving scarce fiscal and administrative resources is a factor that must be weighed").[5]

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[5] Piasa Armory suggests the Attorney General engages in "selective enforcement" of section 2-101.5 because he does not invoke it in every case he could. Response at 5. But Piasa Armory provides no specific examples to support its accusation, which, in any event, simply is not true; the Attorney General has consistently moved to transfer venue to Sangamon or Cook counties in cases, like this one, presenting facial constitutional challenges with statewide implications. As for Piasa Armory's charge that this purported "selective enforcement . . . itself violates due process," it cites only to *Whren v. United States*, 517 U.S. 806, 813 (1996), which says nothing about due process but rather holds selective enforcement of traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures.

To rebut this conclusion, Piasa Armory points to *Williams*' assertion that the Attorney General "routinely litigates in every county in Illinois"—and thus to file lawsuits against student loan borrowers in their home counties, rather than Cook County, "would not require the office of the Attorney General to do anything it does not already do." 139 Ill. 2d at 62. But this misses the mark. The question is not whether the Attorney General litigates in Madison County; of course he does. The question, rather, is whether it promotes a government interest to litigate facial constitutional challenges with statewide implications in Sangamon County. And with the proper focus in mind, *Williams* is inapposite. The student loan lawsuits at issue there concerned the repayment of debt under a contract. They presented fact intensive questions specific to each borrower. And their outcomes affected only the litigants; most Illinois residents were indifferent to whether judgment was entered against any particular borrower. Simply put, these student loan lawsuits are nothing like the lawsuits subject to section 2-101.5. *Williams*' analysis of the government interest did not address the unique circumstances posed by facial constitutional challenges with statewide implications—and thus provides no support to Piasa Armory.

Relying on the Illinois Supreme Court's latest annual report, Piasa Armory also insists Sangamon County has a "congested docket[ ]" and therefore "it is all but certain that a given case will move faster in Crawford County" (presumably this is a mistake and Piasa Armory means Madison County). Response at 10–11; *see Williams*, 139 Ill. 2d at 61–62 (finding "huge case backlog in the Cook County circuit court" undermined government interest under *Mathews* test). Either way, Piasa Armory is mistaken. On a page of the report it omits from the exhibit attached to its response, the Seventh Judicial Circuit (which includes Sangamon County) is shown to have a case clearance rate of 134 percent, compared to just 108 percent in the Third Judicial Circuit (which includes Madison County). *See Illinois Courts Annual Report* at 65, 69

(2021), attached as Exhibit 9. Besides, in the *forum non conveniens* caselaw that Piasa Armory believes is relevant here, *see* Response at 10, the Illinois Supreme Court has been clear that "court congestion" on its own is insufficient to move the needle one way or the other, *e.g.*, *Griffith v. Mitsubishi Aircraft International, Inc.*, 136 Ill. 2d 101, 114 (1990). For all these reasons, the government interest in transferring this case to Sangamon County is strong and *Williams*' contrary reasoning is distinguishable.

ii. The private interest and risk of an erroneous deprivation weigh conclusively in favor of transfer.

The other two *Mathews* factors—the private interest and risk of an erroneous deprivation—weigh conclusively in favor of transfer. The private interest is Piasa Armory's "right of meaningful access to the courts," *Williams*, 139 Ill. 2d at 42, and, as explained above and in the Attorney General's motion and supporting memorandum, Piasa Armory will enjoy meaningful access to the courts in Sangamon County. As for the risk of an erroneous deprivation, there is none because, again, Piasa Armory will have a full opportunity to litigate its constitutional challenge to FIRA in Sangamon County.

Piasa Armory attempts to satisfy these factors primarily by rehashing its arguments that its corporate representatives would prefer a shorter drive to the courthouse, Response at 5–6, and, in their absence, the "actual merits of [its] case [will] be tossed to the wind, as a court not presented with facts or law has a hard time considering them," *id.* at 8. These points are as unpersuasive here as they are elsewhere. If the Sangamon County circuit court is "not presented with facts or law" supporting Piasa Armory's challenge to FIRA, it will only be because Piasa Armory refuses to allow its corporate representatives and lawyer to travel there or take advantage of the Supreme Court Rules authorizing remote appearances.

Piasa Armory also points to section 2-101.5(b), which provides: "The doctrine of forum non conveniens does not apply to actions subject to this Section." According to Piasa Armory, "by abolishing *forum non conveniens* for these kinds of cases, [the General Assembly] has insured that there are no substitute procedural safeguards." Response at 7. This argument betrays a basic misunderstanding of the *forum non conveniens* doctrine, which requires that "the alternative forum must be capable of exercising personal jurisdiction over the defendant; have subject matter jurisdiction of the action; and ***venue must be proper***." Gordon E. Maag, *Forum Non Conveniens in Illinois: A Historical Review, Critical Analysis, and Proposal for Change*, 25 S. Ill. U. L.J. 461, 462 (2001) (emphasis added); *see Dawdy*, 207 Ill. 2d at 171 ("If there exists more than one potential forum [under the applicable venue statute], the equitable doctrine of *forum non conveniens* may be invoked to determine the most appropriate forum.").

Because the *forum non conveniens* doctrine authorizes transfer only between two counties where venue is proper, the General Assembly's decision to eliminate it in actions subject to section 2-101.5 does not affect Piasa Armory's interest in keeping this case in Madison County. Section 2-101.5(b) simply prevents the State from transferring constitutional cases from Sangamon County to Cook County, or vice versa; those are the only two counties where venue is proper and therefore the only two counties that could receive a transfer under the *forum non conveniens* doctrine. Because Piasa Armory wishes to keep this action out of those two counties, *e.g.*, Response at 5, section 2-101.5(b) has no bearing on it—and therefore is irrelevant to its due process challenge to the statute.

For its final attempt to satisfy the "private interest" and "risk of erroneous deprivation" factors, Piasa Armory concocts an elaborate conspiracy theory. It contends the General Assembly determined to "restrict[ ] constitutional claims in Illinois only to counties that the

majority of the current state legislature think more likely than other counties to sustain their questionable legislation." Response at 7. Set aside the outlandish invective; Piasa Armory's theory collapses on a faulty premise. Sangamon County has not been a particularly favorable forum for the State.

To the contrary, a Sangamon County judge recently employed strong language in enjoining the Governor and other officials from enforcing executive orders imposing Covid-19 mask and vaccine mandates on Illinois students and teachers. Temporary Restraining Order at 16, 28–29, *Austin v. Board of Education*, No. 2021-CH-500002 (Sangamon Cty. Feb. 4, 2022) ("This type of evil is exactly what the law was intended to constrain."), attached as Exhibit 10; *see also* Order at 4, *Banks v. State's Attorney*, No. 22 CH 9682 (Cook Cty. Aug. 2, 2023) (ordering State Police to issue FOID card), attached as Exhibit 11; Memorandum & Order at 3, *In re Covid-19 Litigation*, No. 2020-MR-589 (Sangamon Cty. Apr. 7, 2021) (rejecting State's motion to dismiss and reasoning "the governor cannot rely on emergency powers indefinitely" and courts "must ensure the governor does not circumvent the constitutional confines of his authority"), attached as Exhibit 12. On the other hand, a Madison County judge recently granted judgment in the State's favor on a Second Amendment challenge to silencer and short-barreled rifle restrictions brought by the same lawyer who represents Piasa Armory here. Order at 7–8, 11–12, *Dorman v. Haine*, No. 2022-CH-000039 (Madison Cty. Oct. 12, 2023), attached as Exhibit 13; *see also* Order ¶¶ 1–7, *Wilson v. Kelly*, No. 19-CH-666 (Madison Cty. May 25, 2023) (rejecting yet more Second Amendment challenges brought by Piasa Armory's lawyer), attached as Exhibit 14; Order at 8, *Edwardsville/Glen Carbon Chamber of Commerce v. Pritzker*, No. 20-MR-550 (Madison Cty. June 5, 2020) (denying temporary restraining order in challenge to Governor's Covid-19 emergency powers), attached as Exhibit 15.

Even further afield is Piasa Armory's view that section 2-101.5 was "designed expressly to limit ***Second Amendment*** and related challenges." Complaint at 6, ¶ 6 (emphasis added). Under federal law, 28 U.S.C. § 1441(a), the State may remove to federal court an action filed in state court raising a Second Amendment claim.[6] A Second Amendment action filed in Madison County and removed to federal court could be assigned to a judge sitting in Benton, *see* 28 U.S.C. § 93(c), which is actually a bit further from Edwardsville than Springfield, *see* Google Maps, attached as Exhibit 16 (Benton); Exhibit 17 (Springfield); *People v. Stiff*, 391 Ill. App. 3d 494, 504 (5th Dist. 2009) (court may take judicial notice of distance between locations using Google Maps). Given the State's option of removal, many plaintiffs bringing Second Amendment claims opt to file them in federal court in the first instance; indeed, that is what Piasa Armory did earlier this year when it brought suit regarding the State's restrictions on assault weapons and large capacity magazines. *See* Complaint ¶ 19, *Federal Firearms Licensees of Illinois v. Pritzker*, No. 3:23-cv-00215-SPM (Jan. 24, 2023), ECF 1. And on the merits, the State has achieved substantial victories litigating Second Amendment challenges in federal court. *See, e.g., Bevis v. Naperville*, 85 F.4th 1175, 1182 (7th Cir. 2023) ("Using the tools of history and tradition to which the Supreme Court directed us in *Heller* and *Bruen*, we conclude that the state and the affected subdivisions have a strong likelihood of success in the pending litigation [regarding restrictions on assault weapons and large capacity magazines].").

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[6] Although Piasa Armory asserts a Second Amendment challenge to FIRA, *see* Complaint at 3–4, the Attorney General cannot remove this action to federal court because Piasa Armory lacks standing to pursue its claims under both Article III of the federal constitution and Illinois law, *see* Answer at 23–24 (alleging Piasa Armory has not "'sustained'" and is not "'in immediate danger of sustaining a direct injury as a result of enforcement of the challenged statute.'") (quoting *CTU v. Board of Education*, 189 Ill. 2d 200, 206 (2000)); *Collier v. SP Plus Corp.*, 889 F.3d 894, 896 (7th Cir. 2018) ("to establish federal subject-matter jurisdiction" for purposes of removal, defendant "must also show that [plaintiffs] have Article III standing—specifically, that they suffered an injury").

As these examples show, it is baseless to suggest the State is disproportionately likely to win in Sangamon and Cook counties and to lose elsewhere in Illinois. But there is yet another reason why Piasa Armory's theory falls flat. Respectfully, it may not make much difference to the ultimate outcome of the case which circuit court hears its challenge to FIRA in the first instance. When a litigant mounts a facial constitutional attack on a state statute, as Piasa Armory does here, the Illinois Supreme Court is likely to have the last word. *E.g., Caulkins*, 2023 IL 129453, ¶ 81 (assault weapons); *Rowe*, 2023 IL 129248, ¶ 51 (bail reform); S. Ct. R. 302(a) (authorizing direct appeal to the supreme court "in cases in which a statute of the United States or of this state has been held invalid"). And appellate review is de novo. *E.g., Caulkins*, 2023 IL 129453, ¶ 28; *Rowe*, 2023 IL 129248, ¶ 20. Under these circumstances, there is little, if any, litigation advantage to starting off in a particular county; the claims will be resolved by a higher court on a clean slate. It may be sensational rhetoric for Piasa Armory to say section 2-101.5 is "the most efficient form of judge shopping that the state could ever conceive." Response at 6. But the accusation rings hollow to any objective observer who has a pinch of common sense.

To sum up: The *forum non conveniens* doctrine is irrelevant to Piasa Armory's due process arguments. The *Mathews* factors, when properly applied, overwhelmingly support transfer of this action. And Piasa Armory has not shown it lacks meaningful access to the courts in Sangamon County. Its due process arguments should be rejected.

II. Piasa Armory's three readings argument is foreclosed by precedent.

Piasa Armory also contends, for the first time in its response, that section 2-101.5 violates article IV, section 8(d) of the Illinois constitution, which provides in relevant part: "A bill shall be read by title on three different days in each house." This "three readings rule" is a procedural requirement intended to ensure legislators have adequate notice of pending legislation. *Geja's*

Cafe v. Metropolitan Pier & Exposition Authority, 153 Ill. 2d 239, 258–60 (1992). The constitution further provides: "The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met." Ill. const. art. IV, § 8(d). This is known as the "enrolled bill doctrine"; it "mean[s] that, upon certification by the Speaker and the Senate President, a bill is conclusively presumed to have met all procedural requirements for passage," including the three readings rule. *Geja's Cafe*, 153 Ill. 2d at 259.

Piasa Armory does not explain why it thinks a three readings violation occurred during the passage of House Bill 3062, which amended the Code of Civil Procedure to add section 2-101.5. To the contrary, legislative records attached to its response show House Bill 3062 ***was*** "read by title on three different days in each house"—on February 17, March 16, and March 22 in the House of Representatives; and on March 23, April 20, and May 19 in the Senate. *See* Response Ex. E. For this reason alone, the Court should reject Piasa Armory's three readings challenge.

Regardless, as Piasa Armory concedes, the Court "must deny [its] request" under binding precedent. Response at 12. For decades, the Illinois Supreme Court has held the enrolled bill doctrine forecloses all litigation challenging certified legislation for failure to comply with the three readings rule. *Friends of Parks v. Chicago Park District*, 203 Ill. 2d 312, 328–29 (2003); *People v. Dunigan*, 165 Ill. 2d 235, 251–54 (1995); *Cutinello v. Whitley*, 161 Ill. 2d 409, 424–25 (1994); *Geja's Cafe*, 153 Ill. 2d at 258–60; *Polich v. Chicago School Finance Authority*, 79 Ill. 2d 188, 208–12 (1980); *Fuehrmeyer v. Chicago*, 57 Ill. 2d 193, 198 (1974). Here, the Speaker of the House of Representatives and the President of the Senate signed House Bill 3062 to certify the procedural requirements for passage had been met. *See* Certificate, attached as Exhibit 18.

Thus, Piasa Armory "simply [can]not prevail on [its three readings challenge] unless and until the Illinois Supreme Court overrules or abrogates its existing, binding precedent with regard to the enrolled-bill doctrine." *Accuracy Firearms, LLC v. Pritzker*, 2023 IL App (5th) 230035, ¶ 41.

III. Piasa Armory is not entitled to attorneys' fees.

Finally, at the tail end of its response, Piasa Armory asks the Court, in less than one sentence, to "award attorney fees pursuant to the Illinois Civil Rights Act of 2003." Response at 13. The request is defective for two independent reasons. First, the statute authorizes attorneys' fees only "[u]pon motion"; a throwaway line at the of Piasa Armory's response is insufficient. 740 ILCS 23/5(c). And in any event, the Illinois Civil Rights Act of 2003 authorizes attorneys' fees only to prevailing parties "suing under the Illinois Constitution on the subject of discrimination based on race, color, national origin, or gender." *Johnson v. Municipal Employees', Officers', & Officials' Annuity & Benefit Fund of Chicago*, 2018 IL App (1st) 170732, ¶ 23; *see Thomann v. Department of State Police*, 2016 IL App (4th) 150936, ¶ 29 ("the fee-shifting provisions in subsection 5(c) provide for attorney fees and costs only where the claimant is a prevailing party on a discrimination claim against a governmental body involving one or more of the identified suspect classes"). Piasa Armory, of course, has brought no such claim—and thus it is not entitled to attorneys' fees under the Illinois Civil Rights Act of 2003.

*

For all these reasons, the Court should grant the Attorney General's motion and transfer this action to Sangamon County. If the Court denies that motion, however, the Attorney General agrees with Piasa Armory that the Court should grant Piasa Armory's cross-motion for summary judgment on count V and find "there is no just reason for delaying" appeal under Supreme Court Rule 304(a). An immediate appeal promotes judicial economy because, if the Court is mistaken,

any subsequent rulings it makes regarding Piasa Armory's remaining counts challenging FIRA would be vacated, resulting in inefficiencies for all involved. *E.g., Majewski v. Von Bergan*, 266 Ill. App. 3d 140, 144–45 (2d Dist. 1994).

Dated: December 20, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, certify that I will cause to be served copies of the foregoing *Attorney General's Reply in Support of His Motion to Transfer to a Proper Venue and Response in Opposition to Piasa Armory's Cross Motion for Summary Judgment as to Count V* via electronic mail upon those listed below on December 20, 2023:

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Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

/s/ Darren Kinkead
Darren Kinkead, ARDC No. 6304847

STATE OF ILLINOIS
103rd GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

53rd Legislative Day 5/25/2023

Speaker Burke: "Representative Avelar to close."

Avelar: "I ask for an 'aye' vote."

Speaker Burke: "The question is, 'Shall the House concur in Senate Amendments 1, 2, 3, and 4 to House Bill 2450?' This is final action. All those in favor signify by voting 'aye'; all those opposed signify by voting 'nay'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, please take the record. On this question, there are 103 voting 'yes', 1 voting 'no', 0 voting 'present'. And the House does concur in Senate Amendments 1, 2, 3, and 4 to House Bill 2450. And this Bill, having received a Constitutional Majority, is hereby declared passed. Moving to page 8 of the Calendar, we have House Bill 3062, Leader Hoffman."

Hoffman: "Thank you, Madam Speaker, Ladies and Gentlemen of the House. I move that the House concur in Senate Amendment #2 and 3 to House Bill 3062. This is an initiative of the Attorney General of the State of Illinois and would indicate that Sangamon and Cook counties are the only venues proper for Illinois constitutional claims seeking declaratory or adjunctive relief from any law, rule, or executive order when such claims are brought against the state or any of its officers, employees, or agents acting in their official capacity. The Amendment also expressly provides that the doctrine of forum non conveniens does not apply to these constitutional claims brought against the state. We all know that over the past three years there have been several lawsuits that have been… been filed across the state regarding constitutional issues… regarding constitutional issues. These

issues have been brought in counties and there has been considerable judge shopping as a tactic that's been used by litigants to secure sweeping court orders blocking state policies by steering cases to judges perceived to be sympathetic to these causes. We have, in other instances, indicated that Sangamon and Cook County would be the venues for certain actions. This would simply say that for constitutional actions that are brought against the state that those would be the same venues because it has been very difficult for the Attorney General's Office, with limited office resources that go throughout the entire state, many times without sufficient notice, in order to defend these actions. I ask for an 'aye' vote."

Speaker Burke: "Representative Windhorst is recognized."

Windhorst: "Thank you, Madam Speaker. Will the Sponsor yield?"

Speaker Burke: "He indicates he will."

Windhorst: "Leader, if you could, what is the reason behind bringing this Bill?"

Hoffman: "Well, as I indicated, I think more recently than ever, you know, over the past three years, the Attorney General's Office has been forced to respond to, I would call them in many cases, frivolous lawsuits that have strained the office's limited resources. And I believe that many cases, it has been a result of judge shopping, which is a tactic that has been used by many litigants to secure sweeping court orders blocking state policies by steering cases to judges perceived to be sympathetic to their causes. We're limiting this to constitutional issues, and we're saying that Sangamon County or Cook County would be the proper venue. These cases

are normally all coming here anyway, so let's just say that the original venue is going to be here."

Windhorst: "So, part of it is the Attorney General's limited resources in dealing with these actions. Is that what I understood you to say?"

Hoffman: "Yes."

Windhorst: "This is the same Attorney General's Office that has requested from this Body additional authority to investigate and bring actions against crisis pregnancy centers this Session, to bring actions against and investigate gun manufacturers this Session? It doesn't seem that the Attorney General's Office is lacking in resources when they're constantly coming to this Body requesting more authority to do things. So, I think that argument strains credulity."

Hoffman: "What was that word?"

Windhorst: "I'm not sure."

Hoffman: "Gredualty? What'd you… okay. Interesting."

Windhorst: "Trying to test the typists upstairs."

Hoffman: "Yes. I can just… I can tell you what the… the Attorney General's Office, how they responded in committee. They indicated that these are constitutional actions. They have certain constitutional lawyers that they… who are specializing in these types of actions. So, when you receive last-minute notices about a county that is far away from where these constitutional officers… or constitutional lawyers are working, that it's very difficult to respond adequately."

Windhorst: "Well, the Attorney General's Office, as you know, has offices throughout the state. In fact, I believe there are 10 offices outside of Cook County itself that are… that are

statewide. So, from my perspective, it appears the Attorney General has adequate resources and adequate personnel to deal with these issues. In fact, as I said, they've been coming to us repeatedly this Session requesting more authority. So, for… this argument does not, in my opinion, hold any weight. So, I want… you're familiar with the Mathews balancing test, which is used… oh, I'm sorry, was used to… in *Williams v. Illinois Scholarship Commission*?"

Hoffman: "I'm familiar with the case."

Windhorst: "Yes. In that… in that case, a venue restriction was held to be unconstitutional."

Hoffman: "It's my understanding, yes."

Windhorst: "Saying that it violated due process."

Hoffman: "Yes, but there are distinctions between this proposal and that… that ruling. If you would… I can point them out if…"

Windhorst: "Go ahead."

Hoffman: "Okay. The… the *Williams* case dealt with a defendant. They were essentially being deprived of access to court because they were deemed indigent. And they were talking about defendants here, okay? They were talking about providing that a defendant had to go to Cook County. It didn't indicate… in this case, what we're talking about is constitutional matters. The defendant is the state, right? So, the distinction is… is in these cases what we're talking about is we're talking the plaintiff, not the defendant being inconvenienced, which was the *Williams* case."

Windhorst: "So, in my community, if this Body passes a constitutionally questionable piece of legislation, which we

appear to do routinely, that results in a court challenge, people from my community will have to travel to Springfield to challenge that action. It cannot challenge that in Massac County. Is that accurate?"

Hoffman: "Under this proposal, Sangamon and Cook would have… would be the proper venue. And incidentally, this is not uncommon. We've done it in several instances where we have provided that Cook or Sangamon County would be the proper venue. For instance, cases brought by the Attorney General to eliminate a pattern or practice of constitutional violations, cases brought by the Attorney General of Illinois to compel compliance with Section 3.5 of the Open Meetings Act, they also have venue in Sangamon or Cook County. Judicial review of certain final administrative decisions relating to the Collection Agency Act and judicial review of certain final administrative decisions relating to the Community Association Manager Licensing and Disciplinary Act, those are all venue would be in Cook or Sangamon County."

Windhorst: "Well, I appreciate that list, but this is much broader than the list you provided. And this is going to have a much bigger impact on individuals in our various communities who want to get justice in their local community, rather than having to travel to Springfield or Chicago to get that justice. You know, where I live, we… I'm closer to the state capital of Tennessee than I am Illinois. And I'm almost as close to Atlanta, Georgia as I am Chicago, Illinois. So, to say if this Body passes an unconstitutional law, in order for me or another person in my community to contest that law, I've got to travel a great distance and bear that expense

that comes with that. It's not fair to the individuals in these communities."

Hoffman: "Yeah, I… I believe… so, this proposal would say venue is in Sangamon or Cook. If you were to prevail on constitutional issues, it's my understanding many times the awarding party is giving… given expenses of cost."

Windhorst: "So, I think the better explanation isn't the expense to the Attorney General's Office, isn't the strain on their office and may be more about the judge shopping, basically getting rulings that are not favorable to the Majority Party. But I think the ultimate reason why this Bill is being brought is because you can. You're bringing this forward because you can do it. And we are seeing efforts made to undermine the legitimacy of the court system by efforts like this. We redrew the maps for the… for our Appellate and Supreme Court because you could. You did that because you could. Something unfavorable happened in an election, and you changed the maps. You get an unfavorable court ruling, where people legitimately go to their home court where they live and get a ruling that you don't like or your side doesn't like, and you change the rules. The ends do not justify the means. To the Bill. We have seen many counties throughout our state pass Resolutions saying we don't feel a part of the State of Illinois. We don't want to be a part of the State of Illinois because they're passing these Resolutions, because they don't feel the respect from certain parts of the State of Illinois. And what this Bill does is it basically says you're right. You can't go to court in your local jurisdiction. You can't get justice in your local jurisdiction. You've got to come to

Springfield or Chicago to get justice, and that is fundamentally wrong. I urge a 'no' vote."

Speaker Burke: "Representative Caulkins is recognized."

Caulkins: "Thank you, Madam Speaker. Will the Sponsor yield?"

Speaker Burke: "He indicates he will."

Caulkins: "Before I get started, Representative, I take great umbrage in your assessment that my court case was trivial, that I should have to travel somewhere else to get to my court case…"

Hoffman: "I did not… I did not use the term 'trivial'. I did not."

Caulkins: "What did you use? What term did you use?"

Hoffman: "I believe I… and I wasn't necessarily referring to your court case."

Caulkins: "Well, it was a constitutional challenge in Macon County, and you called it, I'll use the word 'trivial'."

Hoffman: "I called… I said 'certain'. I didn't…"

Caulkins: "But by your…"

Hoffman: "Hold it… can I… I'll answer."

Caulkins: "Yes, Sir."

Hoffman: "And then you can whale on me. I said 'certain frivolous actions'. I didn't say 'trivial'. And I don't… I'm not saying that your action is frivolous. I said in other cases I would have deemed them frivolous."

Caulkins: "You also said that the Attorney General gets short notice on these hearings. We know that's not the case. I know personally that's not the case. It took us days and weeks to get a hearing before the judge. And the Attorney General's Office was engaged for weeks and weeks. There's no sneaking up on the Attorney General and giving him a constitutional

challenge case in some court other than Sangamon or Cook. And this… that goes to the crux of the case. Representative, we have 25 trial courts spread all over 102 counties so that people can get justice where they live. Don't you trust the local judges that we elect, Representative?"

Hoffman: "What… what I'm saying is that we… these cases are all ending up here in Sangamon County or Cook County. Why don't we just say that venue is proper for constitutional issues here."

Caulkins: "That's some of the most convoluted reasoning I've ever heard. Representative, isn't this an attempt to use your handpicked, tamed judges in Chicago and Springfield to continue the ongoing legal assault on our rights?"

Hoffman: "I apologize. I thought you were making a statement. I… could you restate it?"

Caulkins: "Isn't this an attempt to use your handpicked, tamed judges in Chicago and Springfield to continue the ongoing legal assault on our rights, as opposed to being able to go to a local court?"

Hoffman: "I've not handpicked any judges. But can I make a point?"

Caulkins: "Well, they have in Chicago."

Hoffman: "But can I… I have not. And I… the voters vote on the judges. I don't handpick them. But can I make a point about Sangamon County?"

Caulkins: "Certainly."

Hoffman: "Can I make a point about Sangamon County? I think a reference was made to the Majority Party wanting to basically change these rules to help out the Majority Party. In Sangamon County, in the circuit that it is part of, it's my

understanding that there isn't one… one member of the judiciary that is a member of the Majority Party, that's a Democrat. It's all Republicans, okay? It's all Republicans. So, to say that we're trying to… to somehow venue shop to help us, they're all members of your party, the judges here."

Caulkins: "How'd they do it in Chicago, Representative?"

Hoffman: "They're elected the same way that judges are elected throughout the entire state."

Caulkins: "And how many members of the Minority Party are there? Let's move on."

Hoffman: "But the plaintiff picks. The plaintiff picks. You bring the action. I would assume if… if this Bill were law, I would assume if you picked, you would pick Sangamon County as opposed to Cook."

Caulkins: "I… I pick Macon County."

Hoffman: "The defendant does not pick."

Caulkins: "I would pick the county where I live to bring an action. Representative, are you at all concerned that this is a violation of the constitutional principle of separation of powers?"

Hoffman: "No."

Caulkins: "Don't courts have the power to decide if a litigant has standing to bring a lawsuit, not the Legislature?"

Hoffman: "Venue is statutory."

Caulkins: "No, but this is the Constitution."

Hoffman: "No, this is statutory."

Caulkins: "To the Bill, please. This is a Bill that will trample your rights, my rights, and make our citizens drive hundreds of miles to get justice in a court that has proven it will

favor the state over you. Article 6 of Section 9 of the Illinois Constitution says that the trial courts of the state are the courts of original jurisdiction of all justifiable matters… jurisdictional matters. That means any of the 25 trial courts covering our 102 counties can hear any kind of cases. We should let them do their job. This is… it's not even clear that the Legislature… this legislation has the power to take that away. Make no mistakes, the Democrat Sponsors of this Bill are acting just like King George III. In the Declaration of Independence, the Americans declared that King George was unfit to rule because he was forcing them to be tried overseas by his tame courts for made-up crimes. The Democrats today are doing the very same thing. They pass unconstitutional laws to make law-abiding citizens criminals and then they make those same citizens travel hundreds of miles to a kangaroo court that they control. Tyrants are always the same, whether kings or lawless Chicago politicians. I urge a 'no' vote and would ask for a verification."

Speaker Burke: "Representative Ugaste is recognized."

Ugaste: "Thank you, Madam Chair. Good to see you up there again. Will the Sponsor yield?"

Speaker Burke: "He indicates he will."

Ugaste: "Leader Hoffman, you've… you've answered quite a few questions about this, so I'll try not to be repetitive. I may have missed something, but I don't think I have. Is there an exclusion in this Bill for any one group involved in collective bargaining?"

Hoffman: "There… there is an exclusion that… not for anyone involved in collective bargaining, but for collective bargaining disputes between the state and representatives of its employees are expressly exempted from these venue provisions."

Ugaste: "So, the unions would be exempt?"

Hoffman: "If there was a claim against the state that dealt with a constitutional issue."

Ugaste: "Okay. And why is that exist?"

Hoffman: "I think… I think if you look at how collective bargaining is regulated, it is largely regulated by federal labor law, which is way different than Illinois constitutional claims."

Ugaste: "But this law only deals with challenges to Illinois constitutional claims. It's not for every suit brought against the state, correct?"

Hoffman: "That's correct."

Ugaste: "Okay. So, their… their challenges would only be for Illinois constitutional challenges. So, the federal exemption truly wouldn't apply, would it?"

Hoffman: "It's my understanding that they would fall under the Contract Article of Constitution. So, if some were brought under the Contract Article of Constitution… of our Constitution, that this would indeed exempt them from these venue provisions. But I would say that still labor law, federal labor law, still preempts most state labor law."

Ugaste: "Okay. Thank you, Leader Hoffman. To the Bill. So, we are about to consider a Bill to affect 12 and a half million Illinoisans because the Attorney General's resources are

apparently spread too thin. In many instances in the state when some department or agency comes and tells us they're spread too thin, we do one thing. We provide more resources. That would seem to me to be the obvious answer, is provide more resources to the Attorney General's Office if they need them in order to defend against constitutional challenges. That way, the rights of the Illinois citizens remain unaffected. But instead, for some unknown reason, we're now being asked to take the opposite approach. We are going to impact the rights of 12 and a half million Illinois citizens to have access to courts. And I know a case was brought up and it was mentioned it was unconstitutional and the Leader mentioned that in fact it involved indigents and plaintiffs. But you know what? There are indigent people in 102 counties of Illinois and one of them may feel that their constitutional rights are being challenged, and they may just find a local attorney or someone with just enough money to file something locally for them. But now, we're going to take that away because now they either have to go Sangamon County or Cook County because allegedly the Attorney General's spread too thin. And I do say allegedly, and I'll address that a little more towards the end, but we haven't even seen proof of that because, as our Floor Leader mentioned, he's asking for further duties and we are providing him with that opportunity on the floor all Session. As I indicated, we are now about to affect the individual… an individual's right in this state to challenge the constitutionality of laws and Executive Orders to solely two counties. We are denying access to court. And as the Sponsor already pointed out, if it's a problem for the

Attorney General's Office, there's a remedy that exists. The Supreme Court of Illinois will consolidate the cases. A petition can be filed. And the cases can be consolidated already in a venue of the Supreme Court's choosing. We provide an exclusion for labor unions. And I heard the Sponsor's answer, but I think there's a better explanation. Working men and women shouldn't have to pay union dues to spend extra money to have their cases challenged in the courts of Sangamon County or Cook County exclusively. They should have a right to file them in the county where they are as well. What I can't understand is why we believe that Illinois citizens shouldn't share that same benefit, especially ones who have far less money than our unions. If the AG's Office is spread too thin, we shouldn't have passed those earlier Bills. If they want a specialist involved… you know, there's something I was reminded of when I first became an attorney, and that's we are an attorney, and we're trained in all areas of the law. And if there's an issue we need to consider, well the Attorney General can ask one of their other attorneys to do it. Maybe it's not their preferred attorney. Maybe it's not the best one in the office on the case. But I'm sure it's one more than competent of handling the issue. Ladies and Gentlemen, I ask that all of us think hard before we vote on this Bill. We should be a lot more concerned about our citizens' rights than whether the Attorney General's Office gets to have a particular attorney they want in a case defending that case before a particular court. Vote 'no'."

Speaker Burke: "Representative Hoffman to close."

Hoffman: "Thank you, Madam Speaker, Ladies and Gentlemen of the House. So, let me just clarify for the record a couple of things. First of all, this Bill would allow a more workable process for the Attorney General's Office to be able to manage cases filed regarding constitutional issues. That's what it does. It would streamline cases, make sure that these cases are heard in an organized fashion, and prevent misuse of our venue statutes. Venue, proper venue, it's an important statutory privilege that's held by the defendant. The defendant. In Illinois, proper venue is granted by the Code of Civil Procedure. Courts have repeated… repeatedly interpreted the venue statute as a Legislature's view that the defendant should not be burdened. The defendant should not be burdened with defending an action in a location that does not have connection to the action. Further, the venue statute serves to protect the defendant against plaintiffs' arbitrary selection of forum. Now, we all know what has happened over the past few years. There have been judicial shopping by filing TROs without early notice to the Attorney General's Office, whether they were COVID-related restrictions, whether they were masks, whether they were vaccines, whether they were SAFE-T Acts, whether they were assault weapons ban, and the list goes on and on, to the extent that one lawyer was charging people $200 just to have their name added as plaintiffs to the lawsuit. Now, where have these cases ended up? They've ended up in Sangamon County. They've ended up here. And, incidentally, another issue that we are addressing here is we are indicating that the doctrine of forum non conveniens does not apply to these

constitutional claims brought against the state. So, what does this Bill do? It makes the doctrine of forum non conveniens, which is a product of judicial creation as opposed to venue, not applicable in the context of the new venue statute, and for good reason. For good reason. Forum non conveniens is a relic. It's old. It's past its time. Even before the pandemic, the idea that a given county within the State of Illinois was inconvenient for the purpose of conducting a trial was nonsense. We learned from the pandemic that processes and procedures from trials can be streamlined and made much more convenient for all parties. Technology allowing for remote witness depositions, portability of documents via the Internet, and connectivity of highways makes interstate travel convenient for all who participate in a trial. According to the 2016 Annual Report of Illinois Courts, cases that were resolved for $50 thousand were only 2.1 percent that actually went to verdict. So, almost 98 percent of those cases that were… were resolved prior to judgment. So, we have a 50-year-old, judicially-imposed forum non conveniens doctrine that ignores advances in technology and infrastructure and that was intended to solve perceived problems when that problem clearly no longer exists. In fact, I would urge the Supreme Court to abolish the doctrine of forum non conveniens across the board. I ask that you vote for this piece of legislation because it makes sense. It ensures that we are going to have judicial economy. We're going to ensure consistency among verdicts throughout the state. And I believe that venue is proper for constitutional

issues when the state is the defendant in Sangamon and Cook County. I ask for a favorable roll call."

Speaker Burke: "The question is, 'Shall the House concur in Amendments 2 and 3 to House Bill 3062?' Reminder, Members, that Representative Caulkins has requested a verification, so please remain in the chamber. This is final action. All those in favor signify by voting 'aye'; all those opposed signify by voting 'nay'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, please take the record. There are 69 voting in 'favor', 35 voting… voting 'nay', and 0 voting 'present'. Mr. Clerk."

Clerk Hollman: "A poll of those voting in the affirmative. Representative Andrade…"

Speaker Burke: "Representative Caulkins has withdrawn his request for verification. With 69 voting 'yes', 35 voting 'no', and 0 voting 'present', the House does concur in Senate Amendments 2 and 3 to House Bill 3062. And this Bill, having received a Constitutional Majority, is hereby declared passed. Leader Mah is recognized for an announcement."

Mah: "Madam Speaker, Democrats would request a caucus immediately in Room 114."

Speaker Burke: "The Democrats will caucus immediately in Room 114, then we'll be returning to the House Floor. Representative Keicher's recognized."

Keicher: "Madam Speaker, can you share with us an approximate time frame to expect your return to the chamber?"

Speaker Burke: "I cannot."

Keicher: "Thank you."

Speaker Burke: "The House will stand in recess."

ILLINOIS COURTS

2021

ANNUAL REPORT

CIRCUIT COURTS

Massac County Courthouse

FIRST CIRCUIT

Fifth Appellate District

Williamson County Courthouse
William J. Thurston, Chief Judge
Circuit Population: 200,984

Alexander (Cairo)
Jackson (Murphysboro)
Johnson (Vienna)
Massac (Metropolis)
Pope (Golconda)
Pulaski (Mound City)
Saline (Harrisburg)
Union (Jonesboro)
Williamson (Marion)

Photo provided by Michele Longworth

Lawrence County Courthouse

SECOND CIRCUIT

Fifth Appellate District

Jefferson County Justice Center
Thomas Joseph Tedeschi, Chief Judge
Circuit Population: 187,414

Crawford (Robinson)
Edwards (Albion)
Franklin (Benton)
Gallatin (Shawneetown)
Hamilton (McLeansboro)
Hardin (Elizabethtown)
Jefferson (Mount Vernon)
Lawrence (Lawrenceville)
Richland (Olney)
Wabash (Mount Carmel)
Wayne (Fairfield)

Photo provided by Amy Dawn Whitlock

Bond County Courthouse

THIRD CIRCUIT

Fifth Appellate District

Madison County Courthouse
William A. Mudge, Chief Judge
Circuit Population: 281,086

Bond (Greenville)
Madison (Edwardsville)

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CIRCUIT COURTS, CONTINUED

FIRST CIRCUIT JUDGES

Steven M. J. Bast, Timothy D. Denny, Jeffery B. Farris, Carey C. Gill, Amanda B. Gott, W. Charles Grace, Stephen Green, Joseph Leberman, Walden E. Morris, John W. Sanders, Christy Solverson, Sarah K. Tripp, Cord Z. Wittig

FIRST CIRCUIT ASSOCIATE JUDGES

Ralph R. Bloodworth, III, Tyler R. Edmonds, Michael A. Fiello, Jeffrey A. Goffinet, Todd D. Lambert, Michelle M. Schafer, Ella York

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	58,790	67	60,361	102.6%	140,810
2020	57,583	61	55,443	96.2%	144,443
2019	66,348	78	60,045	90.4%	143,585
2018	64,166	98	59,587	92.7%	139,311
2017	69,558	73	64,359	92.4%	136,396

SECOND CIRCUIT JUDGES

Eric J. Dirnbeck, Thomas J. Foster, Matthew J. Hartrich, Robert M. Hopkins, William C. Hudson, Michael J. Molt, Melissa Morgan, Michael J. Valentine, Ray W. Vaughn, Tara R. Wallace, T. Scott Webb, Christopher L. Weber, Johannah B. Weber

SECOND CIRCUIT ASSOCIATE JUDGES

Jerry Crisel, Thomas J. Dinn, III, Kimbara G. Harrell, Sonja L. Ligon, Evan Lee Owens, Mark L. Shaner

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	26,511	38	25,948	97.7%	51,034
2020	24,997	30	21,798	87.1%	51,563
2019	32,422	41	29,669	91.4%	49,262
2018	33,217	20	31,141	93.7%	47,311
2017	37,140	16	35,034	94.3%	46,119

THIRD CIRCUIT JUDGES

Christopher Bauer, Amy Maher, Kyle Napp, Dennis R. Ruth, Sarah D. Smith, Amy Sholar, Stephen A. Stobbs, Christopher P. Threlkeld

THIRD CIRCUIT ASSOCIATE JUDGES

Philip B. Alfeld, Veronica Armouti, Thomas W. Chapman, Angela P. Donohoo, Ronald J. Foster, Jr., Janet Heflin, Anthony R. Jumper, Martin J. Mengarelli, Ronald S. Motil, Neil T. Schroeder, Maureen D. Schuette, Ronald R. Slemer

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	54,306	640	59,138	107.6%	82,124
2020	49,030	500	41,286	83.4%	85,661
2019	74,228	530	69,087	92.4%	77,481
2018	75,198	490	71,693	94.7%	74,133
2017	76,042	431	72,569	94.9%	68,929

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CIRCUIT COURTS, CONTINUED

Jasper County Courthouse

FOURTH CIRCUIT

Fifth Appellate District

Fayette County Courthouse
Douglas L. Jarman, Chief Judge
Circuit Population: 234,868

Alexander (Cairo)
Christian (Taylorville)
Clay (Louisville)
Clinton (Carlyle)
Effingham (Effingham)
Fayette (Vandalia)
Jasper (Newton)
Marion (Salem)
Montgomery (Hillsboro)
Shelby (Shelbyville)

Photo provided by Amy Dawn Whitlock

Edgar County Courthouse

FIFTH CIRCUIT

Fourth Appellate District

Coles County Courthouse
Thomas M. O'Shaughnessy, Chief Judge
Circuit Population: 162,025

Coles (Charleston)
Cumberland (Toledo)
Edgar (Paris)
Vermilion (Danville)

Photo provided by Amy Dawn Whitlock

Champaign County Courthouse

SIXTH CIRCUIT

Fourth Appellate District

Moultrie County Courthouse
Randall B. Rosenbaum, Chief Judge
Circuit Population: 359,360

Champaign (Urbana)
DeWitt (Clinton)
Douglas (Tuscola)
Macon (Decatur)
Moultrie (Sullivan)
Piatt (Monticello)

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CIRCUIT COURTS, CONTINUED

FOURTH CIRCUIT JUDGES

Amanda S. Ade-Harlow, Stanley Brandmeyer, Daniel E. Hartigan, Michael D. McHaney, Bradley T. Paisley, Joel J.C. Powless, James L. Roberts, M. Don Sheafor, Jr., Martin W. Siemer, Mark W. Stedelin

FOURTH CIRCUIT ASSOCIATE JUDGES

Jeffrey A. DeLong, Douglas C. Gruenke, Jeffrey Marc Kelly, Allan F. Lolie, Jr., Christopher W. Matoush, Kevin S. Parker, Ericka Sanders

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	36,325	66	35,210	96.8%	43,137
2020	33,958	76	28,236	83.0%	42,577
2019	43,908	171	42,398	96.2%	37,346
2018	43,562	304	43,905	100.1%	37,585
2017	50,135	112	47,513	94.6%	38,729

FIFTH CIRCUIT JUDGES

Mark E. Bovard, Jonathan T. Braden, Nancy S. Fahey, Steven L. Garst, James R. Glenn, Charles C. Hall, Brien J. O'Brien, Tracy W. Resch, Mitchell Shick, Matthew L. Sullivan

FIFTH CIRCUIT ASSOCIATE JUDGES

Brian L. Bower, Derek Girton, Mark S. Goodwin, David W. Lewis, Charles D. Mockbee IV, Karen E. Wall

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	26,466	181	22,698	85.2%	72,206
2020	24,365	117	16,972	69.3%	68,777
2019	30,808	66	24,396	79.0%	62,428
2018	29,544	2	23,339	79.0%	58,072
2017	31,085	5	26,192	84.2%	53,884

SIXTH CIRCUIT JUDGES

Jason M. Bohm, Robert C. Bollinger, Richard L. Broch, Jr., Benjamin W. Dyer, Jeffrey S. Geisler, Thomas E. Griffith, Jr., Karle E. Koritz, Sam A. Limentato, Thomas E. Little, Dana Rhoades, Jeremy Richey, Ramona M. Sullivan, Roger B. Webber

SIXTH CIRCUIT ASSOCIATE JUDGES

Anna M. Benjamin, Phoebe S. Bowers, James R. Coryell, Adam M. Dill, Rodney S. Forbes, Ronda D. Holliman, Erick F. Hubbard, Matthew D. Lee, Brett Olmstead, Lindsey A. Shelton, Gary Webber

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	45,488	649	42,258	91.6%	59,709
2020	48,692	840	43,719	88.3%	74,799
2019	63,786	1,331	60,536	93.0%	72,253
2018	63,725	1,258	60,869	93.7%	68,945
2017	59,498	1,143	56,122	92.5%	66,578

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CIRCUIT COURTS, CONTINUED

Morgan County Courthouse

SEVENTH CIRCUIT

Fourth Appellate District

Sangamon County Complex
John M. Madonia, Chief Judge
Circuit Population: 309,758

Greene (Carrollton)
Jersey (Jerseyville)
Macoupin (Carlinville)
Morgan (Jacksonville)
Sangamon (Springfield)
Scott (Winchester)

Brown County Courthouse

EIGHTH CIRCUIT

Fourth Appellate District

Adams County Courthouse
John Frank McCartney, Chief Judge
Circuit Population: 135,023

Adams (Quincy)
Brown (Mount Sterling)
Calhoun (Hardin)
Cass (Virginia)
Mason (Havana)
Menard (Petersburg)
Pike (Pittsfield)
Schuyler (Rushville)

McDonough County Courthouse

NINTH CIRCUIT

Third Appellate District

McDonough County Courthouse
David L. Vancil, Jr., Chief Judge
Circuit Population: 149,536

Fulton (Lewistown)
Hancock (Carthage)
Henderson (Oquawka)
Knox (Galesburg)
McDonough (Macomb)
Warren (Monmouth)

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CIRCUIT COURTS, CONTINUED

SEVENTH CIRCUIT JUDGES

Ryan M. Cadagin, David Cherry, Kenneth R. Deihl, Adam Giganti, Raylene Grischow, Allison Lorton, Gail L. Noll, Christopher Reif, Zachary Schmidt, April G. Troemper

SEVENTH CIRCUIT ASSOCIATE JUDGES

Jennifer M. Ascher, Rudolph M. Braud, Jr., Jack D. Davis II, Dwayne A. Gab, Colleen R. Lawless, Matthew J. Maurer, Joshua A. Meyer, Chris Perrin, Karen S. Tharp, Jeffery E. Tobin

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	58,440	22	78,388	134.1%	101,829
2020	56,985	12	60,599	106.3%	101,160
2019	71,635	51	83,092	115.9%	90,700
2018	75,641	51	88,113	116.4%	86,583
2017	77,151	32	82,957	107.5%	81,937

EIGHTH CIRCUIT JUDGES

Robert Adrian, Michael L. Atterberry, Talmadge G. Brenner, Charles H. W. Burch, Ramon M. Escapa, Jerry J. Hooker, Amy C. Lannerd, Scott D. Larson, Alan D. Tucker, Timothy J. Wessel

EIGHTH CIRCUIT ASSOCIATE JUDGES

Holly J. Henze, Roger B. Thomson, Kevin D. Tippey, Debra L. Wellborn, John C. Wooleyhan

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	21,669	38	22,236	102.4%	22,843
2020	21,427	36	19,488	90.8%	24,215
2019	27,492	24	26,024	94.6%	22,563
2018	28,509	23	27,396	96.0%	21,597
2017	28,676	10	27,457	95.7%	20,695

NINTH CIRCUIT JUDGES

Bruce C. Beal, Heidi A. Benson, Raymond A. Cavanaugh, Rodney G. Clark, Andrew J. Doyle, Thomas B. Ewing, Richard H. Gambrell, William E. Poncin, James R. Standard

NINTH CIRCUIT ASSOCIATE JUDGES

James G. Baber, Nigel D. Graham, Curtis S. Lane, William A. Rasmussen

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	24,897	7	24,750	99.4%	29,640
2020	23,581	10	22,166	94.0%	28,092
2019	29,022	12	28,580	98.4%	26,465
2018	30,006	5	30,494	98.3%	26,043
2017	32,881	5	31,280	95.1%	25,605

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CIRCUIT COURTS, CONTINUED

Stark County Courthouse

TENTH CIRCUIT

Third Appellate District

Peoria County Courthouse
Katherine S. Gorman, Chief Judge
Circuit Population: 332,368

Marshall (Lacon)
Peoria (Peoria)
Putnam (Hennepin)
Stark (Toulon)
Tazewell (Pekin)

Livingston County Courthouse

ELEVENTH CIRCUIT

Fourth Appellate District

McLean County Law & Justice Center
Mark A. Fellheimer, Chief Judge
Circuit Population: 286,281

Ford (Paxton)
Livingston (Pontiac)
Logan (Lincoln)
McLean (Bloomington)
Woodford (Eureka)

Will County Courthouse

TWELFTH CIRCUIT

Third Appellate District

Will County Courthouse
Daniel L. Kennedy, Chief Judge
Circuit Population: 697,252

Will (Joliet)

Photo provided by Amy Dawn Whitlock

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CIRCUIT COURTS, CONTINUED

TENTH CIRCUIT JUDGES

Paul E. Bauer, Christopher R. Doscotch, Bruce P. Fehrenbacher, Paul P. Gilfillan, Stephen Kouri, Kevin W. Lyons, James A. Mack, Michael D. Risinger, John P. Vespa

TENTH CIRCUIT ASSOCIATE JUDGES

Derek G. Asbury, David A. Brown, Daniel Cordis, Timothy Cusack, Sean W. Donahue, Mark E. Gilles, Frank W. Ierulli, Suzanne L. Patton, Albert L. Purham, Jr., Alicia N. Washington, Lisa Y. Wilson

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	45,420	317	41,522	90.8%	54,856
2020	45,985	395	39,542	85.3%	54,493
2019	61,704	519	60,447	97.1%	46,521
2018	59,119	289	58,334	98.2%	45,514
2017	68,134	46	65,671	96.3%	45,098

ELEVENTH CIRCUIT JUDGES

Carla E. Barnes, Jennifer H. Bauknecht, J. Jason Chambers, John Casey Costigan, Scott Drazewski, Charles M. Feeney, III, Matthew J. Fitton, Rebecca S. Foley, Paul G. Lawrence, Jonathan C. Wright, William A. Yoder

ELEVENTH CIRCUIT ASSOCIATE JUDGES

Scott J. Black, Sarah R. Duffy, Pablo Eves, Thomas W. Funk, John Brian Goldrick, Scott Kording, Amy L. McFarland, Michael Stroh, Robert M. Travers, William Gordon Workman

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	42,885	759	42,247	96.8%	37,943
2020	40,591	989	39,076	94.0%	38,882
2019	51,388	1,307	53,224	101.0%	39,908
2018	55,975	1,179	56,857	99.5%	41,689
2017	60,379	900	59,550	97.2%	42,597

TWELFTH CIRCUIT JUDGES

James Jeffrey Allen, John C. Anderson, Dinah J. Archambeault, Amy Bertani-Tomczak, David M. Carlson, Vincent F. Cornelius, David Garcia, Paula A. Gomora, Carmen Julia Goodman, Sarah-Marie F. Jones, Susan T. O'Leary, Barbara N. Petrungaro, Michael J. Powers, Daniel D. Rippy, Raymond E. Rossi

TWELFTH CIRCUIT ASSOCIATE JUDGES

Brian Barrett, Matthew Bertani, Bennett J. Braun, Victoria R. Breslan, Edward A. Burmila, Jr., M. Thomas Carney, Jessica Colon-Sayre, Donald W. DeWilkins, Derek W. Ewanic, Chrystel L. Gavlin, Sherri Hale, Frederick V. Harvey, Elizabeth D. Hoskins Dow, Theodore J. Jarz, Victoria McKay Kennison, Cory D. Lund, Raymond A. Nash, Domenica A. Osterberger, John Pavich, Roger D. Rickmon, Arkadiusz Z. Smigielski, Kenneth L. Zelazo

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	106,375	3,601	111,324	101.2%	95,657
2020	95,532	3,137	89,476	90.7%	96,936
2019	103,251	3,892	131,007	97.7%	87,765
2018	122,330	3,654	125,755	99.8%	81,942
2017	126,660	3,757	129,993	99.7%	81,322

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CIRCUIT COURTS, CONTINUED

LaSalle County Courthouse

THIRTEENTH CIRCUIT

Third Appellate District

LaSalle County Courthouse
Howard C. Ryan, Jr., Chief Judge
Circuit Population: 194,837

Bureau (Princeton)
Grundy (Morris)
LaSalle (Ottawa)

Henry County Courthouse

FOURTEENTH CIRCUIT

Third Appellate District

Rock Island County Courthouse
Frank Fuhr, Chief Judge
Circuit Population: 262,703

Henry (Cambridge)
Mercer (Aledo)
Rock Island (Rock Island)
Whiteside (Morrison)

Ogle County Courthouse

FIFTEENTH CIRCUIT

Second Appellate District

Ogle County Courthouse
Jacquelyn D. Ackert, Chief Judge
Circuit Population: 167,156

Carroll (Mount Carroll)
Jo Daviess (Galena)
Lee (Dixon)
Ogle (Oregon)
Stephenson (Freeport)

CIRCUIT COURTS, CONTINUED

THIRTEENTH CIRCUIT JUDGES

Marc Bernabei, Christina M. Cantlin-VanWiggeren, Joseph P. Hettel, Troy D. Holland, Lance R. Peterson, Cynthia M. Raccuglia, Sheldon R. Sobol

THIRTEENTH CIRCUIT ASSOCIATE JUDGES

James A. Andreoni, Scott M. Belt, Karen C. Eiten, Michael C. Jansz, Michelle Ann Vescogni

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	29,824	629	29,678	97.5%	22,243
2020	28,762	515	27,288	93.2%	22,171
2019	33,763	800	33,191	96.0%	20,355
2018	35,295	856	35,384	97.9%	19,375
2017	36,345	890	36,958	99.3%	19,055

FOURTEENTH CIRCUIT JUDGES

Peter Church, James G. Conway, Jr., Clarence M. Darrow, John L. McGehee, Dana McReynolds, Kathleen Mesich, Terence M. Patton, Carol Pentuic, Patricia A. Senneff, Stanley B. Steines, Linnea E. Thompson

FOURTEENTH CIRCUIT ASSOCIATE JUDGES

James J. Cosby, Daniel Dalton, MW Durbin, Michelle S. Fitzsimmons, Derek L. Hancks, James F. Heuerman, Norma Kauzlarich, Theodore G. Kutsunis, Clayton R. Lee, Richard A. Zimmer

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	41,106	11	38,341	93.2%	63,606
2020	38,850	6	35,007	90.1%	62,014
2019	52,886	12	50,045	94.6%	60,406
2018	47,032	20	45,425	96.5%	60,520
2017	52,875	14	48,340	91.4%	60,956

FIFTEENTH CIRCUIT JUDGES

Michael P. Bald, James M. Hauser, John J. Kane, Douglas E. Lee, John B. Roe, IV, Kevin J. Ward

FIFTEENTH CIRCUIT ASSOCIATE JUDGES

Scott Brinkmeier, Theresa M. Friel Draper, John Hay, Matthew Klahn, Clayton L. Lindsey, David M. Olson, John C. Redington, Glenn R. Schorsch

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	27,435	6	27,763	101.2%	30,728
2020	27,356	16	24,386	89.1%	31,636
2019	34,403	14	32,875	95.5%	29,217
2018	35,058	4	33,605	95.8%	27,994
2017	37,405	1	35,264	94.3%	27,201

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CIRCUIT COURTS, CONTINUED

Kane County Courthouse

SIXTEENTH CIRCUIT

Second Appellate District

Kane County Judicial Center
Thomas Clinton Hull, III, Chief Judge
Circuit Population: 515,588

Kane (Geneva)

Boone County Courthouse

SEVENTEENTH CIRCUIT

Second Appellate District

Winnebago County Courthouse
Eugene Doherty, Chief Judge
Circuit Population: 336,278

Boone (Belvidere)
Winnebago (Rockford)

DuPage County Courthouse

EIGHTEENTH CIRCUIT

Second Appellate District

DuPage County Courthouse
Kenneth L. Popejoy, Chief Judge
Circuit Population: 924,885

DuPage (Wheaton)

CIRCUIT COURTS, CONTINUED

SIXTEENTH CIRCUIT JUDGES

John A. Barsanti, Susan Clancy Boles, Kevin T. Busch, B. Camargo, René Cruz, John Dalton, Elizabeth Flood, Joseph M. Grady, M. Noland, John A. Noverini, Donald M. Tegeler, Robert K. Villa

SIXTEENTH CIRCUIT ASSOCIATE JUDGES

Reginald N. Campbell, Bradley P. David, Christine A. Downs, Keith A. Johnson, Kathryn Karayannis, David P. Kliment, Marmarie J. Kostelny, Salvatore LoPiccolo, Jr., Sandra T. Parga, William Parkhurst, Charles E. Petersen, Mark Pheanis, Divya K. Sarang, Todd B. Tarter, Alice C. Tracy, Julio Valdez, Julia A. Yetter

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	57,994	112	57,844	99.5%	102,422
2020	64,308	79	28,415	44.1%	102,258
2019	102,151	1,143	73,652	71.3%	66,286
2018	89,521	1,403	50,555	55.6%	118,521
2017	84,075	1,237	56,153	65.8%	78,152

SEVENTEENTH CIRCUIT JUDGES

Joseph P. Bruscato, Lisa R. Fabiano, Gwyn Gulley, Janet R. Holmgren, John S. Lowry, Brendan A. Maher, Joseph G. McGraw, Curtis R. Tobin, III, Ronald J. White

SEVENTEENTH CIRCUIT ASSOCIATE JUDGES

Stephen E. Balogh, Ronald A. Barch, Joseph J. Bruce, Jennifer J. Clifford, John T. Gibbons, Mary Linn Green, Donna R. Honzel, Francis M. Martinez, Philip J. Nicolosi, Steven L. Nordquist, Debra D. Schafer, Donald P. Shriver, Ryan Swift, Robert R. Wilt, John H. Young

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	56,575	138	58,440	103.0%	82,290
2020	49,704	152	50,615	101.5%	84,173
2019	71,288	291	70,210	98.1%	85,359
2018	74,839	283	74,367	99.0%	88,639
2017	77,380	362	77,983	100.3%	90,997

EIGHTEENTH CIRCUIT JUDGES

Linda E. Davenport, Richard D. Felice, Paul M. Fullerton, Daniel P. Guerin, John Kinsella, Robert G. Kleeman, Margaret M. O'Connell, Monique O'Toole, Michael W. Reidy, Brian F. Telander, Ann Celine O'Hallaren Walsh, Bonnie M. Wheaton, K. Wilson

EIGHTEENTH CIRCUIT ASSOCIATE JUDGES

Susan Alvarado, Louis B. Aranda, Kavita Athanikar, Craig Belford, Leah M. Bendik, Joseph T. Bugos, Neal W. Cerne, Bryan S. Chapman, Anthony V. Coco, Christine T. Cody, Brian J. Diamond, Joshua J. Dieden, Robert E. Douglas, Maureen R. Dunsing, Thomas A. Else, Michael W. Fleming, George A. Ford, Robert G. Gibson, Anne T. Hayes, Brian W. Jacobs, Angelo J. Kappas, Jeffrey S. MacKay, Paul A. Marchese, James F. McCluskey, Alexander F. McGimpsey, Timothy McJoynt, Robert A. Miller, James D. Orel, Demetrios N. Panoushis, Robert William Rohm, Daivd E. Schwartz, Elizabeth W. Sexton, Kenton J. Skarin

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	129,010	12,594	156,719	110.7%	59,190
2020	118,433	7,447	103,904	82.5%	74,590
2019	178,304	10,819	190,204	100.6%	52,615
2018	179,328	11,696	192,933	101.0%	53,702
2017	186,033	11,316	195,655	99.1%	55,617

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CIRCUIT COURTS, CONTINUED

Lake County Courthouse

NINETEENTH CIRCUIT

Second Appellate District

Lake County Courthouse
Diane E. Winter, Chief Judge
Circuit Population: 711,239

Lake (Waukegan)

Washington County Courthouse

TWENTIETH CIRCUIT

Fifth Appellate District

St. Clair County Building
Andrew J. Gleeson, Chief Judge
Circuit Population: 354,510

Monroe (Waterloo)
Perry (Pinckneyville)
Randolph (Chester)
St. Clair (Belleville)
Washington (Nashville)

Kankakee County Courthouse

TWENTY-FIRST CIRCUIT

Third Appellate District

Kankakee County Courthouse
Michael D. Kramer, Chief Judge
Circuit Population: 133,428

Iroquois (Watseka)
Kankakee (Kankakee)

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CIRCUIT COURTS, CONTINUED

NINETEENTH CIRCUIT JUDGES

Christen L. Bishop, James Booras, Mitchell L. Hoffman, Mark L. Levitt, Reginald Mathews, Michael G. Nerheim, Jorge L. Ortiz, Victoria A. Rossetti, Joseph V. Salvi, Daniel B. Shanes, Marnie M. Slavin, Charles W. Smith, Patricia Sowinski Fix, Christopher Stride

NINETEENTH CIRCUIT ASSOCIATE JUDGES

Luis A. Berrones, Michael B. Betar, David Brodsky, Rhonda K. Bruno, Janelle Christensen, Raymond Collins, Patricia L. Cornell, Stephen M. DeRue, Ari Fisz, Bolling W. Haxall, III, Daniel Jasica, Charles D. Johnson, Christopher M. Kennedy, D. Christopher Lombardo, Jacquelyn D. Melius, Christopher B. Morozin, Paul B. Novak, Veronica O'Malley, Theodore S. Potkonjak, Elizabeth M. Rochford, Helen S. Rozenberg, Stacey L. Seneczko, J. Simonian, George D. Strickland, Donna-Jo R. Vorderstrasse

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	83,598	3,735	89,355	102.3%	37,937
2020	80,802	2,944	81,242	97.0%	40,047
2019	123,015	4,208	128,433	101.0%	37,538
2018	127,130	4,118	131,524	100.0%	38,743
2017	135,107	4,172	137,986	99.1%	39,016

TWENTIETH CIRCUIT JUDGES

Richard A. Brown, James W. Campanella, Zina Renea Cruse, Daniel Emge, Robert Haida, Christopher E. Hitzemann, Christopher T. Kolker, L. Dominic Kujawa, John J. O'Gara, Heinz M. Rudolf, William D. Stiehl

TWENTIETH CIRCUIT ASSOCIATE JUDGES

S. Campbell, Thomas B. Cannady, William G. Clay IV, Patrick R. Foley, Julia R. Gomric, Eugene Gross, Kevin T. Hoerner, Julie K. Katz, Patricia H. Kievlan, Elaine L. LeChien, Alana I. Mejias, Tameeka Purchase, Jeffrey K. Watson

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	51,806	277	56,202	107.9%	136,013
2020	54,805	449	51,028	92.4%	134,906
2019	76,113	735	74,471	96.9%	123,261
2018	75,783	590	75,229	98.5%	71,136
2017	79,397	300	83,722	105.1%	70,425

TWENTY-FIRST CIRCUIT JUDGES

Adrienne W. Albrecht, Kathy Bradshaw Elliott, Thomas W. Cunnington, William S. Dickenson, Lindsay Parkhurst, Michael Sabol

TWENTY-FIRST CIRCUIT ASSOCIATE JUDGES

Kara M. Bartucci, Brenda L. Claudio, JoAnn Imani Drew, Nancy A. Nicholson, Scott Sliwinski

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	24,522	1	16,221	66.1%	43,569
2020	23,703	0	10,874	45.9%	35,343
2019	27,324	0	18,868	69.1%	72,666
2018	27,607	1	21,014	76.1%	64,429
2017	28,601	0	24,882	87.0%	58,605

CIRCUIT COURTS, CONTINUED

McHenry County Courthouse

TWENTY-SECOND CIRCUIT

Second Appellate District

McHenry County Government Center
James S. Cowlin, Chief Judge
Circuit Population: 311,122

McHenry (Woodstock)

DeKalb County Courthouse

TWENTY-THIRD CIRCUIT

Second Appellate District

Kendall County Courthouse
Bradley J. Waller, Chief Judge
Circuit Population: 235,281

DeKalb (Sycamore)
Kendall (Yorkville)

Photo provided by Amy Dawn Whitlock

CIRCUIT COURTS, CONTINUED

TWENTY-SECOND CIRCUIT JUDGES

Michael J. Chmiel, Tiffany E. Davis, Michael W. Feetterer, Mark R. Gerhardt, David R. Gervais, Justin M. Hansen, Robert A. Wilbrandt, Jr.

TWENTY-SECOND CIRCUIT ASSOCIATE JUDGES

Joel D. Berg, Michael E. Coppedge, Kevin G. Costello, Mark R. Facchini, Christopher M. Harmon, Jeffrey L. Hirsch, Jennifer L. Johnson, Suzanne C. Mangiamele, Thomas A. Meyer, Mary H. Nader, Robert J. Zalud

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	41,509	1,628	44,990	104.3%	16,864
2020	40,176	1,566	39,096	93.7%	18,796
2019	54,357	2,069	57,598	102.1%	16,040
2018	58,229	2,050	60,156	99.8%	17,067
2017	55,913	1,964	58,214	100.6%	16,730

TWENTY-THIRD CIRCUIT JUDGES

Melissa S. Barnhart, Marcy L. Buick, Thomas L. Doherty, Jody P. Gleason, Stephen L. Krentz, Robert P. Pilmer

TWENTY-THIRD CIRCUIT ASSOCIATE JUDGES

John McAdams, Stephanie P. Klein, Philip G. Montgomery, Joseph C. Pedersen, Joseph R. Voiland

YEAR	FILED	REINSTATED	DISPOSED	CLEARANCE RATE %	PENDING
2021	20,950	773	24,448	112.5%	21,769
2020	23,107	398	19,179	81.6%	25,133
2019	28,892	706	29,237	98.8%	20,646
2018	32,208	1,028	33,515	100.8%	20,267
2017	33,568	1,224	34,699	99.7%	20,544

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IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

JULIEANNE AUSTIN, *et al.*, Plaintiffs, v. THE BOARD OF EDUCATION OF COMMUNITY UNIT SCHOOL DISTRICT #300, *et al.*, Defendants.	Case No. 2021-CH-500002 Judge Grischow
ROBERT GRAVES, *et al.*, Plaintiffs, v. GOVERNOR JB PRITZKER, *et al.*, Defendants.	No. 2021-CH-500003 Judge Grischow
MARK AND EMILY HUGHES, *et al.*, Plaintiffs, v. HILLSBORO COMMUNITY SCHOOL DISTRICT #3, a body politic and corporate, *et al.*, Defendants.	Case No. 2021-CH-500005 Judge Grischow
MATTHEW ALLEN, *et al.*, Plaintiffs, v. GOVERNOR JB PRITZKER, in his official capacity, *et al.*, Defendants.	Case No. 2021-CH-500007 Judge Grischow

FILED
FEB 04 2022
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Clerk of the Circuit Court

TEMPORARY RESTRAINING ORDER

Case called for hearing on Plaintiffs' Motion for Temporary Restraining Order. The parties appear through counsel. Arguments were heard on January 3 and 5, 2022 and again on January 19 and 20, 2022. The Court took the matter under advisement. The parties were given until January 27, 2022 to submit proposed orders. This Court, having reviewed the record, pleadings, the parties' written and oral arguments, in addition to the applicable legal authority, finds as follows:[1]

BACKGROUND

The Governor declared an emergency due the coronavirus in March 2020 pursuant to statutory authority delegated to him under the Illinois Emergency Management Agency Act. ("IEMAA" 20 ILCS 3305 *et seq.*) Since that time, the Governor has issued 25 serial disaster proclamations and 99 executive orders related to COVID-19. Those executive orders have touched the lives of every citizen in the state of Illinois in some fashion.

Plaintiffs in the above-captioned matters are parents of students enrolled in schools across Illinois [*Austin* (2021-CH-500002), *Graves* (2021-CH-500003), and *Hughes* (2021-CH-500005)] and teachers working in Illinois schools [*Allen* (2021-CH-50007)]. They all seek entry of Temporary Restraining Orders ("TRO") enjoining certain school-related Covid-19 mitigation measures as set forth in Governor JB Pritzker's Executive Orders, namely: (1) Executive Order 2021-18 ("EO18")[issued on 8/4/21], ordering that school districts require the use of masks for students and teachers who occupy their buildings, provided they are medically able to do so, (2) Executive Order 2021-22 ("EO22")[issued on 9/3/21], requiring persons who are both unvaccinated from Covid-19 and work in Illinois schools to provide weekly negative results of an approved Covid-19 test in order to occupy school buildings, and (3) Executive Order 2021-24

[1] Pursuant to Supreme Court Rule 384, Case Numbers: 2021-CH-500002, 21-CH-500003 and 21-CH-500005 were consolidated before this Court. Subsequently, 21-CH-500007 was filed in Sangamon County. To the extent any portion of this TRO is appealed, any opinions expressed in this consolidated order applies to each case individually.

("EO24")[issued on 9/17/21], ordering that school districts refuse students and teachers admittance to their buildings for specified periods of time if the student or teacher is a "close contact" of a confirmed or probable Covid-19 case and if they refuse to test.[2]

EO22 and EO24 provide that "State agencies . . . may promulgate emergency rules as necessary to effectuate," and aid in the implementation of, the Executive Orders. Toward that end, on September 17, 2021, the Illinois Department of Public Health ("IDPH") and the Illinois State Board of Education ("ISBE") filed Emergency Rules, effective that day, amending portions of Title 77 of the Administrative Code relating to managing disease in schools, *see* 45 Ill. Reg. at 12123, and adding provisions to Title 23 of the Administrative Code relevant to supporting school districts in implementing EO22, *see* 45 Ill. Reg. at 11843, (collectively, the "Emergency Rules"). In August 2021, ISBE and IDPH issued Revised Public Health Guidance for Schools ("Joint Guidance") relating to school districts' efforts to combat Covid-19 and a safe return to in-person instruction.

The *Austin*, *Graves*, *Hughes,* and *Allen* Plaintiffs sued the Governor, IDPH, ISBE, IDPH Director Dr. Ngozi Ezike, ISBE Superintendent Dr. Carmen I. Ayala (collectively, the "State Defendants"), and nearly 170 Illinois school districts (collectively "Defendant School Districts") across Illinois. Their claims assert the theory that students and teachers cannot be required to wear masks while in school buildings and cannot be excluded from school premises after close contact exposure to Covid-19, absent consent and/or a full evidentiary hearing and a court order entered pursuant to the procedures contained in Section 2 (the "Section 2 Procedures") of the Illinois

[2] EO24 requires that schools "make remote instruction available [for students excluded] consistent with the requirements declared by the State Superintendent of Education pursuant to Section 10-30 and 30-18.66 of the School Code." On September 21, 2021, the Governor issued Executive Order 2021-25 ("EO25"), making minor amendments to EO24's school exclusion provision. On January 11, 2022, the Governor issued Executive Order 2022-03 ("EO3") which supersedes EO24 and EO25. The implementation of EO3 has no material impact on the merits of Plaintiffs' claims.

Department of Public Health Act (20 ILCS 2305/1.1 *et seq.* (the "IDPH Act")) because doing so constitutes an IDPH "quarantine" or "modified quarantine" under the IDPH Act. The *Allen* Plaintiffs also insist that unvaccinated teachers cannot be required to undergo weekly Covid-19 testing absent compliance with Section 2 Procedures because doing so constitutes IDPH "testing" under the IDPH Act.[3] The *Graves* Plaintiffs' complaint and motion include additional theories of relief, which the Court addresses below after analyzing the principal theory asserted by all of the *Austin*, *Graves*, *Hughes*, and *Allen* Plaintiffs relating to the Section 2 Procedures.

This Court acknowledges the tragic toll the COVID-19 pandemic has taken, not only on this State, but throughout the nation and globe. Nonetheless, it is the duty of the Courts to preserve the rule of law and ensure that all branches of government act within the bounds of the authority granted under the Constitution. There is no doubt that the public has a strong interest in stopping the spread of this virus, but such does not allow our government "to act unlawfully even in the pursuit of desirable ends." *Georgia v. Biden*, 2021 WL 5779939 (December 7, 2021)(citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582, 585-86 (1952)).

PRELIMINARY MATTERS

As an initial matter, this Court needs to ensure it has jurisdiction over all the parties. Lack of jurisdiction is an issue which can be raised at any time, even by the Court on its own motion. In *Hughes v. Hillsboro Community School District #3*, Case No: 2021-CH-500005, this Court noted that the school district and not the board of education was sued as a defendant. "A board of education is designated as a district's governing body. *Veazey v. Board of Education of Rich Tp High School*, 2016 IL App (1st) 151795. "A board of education 'furnishes the method and

[3] The *Allen* plaintiffs also seek relief in their complaint under the Illinois Healthcare Right of Conscience Act, 745 ILCS 70/1 *et seq.* (HCRCA"). The parties agree that plaintiffs' Motion for Temporary Restraining Order does not implicate the HCRCA claim.

machinery for the government and management of the district.'" *Board of Education of District No. 88 v. Home Real Estate Improvement Corp.*, 378 Ill. 298, 303 (1941). Where jurisdiction is lacking, any resulting judgment rendered is void and may be attacked either directly or indirectly at any time. *People v. Davis*, 156 Ill. 2d 149, 155-56 (1993). In light of the foregoing, the Board of Education for Hillsboro Community School District #3 is not sued, thus, this Court lacks jurisdiction over Hillsboro Community Unit School District #3, since it is not a properly named Defendant. Plaintiff is given leave to add the proper party within the next 14 days. Until such time, the Court reserves ruling as to the legal issues presented in that case, noting however, that any ruling issued herein would subsequently apply to those parties as well.

LEGAL STANDARD

A temporary restraining order or preliminary injunction may issue when plaintiff establishes: (1) a clearly ascertainable right that needs protection; (2) it will suffer irreparable harm in the absence of an injunction; (3) it lacks an adequate remedy at law; and (4) a likelihood of success on the merits. *Makindu v. Illinois High Sch. Ass'n*, 2015 IL App. (2d) 141201, ¶31, 40 N.E.2d 182. If the moving party establishes these elements, the Court must then balance the hardships to the parties and consider the public interest involved. *Id.* The issuance of an injunction is within the sound discretion of the trial court when plaintiff demonstrates that there is a fair question as to the existence of the right claimed and that the circumstances lead to a reasonable belief that the moving party will be entitled to the relief sought. *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1089, 874 N.E.2d 959, 971 (2d Dist. 2007). The Court must determine whether a fair question is raised as to the existence of a right that needs protection and is not to, at this time, decide controverted facts or the ultimate merits of the case. *Id. at 1089.*

EMERGENCY RULES AND JOINT GUIDANCE

I. IDPH Emergency Rules

Section 690 of Title 77 of the Illinois Administrative Code has been around since 1977. All State actors and citizens have operated under those set standards up to and including a time period when our State (and Nation) was faced with another highly contagious disease. In 2014, Ebola reared its ugly head and caused a number of public health challenges. As a result, the IDPH passed Emergency Rules that added new definitions for "quarantine, modified" and "quarantine, isolated" and amended the definitions of quarantine and isolation to include those new concepts. The IDPH, at that time, believed exclusion from school, due to a highly infectious or contagious disease (such as Ebola), was a form of quarantine, subject to the due process procedures as found in the IDPH Act. Those emergency amendments noted that IDPH and local health departments needed to have clear authority to monitor and restrict persons who were potentially at risk.

Since 2014 and prior to the recent 2021 Emergency Rules, tests and vaccines were also considered a form of "modified quarantine" because they were a procedures "intended to limit disease transmission." Under the IDPH Act, individuals had the right to object to these procedures. If they objected, they were afforded due process of law. Likewise, "exclusion from school" was also a form of "modified quarantine" because it was considered a partial limitation on freedom of movement for those who may have been exposed to a contagious disease. At no time did the 2014 emergency amendments take away a person's due process rights.

On September 17, 2021, under the guise of an emergency, the Emergency Rules deleted or modified these terms and definitions.[4] Subsection (d) was added pertaining to schools and added a new provision which delegated authority to the local school districts to require vaccination,

[4] State Defendants' Exhibit 4, p. 12139-12143.

masking, and testing of school personnel, in addition to masking for all students regardless of vaccine status, exclusion from school, and testing for unvaccinated, healthy students who were deemed "close contacts" by the school.[5] The question before this Court is whether the Governor, under his executive authority, can require his agencies to promulgate emergency rules that go beyond what the Legislature intended or without utilizing the legislative branch of government.

To address this, the Court begins its analysis by looking at IEMAA. According to this Act, the Legislature granted the Governor a broad delegation of power. However, this broad delegation of power is not absolute. The manner in which this administrative agency [IDPH] promulgated this Emergency Rules gives this Court pause. At the time it issued this broad-sweeping Emergency Rules, COVID-19 had been in existence for well over one and a half (1 ½) years and vaccines had been around for at least nine (9) months. Based on this historical knowledge, this Court inquired repeatedly as to the emergency that necessitated the Emergency Rules in September of 2021 without adhering to the rulemaking process which provides for public comment and JCAR review prior to adoption.[6] The State Defendants responded that COVID-19 was "fluid,"[7] and it was within the agencies' discretion to assist the Governor and protect the public health and safety.[8] In IDPH's Notice contained in the Illinois Register, it stated the reasoning was "to support schools and school districts in implementing Executive Order 2021-22, which requires that all school personnel either receive the COVID-19 vaccine or undergo at least weekly testing."[9] In support of this emergency action, the IDPH cited to the Communicable Disease Report Act and the Department of Public Health Act.[10]

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[5] State Defendants' Exhibit 5, p. 12145 – 12151.

[6] All parties have been on notice of what was required by law for at least 550 days since the Governor issued the first disaster proclamation.

[7] Report of proceedings 1/3/2022 p. 16: 14-16.

[8] Report of proceedings 1/32022 p. 26: 16-19.

[9] State Defendants' Exhibit 4, p. 11843.

[10] 745 ILCS 45; 20 ILCS 2305.

The State Defendants argue under Section (m) of 20 ILCS 2305/2 all decisions regarding emergencies in the State of Illinois fall under the arm of the IEMAA and that since the IDPH did not issue the vaccine mandate for school personnel, such is a valid exercise of the Governor's authority under IEMAA.[11] The Court disagrees with this broad interpretation. Looking at subsection (b) of 2305/2, which is subject to the provisions in subsection (c), "no person shall be ordered to be quarantine or isolated .... [e]xcept with the consent of the person... or upon the prior order of the court of competent jurisdiction." The State Defendants argue that since the order was not issued by the IDPH, this section does not apply. The Executive Branch, however, fails to recognize or acknowledge that the Legislature granted IDPH the supreme authority in matters of quarantine and isolation. Moreover, subsection (f) of 20 ILCS 53305/5, the powers of IEMAA, includes the mandatory language of "shall," thus requiring the Governor to coordinate with the IDPH with respect to planning for and responding to public health emergencies.[12] These two statutes must be read together, making it clear the Governor cannot make public health decisions during a time of emergency independently and without coordinating with IDPH.

Furthermore, if the Governor did not want a certain statute to apply during a declared emergency, he certainly could have taken steps to suspend those provisions. Where the Governor seeks to suspend a regulation pursuant to his emergency powers, he must first show that the strict compliance with the statute would hinder his efforts to address the pandemic.[13] This authority rests solely with the Governor; not other agencies within the Executive Branch. Thus, the only way the due process provisions as found the IDPH Act (2305/2) would not apply is if the Governor

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[11] See 20 ILCS 2305/5(m)... "Nothing in this Section shall supersede the current National Incident Management System and the Illinois Emergency Operation Plan or response plans and procedures established pursuant to IEMA statutes.

[12] 20 ILCS 3305/5(f)(2.6).

[13] 20 ILCS 3305/7(1), *see also, Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, ¶41.

suspended them during his emergency declarations and corresponding Executive Orders, which he did not. The Governor did, however, for example, suspend various statutes in EO20-15, 20-25, 20-26 and 20-31, namely various portions of the School Code, Code of Civil Procedure and IDPH and Administrative Code, but not 2305/2.

The State Defendants also argue that the Governor has unlimited authority to do whatever is necessary. This Court finds this argument far reaching as the Legislature acknowledged limits which are set forth in 3305/7. Moreover, as pointed out by this Court during oral arguments, if the Governor's power was endless, then why would he instruct the State agencies to promulgate rules to effectuate his mandates? And, why would the Legislature have created specific powers as set forth in paragraphs 1-14 in 3305/7? If the Legislature intended for the Governor's powers to be endless, it simply could have deleted all those other paragraphs and said "during emergencies declared by the Governor, the Governor is authorized to do whatever is felt necessary without any restrictions." But, the Legislature never intended for that type of unfettered power, and therefore, the State's interpretation is unfounded. IEMAA makes it clear that the Governor does not have the authority to make final decisions on public health, which again illustrates the Legislature's intent for the two bodies to work together to come up with framework for health-related emergencies. IEMAA does not delegate authority to or provide deference to any other state agency other than IDPH and the Governor.

The Court cannot find (nor did any party provide) any law enacted by the State Legislature that grants the IDPH the authority to delegate or transfer its duties and responsibilities to ISBE and local school districts. Even the IDPH cannot support that arguments based on 690.1315 of Title 77 which provides that "certified local health departments shall, in conjunction with the Department administer and enforce the standards set forth this Subpart, which include: 1) investigating any

case or suspected case of a reportable communicable disease or condition; and 2) "instituting disease control…including testing… vaccinations… quarantine…" This administrative rule further provides that the certified local health department, … "[i]n consultation with local health care providers, … schools, the local judicial system, and any other entity that the certified local health department considers necessary, the certified local health department shall establish plans, policies, and procedures for instituting and maintaining emergency measures necessary to prevent the spread of a dangerously contagious or infectious disease or contamination." 77 Ill. Admin. Code 690.1315(f) (emphasis added). Based on IDPH's emergency passage, it is clear it violated its own administrative rules.

Moreover, the Governor's delegated authority regarding masks, identifying close contacts, testing and vaccines to another executive agency is beyond the scope of legislative authority. The IDPH is limited by law to delegating its authority only to certified local health departments and has not been authorized by the Legislature to delegate any of its authority to any other body of government, including school districts.[14]

II. ISBE Emergency Rules

On September 17, 2021, ISBE, an executive administrative agency, implemented an emergency "Mandatory Vaccinations for School Personnel." ISBE indicated that its authority for this Emergency Rule came from 105 ILCS 5/2-3.6 (the School Code) and EO22. According to this Executive Order, "…over 6.7 million Illinoisans have been fully vaccinated against COVID-19, in order to protect against the rapid spread of the Delta variant, additional steps are necessary to ensure that the number of vaccinated residents continues to increase and includes individuals working in certain settings of concern, including those who work around children under the age of

[14] 20 ILCS 2310/2310-15

12." Section 3 of EO22 outlines the vaccination and testing requirements for school personnel which includes exclusion from premises unless they comply with the testing requirement set forth in section (d) of EO22. According to section 3(f) of the Governor's OE22, the IDPH and ISBE may promulgate emergency rules as necessary to effectuate this Executive Order.

Prior to IDPH's emergency amendment on September 17, 2021, IDPH found that masks (a.k.a. "devices"), and tests and vaccines (a.k.a. "procedures") were a form of "modified quarantine" because they were a procedure "intended to limit disease transmission." Under the IDPH Act, people had the right to object to these procedures. If they objected, then they were afforded due process rights.[15] Similarly, IDPH concluded "exclusion from school" was also a form of "modified quarantine" because it was considered a partial limitation of freedom of movement or actions to those who may have been exposed to a contagious disease."[16]

Regarding the teachers' case, IDPH did not mandate the COVID-19 vaccine, nor did it issue Emergency Rules pertaining to vaccines or masks,[17] the Governor did and then ISBE promulgated its Emergency Rules to carry out the Governor's orders. The Court is left to question what authority ISBE has to mandate a vaccine that has not even been mandated by the IDPH. Section 690.138 of Title 77 outlines that IDPH, or a local health department, may order the administration of vaccines to prevent the spread of a dangerously contagious or infectious disease and specifies an individual's due process rights should they refuse vaccinations, medications or other treatments. One agency within the Executive Branch cannot delegate authority to another agency within the same Executive Branch absent legislative authority.[18] The Legislature granted

[15] 20 ILCS 2305/2.
[16] 77 Ill. Admin. Code 690.10, Definitions (prior to 9/17/21 amendments).
[17] The emergency mask mandate issued by IDPH expired on 6/4/21.
[18] See 20 ILCS 2310/2310-625, even in times of a disaster declaration, the Legislature did not authorize the Director of IDPH to delegate the health department's obligations to school districts.

IDPH the authority to order tests and vaccines. Nowhere in the School Code did the Legislature grant ISBE or the State Superintendent the authority to order or mandate vaccines and tests. Thus, absent a properly filed emergency rule from IDPH, the Governor's mandate is meaningless and ISBE's Emergency Rule exceeded its authority.

III. **Do the emergency amendments comply with Sec. 5-45 of the IAPA**?

The emergency rule making process is outlined in 5 ILCS 100/5-45. In adopting rules, administrative agencies must comply with the public notice and comment requirements set forth in the Procedure Act. *Champaign-Urbana Public Health District v. Illinois Labor Relations Bd.*, 354 Ill. App. 3d 482, 489 (4th Dist. 2004); *see also*, 20 ILCS 3305/18(a).[19] IDPH attached a certificate which stated the reason for the Emergency Rules was "in response to Governor JB Pritzker's Gubernatorial Disaster Proclamation issued related to COVID-19."[20] As indicated before, at the time IDPH implemented their Emergency Rules, without a formal hearing, the State of Illinois, namely the Governor, IDPH and ISBE had been aware of COVID-19 for 550 days. The need to adopt emergency rules at this junction seems suspect at best and not in compliance with the law. One of the several basis cited for the various executive orders was the Delta variant. The Delta variant has been around since December of 2020. The School Districts, through EO18 had known since August 4, 2021 that the local health departments, not the schools, had the authority to identify close contacts. Thus, the schools knew all summer what needed to be done. So, what emergency arose that had not already been present? By September 17, 2021, the State of Illinois had moved into phase 5 and was fully aware of the threat from COVID-19. Perhaps the threat was

[19] Orders, Rules, and Regulations (where the rule, regulation, order or amendment shall become effective immediately upon being filed with the Secretary of State accompanied by a certificate stating the reason as required by the Illinois Administrative Procedure Act)

[20] State defendants' Exhibit 1 Notice of Filing filed 1/3/2022 3:57 PM documents relating to Emergency Amendments to Ill. Adm. Code, Title 77, Part 690.

because the Courts were interpreting the law as written and the Executive Branch did not like the outcome. How is this a threat to public safety? It is not, it is a threat to a unilateral unchecked exercise of authority by the Executive Branch. Stated differently, IDPH's delegation of its authority was an end-run whereby IDPH passed the buck to schools so as not to trigger the due process protections under the IDPH Act. Courts should not be fooled or misled by this egregious conduct.

To illustrate this further, the Court notes on September 17, 2021, the IDPH issued eleven (11) additional emergency amendments to various administrative codes mandating vaccines or testing for various health care workers/professionals. IDPH could have done the same thing for school personnel under the emergency amended 690.361(1) whereby it added a new section for schools and COVID. It also could have added these requirements in Sec. 690.1380 and 690.1385, but chose not to do so. The delegation of authority to school districts regarding public health and safety is an abuse of power and was never contemplated by the Legislature.

No facts have been presented to show that without these Emergency Rules, the public would be confronted with a threatening situation. How did removing the words "Isolation, Modified" and "Quarantine Modified" and editing the definition of "Quarantine" assist in responding to a threatening situation? How did adding a section delegating the duties of the IDPH and local health departments to schools assist in responding to a threatening situation? What was the need to have this done on an emergency basis without input from the Legislative Branch? "Unless a rule conforms with the public notice and comment requirements, 'it is not valid or effective against any person or party and may not be invoked by an administrative agency for any purpose.'" *Champaign-Urbana Pub. Health Dist. v. Illinois Lab. Rels. Bd.*, 354 Ill. App. 3d 482, 488–89, 821 N.E. 2d 691, 696 (4th Dist. 2004)(citing *Kaufman Grain Co. v. Director of the*

Department of Agriculture, 179 Ill. App. 3d 1040, 1047, 534 N.E. 2d 1259, 1264 (4th Dist. 1988)). Based on the record before this Court, it is hard to see how the implementation of these Emergency Rules was necessary to counter the threat of the public interest safety or welfare. The Governor could have had the Legislature address this while in session, but he did not. The Governor could have suspended statutes, but he did not.[21] Where the Governor seeks to suspend a regulation pursuant to his emergency powers, he must first show that the regulation hinders his efforts to cope with a disaster.[22] No regulation was suspended because the reason for implementing the Emergency Rules was for administrative convenience and an attempt to circumvent the courts' involvement, not because of any stated emergent public threat. [23]

IV. IDPH/ISBE Joint Guidance

In 2003, IDPH and ISBE issued "Management of Chronic Infections Diseases in Children" and acknowledged the importance of substantive and procedural due process protections. These guidelines recognized that each student should have the right to due process, that each student with infectious disease should be educated in the least restrictive environment and extreme measures to isolate students with chronic infectious diseases was not necessary. It further stated that "many irrational fears can be mitigated through planned health education and health counseling programs."[24] Even though these agencies did not incorporate the same language in their revised 2021 Joint Guidance, it still does not change an individual's due process rights.

Fast forwarding to the Joint Guidance issued by the ISBE and IDPH in August of 2021, these agencies made it clear that "local health departments" were to make the final determinations

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[21] See page 9 above of statutes that were suspended.

[22] 20 ILCS 3305/7(1); *see also, Fox Fire Tavern, LLC v. Pritzker,* 2020 IL App (2d) 200623.

[23] The Court refuses to look forward at what transpired after the Emergency Rules were implemented regarding the Omicron variant and must base its analysis on what where the present facts known at the time to warrant such "emergent" conduct by the Executive Branch's administrative agencies.

[24] This Court recognizes the 2003 Guidance is not authoritative. However, it highlights these administrative agencies' understating of the law with regard to due process rights in addressing infectious diseases.

on issues of close contacts, as well as determinations as to who would be mandated to quarantine[25] and for how long.[26] This guidance permitted the schools to assist with contract tracing but did not give schools any authority to make final determinations on who was to quarantine and for how long. This Revised Guidance even acknowledged Test To Stay was a form of modified quarantine.[27] Just because these entities later deleted this reference in the subsequent Joint Guidance does not make it any less true that even IDPH and ISBE agreed that testing was a form of quarantine. Simple as that. The IDPH Act sets forth explicit procedures on what the agency is required to do if a person disagrees with the agency on the issue of quarantine.[28] The Legislature, in the implementation of the IDPH Act, specifically contemplated that people may object to quarantine and laid out procedural methods in which to address those objections. There is no question as to the promulgated statutory rights set forth in the IDPH Act that are due to citizens in matters of quarantine and isolation. Through the issuance of the above-noted Court rulings, these statutory rights have attempted to be bypassed through the issuance of Executive Orders and Emergency Rules.

The Illinois General Assembly had foresight when it created certain provisions limiting the authority of administrative agencies. When the Legislature created our laws, they did so knowing individuals have a fundamental right to due process when one's liberty and freedom is taken away by forcing them to do something not otherwise required of all other citizens. Illinois law prohibits ISBE from making policies affecting school districts which have the effect of rules without following the procedures of the IAPA. Absent this statutory provision, ISBE would be able to on

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[25] To avoid this concept, ISBE and IDPH changed the word "quarantine" to "exclusion from school."

[26] Revised Public Health Guidance for Schools, Part 5- Supporting the full return to in-person learning for all students, August 2021, p. 17-18.

[27] Revised Public Health Guidance for Schools, Part 5- Supporting the full return to in-person learning for all students, August 2021, p. 19.

[28] 20 ILCS 2305(a)(b)(c).

impulse, and depending on who held the Executive Branch, mandate whatever it felt necessary in the most arbitrary and capricious manner without having to follow any due process under the IAPA. As for the matters at hand, it is clear IDPH/ISBE were attempting to force local school districts to comply with this guidance without any compliance with rulemaking. This type of evil is exactly what the law was intended to constrain.

Moreover, the Joint Guidance is attempting to cloak the local school districts with the authority to mandate masks and require vaccination or testing without compliance with any due process under the IDPH Act. The Court has already ruled masks are a device intended to stop the spread of an infectious/contagious disease, and thus are a type of quarantine, and vaccination and testing are specifically covered under the IDPH Act, and as such any attempt to circumvent the statutory due process rights of the Plaintiffs by this Joint Guidance is void. Under no circumstances can guidance be issued which violates a statute.

V. Independent Authority of School Districts

Repeatedly during oral arguments, the Defendant School Districts claimed they have independent authority to adopt and enforce all necessary rules for the management and government of the public schools of their district.[29] They claim this authority is provided to schools by the Illinois School Code, and, in the absence of a valid statewide mandate, the decision of which approach to take lies with the individual School Districts and their Boards.

This Court is in agreement that the Legislature did grant independent authority to school districts.[30] However, the Legislature specified that school districts still had to coordinate with

[29] 105 ILCS 5/10-20, 105 ILCS 5/10-20.5

[30] See 105 ILCS 5/10-21.11, 105 ILCS 5/34-18.13, and 105 ILCS 5/10-20.5, which were also cited to in the 2003 Joint Guidance referenced above. These statutes again make it clear that any health-related decisions must be consistent with Joint Guidance and with the input of the department of public health. Policies related to chronic diseases must be on a case-by-case basis according to the Legislature.

IDPH on health related issues. The fact remains, no school district had policies in effect that predated COVID-19 and the Governor's mandates that required masking, testing, exclusion from school for being a "close contact," quarantine, isolation or vaccinations. Any policies that were adopted were done in response to the pandemic and the Governor's emergency declarations. No School District has presented any evidence it would have taken this course of action but for the Executive Orders and Emergency Rules. This Court finds the policies of each School District will have to be addressed on a case by a case basis, be subject to school district's policies that were presented to the school board at a public meeting and subject to public comment, as well as the Open Meetings Act. Those issues are not before the court at this time.

The Defendant School Districts also argued that the Illinois Educational Labor Relations Act governs labor relations between educational employers and employees, including specific terms of employment. This Court is in agreement with the foregoing, along with the fact that any collective bargaining agreement governs the terms of employment. Individual collective bargaining agreements for each union will have to be analyzed to determine what has and has not been bargained. Again, those issues are not before the Court.

The Legislature took specific measures to address school authority during times in which the Governor has declared a disaster pursuant to section 7 of IEMAA. Under the provision for dismissal of teachers in Section 24-16.5, the Legislature amended the statute to toll these provisions until the Governor's proclamation is no longer in effect.[31] The Legislature also specifically amended 105 ILCS 5/27-8.1 as it pertains to health examinations and immunizations and inserted a provision that a school may not withhold a child's report card during a school year in which the Governor has declared a disaster due to a public health emergency pursuant to Section

[31] Public Act 101-643

7 of the IEMAA. Looking at 105 ILCS 5/27-6.5, physical fitness assessments in schools, again, this solidifies that the Legislature is well aware of IEMAA as it specifically amended the statute and stated that the requirements of this section do not apply if the Governor has declared a disaster due to a public health emergency pursuant to Section 7 of the IEMAA.

Further, reviewing the amendments under P.A. 101-643, the Legislature repeatedly declared that certain sections applied only during times when the Governor had declared a public health emergency under IEMAA. Had our Legislature intended that the various due process provisions, as argued by the Defendants were not to apply, the Legislature would have specifically done so. The Legislature certainly has had time to make any amendments, and has, in fact, made amendments when it deemed them appropriate during the pandemic. Thus, by the absence of any amendments to the statutes/codes argued in this case, the Court is left to conclude, the Legislature did not intend to restrict or take away individual due process rights.

INJUNCTION ELEMENTS

I. A Protectable Right In Need Of Protection

In review of this element, the Court is to determine if the Plaintiffs have "raised a fair question about the existence of [their] right and that the court should preserve the status quo until the case can be decided on the merits." *Buzz v. Barton Associates, Inc. v. Giannone*, 108 Ill. 2d. 373, 386 (1985). Plaintiffs have raised the following questions as to their rights: 1) do they have a statutory right to due process protection as set forth in the IDPH Act prior to being excluded from school until such time as a permanent injunction is heard; 2) do they have a statutory right to due process protection as forth in the IDPH Act prior to being forced to wear a mask in school, if they object, until such time as a permanent injunction is heard; 3) do they have right to in-person education free from undue governmental interference until such time as a permanent injunction is

heard; 4) do they have a statutory right to due process protection as set forth in the IDPH Act prior to being forced to test or be vaccinated; and 5) do they have a right to insist the Governor, and other State administrative bodies, act within the specific confines of their statutory authority until such time as a permanent injunction is heard.

The Legislature has made it clear that citizens have individual due process rights, specifically the due process right to object to being subjected to quarantine, vaccination, or testing which is alleged to prevent the spread of an infectious disease. This Court finds that masks are also a device intended to limit the spread of an infectious disease, and as such, is a type of modified quarantine covered under 20 ILCS 2305(2)(c).[32] The Court finds that 20 ILCS 2305(2)(d) and 20 ILCS 2305(2)(e) expressly provide a right for a citizen to refuse vaccination or testing. This Court finds that Plaintiffs have a protectable interest to not be subjected to any mandates by the Governor, ISBE or the School Districts which interfere with the due process protections provided to Plaintiffs under the IDPH Act in regard to masks as a type of quarantine, as well as vaccination or testing. The Plaintiffs have due process rights in need of protection which must be afforded before they can be excluded from the public school building and disallowed to perform their work duties for failure to wear a mask as a type of quarantine, be vaccinated for COVID, or submit to testing for COVID.

While Plaintiffs' filings contain constitutional due process language, their request for emergency relief is actually premised upon the statutory theory that the State Defendants do not have authority to require masking, close contact exclusion, vaccinations and/or testing in schools unless it is voluntary or an IDPH proceeding is initiated in compliance with Section 2 Procedures for each non-consenting student or teacher, resulting in court orders in compliance with Section 2

[32] 21 U.S.C.A §321(h)(1)(B)

Procedures.[33] Plaintiffs' lead counsel conceded this critical point during the TRO proceedings: "[Defense counsel is] making a constitutional, procedural, and substantive due process analysis when we're in here making a statutory, procedural, and due process request to you.... [Y]ou can decide for yourself whether or not ... the Department of Public Health Act applies."[34]

In accordance with EO24, the IDPH and ISBE proceeded to issue Emergency Rules that raise the following questions: 1) whether the IDPH Emergency Rules were passed in accordance with the procedures set forth in the IAPA; and 2) whether the Legislature has given ISBE the authority to implement Emergency Rules (such as masking, testing and vaccines). The IDPH failed to follow appropriate time frames as set forth in the Illinois Administrative Code in the issuance of the Emergency Rules. These Emergency Rules further removed the judiciary from appropriate judicial oversight in the decisions of arbitrary contract tracing and resulting exclusions and masking of students in Illinois. All these points raise fair questions as to the legality of the Emergency Rules as passed. The Legislature vested the IDPH with sole authority on issues of public health, including but not limited, to vaccinations, testing, quarantine, isolation and masking as set forth in the IDPH Act. This point raises a fair question as to whether the Emergency Rules set forth by the ISBE have any legal effect. Further, in the passing of the Emergency Rules, the due process procedures for each and every student subjected to exclusion from in-person education and quarantine based on being a close contact were completely removed. This continues to raise fair questions as to the legality of the Executive Orders and Emergency Rules in light of Section 2(c) of the IDPH Act and the separation of powers doctrine. The arbitrary methods as to contact tracing and masking in general continue to raise fair questions as to the legality of the Executive

[33] The Court is not suggesting that the IDPH could not later require COVID vaccines for all students and teachers, but those changes would be subject to input from the Immunization Advisory Committee. See 20 ILCS 2305/8.4

[34] Report of proceedings 1/5/22 p. 135: 20-24 and 136: 1-2.

Orders in light of violations of healthy children's substantive due process rights. For the above reasons, fair questions as to rights in need of protection have been satisfied.

II. Irreparable Harm

The injury alleged by the Plaintiffs is the laws of this State which controls these matters of public health are being violated. The Plaintiffs have due process rights under the law which provide them a meaningful opportunity to object to any such mitigations being levied against them, and it is these due process rights which are being continually violated. Under Illinois law, a citizen who refuses to mask or to submit to vaccinations or testing is only potentially subjecting themselves to an isolation or quarantine order. The Defendant School Districts have specifically adopted policies attached to the pleadings that have held children will be excluded from school in the event they do not wear a mask on school premises in violation of the Executive Orders, further preventing them from receiving an in-person education. Some schools do not even have remote learning established, thus, further denying children from an education.

"To demonstrate irreparable injury, the moving party need not show an injury that is beyond repair or compensation in damages, but rather need show only transgressions of a continuing nature." *Victor Township Drainage Dist. 1 v. Lundeen Family Farm P'ship*, 2014 IL App (2d) 140009 ¶ 50. The injury to a plaintiff "must be in the form of plaintiff's legal rights being sacrificed if plaintiff is forced to await a decision on the merits." *Hough v. Weber*, 202 Ill. App. 3d 674, 686 (2d Dist. 1990). The legal rights being sacrificed are the rights of due process under 20 ILCS 2305 *et seq.* which are further provided under 77 Ill. Adm. Code 690.1330. The Court finds the Plaintiffs' legal rights to procedural and substantive due process are being sacrificed each and every day. They have a right to insist compliance with 20 ILCS 2305 *et seq.* before the Defendant School Districts' masking, exclusion from school, quarantine, isolation,

vaccination or testing policies are being thrust upon them, especially when there has been zero evidence that those children are contagious or highly likely to spread a contagious disease. Due process of law is a guaranteed right to the Plaintiffs under the Illinois Constitution and has been specifically codified for circumstances such as these under 20 ILCS 2305 *et seq*. If the Legislature did not think due process rights and a method for objecting were important, they would not have created an entire statute on the issue. When a right such as the one being violated here is alleged, irreparable injury is satisfied. *Makindu v. Illinois High School Assn.*, 2015 IL App (2d) 141201 (2015). Continued deprivation of procedural and substantive rights that are protected by both statutory and constitutional law cannot be compensated in the form damages.

III. Inadequate Remedy At Law

There is no adequate remedy at law because the loss of the continuous sacrifice of legal rights cannot be cured retroactively once the issues are decided on the merits. See *Hough v. Weber*, 202 Ill. App. 3d 674, 686 (2d Dist. 1990). An "adequate remedy at law is one which is clear, complete and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy." *Cross Wood Products, Inc. v. Suter*, 97 Ill. App. 3d 282, 286 (1st Dist. 1981). Furthermore, where injuries are of a continuing nature, remedies at law are inadequate, and injunctions should be imposed. *See Fink v. Board of Trustees of Southern Illinois University*, 71 Ill. App. 2d 276, 281 (5th Dist. 1966).

There is no remedy available after trial in this cause which would compensate these Plaintiffs for the harm caused them by being forced to accept the masking mandate, which this Court finds are, by definition, a type of quarantine, as well as the vaccination or testing policies, being lodged against Plaintiffs at the whims and caprice of the Defendants, all without any procedural or substantive due process rights to object. The losses are not easily, if at all,

quantifiable as a remedy at law. For these reasons, the Court finds the Plaintiffs have no adequate remedy at law.

IV. A Likelihood of Success On The Merits

When addressing this motion, the Court should not attempt to decide issues of fact or the ultimate merits required at the final hearing, but instead should consider whether the plaintiffs have raised a "fair question" as to the likelihood of success on the merits. *Murges v. Bowman,* 254 Ill. App. 3d 1071, 1083 (1st Dist. 1993). A plaintiff need only "raise a fair question as to the existence of the right which it claims and lead the court to believe that it will probably be entitled to the relief requested if the proof sustains [its] allegations." *Ford Motor Credit Co. v. Cornfield*, 395 Ill. App. 3d 896, 903 (2d Dist. 2009).

In review of the definitions of "quarantine" and "modified-quarantine" set forth in the Chapter 77 of the Illinois Administrative Code (both of which were in existence upon the issuance of EO18 and EO24), it is very clear that a child's exclusion from school, a teacher's inability to engage in their occupation, and a requirement for a child to wear a mask that is intended to limit the spread of an infectious disease, all fit within the confines of quarantine. In the event it is argued EO24 was to suspend section 2(c), the Governor must show that strict compliance with the IDPH would hinder his efforts to address the pandemic. To this point, it is important to note, upon the issuance of EO24, the State had been operating under the parameters of the IDPH for over one and a half years (1½) with the pandemic, and it was not until numerous Court rulings were issued mandating compliance with the IDPH that the Governor issued EO24. Further, at the time EO24 was issued, the Joint Guidance issued by both the ISBE and IDPH indicated the local health department was to make final determination regarding issues of close contact and quarantine and lengths of time as to quarantine or isolation. The Governor, in the issuance of EO18, mandated

schools follow this very Joint Guidance in its operations. Through the issuance of EO24, no reference is made to "suspension," nor is any reference made to any "hindrance" of the Governor's efforts through continued compliance with the IDPH in matters of quarantining children and/or teachers.

As noted in *In Re Bradwell*, 55 Ill. 535, 540 (1869), it is well established that the Legislative Branch is the branch of government to which the constitution has entrusted the power of changing the laws. In passing the IDPH Act, the General Assembly made clear the IDPH has "supreme authority in matters of quarantine and isolation."[35] The Legislature did not instruct IEMAA to delegate health issues to any other Executive Branch during health related emergencies. The Legislature further indicated only the IDPH could "amend rules . . . as it may from time to time deem necessary for the preservation of public health."[36] *Id.* The Legislature did not vest ISBE with such authority in matters of quarantine, isolation, vaccination and/or public health in general. In fact, the Legislature vested the IDPH with the authority to declare what vaccines and immunizations are required to attend school.[37] As outlined in paragraph d) of this Section, if a school decides to exclude a student from school for failure to have the health examinations or immunizations, then any such exclusion must comport with the School Code 5/27-8.1 which references Part 690 of Title 77 of the Illinois Administrative Code if an objection to the exclusion is presented. The ISBE's emergency administrative rules mandating issues of masking, vaccinations, testing and quarantine are outside the scope of any authority granted them by the Legislature.

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[35] 20 ILCS 2305/2.

[36] It should be noted that IDPH did not argue its Emergency Rules fell under any IEMAA provision. Even if IDPH had argued this, IDPH did not explain how the Emergency Rules were to preserve the public health. All IDPH did was take away individual due process rights and pass the responsibilities of health care issues to another administrative agency.

[37] 77 Ill. Admin. Code 665.230 School Entrance; *see also*, 105 ILCS 5/27-8.1.

Both the Illinois School Code and IDPH Act adopted the IAPA and the adoption of rule-making therewith. The necessary promulgated procedures set forth in the IAPA were not followed by the IDPH in the adoption of the word "exclusion" and stripping of "modified quarantine" from Title 77 of the Illinois Administrative Code. The mere purpose of implementing the rules was to vitiate the Court's oversight in matters of quarantine. The Joint Guidance issued by the ISBE and IDPH made clear that the local health departments had the final determination in these matters. Sections 2(c), (d), and (e) of the IDPH Act specifically require judicial oversight, if there is an objection, to prevent the arbitrary and predetermined decisions of removing healthy children from public, in-person learning. "The real thrust of the separation of powers philosophy is that each department of government must be kept free from the control or coercive influence of the other departments . . . it may be irrelevant if an agency has legislative or judicial characteristics so long as the legislature or the judiciary can effectively correct errors of the agency." *City of Waukegan v. Pollution Control Board*, 311 N.E. 2d 146, 149, 57 Ill. 2d 170 (1974). The Governor, IDPH, and ISBE all attempted to remove the judiciary from oversight in matters related to all forms of "quarantine" through the issuance of the Executive Orders and Emergency Rules in question, which fail to maintain the separate branches of government clearly intended by the Legislature in the implementation of the IDPH Act.

The Court finds the Plaintiffs have satisfied their burden of raising a fair question of establishing a likelihood of success on the merits that the IDPH Act is the controlling law in regard to matters of masking, quarantine, isolation, vaccination or testing policies implemented by the school districts. No party has cited to any law authorizing schools to make independent health care decisions and rules absent input and guidance from IDPH or local health departments. Again, the Legislature made it clear that school boards were to develop rules relating to managing children

with chronic infectious diseases, not inconsistent with guidelines published by IDPH and ISBE.[38] In other words, this law makes it clear that there must be input from IDPH, but IDPH cannot delegate its duties and responsibilities to ISBE and then stand on the sidelines with its hands in the air, saying "It wasn't us. We didn't exclude kids. We didn't mandate vaccines. We didn't implement a mask mandate…the schools did."

V. Balancing Of Hardships

The Court is told by the Defendants, should this Court grant relief to the Plaintiffs, the students in the districts, and the public as a whole, will be harmed by the further spread of COVID. While the Defendants offer no direct evidence of such a proposition, attached to their pleadings were affidavits of medical professionals who opined that masking, vaccination or testing, and other mitigations are the best chance of controlling the spread of COVID. It is worth noting the Plaintiffs do not seek any order of this Court dismantling masking, vaccination or testing policies in their totality. Only that due process under the law be afforded to them should they choose to object to being quarantined, which by definition includes masks, as well as being subjected to vaccination or testing. These Plaintiffs are not asking for anything other than what the Legislature said they were entitled.

This Court has already found the Plaintiffs are entitled to this due process under the IPDH Act, so the question for the Court is what hardship this might create for Defendants or the public. It is not necessary for the Court to weigh these potential risks presented by the Defendants as such balancing has already been conducted by the Legislature. It is well established that the Legislature, not the courts, have the primary role in our democratic society in deciding what the interests of the public require and in selecting the measures necessary to secure those interests.

[38] 105 ILCS 5/10-21.11

The very essence of 20 ILCS 2305 is the Legislature balanced these competing interests and concluded that citizens may be subjected to masking, isolation, quarantine, vaccination or testing when necessary to protect the public against the spread of an infectious disease. The provisions of 20 ILCS 2305 and the relevant provisions found in 77 Ill. Adm. Code 690.1330 were meant for times such as our State currently finds itself. The Legislature understood that during times like these, liberty interests were at stake, and as such, provided due process under the law for citizens to rely upon should he or she choose to do so. If the certified local health departments utilize the law as it is written, the Legislature has concluded such measures are satisfactory to protect the publics' interests. It is not this Court's role to question the Legislature's balancing of the competing interests as being adequate or not. If the Legislature was of the opinion that the public health laws as written were not satisfactory to protect public health from COVID, it has had adequate opportunity to change the law since March 2020. Given the Legislature has changed the law and has chosen not change these relevant provisions, this Court must conclude the laws which have long been in place to protect the competing interests of individual liberty and public health satisfactorily balance these interest in the eyes of the Legislative branch of government. While the Defendants would seemingly ask this Court to second guess the Legislature's adopted measures to prevent the spread of an infectious disease, which measures include due process of law, it will not do so.

For these reasons, the Court finds the Plaintiffs will suffer irreparable injury should this Temporary Restraining Order not issue.

WHEREFORE, IT IS HEREBY ORDERED as follows:

1) The IDPH Emergency Rules enacted on September 17, 2021 changing sections 690.10 (Definitions); 690.361(d) (Schools), 690.1380 (Physical Examination; Testing and Collection of Laboratory Specimens), and 690.1385 (Vaccinations, Medications, or Other Treatments) of Title 77 of the Illinois Administrative Code is deemed null and void;[39]

2) ISBE Emergency Rule enacted on September 17, 2021, Part 6, Mandatory Vaccinations for School Personnel is deemed null and void;[40]

3) Defendants are temporarily restrained from:

    a. Enforcement of EO18, EO24, EO25 as they pertain to the issue before the Court and the Emergency Rules issued by the IDPH and ISBE;

    b. Ordering school districts require the use of masks for students and teachers who occupy their buildings, if they object, except during the terms of lawful order of quarantine issued from their respective health department, in accordance with the IDPH Act;

    c. Ordering school districts to require persons who are both unvaccinated and work in Illinois schools to provide weekly negative results of an approved COVID-19 test or be vaccinated if they object in order to occupy the school building without first providing them due process of law; and

    d. Ordering school districts to refuse admittance to their buildings for teachers and students for specified periods of time if the teacher or student is deemed a "close contact" of a confirmed probable COVID-19 case without providing due process to that individual if they object, unless the local health department has deemed the individual a close contact after following the procedures outlined in 20 ILCS 2305 and 77 Ill. Adm. Code 690.1330.

4) This temporary restraining order shall remain in full force and effect pending trial on the merits unless sooner modified or dissolved.

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[39] Although this Court denied Plaintiffs' request for Class Certification in Case No: 2021-CH-500002, this Court has declared IDPH's Emergency Rules void. Any non-named Plaintiffs and School Districts throughout this State may govern themselves accordingly.

[40] Although this Court denied Plaintiffs' request for Class Certification in Case No: 2021-CH-500007, this Court has declared IDPH and ISBE's Emergency Rules void. Thus, non-named Plaintiffs and School Districts throughout this State may govern themselves accordingly.

5) For good cause shown bond is waived as there are no set of facts under which the Defendants may suffer any significant financial harm as a result of the TRO.

6) This Temporary Restraining Order is entered at 4:45 pm on February 4, 2022.

7) This constitutes the Decision, Order and Judgment of the Court.

Raylene D. Grischow

Honorable Raylene DeWitte Grischow
Circuit Court Judge

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Dontay Banks,	)	
	)	
Plaintiff,	)	
	)	Case No. 22 CH 9682
v.	)	
	)	Hon. Pamela McLean Meyerson
State's Attorney of Cook County, Illinois, and	)	
Illinois State Police,	)	Judge Pamela McLean Meyerson
	)	
Defendants.	)	AUG 02 2023
		Circuit Court – 2097

ORDER

This matter came to be heard on an evidentiary hearing on Plaintiff's Petition for relief from denial of his Firearm Owner Identification ("FOID") card application. The issue is whether Dontay Banks may own a gun despite his extensive criminal record. Having heard clear and convincing evidence that Mr. Banks is now a positive force in the community and is not likely to act in a manner dangerous to public safety, the Court grants the Petition.

Mr. Banks is an acknowledged former gang leader who was arrested numerous times between 1986 and 1992. He has three felony convictions on state and federal drug and gun charges. He served about 27 years in federal prisons before being released in 2019. On September 29, 2022, Mr. Banks applied to the Illinois State Police ("ISP") for a FOID card. On the same day, Mr. Banks filed his Petition for Restoration of Firearms Rights in this Court. The ISP denied Mr. Banks' application on October 17, 2022, because of his felony convictions.

The statute governing the Court's decision is the Illinois Firearm Owners Identification Card Act (the "Act," 430 ILCS 65/1 *et seq.*). Under Section 8(c) of the Act, Mr. Banks was barred from obtaining a FOID card because he was convicted of a felony. Under Section 10 of the Act, a person whose application is denied may petition the Court to restore his firearm rights. The Court may grant this relief if the petitioner gives notice to the State's Attorney and meets these requirements:

> **(1)** the applicant has not been convicted of a forcible felony under the laws of this State or any other jurisdiction within 20 years of the applicant's application for a Firearm Owner's Identification Card, or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction;
> **(2)** the circumstances regarding a criminal conviction, where applicable, the applicant's criminal history and his reputation are such that the applicant will not be likely to act in a manner dangerous to public safety;

(3) granting relief would not be contrary to the public interest; and
(4) granting relief would not be contrary to federal law.

430 ILCS 65/10(c).

In his *pro se* Petition, Mr. Banks asserted that his federal conviction occurred 29 years ago, he has had no trouble with the law since then, he is now employed as a life coach and mentor to at-risk youth, and he has met all the requirements under the Act to have his firearm rights restored.

Both Defendant Illinois State Police ("ISP") and Defendant Cook County State's Attorney (the "State's Attorney") filed objections. The ISP set forth the history of Mr. Banks' arrests and convictions, which included a 1988 state felony conviction for manufacture or delivery of a controlled substance, for which he was sentenced to two years' probation; a 1994 state felony conviction for unlawful possession of a firearm by a felon, for which he was sentenced to two years' imprisonment; and a 1993 federal conviction for conspiracy, possession, and a number of other counts related to trafficking large amounts of cocaine, for which he was sentenced to life in prison. The ISP also detailed numerous arrests that did not result in convictions, including arrests for attempted murder, murder, and more gun and drug charges. The last arrest was in 1992. Mr. Banks' life sentence was reduced in 2014 and he was released from federal custody in 2019. Based on Mr. Banks' criminal history, the ISP argued that Mr. Banks could not meet his burden under the Act to show he will not act in a manner dangerous to public safety, or that granting his Petition would not be contrary to the public interest.

The State's Attorney objected to Mr. Banks' Petition based on Mr. Banks' criminal history as well. She argued that Mr. Banks' clean record should be discounted because he was "incapacitated from committing crimes" while in prison for 26 years, and that not enough time has passed since his 2019 release to show "true and meaningful reform." Like the ISP, the State's Attorney emphasized the extent and seriousness of Mr. Banks' criminal record.

Mr. Banks retained an attorney and filed a response to the objections. Defendants both replied. On April 19, 2023, after hearing argument on the objections, the Court held that granting relief would not be contrary to federal law under Section 10(c)(4) of the Act, and set the case for hearing on the issues presented under Sections 10(c)(1), (2) and (3).

On July 20, 2023, the Court held the evidentiary hearing in person in the courtroom. Some witnesses testified remotely by Zoom, and the Court was able to see and hear all the witnesses, observe their demeanor, and judge their credibility. Mr. Banks testified on his own behalf and called seven other witnesses:

- *Ericka Johnson-Banks*, Mr. Banks' wife;
- *Torris Lucas*, Mr. Banks' long-time friend;
- *Mateen Franklin-Sabree*, Mr. Banks' friend and former prison chaplain;
- *Paul Robinson*, the deputy head of programs at Chicago CRED, where Mr. Banks is employed;

- *Shakita Booker*, the site manager at the Roseland branch of Chicago CRED, and Mr. Banks' supervisor;
- *Brandon Evans*, for whom Mr. Banks served as "life coach" and mentor at Chicago CRED; and
- *Jevon Standback*, for whom Mr. Banks served as "life coach" and mentor at Chicago CRED.

Mr. Banks was a credible witness. He did not try to evade questions. He acknowledged his criminal record, gang affiliation, gang leadership, and unlawful use of firearms. While he took issue with the amount of drugs the authorities charged him with trafficking, he admitted involvement with the drug trade and weapons that led to his convictions. He credibly described the circumstances that led to attempted murder and murder charges against him, for which he was acquitted and charges dropped, respectively. He also acknowledged the other arrests that did not lead to convictions. His criminal record has now been expunged.

The other witnesses were credible as well. The profile that emerges from the testimony is that Mr. Banks is a reformed and religious man trying to help young people avoid his mistakes. Mr. Banks testified about the "soul searching" he did upon entering prison as a 24-year-old facing a life sentence. He began meeting with the chaplain (witness Mateen Franklin-Sabree) and "faith filled the void in me." Mr. Banks testified that he became a Muslim and ended his involvement with gangs in 1998, making a "clean break" by letting the gang know "I'm out." Mr. Franklin-Sabree corroborated this testimony, saying Mr. Banks underwent a transition in prison and adopted a "different perspective on humanity." After his release in 2019, the two men reconnected and see each other regularly.

While in prison, Mr. Banks testified, he took educational classes—"everything they had." He took vocational courses in automotive technology, forklift operation, welding, electrical work, building maintenance, and Microsoft computer skills. He took self-help courses in containing rage, parenting, habits that block change, coping with stress, and goal-setting, among others.

Mr. Banks testified that, while he was in prison, he informally mentored young men and tried to motivate them to make good life choices—"It's in my nature to do this." Indeed, Paul Robinson testified that Mr. Banks had a "reputation as a leader behind prison walls," which led to Mr. Robinson's decision to hire Mr. Banks as a life coach at Chicago CRED shortly after Mr. Banks was released. Mr. Robinson testified that Chicago CRED's mission is to help reduce shootings.

Those who testified about Mr. Banks' work at Chicago CRED uniformly see him as level-headed and thoughtful. Witnesses described him variously as remarkably calm, kind, positive, level-headed, with an even keel, spiritual, patient, respected, humble, a father figure, and "our Yoda." They testified they had never seen him lose his temper. Mr. Standback testified, "He gave me purpose in life."

Mr. Banks testified he has no problem admitting to his criminal past and gang affiliation, because it "helps me do the work I do now." Mr. Robinson concurred, testifying, "A lot of times

our best staff have lived experience." Mr. Banks testified he sometimes sees former fellow gang members, but there is no evidence this has caused him to backslide into a life of crime. "A lot of them work in the same field I do," he said.

Defendants cross-examined each of Mr. Banks' witnesses about the extent of their knowledge of Mr. Banks' criminal history. The witnesses did not know all the details of Mr. Banks' arrests and convictions. But they all knew he had been deeply involved in gangs and drugs, to the extent that he was facing life in prison. All the witnesses testified that their opinion of Mr. Banks was the same after they learned more about the nature and extent of the charges and convictions.

Since the Illinois Supreme Court's decision in *Evans v. v. Cook Cty. State's Atty.*, 2021 IL 125513, this Court may no longer deny request for a FOID card based solely on a past felony conviction. Rather, the Court must hold an evidentiary hearing to determine whether the applicant has met his burden of proof under the other provisions of Section 10(c) of the Act. In the current procedural posture of this case, this means the Court must ask whether the circumstances regarding Mr. Banks' criminal convictions, his criminal history, and his reputation are such that he will not be likely to act in a manner dangerous to public safety; and whether granting relief would not be contrary to the public interest. 430 ILCS 65/10(c)(2) and (3).

When asked if he would purchase a firearm if he got his FOID card, Mr. Banks responded, "That's a good question." He said "I want to have that choice" and he wanted to have that option "to feel whole." He said he knows the proper way to store and handle a gun, but would also take classes.

Mr. Robinson put it well when he testified, "I'm not a fan of guns, but I believe [Mr. Banks] deserves to have the same rights as I do."

Having considered all the evidence, this Court reaches the same conclusion. The Court finds that the circumstances regarding Mr. Banks' criminal convictions, his criminal history, and his reputation are such that he will not be likely to act in a manner dangerous to public safety; and that granting relief would not be contrary to the public interest. This decision is not being made lightly. Mr. Banks committed dangerous and harmful crimes and routinely defied gun laws when he was a younger man. But the uncontroverted evidence shows that Mr. Banks has left that past behind him and is now actively and effectively working to stop others from making the same mistakes. Further, the evidence shows he has the disposition to be a responsible gun owner.

WHEREFORE, the Court grants Petitioner Dontay Banks' Petition and orders the Illinois State Police to issue him a FOID card. The ISP's Motion to Reconsider, which was filed on July 19, 2023 and asked that the case not proceed to an evidentiary hearing, is stricken as moot. This is a final order disposing of all matters.

Judge Pamela McLean Meyerson

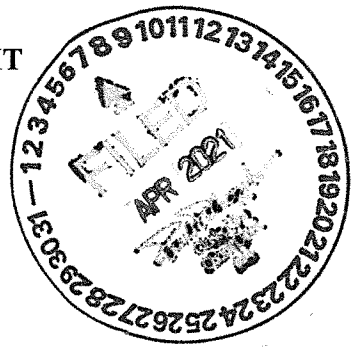
AUG 02 2023

Circuit Court – 2097

Enter:

Judge Pamela McLean Meyerson

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS



IN RE: COVID-19 LITIGATION	Case No: 2020-MR-589 *Honorable Raylene D. Grischow*

MEMORANDUM AND ORDER ON DEFENDANTS MOTION TO DISMISS COUNT V OF FOX FIRE'S AMENDED COMPLAINT

This matter comes on for hearing on the Governor and the Illinois Department of Public Health's ("IDPH") (collectively "defendants") Motion to Dismiss Count V of Fox Fire LLC's Amended Complaint with prejudice pursuant to 735 ILCS 5/2-615 for failure to state a claim upon which relief can be granted. All parties appear through counsel via Zoom.

Arguments were heard on March 30, 2021 and the Court took the matter under advisement. The parties agree Counts I through IV (unchanged from the original complaint) must be dismissed pursuant to *Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, 161 N.E.3d 1190, 1200, 443 Ill. Dec. 538, 548 (2nd Dist. 2020), which holds the Illinois Emergency Management Agency Act, 20 ILCS 3305 "allow[s] the Governor to issue successive disaster proclamations stemming from an ongoing disaster." *Id.* Based on the plaintiff's amended complaint, the parties' written motions and memorandums and the parties' oral arguments, in addition to the applicable legal authority, the Court finds and orders as follows:

735 ILCS 5/2-615

"The question presented by a section 2-615 motion to dismiss is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Beahringer v. Page*, 204 Ill. 2d 363, 369 (2003). In reviewing the sufficiency of a complaint, a court must "accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). "Moreover, Illinois is a fact-pleading jurisdiction." *Beahringer*, 204 Ill. 2d at 369. As such, a

plaintiff "must allege facts that set forth the essential elements of the cause of action" and may not rely on "conclusions of law [or] conclusory allegations not supported by specific facts." *Visvardis v. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (1st Dist. 2007). However, "the plaintiff is not required to set out evidence." *Chandler v. Illinois Cent. R.R.*, 207 Ill. 2d 331, 348 (2003). Instead, the plaintiff need only allege the ultimate facts to be proved, "not the evidentiary facts tending to prove such ultimate facts." *Id.* Therefore, "[t]o survive a [section 2-615] motion to dismiss, a complaint must present a legally recognized claim as its basis for recovery, and it must plead sufficient facts which, if proved, would demonstrate a right to relief." *Derby Meadows Util. Co. v. Inter-Cont'l Real Estate*, 202 Ill. App. 3d 345, 358 (1st Dist. 1990). Further, a court should dismiss a cause of action on the pleadings "only if it is clearly apparent that no set of facts can be proven which will entitle the plaintiff to recovery." *Chanel v. Topinka*, 212 Ill. 2d 311, 318 (2004). It is within this framework that the Court analyzes defendants' motion to dismiss Count V of the amended complaint.

ANLAYSIS

Defendants move to dismiss Count V of the amended complaint with prejudice asserting it does not state a cause of action. Defendants claim the Emergency Management Act provides the Governor discretion to exercise his powers under the Act and that the courts cannot inquire further into the propriety of the reasoning, so long as the reasoning and decision are not, themselves, illegal. On the other hand, Fox Fire contends that the Second District Appellate Court Opinion from November of 2020 outlines that a viable cause of action for reasonableness exists. Fox Fire also claims that courts may interfere with regulations that prove to be arbitrary, capricious or unreasonable.

This Court recognizes that the U.S. Constitution and the Illinois state constitution created three separate branches of government. The separation of powers clause of the Illinois Constitution provides: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const.1970, art. II, § 1. In both theory and practice, the purpose of

the provision is to ensure that the whole power of two or more branches of government shall not reside in the same hands. *People v. Hammond*, 2011 IL 110044, ¶ 51, 959 N.E.2d 29, 44 (*citing People v. Walker*, 119 Ill.2d 465, 473, 116 Ill.Dec. 675, 519 N.E.2d 890 (1988)). The separation of powers clause does not seek to achieve a complete divorce among the three branches of government. *In re S.G.*, 175 Ill.2d 471, 486–87, 222 Ill.Dec. 386, 677 N.E.2d 920, 927 (1997).

The aforementioned separation of powers exist, even in a pandemic. The Illinois legislature enacted a law empowering the governor to respond to a public health emergency within a period of time as prescribed by the legislature. This emergency power expires after 30 days unless a new emergency exists. To date, COVID court cases have been resolved throughout this state by applying the plain language of the statute. However, the governor cannot rely on emergency powers indefinitely. The U.S. Constitution recognized the importance of dispersing governmental power in order to protect individual liberty and avoid tyranny. Why did the framers insist on this particular arrangement? They believed the new federal government's most dangerous power was the power to enact laws restricting the people's liberty. The Federalist No. 48 (J. Madison)[1]. So, when a case or controversy comes within the judicial competence, the Constitution does not authorize judges to look the other way; courts must call foul when the constitutional lines are crossed. Indeed, the framers afforded courts independence from the political branches in large part to encourage exactly this kind of "fortitude ... to do [our] duty as faithful guardians of the Constitution." *Gundy v. United States*, 139 S. Ct. 2116, 2135 (2019).

Counsel for defendants argue that any disagreement over how the governor is handling the pandemic, for more than a year now, should be handled in the next election and not by this Court. However, it is this Court that must ensure the governor does not circumvent the constitutional confines of his authority. This fundamental principle underlying the foundation of our government prevails even

[1] Madison argues that the legislative, executive and judicial branches must not be totally divided. The branches of government can be connected while remaining separate and distinct. This paper is titled "These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other."

in an emergency because "[e]xtraordinary conditions do not create or enlarge constitutional power." *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 529, 55. S.Ct. 837 (1935). While this Court cannot consider the governor's discretion of particular measures to address a pandemic, this Court can ensure that such measures comport with the constitution and whether any measures have been disregarded by any branches of the government. This Court can inquire as to whether the means utilized in the execution of a power granted are forbidden by the constitution. *Bigelow Group, Inc. v. Rickert*, 377 Ill.App.3d 165, 174 (2nd Dist. 2007).

The Appellate Court's opinion addressed the narrow issue of whether or not the Temporary Restraining Order was properly issued. The Appellate Court found Fox Fire had not established a likelihood of success on the merits and reversed the trial court's granting of the TRO. After remand, Fox Fire amended their complaint to add Count V claiming EO61, the IDPH resurgence mitigation measures of October 20, 2020, and their progeny are arbitrary and unreasonable. The Second District specifically pointed out that they were remanding the case for further proceedings and for judicial economy. The Court informed the parties that "in order to deem the Governor's orders unreasonable, there has to be a comparison of the disease's impact on the restaurant industry *vis-à-vis* its impact on the general public." *Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, ¶50, 161 N.E.3d 1190, 1200, 443 Ill. Dec. 538, 548 (2nd Dist. 2020).

The amended complaint contains allegations to this effect. Fox Fire alleges that restricting indoor dining at Fox Fire and other Kane County restaurants is both arbitrary and unreasonable and that they have a right to insist defendants issue orders and regulations which are neither arbitrary nor unreasonable. Our Supreme Court has stated that administrative actions taken under statutory authority will not be set aside unless it has been clearly arbitrary, unreasonable or capricious. *County of Will v. Pollution Control Board*, 2019 IL 122798, ¶ 43, 135 N.E.3d 49, *61; See also, Illinois Coal Operators Ass'n v. Pollution Control Board*, 59 Ill. 2d 305, 310, 319 N.E.2d 782 (1974) ("administrative action taken under statutory authority will not be set aside unless it has been clearly arbitrary, unreasonable

or capricious"). Since this has been pled, it is within the province of this Court to determine if the defendants' implementation of the business shutdowns and/or restrictions were arbitrary and unreasonable. Fox Fire bears a heavy burden to establish that defendants' actions were clearly arbitrary and capricious. Nonetheless, Count V of the amended complaint contains enough information to reasonably inform the defendants of the nature of they claims they are called upon to defend.

The Court orders as follows:

1. The Motion to Dismiss Count V is denied;

2. Defendants have 14 days to file an answer to Count V of the amended complaint, on or before April 21, 2021; and

3. This matter is set for a status conference by Zoom on **April 28, 2021 at 9:30 a.m.** to establish a scheduling order and date for a preliminary injunction hearing. The Court will send a Zoom invite with remote hearing instructions that must be followed.

IT IS ORDERED.

DATE: April 7, 2021

By: Raylene D. Grischow
Raylene D. Grischow, *Circuit Court Judge*

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

ROBERT DORMAN,

Plaintiff,

v.

THOMAS HAINE and
BRENDAN KELLY, in their official capacities,

Defendants.

No. 2022-CH-000039

ORDER

Defendant Thomas Haine, sued in his official capacity as the duly elected State's Attorney of Madison County, Illinois, moved to dismiss Plaintiff's Complaint on August 29, 2022. Defendant Brendan Kelly, sued in his official capacity as Director of the Illinois State Police, moved the Court on June 26, 2023, to enter judgment on the pleadings pursuant to section 2-615(e) of the Code of Civil Procedure, 735 ILCS 5/2-615(e). Plaintiff Robert Dorman* filed a response in opposition on August 7, 2023, and Defendant Kelly filed a reply on September 22, 2023. The Court heard arguments on September 25, 2023. The Plaintiff was present by and through his counsel, Thomas Maag. The Defendant, Thomas Haine, was present by and through his counsel, Michael Schag, by zoom. The Defendant, Brendan Kelly, was present by and through his counsel, Darren Kinkead.

For the following reasons, the Court grants the Defendants' motions and enters final judgment in favor of the Defendants and against the Plaintiff on all of the Plaintiff's claims.

* At the hearing on September 25, 2023, the Court granted the oral motion of Mr. Dorman's counsel to correct the spelling of his client's surname in the caption of this case.

BACKGROUND

Illinois law prohibits the private possession of silencers, defined as "any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm." 720 ILCS 5/24-1(a)(6). Illinois law also prohibits the private possession of short-barreled rifles, defined as "any rifle having one or more barrels less than 16 inches in length or . . . any weapon made from a rifle [ ], whether by alteration, modification, or otherwise, if such a weapon as modified has an overall length of less than 26 inches." *Id.* § 24-1(a)(7)(ii). The prohibition on possessing short-barreled rifles does not apply to a person who "has been issued a Curios and Relics license from the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives" or "is an active member of a bona fide, nationally recognized military re-enacting group," so long as certain conditions are satisfied. *Id.* § 24-2(c)(7).

The Plaintiff asserts three claims in his Complaint. Count I requests the Court to interpret the exception to the prohibition on possessing short-barreled rifles. Count II requests the Court to declare the prohibition on possessing short-barreled rifles as a constitutional violation of the Second Amendment to the U.S. Constitution (as incorporated against Illinois by the Fourteenth Amendment). Count III requests the Court to declare the prohibition on possessing silencers as a constitutional violation of the Second Amendment.

LEGAL STANDARD

Section 2-615(e) of the Code of Civil Procedure provides: "Any party may seasonably move for judgment on the pleadings." 735 ILCS 5/2-615(e). The standard for a motion for judgment on the pleadings is "the same" as a motion to dismiss for failure to state a cause of action. *Khan v. Serfecz*, 293 Ill. App. 3d 959, 962-63 (1st Dist. 1997). Therefore, a motion for judgment on the pleadings "may be addressed to a complaint which is insufficient as a matter of

law to state a cause of action and does not, therefore, tender a triable issue of fact." *Pollack v. Marathon Oil Co.*, 34 Ill. App. 3d 861, 867 (5th Dist. 1976). In considering a motion for judgment on the pleadings, "the trial court must examine all pleadings on file, taking as true any well-pleaded facts and reasonable inferences to be drawn therefrom, to determine whether the controversy may be decided as a matter of law." *Hess v. Loyd*, 2012 IL App (5th) 090059, ¶ 17. The "court must determine whether the challenged portion of the complaint, in the light most favorable to the plaintiffs, is sufficient to state a claim upon which relief may be granted." *Bulatovic v. Dobritchanin*, 252 Ill. App. 3d 122, 127 (1st Dist. 1993). "A judgment on the pleadings is proper if only questions of law and not of fact exist after the pleadings have been filed." *Walker v. State Bd. of Elections*, 65 Ill. 2d 543, 553 (1976).

COUNT I

The Defendants are entitled to judgment on Count I because the Plaintiff's allegations show he lacks standing to pursue this claim. As noted above, the prohibition on possessing short-barreled rifles does not apply to a person who "has been issued a Curios and Relics license from the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives," so long as certain conditions are satisfied. 720 ILCS 5/24-2(c)(7). In Count I, the Plaintiff requests the Court to declare that pursuant to section 24-2(c)(7), "a person may possess a rifle with an overall length of less than 26 inches, provided they possess a valid Curio and Relics license." Plaintiff's Complaint at 5. Plaintiffs have standing to pursue a claim under Illinois law only if they have suffered "some injury in fact to a legally cognizable interest" that is "(1) 'distinct and palpable'; (2) 'fairly traceable' to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 492-93 (1988); *Wexler v. Wirtz Corporation, 809* N.E. 2d 1240, 1243 (2004). Plaintiffs who seek a declaratory

judgment, as the Plaintiff does in Count I, must also show (1) the case "present[s] a concrete dispute admitting of an immediate and definitive determination of the parties' rights, the resolution of which will aid in the termination of the controversy or some part thereof," and (2) they "possess a personal claim, status, or right which is capable of being affected" by the declaration sought, as opposed to "merely having a curiosity about or a concern for the outcome of the controversy." *Underground Contractors Ass'n v. City of Chicago*, 66 Ill. 2d 371, 375-76 (1977).

In the instant matter, the Plaintiff lacks standing for three independent reasons. First, his alleged injury is not *likely to be redressed* by a judgment in his favor. *See Greer*, 122 Ill. 2d at 493 (alleged injury must be "substantially likely to be prevented or redressed by the grant of the requested relief"). The Plaintiff is not a historical reenactor and does not possess a Curios and Relics license. Complaint ¶ 25. Even if the Court were to agree with him and declare "a person may possess a rifle with an overall length of less than 26 inches, provided they possess a valid Curio and Relics license," *id.* at 5, the Plaintiff's alleged injury would not be redressed. He still would not be able to possess such a rifle under Illinois law because he does not possess a valid Curios and Relics license. *See In re Marriage of Rodriguez*, 131 Ill. 2d 273, 280 (1989) ("In deciding whether a party has standing, a court must look at the party to see if he or she will be benefitted by the relief granted."); *Vill. of Itasca v. Vill. of Lisle*, 352 Ill. App. 3d 847, 851 (2d Dist. 2004) (plaintiff lacked standing because "[e]ven if the court were to grant such relief, plaintiff's injury would not be cured"). Further, the Plaintiff has not been investigated, charged, or prosecuted for violating Illinois gun laws, and therefore, lacks standing.

Second, the Plaintiff's alleged injury is not *fairly traceable* to the Defendants' actions. *See Greer*, 122 Ill. 2d at 493 (alleged injury must be "'fairly traceable' to the defendant's

actions"). The Plaintiff alleges the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") is misinterpreting section 24-2(c)(7) in deciding whether to approve applications to transfer rifles with an overall length of less than 26 inches to Illinois residents who possess Curios and Relics licenses. Complaint ¶ 11. The Plaintiff does not allege the Defendants, or any other Illinois official, has taken any action with respect to section 24-2(c)(7) or has played any role in ATF's actions. Thus, the Plaintiff's alleged injury is not fairly traceable to the Defendants' actions. *See Carr v. Koch*, 2012 IL 113414, ¶ 37 (plaintiffs lacked standing to obtain declaratory judgment against state officials because their alleged injury of higher taxes was caused by local school districts).

Third, the Plaintiff requests the Court to "provide guidance" to nonparties like ATF on the correct application of section 24-2(c)(7). Complaint ¶ 13. But a declaratory judgment action authorizes only a "definitive determination of the legal rights *of the parties*." *Exch. Nat'l Bank of Chi. v. Cook Cty.*, 6 Ill. 2d 419, 422 (1955) (emphasis added). It does not authorize "the court to pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events." *Underground*, 66 Ill. 2d at 375. Because Count I does not request the Court to determine a legal dispute between the Defendants, it would result in an advisory opinion that is forbidden under Illinois law. *Commonwealth Edison Co. v. ICC*, 2016 IL 118129, ¶ 10. A claim that involves "contingent future events that may not occur as anticipated, or indeed may not occur at all" is not ripe for judicial determination. *Thomas v. Union Carbide Agr. Prod. Co.*, 473 U.S. 568, 580-81 (1985). For all the foregoing reasons, the Defendants are entitled to final judgment in their favor and against the Plaintiff on Count I.

COUNT II

The Defendants are entitled to judgment on Count II because short-barreled rifles are not covered by the Second Amendment. The U.S. Supreme Court recently clarified the standard for evaluating Second Amendment claims. *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2126, 2129-30 (2022). Courts "must first ask whether [the challenged law] governs conduct that falls within the plain text of the Second Amendment. Only if the answer is yes [should courts] proceed to ask whether [the challenged law] fits within America's historical tradition of firearm regulation." *United States v. Sitladeen*, 64 F.4th 978, 985 (8th Cir. 2023) (cleaned up); *see Atkinson v. Garland*, 70 F.4th 1018, 1020 (7th Cir. 2023); *Range v. Attorney General*, 69 F.4th 96, 101 (3d Cir. 2023); *Nat'l Rifle Ass'n v. Bondi*, 61 F.4th 1317, 1321 (11th Cir. 2023); *United States v. Rahimi*, 61 F.4th 443, 453 (5th Cir. 2023).

Federal courts uniformly have held that short-barreled rifles are not covered by the Second Amendment. The reasoning is based on the U.S. Supreme Court's decision in *United States v. Miller*, 307 U.S. 174, 179 (1939), which held that short-barreled *shotguns* are not "Arms" within the meaning of the constitutional text. *See District of Columbia v. Heller*, 554 U.S. 570, 621-22 (2008) (confirming that *United States v. Miller* holds "that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns").

Every federal court to consider the question has found there is no constitutionally relevant distinction between short-barreled rifles and short-barreled shotguns; therefore, because *United States v. Miller* holds that short-barreled *shotguns* fall outside the scope of the Second Amendment, it necessarily follows that short-barreled *rifles* do too. *See United States v. Cox*, 906 F.3d 1170, 1185-86 (10th Cir. 2018); *Miller v. Garland*, No. 1:23-cv-195 (RDA/JFA), 2023 WL

3692841, at *11 (E.D. Va. May 26, 2023); *United States v. Royce*, No. 1:22-cr-130, 2023 WL 2163677, at *2-4 (D.N.D. Feb. 22, 2023); *United States v. Rush*, No. 22-cr-40008-JPG, 2023 WL 403774, at *1-*3 (S.D. Ill. Jan. 25, 2023); *United States v. Barbeau*, No. CR15-391RAJ, 2016 WL 1046093, at *3-*4 (W.D. Wash. Mar. 16, 2016); *see also United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 517 (1992) (short-barreled rifles, like short-barreled shotguns, are "concealable weapons" "likely to be used for criminal purposes"); *Firearms Regulatory Accountability Coalition, Inc. v. Garland*, No. 1:23-cv-024, 2023 WL 5942365, at *5 (D.N.D. Sept. 12, 2023) ("At the outset, it is clear that uniquely dangerous weapons, including short-barreled rifles, are not protected by the Second Amendment.").

When interpreting and applying federal law, Illinois courts are bound to follow decisions of the U.S. Supreme Court. *E.g., State Bank of Cherry v. CGB Enters., Inc.*, 2013 IL 113836, ¶ 33. As for the decisions of lower federal courts, the Illinois Supreme Court "has consistently recognized the importance of maintaining a uniform body of law in interpreting federal [law] if the federal courts are not split on an issue." *Id.* ¶ 34. Therefore, "if the lower federal courts are uniform on their interpretation of [ ] federal [law], [Illinois courts], in the interest of preserving unity, will give *considerable weight* to those courts' interpretations of federal law and find them to be *highly persuasive*." *Id.* ¶ 35 (emphasis added). Illinois courts should decline to follow a uniform interpretation by federal courts only if those decisions are "without logic or reason"—a standard that "is not met just because, had the question initially been before [the Court], [it] may have ruled in a different manner." *Walton v. Roosevelt Univ.*, 2023 IL 128338, ¶ 24.

This Court gives considerable weight to the federal cases uniformly holding that short-barreled rifles are not covered by the Second Amendment and finds those cases to be highly persuasive. These decisions are not without logic or reason. The Plaintiff does not allege any

facts, or make any arguments, that would materially distinguish short-barreled rifles from short-barreled shotguns. Accordingly, the relevant Illinois statute, 720 ILCS 5/24-1(a)(7)(ii), is not a constitutional violation of the Second Amendment. For all these reasons, the Defendants are entitled to final judgment in their favor and against the Plaintiff on Count II.

COUNT III

The Defendants are entitled to judgment on Count III because silencers are not covered by the Second Amendment. Silencers (sometimes called suppressors) are attached to firearms to reduce the noise (or report) caused by firing the weapon. Plaintiff's Complaint ¶¶ 7-9. They mitigate some of the negative externalities caused by loud gunfire, including hearing loss and noise pollution. *Id.* ¶¶ 9, 19-20, 23. But silencers do not eliminate these externalities because "'silencers' do not actually 'silence a firearm, instead, they merely reduce the report of a firearm." *Id.* ¶ 9.

To determine whether silencers are "Arms" covered by the Second Amendment, the Court must look to the original public meaning of the constitutional text. *Heller*, 554 U.S. at 576. That "meaning is fixed according to the understandings of those who ratified it." *Bruen*, 142 S. Ct. at 2132. And while the Second Amendment applies to "circumstances beyond those the Founders specifically anticipated," any such circumstances still must fall within the founding-era definition of "the right of the people to keep and bear Arms." *Id.*

Heller sets forth the original public meaning of the word "Arms" in the Second Amendment. 554 U.S. at 581. "Arms" are "weapons of offence, or armour of defence." *Heller*, 554 U.S. at 581 (cleaned up). They include "anything that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." *Id.* The founding-era definition of "Arms" is, in short, "no different from the meaning today." *Id.*

Federal courts uniformly hold that silencers do not satisfy this definition of "Arms." *See Cox*, 906 F.3d at 1186; *United States v. Peterson*, No. 22-231, 2023 WL 5383664, at *1-2 (E.D. La. Aug. 21, 2023); *United States v. Kaczmarek*, No. 1:21-cr-20155, 2023 WL 5105042, at *2 (E.D. Mich. Aug. 9, 2023); *United States v. Cooperman*, No. 22-CR-146, 2023 WL 4762710, at *1-2 (N.D. Ill. July 26, 2023); *Cox v. United States*, No. CR11-00022RJB, 2023 WL 4203261, at *7 (D. Alaska June 27, 2023); *Miller v. Garland*, 2023 WL 3692841, at *10; *United States v. Villalobos*, No. 3:19-cr-00040-DCN, 2023 WL 3044770, at *11-*12 (D. Idaho Apr. 21, 2023); *United States v. Saleem*, No. 3:21-cr-00086-FDW-DSC, 2023 WL 2334417, at *8-*10 (W.D.N.C. Mar. 2, 2023); *Royce*, 2023 WL 2163677, at *4; *United States v. Al-Azhari*, No. 8:20-cr-206-T-60AEP, 2020 WL 7334512, at *3 (M.D. Fla. Dec. 14, 2020); *United States v. Hasson*, No. GJH-19-96, 2019 WL 4573424, at *4-*5 (D. Md. Sept. 20, 2019); *see also State v. Barrett*, 941 N.W.2d 866, 872-73 (Wis. App. 2020).

These courts reason "[a] silencer is a firearm **accessory** (emphasis added); it's not a weapon in itself (nor is it 'armour of defence')." *Cox*, 906 F.3d at 1186. "A silencer is not itself used 'to cast at or strike another,' it does not contain, feed, or project ammunition, and it does not serve any intrinsic self-defense purpose." *Hasson*, 2019 WL 4573424, at *4. Simply put, "because [silencers] are not independently operable and do not serve any central self-defense purpose, [they] are not firearms within the meaning of the Second Amendment but are instead firearm accessories that fall outside its protection." *Saleem*, 2023 WL 2334417, at *9; *see Miller v. Garland*, 2023 WL 3692841, at *10 ("Courts have routinely held that a silencer is not a firearm because a silencer cannot cause harm on its own, it is 'not useful independent of its attachment to a firearm,' and 'a firearm remains an effective weapon without a silencer'").

As required by the Illinois Supreme Court, *Walton*, 2023 IL 128338, ¶ 24; *State Bank*, 2013 IL 113836, ¶¶ 33-35, the Court gives considerable weight to the federal cases uniformly holding that silencers are not "Arms" within the meaning of the Second Amendment and finds them to be highly persuasive. These decisions are not without logic or reason. Therefore, this Court will follow these decisions and find silencers are not "Arms" within the meaning of the Second Amendment.

Further, the federal courts uniformly hold that silencers are not *necessary* to the use of "Arms" within the meaning of the Second Amendment. "Individual self-defense is the central component of the Second Amendment right." *Bruen*, 142 S. Ct. at 2133. In addition to "Arms" covered by the plain text of the Second Amendment, some courts have found the Second Amendment also covers unenumerated items and activity *necessary* to the exercise of this core right. *See Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014) ("the right to possess firearms for protection implies a corresponding right to obtain the bullets necessary to use them" because "eliminating a person's ability to obtain or use ammunition could thereby make it impossible to use firearms for their core purpose" of self-defense); *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) ("[t]he right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use" because "the core right wouldn't mean much without the training and practice that make it effective").

Plaintiff's counsel conceded during oral argument that silencers are not necessary to the use of "Arms" within the meaning of the Second Amendment. The federal courts uniformly agree. *See Saleem*, 2023 WL 2334417, at *10 ("The use of a silencer is in no way necessary to the effective use of a firearm—it certainly has benefits for the user, but unlike cleaning materials or bullets, a firearm can be used safely and effectively without a silencer."); *Hasson*, 2019 WL

4573424, at *5 ("Although silencers may improve the usage of a firearm, they are not necessary, and they are therefore not protected by the Second Amendment."); *see also Barrett*, 941 N.W.2d at 873 (even though there are some "activities which would be enhanced by silencer usage," there is "nothing about the use of silencers [that] is mandatory for effective firearm usage").

These courts reason "[a] firearm is effective as a weapon of self-defense without the use of a silencer." *Saleem*, 2023 WL 2334417, at *10; *see Hasson*, 2019 WL 4573424, at *5 ("a firearm remains an effective weapon without a silencer of any type attached"); *Barrett*, 941 N.W.2d at 873 (there is "no evidence suggesting that firearms cannot be effectively used without silencers"). Silencers at best may make it more *convenient* to use a firearm. *See Saleem*, 2023 WL 2334417, at *10 (acknowledging "benefits for the user"); *Hasson*, 2019 WL 4573424, at *5 (acknowledging "silencers may improve the usage of a firearm"); *Barrett*, 941 N.W.2d at 873 (acknowledging some "activities which would be enhanced by silencer usage"). But an accessory must be *necessary* to the use of "Arms" to receive Second Amendment protection. *Saleem*, 2023 WL 2334417, at *10; *Hasson*, 2019 WL 4573424, at *5; *Barrett*, 941 N.W.2d at 873. A silencer is not an accessory which renders a firearm useful and functional.

As required by the Illinois Supreme Court, *Walton*, 2023 IL 128338, ¶ 24; *State Bank*, 2013 IL 113836, ¶¶ 33-35, this Court gives considerable weight to the federal cases uniformly holding that silencers are not *necessary* to the use of "Arms" within the meaning of the Second Amendment and finds those cases to be highly persuasive. These decisions are not without logic or reason. Therefore, the Court will follow these decisions and find silencers are not *necessary* to the use of "Arms" within the meaning of the Second Amendment.

Because the Court finds silencers are neither "Arms" within the meaning of the Second Amendment, nor necessary to their use, it follows that silencers are not covered by the Second

Amendment and the applicable Illinois statute, 720 ILCS 5/24-1(a)(6), is not a constitutional violation of the Second Amendment. Therefore, the Defendants are entitled to final judgment in their favor and against the Plaintiff on Count III.

WHEREFORE, for the foregoing reasons, the Defendants' Motion for Judgment on the Pleadings is Granted. The Court enters Final Judgment in favor of the Defendants and against the Plaintiff on Count I, Count II, and Count III of the Plaintiff's Complaint.

IT IS ORDERED.

Dated: 10/12/23

Honorable Ronald S. Motil

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

STEFNEE D. WILSON,	)	
	)	
Plaintiff,	)	
	)	
-v-	)	Case No. 19-CH-666
	)	
BRENDAN F. KELLY, et al.,	)	
	)	
Defendant.	)	

ORDER

The above-captioned case was called for hearing on April 27, 2023 on Plaintiff's Motion for Summary Judgment on the issue of Exorbitance, Defendant's Response to Plaintiff's Motion for Summary Judgment on the issue of Exorbitance, and Defendant's Memorandum of Law in Support of Defendant's Cross Motion for Summary Judgment. Plaintiff was present by her counsel, Thomas Maag, and the Defendant, Brendan F. Kelly, was present by his counsel, Laura K. Bautista, Assistant Chief Deputy Attorney General. The Court, having been duly advised of and having considered the arguments and pleadings filed by the parties in connection with the remaining issues in this matter, makes the following Findings and Order:

1. Plaintiff filed a four-count Complaint alleging that her rights under the Second Amendment and Illinois Constitution were being violated.
2. In Count I, Plaintiff alleged that she has a Firearm Owner's Identification Card (FOID Card) and that she intended to apply for an Illinois Concealed Carry License (CCL). Plaintiff alleged that the amount charged for FOID Cards and CCLs are an unconstitutional tax that violate the Second Amendment because they are in excess of

the amount necessary to administer the FOID and CCL statutes and programs. Count II is identical to Count I, except that it alleges a violation of the Illinois Constitution rather than the Second Amendment.

3. In Counts III and IV, Plaintiff alleged that Section 24-3(A)(h) of the Criminal Code, which, inter alia, prohibits the sale of zinc alloy handguns, violates the Second Amendment and the Illinois Constitution.
4. On October 3, 2022, the Court granted Summary Judgment in Defendant's favor as to the portion of Counts I and II challenging the FOID Card application fee, and as to Counts III and IV. As to the portion of Counts I and II that challenged CCL application fees, the Court found there was an issue of fact and set the matter for trial.
5. Following this Order, Plaintiff conducted additional discovery and filed her Motion for Summary Judgment on Exorbitance. Defendant Kelly filed a Response and Cross Motion for Summary Judgment.
6. On May 16, 2023, Defendant Kelly filed a Notice to the Court that in *People v. Chatonda*, Cook County Case No. 21119787501, Cook County Court found that the $150 CCL application fee is constitutional.
7. Accordingly, Plaintiff's Motion for Summary Judgment on Exorbitance is Denied and Defendant's Cross Motion for Summary Judgment is Granted, for the reasons set forth below.

Standing

8. Plaintiff has never paid the CCL application fee of $150 that she is challenging, which counsel confirmed during oral argument.

9. Standing requires an injury in fact to a legally cognizable interest. Without having paid the application fee for a CCL, Plaintiff has not suffered an injury in fact and does not have standing.

Exorbitance under *Bruen*

10. Even if Plaintiff had standing to bring her claims, she has failed to show that the CCL fee is "exorbitant" or that it has essentially amounted to a denial of her right to public carry. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S.Ct. 2111, n.9 (2022).
11. *First*, Plaintiff has presented no evidence that the CCL fee has prevented *her* from receiving a CCL. Although Plaintiff alleges in her unverified Complaint that she cannot afford to apply for a CCL, she has presented no admissible evidence to support that assertion. Even if Plaintiff were at one point unable to afford to pay the CCL application fee, she has not shown that she was incapable of saving up to pay the application fee.
12. *Second*, Plaintiff has presented no evidence that the CCL fee generally prevents Illinois residents from receiving a CCL. On the contrary, the sheer number of CCLs that are currently valid demonstrates that the CCL fee does not essentially result in a denial of the right to bear arms. There are currently approximately 500,000 valid CCLs in Illinois, of which 100,000 were issued in fiscal year 2022.
13. *Third*, while Plaintiff argues that any amount charged for a CCL application in excess of the cost of processing and mailing applications is therefore exorbitant, she provides no cases limiting concealed carry license fees in that way. However, Defendant Kelly provided ample caselaw showing that a CCL fee of $150 is not exorbitant. In *Antonyul*

v. Hochul, 1:22-CV-0986, 2022 U.S. Dist. Lexis 201944, *5–6 (NYND Nov. 7, 2022), the Court did not suspend training requirements to receive a concealed carry permit even though the cost could be as high as $700 to $1,000. To be exorbitant, a fee must significantly exceed what is normal. *See State ex rel. Okla. Bar Ass'n v. Moss*, 577 P.2d 1317, 1320–21 (Okla. Sup. Ct. 1978) (the dictionary defines "exorbitant" as excessive, grossly exceeding normal); *Morris v. Savoy*, 576 N.E.2d 765, 772 (Ohio Sup. Ct. 1991) (the dictionary defines "exorbitant" as "out of all bounds" or "extravagant"). And other courts have defined "exorbitant" as synonymous with "unconscionable" and "shockingly unfair, harsh, or unjust." *Woody v. DOJ*, 494 F.3d 939, 948 (10th Cir. 2007); *United States HHS v. Smitley*, 347 F.3d 109, 116 (4th Cir. 2003). Using these definitions, the fee for a new CCL application in Illinois is not exorbitant.

14. *Fourth*, the CCL application fee is similar to or even less than the fees charged in other jurisdictions, including Alabama ($25 yearly cost), Code of Ala. § 13A-11-75(f)(1)(b); Louisiana ($25 yearly cost), La. R.S. § 40:1379.3; Los Angeles County ($75 yearly cost) https://lasd.org/ccw/#ccw_fees; Kansas ($33.13 yearly cost), Kan. Stat. §§ 75-7c03(a), 75-7c05(b)(2); and New Mexico ($25 yearly cost), N.M. Stat. Ann. §§ 29-19-3, 5(A)(2). As such, the CCL fee in Illinois is not "excessive" or "grossly exceeding normal."

Exorbitance under First Amendment Fee Jurisprudence

15. While courts applied First Amendment fee jurisprudence in Second Amendment cases challenging licensing fees, those decisions were issued before *Bruen* and are no longer applicable. *See Guns Save Life v. Raoul*, 2019 IL App (4th) 190334 at ¶ 70 ("'the Supreme Court's First Amendment fee jurisprudence provides the appropriate

foundation for addressing *** fee claims under the Second Amendment.'") (quoting *Kwong v. Bloomberg*, 723 F.3d 160, 165 (2d Cir. 2013)).

16. But even if First Amendment fee jurisprudence is applicable, the CCL fee is constitutional because it is "designed 'to meet the expense incident to the administration of the [licensing statute] and to the maintenance of public order in the matter licensed.'" *Id.* (alterations in original) (quoting *Cox v. New Hampshire*, 312 U.S. 569, 577 (1941)).

17. The $150 CCL application fee is distributed among three funds. The largest portion, $120, goes to the State Police Firearm Services Fund. 430 ILCS 66/60(b).

18. The Fourth District found that funds deposited into the State Police Firearm Services Fund "are expressly designated 'to finance any of [ISP's] lawful purposes, mandates, functions, and duties under the Firearm Owners Identification Card Act and the Firearm Concealed Carry Act, including the cost of *** prompt and efficient processing of application.'" *Id.* at ¶ 77 (second alteration in original) (quoting 20 ILCS 2605/2605-595(b)). Accordingly, "[a]s to the portion of the [FOID Card application] fee deposited into the State Police Firearm Services Fund, the fee is clearly imposed to defray the cost of the licensing program." *Id.*

19. The same analysis applies to the CCL application fees. The $120 allotted to the State Police Firearm Services fund is designated to finance ISP's lawful purposes and duties, including administration of the Firearm Concealed Carry Act, and therefore this portion of the fee is "clearly imposed to defray the cost of the licensing program." *Id.*

20. The portions of the CCL fee deposited in State Crime Laboratory Fund ($10) and the Mental Health Reporting Fund ($20) fulfill the purpose of protecting the health, safety,

and welfare of the public, and providing a system for identifying those who are not qualified to carry a concealed firearm. The Mental Health Reporting Fund finances the "collecting and reporting [of] data on mental health records and ensuring that mental health firearm possession prohibitors are enforced as set forth under the Firearm Concealed Carry Act [430 ILCS 66/1 et seq.] and the Firearm Owners Identification Card Act [430 ILCS 65/0.01 et seq.]." 30 ILCS 105/6z-99(b). And deposits to the State Crime Laboratory Fund are used, among other things, "to educate and train forensic scientists who may test ballistics, conduct firearm functionality tests, test gunshot residue, collect DNA analyses, or collect other evidence useful in gun cases." *People v. Stevens*, 2018 IL App (4th) 150871, ¶ 21 (citing 730 ILCS 5/5-9-1.4(g)(3) (2014)).

21. Collectively, the above funds either cover the administrative costs of the licensing scheme (which Plaintiff estimated at $75.50 during oral argument), the enforcement of the scheme, or relate to the overarching public interest in the management of lawful firearm ownership, which distribution complies with the Supreme Court's fee jurisprudence. *See Cox*, 312 U.S. at 577; *see also National Awareness Foundation v. Abrams*, 50 F.3d 1159, 1166 (2d Cir. 1995).

22. Plaintiff has presented no evidence demonstrating that the licensing scheme charges more than what is necessary for the administration of the licensing statute and maintenance of public order in the matter licensed, *Cox*, 312 U.S. at 577, and it is her burden to overcome the presumption of the statute's constitutionality. *See People v. Rizzo*, 2016 IL 118599, ¶ 48; *see also Davis v. Brown*, 221 Ill. 2d 435, 442 (2006) (party challenging constitutionality of a statute has burden of clearly establishing a constitutional violation).

FOR THE FOREGOING REASONS, IT IS ORDERED THAT:

Plaintiff's Motion for Summary Judgment, regarding Exorbitance of CCL application fees in Counts I and II, is Denied and Defendant's Cross Motion for Summary Judgment is Granted in favor of the Defendant and against the Plaintiff. This is the final Order of the Court.

ORDERED this 25 day of MAY, 2023.

Ronald S. Motil, Associate Judge

Clerk to send copies to all attorneys of record.

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

EDWARDSVILLE / GLEN CARBON CHAMBER OF COMMERCE, an Illinois not for profit corporation,
Plaintiff
vs

GOVERNOR JAY ROBERT PRITZKER, in his official capacity
Defendant

20-MR-550

ORDER

The Court held a hearing on May 29, 2020 for the Plaintiff's Motion for a Temporary Restraining Order (TRO) and now rules as follows.

A TRO is an emergency remedy issued to maintain the status quo until a hearing can be held on an application for a preliminary injunction. (*Peoples Gas,* 117 Ill.App.3d at 355, 72 Ill.Dec. 865, 453 N.E.2d 740.) ***Passon v. TCR, Inc.***, 242 Ill. App. 3d 259, 264, 608 N.E.2d 1346, 1350 (2d Dist. 1993). The hearing is a summary proceeding, not an evidentiary hearing. The Court has reviewed the filings from both parties, the *amici* brief and arguments from counsel. Additionally the Court has not conducted any analysis on the Governor's authority to enforce his executive orders based upon any provision of the United States Constitution, such as due process, or any federal civil rights statute because Chamber of Commerce has disavowed any rights or claim for relief that it has under federal law. "Just so it is clear, The Chamber is **NOT** seeking any relief under the U.S. Constitution or under any Federal Law." (Emphasis in original) (Para. 6, Complaint).

To be entitled to temporary injunctive relief, plaintiffs must demonstrate that they (1) possess a protectable right, (2) will suffer irreparable harm without the protection of an injunction, (3) have no adequate remedy at law, and (4) are likely

to be successful on the merits of their action. *Murges v. Bowman,* 254 Ill.App.3d 1071, 1081, 194 Ill.Dec. 214, 627 N.E.2d 330 (1993). "The plaintiff is not required to make out a case which would entitle him to judgment at trial; rather, he only needs to show that he raises a 'fair question' about the existence of his right and that the court should preserve the status quo until the cause can be decided on the merits." *Stocker Hinge Manufacturing Co.,* 94 Ill.2d at 542, 69 Ill.Dec. 71, 447 N.E.2d 288. ***Bartlow v. Shannon***, 399 Ill. App. 3d 560, 567, 927 N.E.2d 88, 95 (5th Dist. 2010)

In addition, "If these elements are met, then the court must balance the hardships and consider the public interests involved...To obtain a preliminary injunction, the plaintiff must raise a "fair question" that each of the elements is satisfied. *Clinton Landfill,* 406 Ill.App.3d at 378, 348 Ill.Dec. 117, 943 N.E.2d 725." ***Makindu v. Illinois High Sch. Ass'n***, 2015 IL App (2d) 141201, ¶ 31, 40 N.E.3d 182, 190

The Defendant has not filed a verified answer to the verified complaint. "On a motion for a temporary restraining order, it has long been held that in the absence of a verified answer, the court should not receive or consider evidence or affidavits from the opposing party. *Russell v. Howe,* 293 Ill.App.3d 293, 296, 227 Ill.Dec. 894, 688 N.E.2d 375 (1997); *Carriage Way Apartments v. Pojman,* 172 Ill.App.3d 827, 836, 122 Ill.Dec. 717, 527 N.E.2d 89 (1988); *Kurle v. Evangelical Hospital Ass'n,* 89 Ill.App.3d 45, 48, 44 Ill.Dec. 357, 411 N.E.2d 326 (1980)." ***Bridgeview Bank Group v. Meyer***, 2016 IL App (1st) 160042, ¶ 11, 49 N.E.3d 916, 920. The Plaintiff did not object to the filing of an *amici* brief, but upon review by the Court a Declaration of Michael Wahl, M.D. is attached to the brief. Because *amici* filed their brief on behalf of the Defendant, the Court will not consider the Declaration of Dr. Wahl for its ruling on the TRO motion.

During oral argument counsel for both sides frequently referenced other cases bearing on the Governor's Executive Orders and his authority under our Illinois Constitution and statutory framework. The Court notes that two similar cases that were discussed are highlighted on the Illinois Supreme Court's website under the headline "High-Profile Cases Before the Illinois Appellate Courts" http://www.illinoiscourts.gov/appellatecourt/highprofile/default.asp (last visited June 5,

2020). In both of the cases listed the plaintiffs were granted TROs against Governor Pritzker. The Governor sought immediate review of the orders by filing appeals to the Appellate Court of Illinois, Fifth Judicial District, in Mt. Vernon, Illinois. Both of the plaintiffs declined to defend their TROs and instead consented to dissolving or vacating their TROs before the Appellate Court could rule.

During the course of the hearing, circumstances changed as the Governor issued a superseding order, Executive Order #38. The Plaintiff's filings on the TRO dealt with Governors Executive Order #32, which declared certain businesses either essential or non-essential. The non-essential businesses were not allowed to operate and could have been the basis for plaintiff's protectable rights being violated and irreparable harm. EO38 eliminated the distinction between essential and non-essential businesses, depriving the Plaintiff of this argument for its TRO motion.

This parties then argued the question of whether or not the Motion for TRO was moot in light of EO38. The Plaintiff believes that it still has a viable motion because it not only claims injury from the essential / non-essential issue, which is now moot for TRO purposes, but also claims injury from business premise activities being limited or severely limited by any executive order, and also requests an injunction for any future executive order, which would include EO38. Plaintiff's counsel identified general categories of bars, restaurants and gyms as suffering continuing harm. The Court finds that the Motion for TRO survives the mootness issue, at least in part.

The parties then argued whether or not the Chamber has standing to represent its members. An association has standing to sue on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt,* 432 U.S. at 343, 97 S.Ct. at 2441, 53 L.Ed.2d at 394***. Int'l Union of Operating Engineers, Local 148, AFL-CIO v. Illinois Dept. of Employment Sec.***, 215 Ill. 2d 37, 47, 828 N.E.2d 1104, 1111 (2005). The second prong is, "at the least, complementary to the first, for its demand that an association plaintiff be organized for a purpose germane to the subject of its member's claim raises an assurance that the

association's litigators will themselves have a stake in the resolution of the dispute, and thus be in a position to serve as the defendant's natural adversary." *Brown Group,* 517 U.S. at 555–56, 116 S.Ct. at 1535–36, 134 L.Ed.2d at 769. ***Id.*** At 47-48, 1111. However, "Under Illinois law, a plaintiff need not allege facts establishing standing. *Wexler v. Wirtz Corp.*, 211 Ill.2d 18, 22, 284 Ill.Dec. 294, 809 N.E.2d 1240 (2004); *Chicago Teachers Union, Local 1 v. Board of Education of the City of Chicago,* 189 Ill.2d 200, 206, 244 Ill.Dec. 26, 724 N.E.2d 914 (2000). Rather, it is the defendant's burden to plead and prove lack of standing. *Chicago Teachers Union,* 189 Ill.2d at 206, 244 Ill.Dec. 26, 724 N.E.2d 914; *Greer v. Illinois Housing Development Authority,* 122 Ill.2d 462, 494, 120 Ill.Dec. 531, 524 N.E.2d 561 (1988)." ***Id.*** at 45, 1110.

The organizational purpose of the Chamber is not revealed on the record except in very general terms suggesting that it "represents its members in a variety of matters of importance". (Par. 2, Complaint). The Governor's argument, however, lacks any factual basis. Without a verified answer and affidavits supporting the Defendant's argument that the lawsuit does not comport with the Chamber's organizational purpose, the Court has no facts with which to engage in an analysis of that issue and will deny the Governor's challenge to standing at this stage of the proceedings.

Turning to the merits of the motion and the elements required, the plaintiff alleges a clearly ascertainable right in need of protection in paragraphs 23-25 of its Memorandum in Support of a TRO for the first element.

> 23. It should go without saying that Plaintiffs have protectable rights and interests at stake.
>
> 24. As set forth more fully above, Plaintiffs have a protectable right and interest in being free from invalid lawmaking that blatantly overreaches the authority of the Governor under his constitutional powers of office or any delegated power by the legislature in the IEMAA.
>
> 25. The Governor has unilaterally determined that certain businesses he deemed non-essential be closed without any oversight of this Court that such business premises constitute a threat to public health.

During oral argument, counsel for the Chamber argued that particular members have the right to not have restrictions on how many people they can have on their property. However, the Chamber's verified complaint has failed to identify a single member whose rights need protection or who is suffering irreparable harm.

Assuming for the moment that the Chamber has plead enough to satisfy the first element required for a TRO, it is clear that the Chamber has not plead any facts to identify a single member who is being irreparably harmed. Quoting from the Verified Complaint:

> 112. The Chamber is being irreparably harmed each and every moment in which it continues to be subjected to Pritzker's ultra vires order.
>
> 113. Among other things, The Chamber, is prevented from having private business premises opened and are subject to potential enforcement actions, which actions regarding license revocation, etc. have been expressly threatened by Pritzker in his daily press briefings, to the extent private business premises might engage in activities proscribed by EO 32.

Illinois is a fact pleading jurisdiction, and pleading conclusions without well plead facts is fatal to Plaintiff's claim for the relief of a temporary restraining order.

> Such broad, conclusory allegations are insufficient to establish a plaintiff's entitlement to temporary injunctive relief. See Capstone Financial Advisors, Inc. v. Plywaczynski, 2015 IL App (2d) 150957, ¶ 11, 2015 WL 9437987 (plaintiff's failure to identify single client whom defendant solicited, or whose confidential information defendant used, fatal to motion for temporary restraining order); Office Electronics, Inc. v. Adell, 228 Ill.App.3d 814, 820, 170 Ill.Dec. 843, 593 N.E.2d 732 (1992) (conclusory allegations regarding plaintiff's irreparable injury and lack of adequate legal remedy do not support issuance of preliminary injunction); Schlicksup Drug Co. v. Schlicksup, 129 Ill.App.2d 181, 188, 262 N.E.2d 713 (1970) (finding allegation that defendant's conduct had and "will continue to cause irreparable injury to the plaintiff for which plaintiff has no adequate remedy at law" was a conclusion and not an allegation of fact (internal

quotation marks omitted)). ***Bridgeview Bank Group v. Meyer***, 2016 IL App (1st) 160042, ¶¶ 14-15, 49 N.E.3d 916, 920–21.

The Governor also challenges the Chamber's likelihood of success on the merits. "To demonstrate a likelihood of success on the merits, a party need not make out a case that would necessarily require relief at the final hearing. *Williams Brothers Construction, Inc.,* 243 Ill.App.3d at 956, 184 Ill.Dec. 14, 612 N.E.2d at 894. A party need only raise a "'fair question as to the existence of the rights claimed, [and] lead the court to believe that it will probably be entitled to the relief sought if the proof sustains the allegations.'" *Williams Brothers Construction, Inc.,* 243 Ill.App.3d at 956, 184 Ill.Dec. 14, 612 N.E.2d at 894–95." ***Keefe-Shea Joint Venture v. City of Evanston***, 332 Ill. App. 3d 163, 174, 773 N.E.2d 1155, 1164 (1st Dist. 2002). The Plaintiff seeks a declaration in Count 1 that no disaster existed in the State within the meaning of Section 4 of the Emergency Management Act (IEMAA), 20 ILCS 3305/4. Count 2 seeks a declaration that due to the absence of a disaster on April 30, 2020 the Governor does not possess any emergency powers pursuant to Section 7 of the IEMAA, 20 ILCS 3305/7 to issue EO #32. Count 3 seeks a declaration that the Illinois Department of Health Act (IDHA), 20 ILCS 2305 governs the conduct of "State Actors" in the context of the lawsuit.

The Court finds that the Plaintiff is unlikely to succeed on its statutory interpretation. The Chamber alleges that the prerequisite for declaring a disaster under the IEMAA required an occurrence or threat requiring emergency action to avert, *inter alia*, a public health emergency. (Para. 65, Complaint). The statute defines a disaster as follows:

> "Disaster" means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism. 20 ILCS 3305/4

The Governor upon proclaiming a disaster exists is authorized by statute to exercise emergency powers as defined in Section 7. "Emergency Powers of the Governor. In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers;" On March 9, 2020, Governor Pritzker issued a proclamation declaring a disaster related to the COVID-19 pandemic invoking Section 7. On April 1, 2020, Governor Pritzker issued a similar proclamation, again, finding that a continuing disaster existed and on April 30, 2020 he again signed a proclamation finding under Section 7 that a disaster existed. The proclamations are attached to the Plaintiff's complaint, and each proclamation makes dozens of factual findings supporting the proclamation. The Chamber does not contest a single one of those facts.

The Chamber alleges that "reissuing a disaster proclamation for the same COVID-19 virus due to an unnecessary self-serving termination date placed in a previous proclamation of disaster is not a threat or occurrence satisfying the definition of a disaster in Section 4 of the IEMAA." (Para. 74, Complaint). The Plaintiff is incorrect that the termination date is unnecessary as Section 7 mandates that the proclamations are only valid for 30 days. The 30 days mandated by statute require the Governor to issue a new proclamation on or before the end of the preceding proclamation, assuming that the disaster is continuing, such as in the case of flooding. Over the past 40 years Governors of the State of Illinois have issued successive disaster declarations in 21 of those years. Over 2009 and 2010 four successive disasters were declared after the original declaration regarding the H1N1 virus. The language makes clear that the 30 day period is triggered by the Governor's proclamation declaring a disaster, not by the date on which the disaster initially arises. In addition, the Governor is not required to seek approval from the General Assembly to continue a disaster proclamation beyond 30 days. The General Assembly demonstrated it was capable of creating limits on successive disaster declarations when it believed they were appropriate. Local disaster declarations have these limitations. "(a) A local disaster may be declared only by the principal executive officer of a political subdivision, or his or her interim emergency successor, as provided in Section 7 of the "Emergency Interim Executive Succession

Act". It shall not be continued or renewed for a period in excess of 7 days except by or with the consent of the governing board of the political subdivision." 20 ILCS 3305/11. Unlike local executive authorities whose emergency powers are limited in time, the Governor is not required to seek approval for proclamations under the IEMAA after 30 days.

The General Assembly also wrote into law that other statutes cannot limit the emergency powers of the Governor under the IEMAA. "Limitations. Nothing in this Act shall be construed to: (d) Limit, modify, or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in the Governor under the constitution, statutes, or common law of this State, independent of or in conjunction with any provisions of this Act;" 20 ILCS 3305/3. The Plaintiff's claim that the Governor cannot proclaim successive disasters over COVID-19 finds no support in the plain reading of the statute.

The Plaintiff's claim in Count 3 that the Public Health Act is the only source of the Governor's authority to prevent the spread of COVID-19 and that Executive Order #32 under the IEMAA is therefore invalid also fails at the TRO stage of these proceedings. Because EO32 has been superseded by EO38 the Plaintiff's claim in Count 3 is moot.

The Court is aware of the economic devastation in Illinois and Madison County as a result of the Governor's executive orders and is not saying that the Governor's authority to exercise his emergency powers is without restraint. As the Act outlines, he must identify an occurrence to support each proclamation, and if the occurrence is non-existent, then those affected can petition for redress. The Plaintiff here has not challenged the factual basis for the Governor's proclamations.

The Plaintiff's Motion for a Temporary Restraining Order is DENIED.

6/5/2020

Judge Christopher Threlkeld

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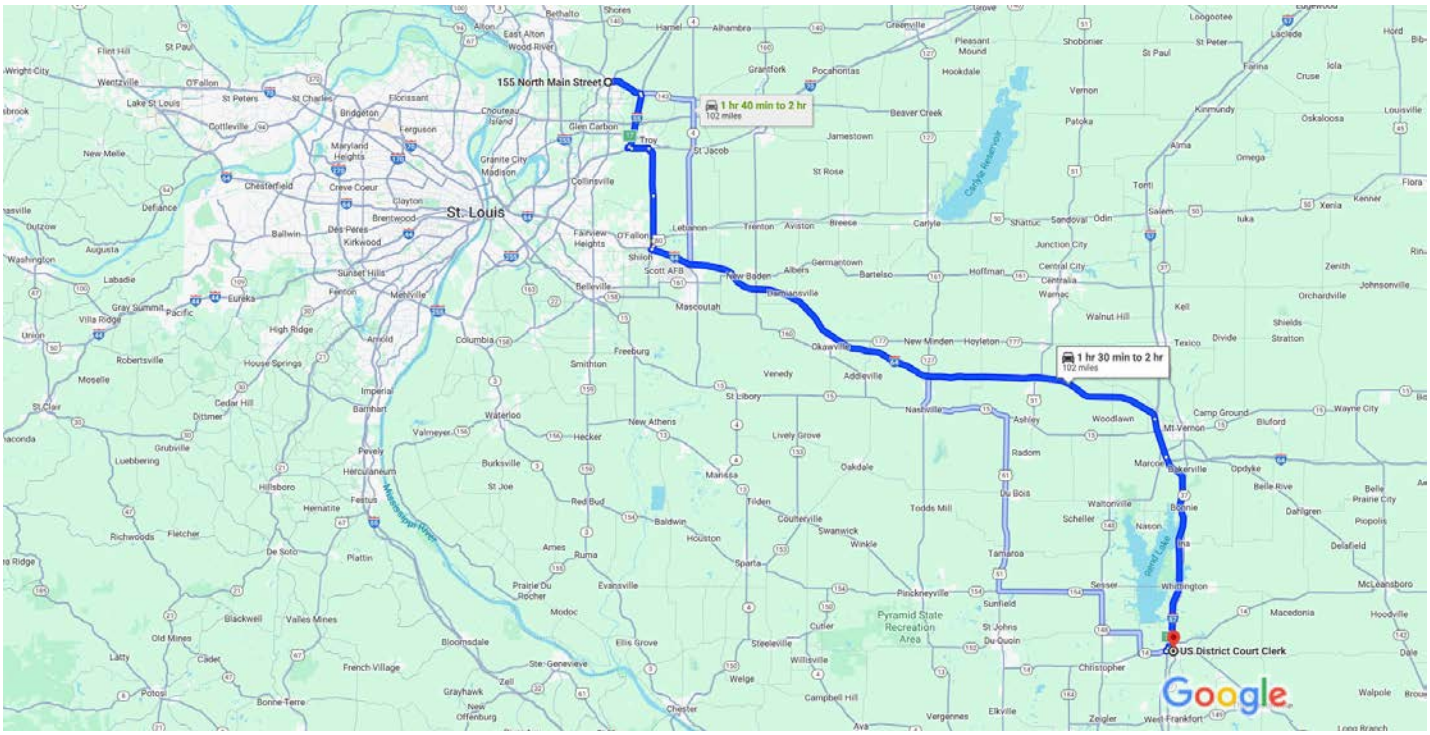

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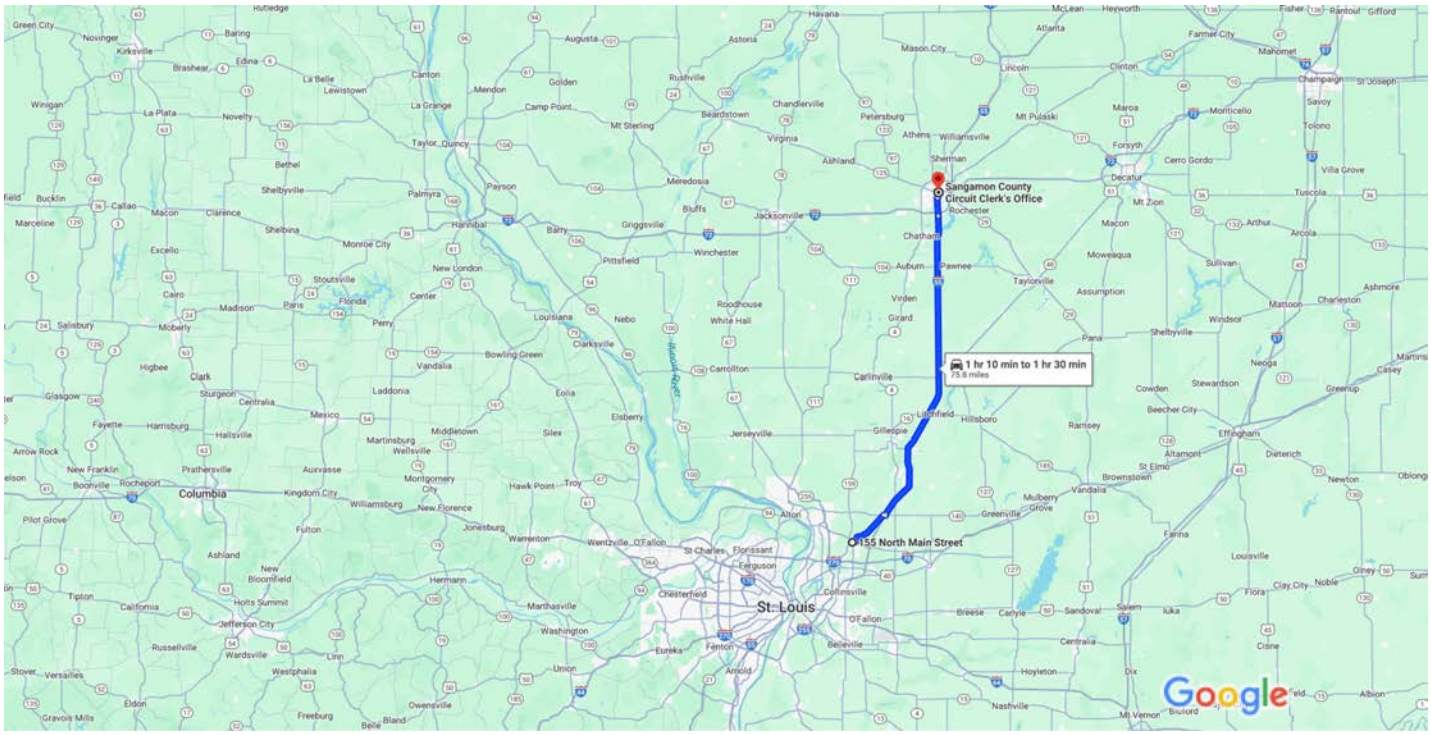

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Executive Department

CERTIFICATE

To All To Whom These Presents Shall Come, Greeting:

I, ALEXI GIANNOULIAS, Secretary of State of the State of Illinois, do hereby certify that the attached is a true copy of **Public Act 103-5 (HB 3062)**.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois.
Done at the City of Springfield,
November 27, 2023.

Alexi Giannoulias

SECRETARY OF STATE

AN ACT concerning civil law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 2. The Code of Civil Procedure is amended by adding Section 2-101.5 as follows:

(735 ILCS 5/2-101.5 new)

Sec. 2-101.5. Venue in actions asserting constitutional claims against the State.

(a) Notwithstanding any other provisions of this Code, if an action is brought against the State or any of its officers, employees, or agents acting in an official capacity on or after the effective date of this amendatory Act of the 103rd General Assembly seeking declaratory or injunctive relief against any State statute, rule, or executive order based on an alleged violation of the Constitution of the State of Illinois or the Constitution of the United States, venue in that action is proper only in the County of Sangamon and the County of Cook.

(b) The doctrine of forum non conveniens does not apply to actions subject to this Section.

(c) As used in this Section, "State" has the meaning given to that term in Section 1 of the State Employee Indemnification Act.

(d) The provisions of this Section do not apply to claims arising out of collective bargaining disputes between the State of Illinois and the representatives of its employees.

Section 99. Effective date. This Act takes effect upon becoming law.

Emanuel C. Welch

Speaker, House of Representatives

Jim Harmon

President of the Senate

APPROVED

this 12 day of June, 20 23

GOVERNOR

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC,

Plaintiff,

v.

KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois,

Defendant.

No. 2023 LA 1129

ORDER

This matter is before the Court on Plaintiff's motion for summary judgment as to the Venue Count (i.e. Count V), and Defendant's, Kwame Raoul, in his official capacity as Attorney General of Illinois ("Attorney General"), motion to transfer this case to Sangamon County under section 2-101.5(a) of the Code of Civil Procedure, 735 ILCS 5/2-101.5(a) ("section 2-101.5(a)").

Plaintiff Piasa Armory, LLC ("Piasa Armory") filed a combined response in opposition and cross-motion for summary judgment on Count V* of its complaint on November 22, 2023. The parties have briefed the matter and the Court heard oral argument on January 10, 2024.

Piasa Armory was present by and through its counsel, Thomas Maag. The Attorney General was present by and through his counsel, Darren Kinkead. For the following reasons, the Court DENIES the motion to transfer and GRANTS Piasa Armory's motion for summary judgment.

* Piasa Armory's motion states it is moving for summary judgment on Count II of its complaint. At oral argument, in response to the Court's question seeking clarification, Piasa Armory explained this is a typo and its motion should have stated Count V instead.

The Attorney General contends, and Piasa Armory concedes, that section 2-101.5(a) applies to this action by virtue of the date of it being filed and this being a constitutional case. The Court agrees. Section 2-101.5(a) provides:

> Notwithstanding any other provisions of this Code, if an action is brought against the State or any of its officers, employees, or agents acting in an official capacity on or after the effective date of this amendatory Act of the 103rd General Assembly [June 6, 2023] seeking declaratory or injunctive relief against any State statute, rule, or executive order based on an alleged violation of the Constitution of the State of Illinois or the Constitution of the United States, venue in that action is proper only in the County of Sangamon and the County of Cook.

735 ILCS 5/2-101.5(a).

First, Piasa Armory brought this action against the Attorney General in his official capacity.

Second, Piasa Armory filed its complaint on August 17, 2023.

Third, Piasa Armory seeks declaratory and injunctive relief concerning the Firearm Industry Responsibility Act ("FIRA"), which amended the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505, effective August 12, 2023.

Fourth, Piasa Armory contends those amendments violate the Supremacy Clause, First Amendment, Second Amendment, Fifth Amendment and Fourteenth Amendment of the United States Constitution; and the Three Readings Rule of the Illinois Constitution.

Therefore, each of section 2-101.5(a)'s requirements is satisfied, and the plain language of the statute provides that venue in this action is proper only in Sangamon County or Cook County. Further, the Attorney General timely objected to venue in Madison County by filing a motion to transfer this action to Sangamon County pursuant to section 2-101.5(a) within the time he was granted to answer or move with respect to Piasa Armory's complaint. *See* 735 ILCS 5/2-104(b).

Piasa Armory opposes the Attorney General's motion because, it argues, section 2-101.5(a) violates Amendments 1, 2, 5 and 14 of the U.S. Constitution, and the Three Readings Rule of the Illinois Constitution. "[C]ourts generally cannot interfere with the legislature's province in determining where venue is proper, unless constitutional provisions are violated." *Williams v. Illinois State Scholarship Commission*, 139 Ill. 2d 24, 41 (1990) (citation omitted). Because the Attorney General has moved the Court to transfer this action from Piasa Armory's preferred forum pursuant to Section 2-101.5(a), the Court finds Piasa Armory has standing to challenge the constitutionality of the statute at least as applied here. *E.g., CTU v. Board of Education*, 189 Ill. 2d 200, 206 (2000) ("To have standing to challenge the constitutionality of a statute, one must have sustained or be in immediate danger of sustaining a direct injury as a result of enforcement of the challenged statute.").

To determine whether section 2-101.5(a) would violate Piasa Armory's rights under the Due Process Clause of the United States Constitution, the Court considers federal and state cases because due process provides the same rights under the federal and state constitutions. *E.g., Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 47; *People v. Kizer*, 365 Ill. App. 3d 949, 960–61 (4th Dist. 2006). Due process under the state constitution is held in limited lockstep with the federal constitution.

The Illinois Supreme Court applied these principles in *Williams*, 139 Ill. 2d 24, which is its only Illinois state court precedent addressing whether a statute fixing venue violated a litigant's due process rights. The law at issue in *Williams* set Cook County as the "exclusive venue" for lawsuits brought against student loan borrowers by the state agency tasked with administering those loans. *Id.* at 28. The court "admit[ted] that, standing alone, requiring venue to be in a particular county does *not necessarily* infringe upon [the] right of access to the courts."

Id. at 63. This Court interprets "not necessarily" to mean that depending on the matter, it might, or it might not, without more.

In the case before it, however, the court found the state agency "regularly" obtained default judgments "against [borrowers] who, for all practical purposes, cannot appear" in Cook County because they "are indigent" and "cannot afford the travel costs to [that] distant forum." *Id.* at 42–43, 46. The court also found "there was no evidence that [borrowers] could have defended their interests without making a personal appearance" in Cook County. *Id.* at 64. The Supreme Court thus concluded that, in that particular case, "the burden of an inconvenient forum, when combined with the indigence of the [borrowers]" and other factors, "effectively deprive[d] [the borrowers] of any means of defending themselves in these actions" and therefore constituted "a due process deprivation." *Id.* at 63 (citing *Boddie*, 401 U.S. at 377).

In the present matter, Piasa Armory, similar to the student loan borrowers in *Williams*, has demonstrated that both Sangamon and Cook Counties are inconvenient forums for the Plaintiff. While Sangamon County will be the primary focus due to its closer proximity, Cook County presents significantly greater inconvenience to the Plaintiff. However, it is fair to say that, in this case, for this Plaintiff, the inconvenience of Cook County is exponentially greater than the inconvenience of Sangamon County. For counties closer to the northern part of the state, the opposite may well be true.

To the extent that this statute merely *permits*, a Plaintiff to file in Cook or Sangamon County, and bars the State from moving for transfer, the Court finds it is Constititonal. To the extent that a resident of Cook or Sangamon County wished to file a lawsuit in their home county, this Court also finds that would be constitutional and permitted under the statute. Therefore, as this statute is constitutional under at least those circumstances, this is not a facial challenge, it is

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Furthermore, the Defendant asserts that Sangamon County is a suitable location for conducting remote proceedings, such as using zoom or similar systems. The Court is aware that Supreme Court Rule 206(h), Supreme Court Rule 45(c)(1) and 241(b) allows broad use of video conference or telephone at an evidentiary hearing or trial "for good cause shown and upon appropriate safeguards" or even as of right. Remote hearings conducted pursuant to these rules *can* provide adequate due process to all participants. *E.g., In re P.S.*, 2021 IL App (5th) 210027, ¶ 62. This Court is very familiar with the use of remote proceedings, as it makes said available in many circumstances, and indeed, finds then quite useful in many cases.

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The Illinois Supreme Court held in *Williams* "the burden of an inconvenient forum, when combined with the indigence of the [student loan borrowers]" *and other factors* caused the Illinois Supreme Court to find the venue statute unconstitutional in that case. *Id.* at 63–64.

In this case, Sangamon is an inconvenient forum. Just as Sangamon County was an inconvenient forum in an oil and gas case brought by the State in *People ex rel. Madigan v. Leavell*, 905 NE 2d 849 - Ill: Appellate Court, 4th Dist. 2009, Sangamon County is simply inconvenient to Plaintiff, inconvenient to Plaintiff's witnesses, and Defendant lists no witnesses that Sangamon County would be convenient for. While hardly entitled to any weight, even the location of Plaintiff's counsel is in Madison County. While documents may be relatively easy to move, there is no showing that any relevant documents are anywhere other than Madison County.

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non conveniens can ameliorate that. Unfortunately, this protection has been abolished by the State.

Essentially, this statute embodies precisely what the Supreme Court apprehended would transpire if it ruled differently in *Williams*. The Court observed the arbitrary and abrupt departure of the legislature from established venue principles, not only for one agency, as in *Williams*, but for all state agencies. This effectively exposes every party involved in a dispute with the State of a constitutional magnitude to "be entirely at [an agency's] mercy, since such an action could be made oppressive and unbearably costly" (Heldt, 329 Ill.App. at 414, 69 N.E.2d 97), and place venue "in a faraway place where [the party] neither resides nor carries on any kind of activities" (American Oil Co., 133 Ill.App.2d at 261, 273 N.E.2d 17). *Williams*, 139 Ill. 2d at 58.

In *Williams* it is enough that the forum is inconvenient, and that the statute is not consistent with traditional notions of substantial justice and fair play when it comes to venue. This finding is supported by applying the three factors established in *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976), which the Illinois Supreme Court used to frame its due process analysis of the venue statute at issue in *Williams*. *See, e.g.,* 139 Ill. 2d at 63. "Per *Mathews*, when evaluating a procedural due process challenge, [courts] should consider (1) the government's interest in the procedure, including the function involved and the fiscal or administrative burdens that the additional or substitute procedure would entail, (2) the private interest affected by the governmental action, and finally (3) the risk of an erroneous deprivation of said interest through the procedures being contested and the probable value, if any, of additional or substitute procedural safeguards." *People v. Deleon*, 2020 IL 124744, ¶ 27.

Considering the first *Mathews* factor, the Court finds the government interest here minimal at best. Sangamon County is not more important than any other county in this State. The fact that it is the seat of state government is ultimately irrelevant. Based on the record before the Court, the General Assembly will not be called as witnesses. The Defendant in this case, as noted in *Williams*, has offices throughout Illinois, including St. Clair County, whose attorneys regularly appear in this Court, and are familiar with this Court's rules and customs. The Attorney General is responsible for representing the State and its officers in court in every county. Therefore, for all these reasons, transferring this action to Sangamon County would simply make it more difficult for the Plaintiff to prosecute its constitutional claims.

The Court hereby concludes that the second *Mathews* factor, namely the private interest factor, strongly disfavors transfer. In *Williams*, the Illinois Supreme Court explained the private interest at issue in a due process challenge to a venue statute is the "right of *meaningful* access to the courts." 139 Ill. 2d at 42. While this Court acknowledges without hesitation that the judges in Sangamon County would impartially handle this case, the reality remains that the greater the distance between the parties, witnesses, the sources of evidence, the more arduous it becomes to access the courthouse.

Likewise, the Court determines the third *Mathews* factor, the risk of erroneous deprivation, again strongly disfavors transfer, for the reasons set forth above.

While the Court recognizes that this is not a motion for *forum non conveniens,* many of the standards and purposes associated with that doctrine are relevant to this case. For instance, several *forum non conveniens* factors align with the *Mathews* factors, which considers both government and private interests. Despite the Attorney General's assertion that *forum non conveniens* no longer serves any practical purpose, this Court lacks jurisdiction to contradict the

Supreme Court. If the Supreme Court wishes to abolish *forum non conveniens*, it can do so in the same way it adopted it, by having the Supreme Court declare it to be so. This Court has no power to overrule the Supreme Court.

The State's argument, that the Illinois Supreme Court acknowledged over two decades ago in the case *First American Bank v. Guerine,* 198 Ill. 2d 511, 525 (2002), that changing world circumstances undermine the doctrine's relevance, does not grant this Court authority to abolish the doctrine. If the Attorney General were to appeal, and the Supreme Court declared its decades of *forum non conveniens* law should be discarded, this Court will comply. If, as the State suggests, the Illinois Supreme Court should thus consider modifying or eliminating Supreme Court Rule 187, that would be an argument to take place in that Court.

Piasa Armory also contends section 2-101.5(a) is unconstitutional because the bill enacting it violated the Three Readings Rule of the Illinois Constitution. Legislative history shows that HB3062, which became the Public Act in question, started out as a landlord tenant bill, ultimately passing out of the House as a landlord tenant bill. The bill, however, was amended in the Senate, by striking all reference to landlord tenant law, and replacing same with a new venue statute at issue herein. Once "gutted and amended", the statute was not read three times in the Senate, and as a venue bill, was not read three times in the House. On its face, this appears to violate the three readings rule, and possibly the single subject rule. However, as Piasa Armory correctly concedes, the Court must follow Illinois Supreme Court precedent foreclosing such challenges under the Enrolled Bill Doctrine of the Illinois Constitution. *E.g., Friends of Parks v. Chicago Park District*, 203 Ill. 2d 312, 328–29 (2003). Thus, while Plaintiff concedes this Court cannot rule in its favor on the issue, it is clear that Plaintiff intends to challenge existing law at a higher court. To that end, Plaintiff's Three Readings Rule challenge is denied,

and this Court's ruling in this case is in no way based upon the Three Readings Rule. If the precedent of the Supreme Court were different, this Court would apply that precedent.

However, as 735 ILCS 5/2-101.5(a) does violate due process, as applied to persons who reside or were injured outside of Cook or Sangamon County, the motion to transfer is Denied, as 735 ILCS 5/2-101.5 is unconstitutional, as Defendant seeks to apply it. This triggers obligations under Illinois Supreme Court Rule 18.

Pursuant to Supreme Court Rule 18, this Court states and finds as follows:

(a) the court makes the finding in a written order or opinion, or in an oral statement on the record that is transcribed;

In this case, this order fulfills the requirement as a written order.

(b) such order or opinion clearly identifies what portion(s) of the statute, ordinance, regulation or other law is being held unconstitutional;

In this case, the Court declares that Public Act 103-0005 is unconstitutional when applied to residents outside of Cook or Sangamon County, as well as individuals injured outside of Cook or Sangamon County.

(c) such order or opinion clearly sets forth the specific ground(s) for the finding of unconstitutionality, including:

(1) the constitutional provision(s) upon which the finding of unconstitutionality is based;

In this case, it is based on Constitutional Due Process.

(2) whether the statute, ordinance, regulation or other law is being found unconstitutional on its face, as applied to the case sub judice, or both;

While the statute is generally unconstitutional, there may be instances where it could be considered constitutional. Therefore, it is pronounced unconstitutional as applied.

(3) that the statute, ordinance, regulation or other law being held unconstitutional cannot reasonably be construed in a manner that would preserve its validity;

There is no reasonable interpretation of the statute.

(4) that the finding of unconstitutionality is necessary to the decision or judgment rendered, and that such decision or judgment cannot rest upon an alternative ground; and

There is no alternative non-constitutional argument that can be applied.

(5) that the notice required by Rule 19 has been served, and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute, ordinance, regulation or other law challenged.

Rule 19 has been complied with.

ACCORDINGLY, the motion to transfer to Sangamon County is DENIED. Piasa Armory's cross-motion for summary judgment on Count V is GRANTED. The Court finds IL Public Act 103-0005 unconstitutional as applied. Pursuant to Supreme Court Rule 304, this Court finds no just reason to delay enforcement or appeal of this Order.

The Defendant is expected to appeal this Order. It is also anticipated that as Plaintiff brought its count under 42 USC 1983, that it will file a fee and cost petition under Section 1988. Thus,

1. Defendant is ordered to file an answer to Counts I through IV within 30 days of this date.
2. Plaintiff is ordered to file its fee and costs petition, for Count V, within 45 days of this date, unless Defendant files a notice of appeal of this Order.

3. If the Defendant files an appeal of this Order within 30 days, this Court will address fees and costs for Count V following disposition of the appeal.
4. If the Defendant does not file an appeal of this Order within 30 days, Defendant may file any response or objection to the fee petition within 30 days of same being filed. A reply in support may be filed 14 days thereafter. This Court will either rule on said petition, or set same for argument, depending on what is filed by the parties.

IT IS ORDERED.

Dated: 3/1/24

Honorable Ronald J. Foster, Jr.

EFILED
Case Number 2023LA001129
Date: 3/13/2024 4:53 PM
Thomas McRae
Clerk of Circuit Court
Third Judicial Circuit, Madison County Illinois

APPEAL TO THE ILLINOIS SUPREME COURT

FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General, Defendant-Appellant.	No. 2023 LA 1129 Hon. Ronald J. Foster, Jr. Judge Presiding

NOTICE OF APPEAL

PLEASE TAKE NOTICE that under Illinois Supreme Court Rules 302(a) and 304(a), Defendant Kwame Raoul, in his official capacity as Attorney General of Illinois, by and through his attorney, hereby appeals directly to the Illinois Supreme Court from the partial final judgment entered on March 4, 2024 (Attachment A) ("Op."), by the Honorable Ronald J. Foster, Jr., Judge of the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, in this case, granting Plaintiff summary judgment on its claim that section 2-101.5(a) of the Code of Civil Procedure, 735 ILCS 5/2-101.5(a), violates the United States Constitution's Due Process Clause as applied to "persons who reside or were injured outside of Cook or Sangamon County." Op. 11. Rule 304(a) is satisfied because the circuit court entered a final judgment as to one or more but fewer than all of Plaintiff's claims, namely, Count V of Plaintiff's complaint, which challenges section 2-101.5(a) on due-process grounds, and the circuit court made an express finding that there is no just reason to delay appeal, Op. 12.

By this appeal, Defendant requests that the Illinois Supreme Court reverse and vacate the circuit court's order to the extent it was adverse to him, and grant him any other relief deemed appropriate.

Dated: March 13, 2024

Respectfully submitted,

/s/ Darren Kinkead
Darren Kinkead, ARDC No. 6304847
Office of the Attorney General
115 South LaSalle Street
Chicago, IL 60601
(773) 590-6967
Darren.Kinkead@ilag.gov

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, certify that I will cause to be served copies of the foregoing *Notice of Appeal* via electronic mail upon those listed below on March 13, 2024:

Thomas G. Maag
Peter J. Maag
Maag Law Firm, LLC
22 West Lorena Avenue
Wood River, IL 62095
(618) 216-5291
tmaag@maaglaw.com
lawmaag@gmail.com

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

/s/ Darren Kinkead
Darren Kinkead, ARDC No. 6304847

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC,

Plaintiff,

v.

KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois,

Defendant.

No. 2023 LA 1129

ORDER

This matter is before the Court on Plaintiff's motion for summary judgment as to the Venue Count (i.e. Count V), and Defendant's, Kwame Raoul, in his official capacity as Attorney General of Illinois ("Attorney General"), motion to transfer this case to Sangamon County under section 2-101.5(a) of the Code of Civil Procedure, 735 ILCS 5/2-101.5(a) ("section 2-101.5(a)").

Plaintiff Piasa Armory, LLC ("Piasa Armory") filed a combined response in opposition and cross-motion for summary judgment on Count V* of its complaint on November 22, 2023. The parties have briefed the matter and the Court heard oral argument on January 10, 2024.

Piasa Armory was present by and through its counsel, Thomas Maag. The Attorney General was present by and through his counsel, Darren Kinkead. For the following reasons, the Court DENIES the motion to transfer and GRANTS Piasa Armory's motion for summary judgment.

* Piasa Armory's motion states it is moving for summary judgment on Count II of its complaint. At oral argument, in response to the Court's question seeking clarification, Piasa Armory explained this is a typo and its motion should have stated Count V instead.

The Attorney General contends, and Piasa Armory concedes, that section 2-101.5(a) applies to this action by virtue of the date of it being filed and this being a constitutional case. The Court agrees. Section 2-101.5(a) provides:

> Notwithstanding any other provisions of this Code, if an action is brought against the State or any of its officers, employees, or agents acting in an official capacity on or after the effective date of this amendatory Act of the 103rd General Assembly [June 6, 2023] seeking declaratory or injunctive relief against any State statute, rule, or executive order based on an alleged violation of the Constitution of the State of Illinois or the Constitution of the United States, venue in that action is proper only in the County of Sangamon and the County of Cook.

735 ILCS 5/2-101.5(a).

First, Piasa Armory brought this action against the Attorney General in his official capacity.

Second, Piasa Armory filed its complaint on August 17, 2023.

Third, Piasa Armory seeks declaratory and injunctive relief concerning the Firearm Industry Responsibility Act ("FIRA"), which amended the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505, effective August 12, 2023.

Fourth, Piasa Armory contends those amendments violate the Supremacy Clause, First Amendment, Second Amendment, Fifth Amendment and Fourteenth Amendment of the United States Constitution; and the Three Readings Rule of the Illinois Constitution.

Therefore, each of section 2-101.5(a)'s requirements is satisfied, and the plain language of the statute provides that venue in this action is proper only in Sangamon County or Cook County. Further, the Attorney General timely objected to venue in Madison County by filing a motion to transfer this action to Sangamon County pursuant to section 2-101.5(a) within the time he was granted to answer or move with respect to Piasa Armory's complaint. *See* 735 ILCS 5/2-104(b).

Piasa Armory opposes the Attorney General's motion because, it argues, section 2-101.5(a) violates Amendments 1, 2, 5 and 14 of the U.S. Constitution, and the Three Readings Rule of the Illinois Constitution. "[C]ourts generally cannot interfere with the legislature's province in determining where venue is proper, unless constitutional provisions are violated." *Williams v. Illinois State Scholarship Commission*, 139 Ill. 2d 24, 41 (1990) (citation omitted). Because the Attorney General has moved the Court to transfer this action from Piasa Armory's preferred forum pursuant to Section 2-101.5(a), the Court finds Piasa Armory has standing to challenge the constitutionality of the statute at least as applied here. *E.g., CTU v. Board of Education*, 189 Ill. 2d 200, 206 (2000) ("To have standing to challenge the constitutionality of a statute, one must have sustained or be in immediate danger of sustaining a direct injury as a result of enforcement of the challenged statute.").

To determine whether section 2-101.5(a) would violate Piasa Armory's rights under the Due Process Clause of the United States Constitution, the Court considers federal and state cases because due process provides the same rights under the federal and state constitutions. *E.g., Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 47; *People v. Kizer*, 365 Ill. App. 3d 949, 960–61 (4th Dist. 2006). Due process under the state constitution is held in limited lockstep with the federal constitution.

The Illinois Supreme Court applied these principles in *Williams*, 139 Ill. 2d 24, which is its only Illinois state court precedent addressing whether a statute fixing venue violated a litigant's due process rights. The law at issue in *Williams* set Cook County as the "exclusive venue" for lawsuits brought against student loan borrowers by the state agency tasked with administering those loans. *Id.* at 28. The court "admit[ted] that, standing alone, requiring venue to be in a particular county does *not necessarily* infringe upon [the] right of access to the courts."

Id. at 63. This Court interprets "not necessarily" to mean that depending on the matter, it might, or it might not, without more.

In the case before it, however, the court found the state agency "regularly" obtained default judgments "against [borrowers] who, for all practical purposes, cannot appear" in Cook County because they "are indigent" and "cannot afford the travel costs to [that] distant forum." *Id.* at 42–43, 46. The court also found "there was no evidence that [borrowers] could have defended their interests without making a personal appearance" in Cook County. *Id.* at 64. The Supreme Court thus concluded that, in that particular case, "the burden of an inconvenient forum, when combined with the indigence of the [borrowers]" and other factors, "effectively deprive[d] [the borrowers] of any means of defending themselves in these actions" and therefore constituted "a due process deprivation." *Id.* at 63 (citing *Boddie*, 401 U.S. at 377).

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In *Williams* it is enough that the forum is inconvenient, and that the statute is not consistent with traditional notions of substantial justice and fair play when it comes to venue. This finding is supported by applying the three factors established in *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976), which the Illinois Supreme Court used to frame its due process analysis of the venue statute at issue in *Williams*. *See, e.g.,* 139 Ill. 2d at 63. "Per *Mathews*, when evaluating a procedural due process challenge, [courts] should consider (1) the government's interest in the procedure, including the function involved and the fiscal or administrative burdens that the additional or substitute procedure would entail, (2) the private interest affected by the governmental action, and finally (3) the risk of an erroneous deprivation of said interest through the procedures being contested and the probable value, if any, of additional or substitute procedural safeguards." *People v. Deleon*, 2020 IL 124744, ¶ 27.

Considering the first *Mathews* factor, the Court finds the government interest here minimal at best. Sangamon County is not more important than any other county in this State. The fact that it is the seat of state government is ultimately irrelevant. Based on the record before the Court, the General Assembly will not be called as witnesses. The Defendant in this case, as noted in *Williams*, has offices throughout Illinois, including St. Clair County, whose attorneys regularly appear in this Court, and are familiar with this Court's rules and customs. The Attorney General is responsible for representing the State and its officers in court in every county. Therefore, for all these reasons, transferring this action to Sangamon County would simply make it more difficult for the Plaintiff to prosecute its constitutional claims.

The Court hereby concludes that the second *Mathews* factor, namely the private interest factor, strongly disfavors transfer. In *Williams*, the Illinois Supreme Court explained the private interest at issue in a due process challenge to a venue statute is the "right of *meaningful* access to the courts." 139 Ill. 2d at 42. While this Court acknowledges without hesitation that the judges in Sangamon County would impartially handle this case, the reality remains that the greater the distance between the parties, witnesses, the sources of evidence, the more arduous it becomes to access the courthouse.

Likewise, the Court determines the third *Mathews* factor, the risk of erroneous deprivation, again strongly disfavors transfer, for the reasons set forth above.

While the Court recognizes that this is not a motion for *forum non conveniens,* many of the standards and purposes associated with that doctrine are relevant to this case. For instance, several *forum non conveniens* factors align with the *Mathews* factors, which considers both government and private interests. Despite the Attorney General's assertion that *forum non conveniens* no longer serves any practical purpose, this Court lacks jurisdiction to contradict the

Supreme Court. If the Supreme Court wishes to abolish *forum non conveniens*, it can do so in the same way it adopted it, by having the Supreme Court declare it to be so. This Court has no power to overrule the Supreme Court.

The State's argument, that the Illinois Supreme Court acknowledged over two decades ago in the case *First American Bank v. Guerine,* 198 Ill. 2d 511, 525 (2002), that changing world circumstances undermine the doctrine's relevance, does not grant this Court authority to abolish the doctrine. If the Attorney General were to appeal, and the Supreme Court declared its decades of *forum non conveniens* law should be discarded, this Court will comply. If, as the State suggests, the Illinois Supreme Court should thus consider modifying or eliminating Supreme Court Rule 187, that would be an argument to take place in that Court.

Piasa Armory also contends section 2-101.5(a) is unconstitutional because the bill enacting it violated the Three Readings Rule of the Illinois Constitution. Legislative history shows that HB3062, which became the Public Act in question, started out as a landlord tenant bill, ultimately passing out of the House as a landlord tenant bill. The bill, however, was amended in the Senate, by striking all reference to landlord tenant law, and replacing same with a new venue statute at issue herein. Once "gutted and amended", the statute was not read three times in the Senate, and as a venue bill, was not read three times in the House. On its face, this appears to violate the three readings rule, and possibly the single subject rule. However, as Piasa Armory correctly concedes, the Court must follow Illinois Supreme Court precedent foreclosing such challenges under the Enrolled Bill Doctrine of the Illinois Constitution. *E.g., Friends of Parks v. Chicago Park District*, 203 Ill. 2d 312, 328–29 (2003). Thus, while Plaintiff concedes this Court cannot rule in its favor on the issue, it is clear that Plaintiff intends to challenge existing law at a higher court. To that end, Plaintiff's Three Readings Rule challenge is denied,

and this Court's ruling in this case is in no way based upon the Three Readings Rule. If the precedent of the Supreme Court were different, this Court would apply that precedent.

However, as 735 ILCS 5/2-101.5(a) does violate due process, as applied to persons who reside or were injured outside of Cook or Sangamon County, the motion to transfer is Denied, as 735 ILCS 5/2-101.5 is unconstitutional, as Defendant seeks to apply it. This triggers obligations under Illinois Supreme Court Rule 18.

Pursuant to Supreme Court Rule 18, this Court states and finds as follows:

(a) the court makes the finding in a written order or opinion, or in an oral statement on the record that is transcribed;

In this case, this order fulfills the requirement as a written order.

(b) such order or opinion clearly identifies what portion(s) of the statute, ordinance, regulation or other law is being held unconstitutional;

In this case, the Court declares that Public Act 103-0005 is unconstitutional when applied to residents outside of Cook or Sangamon County, as well as individuals injured outside of Cook or Sangamon County.

(c) such order or opinion clearly sets forth the specific ground(s) for the finding of unconstitutionality, including:

(1) the constitutional provision(s) upon which the finding of unconstitutionality is based;

In this case, it is based on Constitutional Due Process.

(2) whether the statute, ordinance, regulation or other law is being found unconstitutional on its face, as applied to the case sub judice, or both;

While the statute is generally unconstitutional, there may be instances where it could be considered constitutional. Therefore, it is pronounced unconstitutional as applied.

(3) that the statute, ordinance, regulation or other law being held unconstitutional cannot reasonably be construed in a manner that would preserve its validity;

There is no reasonable interpretation of the statute.

(4) that the finding of unconstitutionality is necessary to the decision or judgment rendered, and that such decision or judgment cannot rest upon an alternative ground; and

There is no alternative non-constitutional argument that can be applied.

(5) that the notice required by Rule 19 has been served, and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute, ordinance, regulation or other law challenged.

Rule 19 has been complied with.

ACCORDINGLY, the motion to transfer to Sangamon County is DENIED. Piasa Armory's cross-motion for summary judgment on Count V is GRANTED. The Court finds IL Public Act 103-0005 unconstitutional as applied. Pursuant to Supreme Court Rule 304, this Court finds no just reason to delay enforcement or appeal of this Order.

The Defendant is expected to appeal this Order. It is also anticipated that as Plaintiff brought its count under 42 USC 1983, that it will file a fee and cost petition under Section 1988. Thus,

1. Defendant is ordered to file an answer to Counts I through IV within 30 days of this date.
2. Plaintiff is ordered to file its fee and costs petition, for Count V, within 45 days of this date, unless Defendant files a notice of appeal of this Order.

3. If the Defendant files an appeal of this Order within 30 days, this Court will address fees and costs for Count V following disposition of the appeal.
4. If the Defendant does not file an appeal of this Order within 30 days, Defendant may file any response or objection to the fee petition within 30 days of same being filed. A reply in support may be filed 14 days thereafter. This Court will either rule on said petition, or set same for argument, depending on what is filed by the parties.

IT IS ORDERED.

Dated: 3/1/24

Honorable Ronald J. Foster, Jr.

EFILED
Case Number 2023LA001129
Date: 3/14/2024 3:38 PM
Thomas McRae
Clerk of Circuit Court
Third Judicial Circuit, Madison County Illinois

APPEAL TO THE SUPREME COURT OF ILLINOIS

FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC, Plaintiff, v. KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, Defendant.	No. 2023 LA 1129

NOTICE OF CROSS APPEAL

Comes now Plaintiff Piasa Armory, LLC, by and through its attorneys, Thomas G, Maag and the Maag Law Firm, LLC, and in response to the Notice of Appeal, filed by Defendant on March 13, 2023, SUBMITS ITS NOTICE OF CROSS APPEAL of the order of the trial court dated March 4, 2024, and, as instructed in *Caulkins v. Pritzker*, 2023 IL 129453 (Ill 2023), cross appeals from the denial by the trial court of Plaintiff's arguments related to the 3 readings rule of the Illinois Constitution (Article IV, Section 8), in order to preserve the arguments on appeal, and respectfully requests this Honorable Court reverse the trial court, to the extent that it found Section 2-101.5(a), also known as HB3062, did not violate the three readings rule of the Illinois Constitution, and in said process, hold said act unconstitutional in its entirety, as opposed to merely as applied, and as such, overrule such precedent as *Friends of Parks v. Chicago Park district,* 203 Ill. 2d 312, 328-29 (2003), and in the process, *affirm* the ultimate ruling of the trial court in this case denying said motion to transfer and other relief, previously appealed by Defendant, by reversing and vacating the challenge based on the 3 readings rule.

Dated: 3-14-2024

Respectfully Submitted,
Piasa Armory, LLC

By/sThomas G. Maag
Thomas G. Maag #6272640
Maag Law Firm, LLC
22 West Lorena Avenue
Wood River, IL 62095
618-216-5291
tmaag@maaglaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed using electronic means, which will send notifications to the following:

Darren Kinkead
Darren.kinkead@ilag.gov

Date: 3-14-2024

s/Thomas G. Maag

CERTIFICATE OF FILING AND SERVICE

I certify that on April 1, 2024, I electronically filed the foregoing **Supplemental Record** with the Clerk of the Court for the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL System.

Thomas G. Maag
tmaag@maaglaw.com

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Alex Hemmer
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