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.

REPLY BRIEF OF DEFENDANT-APPELLANT THE ATTORNEY GENERAL OF ILLINOIS

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ARGUMENT

The Attorney General explained why section 2-101.5 does not violate due-process principles, either as a general matter or as applied to plaintiff's own case. Plaintiff's answering brief does nothing to further its due-process challenge to section 2-101.5. Indeed, plaintiff all but ignores the Attorney General's opening brief, instead resting its due-process challenge on a cursory application of *Mathews v. Eldridge*, 424 U.S. 319 (1976), that cannot be squared with this Court's opinion in *Williams v. Illinois State Scholarship Comm'n*, 139 Ill. 2d 24 (1990). The Court should reverse and hold that section 2-101.5 complies with due-process principles, both as a general matter and in this case.[1]

I. Plaintiff's arguments are not responsive to the Attorney General's brief.

Section 2-101.5 does not violate due-process principles, either as a general matter or as applied to plaintiff's own case. This Court held over 30 years ago in *Williams* that venue rules are presumptively constitutional, such that courts "generally cannot interfere with the legislature's province in determining where venue is proper." 139 Ill. 2d at 41. The Court has

[1] Below, plaintiff filed a notice of cross-appeal in an attempt to argue before this Court that section 2-101.5 also violated article IV, section 8, of the Illinois Constitution. AT Br. 9 n.3. But the Court dismissed the putative cross-appeal for lack of jurisdiction, C343, and plaintiff agrees it is not before the Court, AE Br. 8. (The appendix is cited as "A__"; the common-law record as "C__"; the Attorney General's opening brief as "AT Br. __"; and plaintiff's answering brief as "AE Br. __.")

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recognized an exception to that general rule only once, in *Williams* itself, but the statute at issue there was an extreme outlier, one that "deprived" indigent defendants of "any 'meaningful opportunity' to defend themselves" in court. *Id.* at 42-43. Section 2-101.5 does not have that effect: Plaintiff identifies no reason why it would lack a "meaningful opportunity" to pursue its constitutional challenge to the Firearm Industry Responsibility Act ("FIRA") in Sangamon County, or any reason why section 2-101.5 otherwise warrants an exception to the general rule requiring deference to the General Assembly's determinations regarding venue. Plaintiff's due-process claim therefore fails.

The Attorney General explained all this in his opening brief, AT Br. 11-39, but plaintiff largely ignores it. The Attorney General discussed at length, for instance, the unusual nature of the statutory scheme at issue in *Williams* and this Court's explanation that it violated due-process principles because it deprived indigent defendants of access to the courts (and, indeed, permitted the state agency at issue to obtain default judgments when those defendants failed to appear). *Id.* at 15-16, 25-27. Plaintiff offers no serious response to this account of *Williams*. It asserts that the Attorney General misreads the *Williams* opinion, AE Br. 19, but it offers no alternative reading, and indeed repeatedly acknowledges that the Court in *Williams* was "concerned about defaults" on the part of indigent defendants, *id.* at 17; *accord id.* at 19-20, a risk that even plaintiff accepts is not present in this context, *see id.* (agreeing that, "in total candor, it is probably not likely that a filing Plaintiff will suffer

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a default judgment" as a result of section 2-101.5). Plaintiff's failure to offer any alternative reading of *Williams* is telling: There is no real way to read that opinion as resting on anything other than the risks posed to the indigent defendants in that case by a statute that threatened to shut the courthouse doors entirely. Plaintiff must thus show that section 2-101.5 will have the same effect on its own case.

Plaintiff cannot make that showing. As the Attorney General explained in the opening brief, plaintiff has never argued that it will be unable to litigate its claims in Sangamon County, nor would any such allegation be plausible, given not only the relatively short distance between that forum and plaintiff's home county but also the many rules promulgated by this Court enabling access to electronic participation in court proceedings. AT Br. 21-25. Nor has plaintiff ever identified any specific burdens that it will face if it has to proceed in Sangamon County, as opposed to vague assertions that doing so would be "inconvenient." *Id.* at 29-30. Plaintiff's only real response appears to be that the Attorney General failed to argue that section 2-101.5 is constitutional "as applied" to it (as opposed to facially). AE Br. 14-15. That is incorrect: The Attorney General extensively discussed why plaintiff's own filings — which rest on little more than its assertion of inconvenience — undercut rather than support its claim that section 2-101.5 violates its own due-process rights. *See* AT Br. 21 (addressing plaintiff's "own due-process rights"); *id.* at 22 (addressing plaintiff's claims); *id.* at 23 (addressing plaintiff's complaint); *id.*

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at 23-24 (addressing plaintiff's filing in opposition to transfer). Plaintiff is simply wrong to assert otherwise.

Indeed, plaintiff largely fails to acknowledge or respond to the Attorney General's arguments at all. Instead, plaintiff simply doubles down on the assertion that it would be inconvenient for it to litigate its facial challenge to FIRA in Sangamon County, given that it "does no business outside of Madison County," its "employees . . . are almost, to a person, Madison County residents," and it would prefer not to drive "90 minute[s]" to Sangamon County to litigate its case. AE Br. 16-17; *accord id.* at 17-18 (explaining that plaintiff's owner "submitted an affidavit" attesting that "Madison County is convenient for him and Sangamon County is not"). But the Attorney General explained why these factual assertions do not give rise to a due-process claim: Plaintiff's claims challenging FIRA are facial in nature, and so should not require evidentiary development, *see People v. Thompson*, 2015 IL 118151, ¶ 36 (in a facial case, "the specific facts related to the challenging party are irrelevant"), and even if evidentiary development or some other form of personal participation were required, the burdens associated with any such participation would not give rise to a due-process violation, given both the ease of participating in court proceedings remotely, *see* Ill. Sup. Ct. Rs. 43(c)(1), 206(h), 241(b), and the minimal cost of driving 90 minutes from one Illinois county to another. *See* AT Br. 23-25. Plaintiff offers no response.

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In the end, under *Williams*, a venue statute is constitutional unless it operates to deprive litigants of the right to access the court system. Plaintiff cannot show that section 2-101.5 does so, either as a general matter or with respect to its own challenge to FIRA. The Court should reverse.

II. Plaintiff's due-process argument cannot be squared with *Williams* and would permit evasion of venue rules.

Plaintiff instead hinges its due-process claim almost entirely on a cursory application of the *Mathews* factors to section 2-101.5. AE Br. 15-23. But plaintiff's application of *Mathews* rests primarily on its view that it would violate due-process principles to make a plaintiff file suit in a county in which it does not reside. That understanding of the Due Process Clause cannot be squared with *Williams*, with the many venue statutes that do not permit litigants to file suit in their home counties, or with common sense, and, if accepted, would mire Illinois courts in endless litigation over venue.

To start, plaintiff is wrong to assert that the first two *Mathews* factors — the private interests at stake and the risk of erroneous deprivation of such interests, 424 U.S. at 335 — tip in its favor. AE Br. 16-21. Plaintiff appears to accept that the private right at stake is the right of access to the courts, *see id.* at 16; *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971), and that such a right is not unlimited, AE Br. 16 ("[P]laintiff actually agrees" that it does not have an "unfettered constitutional right" to file in the county of its choice). But plaintiff appears to believe that section 2-101.5 poses an unacceptable risk of

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erroneous deprivation of that right simply by making it marginally more difficult to litigate its case.

That argument fails on multiple levels, as the Attorney General has explained. AT Br. 14-19, 21-25. For one, no court has ever found that a law unconstitutionally restricts the right of access to the courts unless it has the effect of *completely* depriving an individual of such access — including, as discussed, *supra* pp. 1-2, this Court's opinion in *Williams*, which rests on just such a rule. AT Br. 14-16 & n.4. Even plaintiff does not argue that section 2-101.5 has such an effect; indeed, it concedes that it would be able to litigate its facial constitutional challenge to FIRA in Sangamon County, contending only that doing so would not be "convenient." AE Br. 16. That alone means that plaintiff's due-process claim fails.

And even if a litigant could make out a due-process violation on a showing that a venue rule merely *impaired* its right of access to the courts — while still permitting such a litigant to access the court system — plaintiff transparently has not made such a showing here. AT Br. 21-25. Plaintiff's filings below identify no specific burdens that might be imposed by having to litigate this case in Sangamon County; instead, again, plaintiff asserts only that Madison County would be a "convenient forum" in which to litigate the case and that Sangamon County would not be. C168, 170. The Attorney General identified this deficiency in his opening brief, AT Br. 23-24, but plaintiff did not address the defect in its answering brief. Instead, plaintiff

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insists that section 2-101.5 burdens its right of access to the courts simply because it would rather litigate its case in Madison County, where it resides, than in Sangamon County, "a 90 minute . . . drive away." AE Br. 16-17; *accord id.* at 17-18 ("Plaintiff submitted an affidavit . . . setting forth that Madison County is convenient . . . and Sangamon County is not."). But if a litigant were permitted to opt out of a venue rule on such a slender showing, venue rules would carry no force at all.

In an effort to justify its failure to identify any real burdens imposed by section 2-101.5, plaintiff identifies a range of hypothetical burdens that section 2-101.5 could conceivably impose on other litigants in other cases, arguing that "[w]itnesses sometimes cannot travel to their local courthouse to testify" and that such issues may be experienced by "the weak, the downtrodden, [and] the poor." AE Br. 20-21.[2] But plaintiff does not argue that *it* faces any of these burdens, or at least not with any specificity. Plaintiff adverts to the existence of possible "witnesses" in Madison County, *id.* at 16, but it does not identify any relevant testimony that any such witnesses might provide, and it is highly unlikely that any exists, since plaintiff does not dispute that its challenge to FIRA is facial in nature. *See Thompson*, 2015 IL 118151, ¶ 36 (in facial case,

[2] Plaintiff also argues that these issues may be particularly acute in cases in which individuals may be "accus[ed] . . . of crimes they did not commit." AE Br. 21. But section 2-101.5 does not apply in criminal cases, or, indeed, in any action brought *by* the State or its officers or agencies. It applies only in civil cases raising constitutional challenges to state statutes in which the State, its officers, or its agencies are defendants. Plaintiff's concern is thus misplaced.

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"the specific facts related to the challenging party are irrelevant"). Plaintiff cannot rely on hypothetical burdens that others might one day face in other cases to show that its own rights are violated by section 2-101.5. *See State v. Funches*, 212 Ill. 2d 334, 346 (2004) ("A party has standing to challenge the constitutionality of a statute only insofar as it adversely impacts his or her own rights.").

At bottom, plaintiff's argument as to the first two *Mathews* factors simply cannot be squared with *Williams* or common sense. Plaintiff's position appears to boil down to the view that a venue statute violates the Due Process Clause if it requires a litigant to file suit in a county in which it does not reside or do business. *Cf.* AE 16-17 (identifying only these factors as the basis for its claim). But that is not the test applied in *Williams*, which emphasized that its decision rested on *more* than the "burden of an inconvenient forum" — largely, on the borrowers' "indigence" and the nature of the agency's pursuit of its claims, which left the borrowers without "*any* means of defending themselves" in delinquency cases. 139 Ill. 2d at 63 (emphasis added). *See* AT Br. 28-29. Plaintiff would read that language out of existence, and in doing so open the doors to endless litigation over asserted due-process objections to venue rules. After all, as the Attorney General explained, AT Br. 5-6 & n.2, a wide range of venue statutes have the effect that that plaintiff attributes to section 2-101.5: They force plaintiffs to file suit in counties in which they

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"do[ ] no business" and are not otherwise at home. AT Br. 16. Plaintiff has no real response.

Plaintiffs at times appears to suggest that section 2-101.5 is different in kind than these statutes, because (in its view) it situates venue in counties where no "witness [or] document" is available, AE Br. 18, making those counties less appropriate for litigation than its county of choice. Plaintiff appears to say, for instance, that a court adjudicating a due-process challenge to a venue rule should "measure[ ]" the "venue rights" of the parties "against each other, to provide each side with a reasonable degree of convenience, depending on the facts of the case." *Id.* at 16. But that is simply the *forum non conveniens* analysis, under which courts weigh the relative convenience of alternate forums and decide which would be best for the parties and the court system. *See Fennell v. Illinois Cent. R. Co.*, 2012 IL 113812, ¶¶ 12-16.[3] As the Attorney General explained, AT Br. 33-35, that cannot be the standard for evaluating a due-process challenge to a venue statute, else circumvention of the "legislature's province [to] determine[e] where venue is proper," *Williams*,

[3] Notwithstanding its reliance on these principles, plaintiff argues at length that the *forum non conveniens* doctrine "is not before the Court." AE Br. 8; *see id.* at 8-14. But it was plaintiff that inserted that issue into this case by telling the circuit court that the *Mathews* test "mimic[s] the *forum non conveniens* analysis," C131 — an argument that court accepted, agreeing that "the standards and purposes associated with that doctrine are relevant to this case," A9. Regardless, the Attorney General agrees with plaintiff's current view that the *forum non conveniens* doctrine is irrelevant to plaintiff's due-process claim; indeed, the Attorney General said exactly that in the opening brief. *See* AT Br. 33-34 (explaining that *forum non conveniens* principles "have no bearing here"); *id.* at 37 (similar).

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139 Ill. 2d at 41, under the rubric of due process would become routine. The Court should reaffirm the rule that venue rules generally "implicate[ ] no constitutional principle," 14D Charles A. Wright *et al.*, *Federal Practice & Procedure* § 3801 (4th ed. 2013), at least absent the kind of circumstances at issue in *Williams*, which, as discussed, *supra* pp. 3-4, are not present here.

Finally, plaintiff is wrong that the final *Mathews* factor — the governmental interests secured by the procedure, 424 U.S. at 335 — tips in its favor. Plaintiff attacks the Attorney General for failing to explain the reason that the General Assembly enacted section 2-101.5. AE Br. 22. But this argument is nonresponsive because the Attorney General explained at length the basis for the General Assembly's decision, AT Br. 5-7, 31-33 — an explanation that plaintiff largely ignores. As the Attorney General explained, the General Assembly has for decades established venue in Sangamon and/or Cook County for a wide range of cases challenging agency action, in contexts as diverse as housing, banking, and license revocation. *See id.* at 5-6 & n.2. That choice makes sense because, as the Attorney General also explained, "[t]hese cases challenge governmental action (which either occurred in or will be enforced by agencies in these counties), and they will not generally turn on facts that are uniquely available in plaintiffs' home counties (because they turn on questions of law)." *Id.* at 20. In 2023, driven by "an increase in cases challenging state statutes and rules on constitutional grounds" — which were often duplicative and brought in multiple counties across the State — the

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General Assembly extended this venue rule to those cases challenging state statutes, regulations, and executive actions on constitutional grounds. *Id.* at 6; *see* C204-205 (statement of Rep. Hoffman) (explaining the General Assembly's reasoning). Indeed, the bill's sponsor said exactly that on the House floor, explaining that section 2-101.5 "simply say[s] that for constitutional actions that are brought against the state," the same venue rule should apply as in the administrative-law statutes cited above. C192 (statement of Rep. Hoffman).

Plaintiff does not offer any meaningful response to this explanation. It acknowledges that other statutes likewise set venue in Sangamon and/or Cook Counties, AE Br. 22, but it offers no reason why these statutes would be constitutional and section 2-101.5 would not, *see id.* And it asserts without support that *Williams* forecloses any reason the General Assembly could have for setting venue in these counties, *id.* at 23 — an argument that, again, bears no relation to the Attorney General's explanation or to *Williams* itself, which rejected only one specific government interest (the State's ability to prosecute student-loan suits "in a timely and efficient manner, with the lowest possible expenditure of State funds," 139 Ill. 2d at 59) and in the context of the unique statute at issue there. Here, the General Assembly enacted section 2-101.5 not to encourage the State to "expeditiously collect[ ] on defaulted loans," *id.*, as in *Williams*, but to promote the fair and efficient adjudication of constitutional claims in the counties in which the challenged state action was taken or will be enforced. The General Assembly has made that choice for decades in other

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public-law contexts, AT Br. 4-6, and it will generally impose little or no burden on plaintiffs, given the predominantly legal issues that are presented by such cases. Plaintiff is wrong to suggest that *Williams* or any other authority forecloses that choice.

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CONCLUSION

For these reasons, the Court should reverse the judgment below.

Respectfully submitted,

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November 6, 2024

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on November 6, 2024, I electronically filed the foregoing **Reply Brief of Defendant-Appellant** with the Clerk of the Court for the Illinois Supreme Court 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.

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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.

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