No. 130539

IN THE
SUPREME COURT OF ILLINOIS

PIASA ARMORY, LLC,

Plaintiff-Appellee

v.

KWAME RAOUL, in his official capacity as Illinois Attorney General,

Defendant-Appellant.

On Appeal from the Illinois Circuit Court of the Third Judicial Circuit
Madison County, Illinois; Honorable Ronald J. Foster, Jr. Presiding
Case No. 2023-LA-1129

AMICUS CURIAE BRIEF OF ILLINOIS TRIAL LAWYERS ASSOCIATION IN SUPPORT OF DEFENDANT-APPELLANT

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INTERESTS OF *AMICUS CURIAE*

Plaintiff Piasa Armory, LLC alleges that 735 ILCS 5/2-101.5(a) is unconstitutional, in part, because the statute explicitly makes the doctrine of intrastate *forum non conveniens* inapplicable to constitutional claims against the State. The trial court agreed with Plaintiff, despite the pleadings of Defendant Kwame Raoul, in his official capacity as Illinois Attorney General, explaining that the intrastate doctrine is outdated and counterproductive. The Attorney General's position is correct, and the Illinois Trial Lawyers Association (ITLA) presents this brief to highlight why the doctrine of intrastate *forum non conveniens* should be abandoned in Illinois.

ARGUMENT

Forum non conveniens is a judicially-created doctrine. *Daiber v. Montgomery County Mutual Fire Ins. Co.,* 191 Ill.App.3d 566, 567 (5th Dist. 1989). The doctrine was borne from the concept that – "in exceptional circumstances" – courts have power to decline otherwise-proper jurisdiction. *Gulf Oil Corp. v. Gilbert,* 330 US 501, 505 (1947) (*citing admiralty cases and suits between international parties*).

This Court first allowed *intrastate* application of the doctrine in 1983. *Torres v. Walsh,* 98 Ill.2d 338, 353 (Ill. 1983). After *Torres,* not only could Illinois courts decline jurisdiction when venue was more fairly and conveniently set within a different State's jurisdiction, Illinois courts could now

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grant a defendant's motion to transfer a lawsuit to a different county within Illinois. *Id.* 343-44.

Intrastate application of *forum non conveniens* currently operates as follows: (1) a plaintiff files her complaint against a defendant in an Illinois county that is a proper venue for her case pursuant to Illinois' general forum statute, 735 ILCS 5/2-101 (which already requires that every action must be commenced in either the county of residence of any defendant who is joined in good faith, or in the county in which some part of the transaction giving rise to the cause of action arose); (2) the defendant petitions the trial court to consider whether the statutorily-proper county venue is nevertheless "inconvenient"; (3) the court runs through certain "private" and "public" interest factors to weigh whether some other Illinois county should take the case[1]; (4) the court pays some lip service to the idea that plaintiff's venue choice deserves a measure of deference[2]; (5) the trial court decides whether to keep the properly-venued case

[1] The private interest factors include: (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive – for example, the availability of compulsory process to secure attendance of witnesses and the ability to view the premises where the alleged negligence occurred. *First American Bank v. Guerine,* 198 Ill.2d 511, 516 (Ill. 2002). The public interest factors are: (1) potential administrative difficulties caused by adding the litigation to an already congested court docket; (2) the interest in deciding controversies locally; and (3) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation. *Langenhorst v. Norfolk Southern Ry. Co.,* 219 Ill.2d 430, 443-44 (Ill. 2006).

[2] It was recently noted that amongst all the States, Illinois and Maryland apply the least deference to a plaintiff's forum choice. William S. Dodge et al., The Many State Doctrines of Forum Non Conveniens, 72 DUKE LAW J. 1163

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or whether to "decline" and dismiss the case for transfer to another county in Illinois – often a county right next door; (6) the trial court's decision is, invariably, interlocutorily appealed, stalling any forward movement on the case; (7) the court of appeals references that the trial court's decision is supposed to receive at least some deference; (8) the court of appeals runs through the factors itself and decides whether the plaintiff's case will stay in her chosen forum or go to the defendant's preferred county court.

A cottage industry of wasteful satellite litigation results; of which this Court observed – presciently – in 2002:

> **Obviously, one of the purposes of the *forum non conveniens* doctrine – sensible and effective judicial administration – is not being served by this protracted interlocutory litigation over plaintiffs' forum choices. The resources of this court are more profitably spent deciding fully developed controversies than micromanaging errant forum rulings with nonprecedential supervisory orders.**

First American Bank v. Guerine, 198 Ill.2d 511, 520 (Ill. 2002), *emphasis added.*

Applying *forum non conveniens* intrastate within Illinois was premised on the now-obsolete rationale that trial in any one county within Illinois (already presuming that county is a proper venue pursuant to the general venue statute), could be so unreasonably inconvenient to a defendant as to justify transferring the case to another county within Illinois. This basis for the *forum non conveniens* doctrine, "considerations of fundamental fairness

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(2023). Illinois' deference-to-plaintiff rule is more restrictive than the federal doctrine. *Id.*

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and sensible and effective judicial administration," is simply no longer served by the intrastate doctrine. *See Torres,* 98 Ill.2d at 344, *quoting Adkins v. Chicago, Rock Island & Pacific R.R.Co.,* 54 Ill.2d 511, 514 (Ill. 1973). Given modern technology, rendering insignificant the inconvenience of intrastate litigation; given the realities of 'forum shopping' by all litigants; given the court congestion caused by now-perfunctory filing and interlocutory appeal of intrastate forum motions; and given the protection of defendants' forum concerns already afforded by the Legislature, perpetuating intrastate *forum non conveniens* offends fundamental fairness and offends sensible, effective judicial administration in Illinois.

Intrastate *forum non conveniens* is unjust and unsound under present conditions. This Court has the power, and the duty, to abolish intrastate application of the doctrine. *See Ruffing v. Glissendorf,* 41 Ill.2d 412, 419 (Ill. 1968) ("The doctrine of school district immunity was created by this court alone. Having found the doctrine to be unsound and unjust under present conditions, we consider that we have not only the power, but the duty, to abolish that immunity."); *Henderson v. Foster,* 59 Ill.2d 343, 350 (Ill. 1974); *see also Yakich v. Aulds,* 2019 IL 123667 ¶13 (Ill. 2019); *Coleman v. East Joliet Fire Protection Dist.,* 2016 IL 117952 ¶53 (Ill.2016) ("To be sure, *stare decisis* is not an inexorable command.").

I. No historical considerations warrant perpetuation of *forum non conveniens* intrastate in Illinois

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Historical origins of the *forum non conveniens* doctrine are "murky", though there is some consensus that the doctrine originated in Scottish or English estate cases. *American Dredging Co. v. Miller,* 510 U.S. 443, 449 (1994). This Court previously cited English authority for the doctrine dating from 1705. *Torres v. Walsh,* 98 Ill.2d 338, 348 (Ill. 1983). On the basis of that probable history, the doctrine is often described as a right existing at English common law and thereby adopted as common law by the State. *See Id., quoting* Ill.Rev.State.1981, ch.1, par.801.

However, Illinois adopted English common law "as it existed prior to the fourth year of James the First", that is, 1606. *Id.; Canal v. Topinka,* 212 Ill.2d 311, 323-24 (Ill. 2004). As Justice Goldenhersh pointed out in his dissent in *Torres*: "Decisions of the courts of England in 1705 and thereafter are not authority for the position which the majority takes." 98 Ill.2d at 354-55. Other States also recognize the dubious value of relying on "common law" to justify *forum non conveniens* – particularly intrastate *forum non conveniens*. The Supreme Court of Missouri for example, after noting that English *forum non conveniens* cases post-date 1606 (and are thus presumably not adopted by the State common law), found that even if earlier English *forum non conveniens* cases existed, "such cases would not be dispositive because travel between English counties prior to 1607 would be more analogous to travel between American states than between Missouri counties." *Willman v. McMillen,* 779 S.W.2d 583, 586 (Mo. 1989).

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The Supreme Court of New Mexico quoted from Justice Goldenhersh's *Torres* dissent when it observed "[w]e are aware of only two states – Illinois and Oklahoma – which have held that intrastate *forum non conveniens* existed at the common law." *First Financial Trust Co. v. Scott,* 122 N.M. 572, 575 (NM 1996). The *Scott* Court also observed that, regardless of the precise date of the centuries-old English cases (vis-a-vis the 1606 common law cut-off date), the 'convenience' concerns at issue in those cases do not translate to intrastate transfer in the modern era: "We do not find the transfer from a county in southern England to another county in northern England at the beginning of the nineteenth century to be sufficiently analogous to the transfer between counties in the State of New Mexico at the end of the twentieth century." *Id.* at 576.

The Supreme Court of Mississippi further distinguished the old English *forum non conveniens* common law from modern intrastate *forum non conveniens*. *Clark v. Luvel Dairy Products, Inc.,* 731 So.2d 1098, 1103 (Miss. 1998). Whereas a plaintiff in 17th century England had the prima facie power to designate *any* county in the whole country of England as the place for trial, modern U.S. plaintiffs' intrastate county venue choices are limited by their State legislature's venue statutes. *Id.* For example, even without the 'safeguard' of intrastate *forum non conveniens*, an Illinois plaintiff is not permitted to indiscriminately or capriciously choose any county in which to bring her case – the Legislature confined Illinois plaintiffs' venue options via

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735 ILCS 5/2-101. An Illinois plaintiff must be able to prove that the forum county is either the county in which some part of the transaction giving rise to the cause of action arose, or is the residence of a defendant joined in good faith and with probable cause for obtaining a judgment against that resident defendant *and* that defendant is not solely joined for the purpose of fixing venue. 735 ILCS 5/2-101.

Certain *forum non conveniens* precedent came in 1947 with *Gulf Oil Corp. v. Gilbert,* holding that the doctrine could apply in federal diversity cases. 330 U.S. 501 (1947). The *Gilbert* opinion is the genesis of the now well-worn public and private factors weighed in *forum non conveniens* analyses. Closely following *Gilbert,* this Court recognized the interstate doctrine in 1948. *Whitney v. Madden,* 400 Ill. 185 (Ill. 1948).

Illinois expanded the judicial doctrine to include intrastate transfer in *Torres v. Walsh*. 98 Ill.2d 338 (Ill. 1983). The *Torres* Court noted that, unlike the majority of States that had condoned intrastate *forum non conveniens*, Illinois did not have any statutory authority for doing so. *Torres,* 98 Ill.2d at 346-47[3].

The *Torres* Court instead found authority for the doctrine in the "common law," bringing us back to Justice Goldenhersh's dissent, cited above.

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[3] At the time, the *Torres* Court counted 18 States where the ability to transfer cases to other counties within the same State on *forum non conveniens* grounds had been permitted and defined by the state Legislature. 98 Ill.2d at 347.

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A clear view of the history of *forum non conveniens* in Illinois shows us that – particularly absent any statutory basis – intrastate application of the doctrine arises solely from this Court's administrative authority. Repeal of intrastate application of the doctrine therefore requires only this Court's considered opinion that intrastate *forum non conveniens* no longer serves to promote either fair play between litigants or effective, sensible judicial administration, if it ever served those purposes at all.

II. The pretense of "unreasonable" inconvenience as-between Illinois counties is inadequate justification for intrastate *forum non conveniens*, particularly given the practical morass effected by litigating the intrastate doctrine.

The venue provision of 5/2-101.5(a) does not deprive Plaintiff of due process rights, in part because - as the Attorney General pointed out in his briefing to the trial court - "it is beyond dispute that remote appearances can be structured in a way that provides due process to all participants." (SR95, *citing In re P.S.,* 2021 IL App (5th) 210027 ¶62). The technological advances that give litigants a meaningful opportunity to be heard remotely in every county in Illinois distinguish this case from the outcome reached in *Williams v. Illinois State Scholarship Commission,* 139 Ill.2d 24 (Ill. 1990). In *Williams,* the subject statute defined Cook County as the sole, exclusive venue for all lawsuits involving delinquent student loans payments. *Id.* at 28. The *Williams* Court held that because the plaintiffs were shown to be financially incapable of travel to Cook County and were shown to have consequently been subject to

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default judgment for failure to appear, the statute in practice deprived plaintiffs of the meaningful opportunity to be heard. *Id.* at 43.

The trial court in the case at bar found the *Williams* holding controlled, taking "judicial notice that telephones were in widespread use at the time *Williams* was decided, thus contrary to the argument of the State, the remote appearance option was available to the student loan borrowers in *Williams*" (SR220). Thereby construing the technological court access available to litigants in 2024 as practically identical to the ability to make a phone call in 1990, the trial court below found that section 2-101.5(a) was unconstitutional without the "safeguard" of intrastate *forum non conveniens* (SR220).

Respectfully, the remote access widely available to litigants today is not comparable to landline 'telephone use' in 1990. Today client/attorney meetings can be easily managed remotely; exchange of voluminous documents is effected remotely; depositions, including video depositions, can be taken remotely; witnesses can testify remotely in trial – indeed entire trials can be conducted remotely. *See* Rhys Saunders, In Zoom We Trust, 109 ILL.B.J. 12 (2021) (discussing the fully remote jury trial in the 19th Judicial Circuit Court, *Raskin v. Mitchell*).

As the Court recognized in its May 2020 Policy on Remote Court Appearances in Civil Proceedings, technology "improve[s] the administration of justice, increase[s] efficiency, and reduce[s] costs." (SR 41).

> The widespread popularity of mobile telephones, particularly smartphones and other personal devices, means that more people

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> than ever before have the ability to participate in court proceedings electronically from a location outside of court … New Illinois Supreme Court Rule 45 and Supreme Court Rule 241 grant courts broad discretion to allow Remote Court Appearances.

((SR41) Illinois Supreme Court Policy on Remote Court Appearances in Civil Proceedings, eff. May 2020). Modern technology ensures that – whether the trial is set in the Illinois county that the properly-venued defendant would *prefer* or not—intrastate litigation will be reasonably convenient and will comport with fundamental fairness and sensible judicial administration. Technology has rendered intrastate *forum non conveniens* entirely unnecessary. Illinois courts have long recognized that the utility of intrastate *forum non conveniens* was on the edge of being swallowed by the realities of modern civil practice and modern technology. We are now over the edge.

Twenty years ago, at the time when this Court issued its opinion in *Peile v. Skelgas,* upholding use of the intrastate *forum non conveniens* doctrine, the world's first "webcam" had just been invented, internet access was dial-up only and often paid by-the-minute, and there was one commercially available video conferencing phone – an AT&T "videophone 2500" on sale for $999.[4] 163 Ill.2d

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[4] Cambridge research scientists programed a camera to take three grayscale pictures per minute of the lab coffee pot, then wrote a code that would relay the most recent image to someone who requested the image online. Rebecca Kesby, How the World's First Webcam Made a Coffee Pot Famous, 22 Nov. 2012, BBC World Service, https://www.bbc.com/news/technology-20439301, *visited July 11, 2024*; *see also* Julie Bort, No Google. No Netflix. No iPhone. This is What Tech Was Like in 1994, Aug.18, 2014, Business Insider, https://www.businessinsider.com/tech-in-1994-the-year-the-web-was-born-2014-8, *visited July 11, 2024*; Shannon Liao, AT&T Launched the VideoPhone 2500 in 1992. It Sold for $1,499, CNN Business, Jun.12, 2020,

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323 (Ill. 1994). *Even then*, members of the Court questioned the "inconvenience" purportedly motivating the doctrine:

> Although the doctrine of *forum non conveniens* may make sense in the context of cases having connections with more than one State, it can no longer be justified where, as here, the dispute concerns Illinois alone. The improvement of the highway system, the expansion of scheduled air service, and the spread of new technologies have all but eliminated the obstacles that once hindered the ability of parties to litigate their cases in different parts of the State. Long-distance communication has become routine. Travel is safe, easy, fast and affordable. Regional prejudices, to the extent they existed, have dissipated.

Peile, 163 Ill.2d at 345 (Harrison, J. dissenting)*, internal citations omitted.* In 2002, the Court remarked: "We live in a smaller world than that contemplated by the *Gulf Oil* Court, or even this court in *Torres.* 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." *Guerine,* 198 Ill.2d 511, 525 (Ill. 2002).

As technology advances, the pretext of 'inconvenience' as the touchstone motivating intrastate *forum non conveniens* becomes ever more tenuous. *See Erwin v. Motorola, Inc.,* 408 Ill.App.3d 261, 281 (1st Dist. 2011) ("[I]t has become well-recognized by our courts that given our current state of technology (including e-mail, Internet, fax and copying machines) documentary evidence can be copied and transported easily and inexpensively.); *Foster v. Hillsboro Area Hosp., Inc.,* 2016 IL App (5th) 150055 ¶45 (" The issue of convenience, in

https://www.cnn.com/2020/06/12/tech/att-video-phone-vault/index.html, *visited July 11, 2024* (the VideoPhone 2500 was discontinued in 1995).

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a world where everything is available instantaneously and remotely, now blurs even further the lines of convenience. In our view … technological advances … render many of the usual convenience-of-the-parties arguments antiquated and implausible.”).

Ironically, the practice of intrastate *forum non conveniens* has itself become the inconvenience, hampering effective judicial administration. The *Guerine* Court observed that between 1994 and 2002, the Illinois Supreme Court had been required to exercise its supervisory authority to manage *forum non conveniens* appeals over 30 times. 198 Ill.2d at 520 (“Obviously … sensible and effective judicial administration [] is not being served by this protracted interlocutory litigation over plaintiffs’ forum choices.”); *see also Peile,* 163 Ill.2d at 335 (recognizing the administrative “quagmire” created by intrastate application of the doctrine.). Justice Harrison’s 1994 dissent in *Peile* voiced similar concerns:

> The litigation of [intrastate *forum non conveniens*] motions in the circuit courts and the appeals that inevitably follow consume an increasing share of scarce judicial resources. As a result, the disposition of legitimate controversies is delayed as our judges find their attention diverted to what the majority concedes is a ‘battle over minutiae.’ I fail to see how this advances the interests of justice.

163 Ill.2d at 346. Intrastate application of the doctrine after *Torres* “spawned vast amounts of collateral litigation. *Forum non conveniens* motions have become routine … Litigation has crowded the dockets of Illinois appellate courts and has occupied a disproportionate share of the supreme court’s

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resources." David C. Nelson, Intrastate Forum Non Conveniens: An Argument for Reform after Peile v. Skelgas, 84 ILL.B.J. 180, 181 (1996).

Members of Illinois' General Assembly recognized this counterproductivity when passing section 2-101.5(a). During debate, Sponsor of the bill Rep. Jay Hoffman explained the rationale for prohibiting intrastate *forum non conveniens*, both in 2-101.5(a) and in general (SR 125). Our courts look to the General Assembly floor statements to ascertain legislative intent. *Morel v. Coronet Ins. Co.,* 117 Ill.2d 18, 24 (Ill. 1987). It is therefore worth quoting Rep. Hoffman's statement at length:

> 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.

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State of Ill. 103rd G.A. House of Representatives (May 25, 2023) at p.64. Rep. Hoffman ably summarizes the futility and inconvenience of the intrastate doctrine. Amicus curiae likewise urge this Court to abolish intrastate application of *forum non conveniens*.

III. Illinois' General Venue Statute sufficiently protects the interests previously safeguarded by the intrastate *forum non conveniens* doctrine.

Modern technology and modern trial practice eliminate any unreasonable inconvenience that could arguably arise from litigating in one Illinois county versus another Illinois county. Given modern reality, Illinois' general venue statute is a sufficient backstop against purported plaintiff venue abuse. There is no more justification for engrafting a turgid extra-statutory doctrine to the Legislature's statement on proper intrastate venue.

The task of setting venue for Illinois lawsuits is properly before the Illinois Legislature. From "the earliest history of this state, and under three different Constitutions, the Legislature has always assumed and exercised the power of determining the venue of transitory actions." *Mapes v. Hulcher,* 363 Ill.227, 230 (Ill. 1936). This Court "has consistently held that the determination of venue is for the legislature." *Torres,* 98 Ill.2d 338, 353, (J.Goldenhersh, dissent), *citing Chappelle v. Sorenson,* 11 Ill.2d 472 (Ill. 1957). "Because venue is merely a matter of procedure, courts generally cannot interfere with the legislature's province in determining where venue is proper." *Williams v. Illinois State Scholarship Com'n,* 139 Ill.2d 24, 41 (Ill. 1990).

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This Court considered those principles in *Peile v. Skelgas, Inc.* when it, at that time, declined to abandon intrastate *forum non conveniens*. 163 Ill.2d at 331. The *Peile* Court pointed out the Illinois Supreme Court's Constitutional authority to promulgate procedural rules in furtherance of its supervisory and administrative powers. *Id.* at 334. In 1994, according to the *Peile* majority, the interests of justice sometimes required transfer to a significantly more convenient Illinois county, so it remained necessary for the Court to exercise its authority in perpetuation of the intrastate *forum non conveniens* forum. *Id.* at 332, 336 ("We conclude that the *forum non conveniens* doctrine continues to serve a valuable policy that the courts of this State are sufficiently equipped to effectuate.").

The issue today is that, while the Court's inherent authority is irrefutable[5], reality does *not* warrant exercise of that authority to perpetuate intrastate *forum non conveniens*. Contemporaneous with this Court's *Peile* decision, the United States Supreme Court aptly observed:

> At bottom, the doctrine of *forum non conveniens* is nothing more or less than a supervening venue provision, permitting displacement of the ordinary rules of venue when, in light of certain conditions, the trial court thinks that jurisdiction ought to be declined.

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[5] *Contra* Markus Petsche, A Critique of the Doctrine of Forum Non Conveniens, 24 FLA.J.INT'L L. 545, 550 (2012) ("Forum non conveniens is, essentially, a doctrine based on the presumed virtues of judicial discretion."); Gordon E. Maag, Forum Non Conveniens in Illinois: A Historical Review, Critical Analysis, and Proposal for Change, 25 S.ILL.U.L.J. 461, 520 (2001) ("[I]t is respectfully submitted that the Illinois Supreme Court lacks the authority to enforce intrastate *forum non conveniens* in the face of a legislative proscription.").

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American Dredging Co. v. Miller, 510 U.S. 443, 453 (1994). It may be that 'certain conditions' necessitating a court-created supervening venue provision persisted in 1994; they do not persist in 2024.

The Illinois venue statute was itself "*designed* to insure that the action will be brought either in a location convenient to the defendant, by providing for venue in the county of residence, or convenient to potential witnesses by allowing for venue where the cause of action arose." *Langenhorst v. Norfolk Southern Ry. Co.,* 219 Ill.2d 430, 441 (Ill. 2006), *internal quotations omitted, emphasis added*. The supposed purpose of the intrastate *forum non conveniens* doctrine (convenience) is therefore served by the venue statute. As the First District commented: "The legislature clearly meant to protect a defendant against being sued in a county arbitrarily selected by a plaintiff, wherein the defendant does not reside, or in which no part of the transaction occurred which gave rise to the cause of action." *Heldt v. Watts,* 329 Ill.App. 408, 414 (1st Dist. 1946) (observing the "many safeguards the legislature has thrown around the right of a defendant to be sued in the proper county."). Sections 5/2-106, 5/2-615, 5/2-619, 5/2-1001, and 5/2-1001.5 of Illinois' Code of Civil Procedure further protect defendants from unreasonable venue.

Additionally, as opposed to the "multifarious" *forum non conveniens* analysis, which "make[s] uniformity and predictability of outcome almost impossible", the general venue statute analysis is straightforward. *Miller,* 510 U.S. at 455; *see also* Peter G. McAllen, Deference to the Plaintiff in Forum Non

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Conveniens, 13 S.ILL.U.L.J. 191, 199 (1989) ("As typically happens when trial courts of varying predilections are directed to 'exercise discretion' in weighing a large number of incommensurate factors, the result has been a welter of decisions that are difficult if not impossible to harmonize."). Defendants should be well aware in which Illinois counties they reside, as 'residence' is defined by the statute – and "defendants, like plaintiffs, benefit from the simple and determinate nature of venue rules."[6]

In addition to "convenience" – which no longer justifies an extra-statutory tool for defendants to avoid venue pursuant to 735 ILCS 5/2-101 – proponents of intrastate *forum non conveniens* rely on accusations of plaintiff 'forum shopping' necessitating extra protection from statutorily-proper venue. This too is a red herring.

IV. Intrastate *forum non conveniens* is a vehicle for extra-statutory forum shopping.

The perceived threat of lopsided 'forum shopping' animates intrastate *forum non conveniens* practice. *Guerine,* 198 Ill.2d at 521 ("Behind the talk of

[6] Justice Goldenhersh alluded to the superior predictability of the venue statute versus intrastate *forum non conveniens* litigation in *Torres*: "I need not lengthen this dissent by pointing out the confusion which the utter disregard of the venue statutes evidenced by this opinion will cause in the administration of justice in this jurisdiction. To destroy in one stroke the stability created by a long history of deference to legislative governance of venue is an unfortunate mistake which should be immediately corrected." 98 Ill.2d at 355 (J. Goldenhersh, dissenting); *see also* Markus Petsche, A Critique of the Doctrine of Forum Non Conveniens, 24 FLA.J.INT'L L. 545, 570 (2012) (quoting a description of *forum non conveniens* caselaw as "a crazy quilt of ad hoc, capricious, and inconsistent decisions.").

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inconvenience and the interests of justice lies a concern not about plane fares but about juries."). Underpinning all the calibrations of private and public factors is the impetus to curb what has been cast as plaintiffs' "incessant jockeying for a more sympathetic jury likely to come forward with a more substantial award." *Id. internal quotations omitted.*

In reality however, intrastate *forum non conveniens* is itself a tool *perpetuating* forum shopping – defendants use the doctrine to workaround the general venue statute and to divert plaintiffs' cases to venues that *defendants* deem more sympathetic. "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." *Guerine,* 198 Ill.2d at 521, *quoting* Gordon E. Maag, Forum Non Conveniens in Illinois: A Historical Review, Critical Analysis, and Proposal for Change, 25 S.ILL.U.L.J. 461, 510 (2001). As this Court observed in *Cotton v. Louisville & N.R. Co.:*

> If it is 'shopping' for a plaintiff to bring suit in a great metropolis where a large verdict is anticipated, why is it not also 'shopping' for a defendant to attempt to have the case dismissed on the ground that it should have been brought in a small community where the defendant anticipates a smaller verdict would result.

14 Ill.2d 144, 174 (Ill. 1958)[7].

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[7] *Cotton* held that an interstate railroad case could only be dismissed on *forum non conveniens* grounds if the defendant could show that plaintiff's venue choice had been solely motivated by vexation and harassment – on those grounds, *Cotton* was overruled. *People ex rel. Chesapeake & O. Ry. Co. v. Donovan*, 30 Ill. 2d 178, 180 (Ill. 1964).

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Illinois' general venue statute permits a plaintiff to choose the forum for her case, provided that forum meets the criteria set by the Legislature. "There is nothing which requires a plaintiff to whom such a choice is given to exercise it in a self-denying or large-hearted manner." *Cotton,* 14 Ill.2d at 161, *internal quotation omitted.* In other words, there is nothing wrong with plaintiff choosing what she perceives to be a preferable intrastate venue. *See Wieser v. Missouri Pacific R.Co.,* 98 Ill.2d 359, 368 (Ill. 1983). In fact, not-choosing the more strategically advantageous venue would be a dereliction of plaintiff counsels' duty to zealously represent their clients. *See* Model Rules of Prof'l Conduct R.1.3 (Am.Bar Assoc. 2024). When Illinois' general venue statute yields more than one permissible venue, plaintiffs are not 'cheating' by selecting one county over another.

Nevertheless, defendants have been able to successfully paint plaintiffs' legitimate forum choice pursuant to the statute as nefariously-motivated forum shopping, undertaken for the purpose of harassing and inconveniencing defendants. As Justice Harrison pointed out in his *Peile* dissent:

> These considerations [of convenience] were never really behind the doctrine in any case. This court adopted intrastate *forum non conveniens* in the wake of popular criticism that plaintiffs' lawyers were exploiting the venue rules to shop for more generous juries. If that criticism ever had any empirical or analytical basis, it is long since gone. If there are abuses today, they are committed not by plaintiffs, but by defense counsel. *Forum non conveniens* motions have become a routine and lamentable part of defense strategy.

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163 Ill.2d at 345; *see also Goad v. Celotex Corp.,* 831 F.2d 508, 512 (4th Cir. 1987) ("Defendants' brief invokes the spectre, or sets up the strawman, depending on whose ox is being gored, of forum shopping.").

To be sure, plenty of opinions use language condemning forum shopping, but distaste for the practice largely arose from federal courts' disapproval of attempts to jump *jurisdictions* and find preferable state law. *Compare Agency Holding Corp. v. Malley-Dupp & Assoc.,* 483 U.S. 143, 144, 154 (1987), *with Keeton v. Hustler Magazine, Inc.,* 465 U.S. 770, 779 (1984); *see also* Forum Shopping Reconsidered, 103 HARV.L.REV. 1677, 1680-82 (1990). There are no jurisdiction-jumping concerns when the choice is between statutorily-sanctioned Illinois circuit courts.

There is nothing unethical about either plaintiff or defendant seeking the most strategically advantageous venue within statutory bounds. However, it *is* counter to fundamental fairness and to the effective administration of justice in this State for a judicially-created doctrine to enshrine reverse forum shopping, in derogation of the general venue statute, under the guise of 'convenience.' This Court observed the artifice, and gamesmanship, inherent in defendants' invocation of *forum non conveniens* in *Cotton*:

> We are sure the railroad's concern for the trial calendar[] cannot be very sincere. Delays are always a sharp weapon for the defense. Postponement of an injured employee's day in court … is most frustrating. Defendants can afford to wait. Plaintiffs can ill-afford to do so … Settlements thus become imperative and frequently are inadequate.

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14 Ill.2d at 170. The *Cotton* Court's reference to settlements remains apropos. The entire doctrine of *forum non conveniens* is designed to uncover the most convenient forum *for trial*. *See Langenhorst,* 219 Ill.2d at 442. Yet very few civil cases are tried. In 2022, for example, there were 44,878 cases open Statewide seeking damages of $50,000 or more. Administrative Office of the Illinois Courts, 2022 Annual Report of the Illinois Courts Statistical Summary, p.55. In the entire State for that category of case, only 158 were resolved by jury trial and only 39 by bench trial. *Id.* at p.166. That is approximately .4% – less than one percent – of cases going to trial; a truly miniscule portion of cases buttressing an ever-metastasizing, unserviceable, interlocutory practice. *See also* Hon. Ron Spears, Dinosaurs and Jury Trials: Adaptation or Extinction?, 101 Ill. B.J. 264 (2013) ("While historical statistics are sparse, the decline in percentage of cases resolved by jury verdict over the past 40 years is probably a reduction from the 5-10 percent that previously went to trial to one percent or less.").

Considering that the intrastate doctrine does not further trial "convenience" or judicial administration, and functions only as an extra-statutory tool for defendants to forum-shop and enjoy interlocutory delay, the 'sharp weapon' of intrastate *forum non conveniens* practice is not justifiable.

CONCLUSION

The Legislature prohibited application of intrastate *forum non conveniens* in cases under 735 ILCS 5/2-101.5(a), and on the General Assembly

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floor, Legislators urged this Court to abolish the intrastate doctrine altogether. Intrastate *forum non conveniens* is a judicially created doctrine that no longer serves any legitimate purpose. This Court has the inherent authority and responsibility to abolish the doctrine of intrastate *forum non conveniens*. For the reasons stated above, ITLA echoes the Illinois' General Assembly's call to the Court to do so.

Respectfully submitted,
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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 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), contains 22 pages.

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