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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 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

MOTION OF THE ILLINOIS DEFENSE COUNSEL AND DRI CENTER FOR LAW AND PUBLIC POLICY FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE

The Illinois Defense Counsel and the DRI Center for Law and Public Policy, through below counsel, pursuant to Illinois Supreme Court Rule 345, respectfully requests leave to appear and file its *amicus curiae* brief in support of appellee, Paisa Armory, LLC and in support thereof, states as follows:

Illinois Defense Counsel

1. The mission of the Illinois Defense Counsel ("IDC") is to ensure civil justice with integrity, civility, and professional competence. The IDC is comprised of Illinois attorneys who

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devote a substantial portion of their practice to the representation of business, corporate, insurance, professional, and other individual defendants in civil litigation.

2. The IDC has adopted specific objectives designed to establish IDC as the voice of the defense bar in Illinois, and to serve the business and professional interests of its members. To that end, the IDC Board of Directors has developed and approved the following statement of Core Values:

- IDC will promote and support a fair, unbiased, and independent judiciary.
- IDC will take positions on issues of significance to the defense bar, and advocate and publicize those positions.
- IDC will promote and support the fair, expeditious, and equitable resolution of disputes, including preservation and improvement of the jury system.
- IDC will provide programs and opportunities for professional development to assist members in better serving their clients.
- IDC will increase its role as the voice of the defense bar of Illinois to make IDC more relevant to its members and the general public.
- IDC will support diversity within our organization, the defense bar, and the legal profession.
- IDC will promote and support civility and highest ethical standards within the legal profession.

3. The DRI Center for Law and Public Policy (DRI) is the public policy think tank and advocacy voice of DRI, Inc. -- an international organization of around 16,000 attorneys representing businesses in civil litigation. DRI's mission includes enhancing the skills, effectiveness, and professionalism of defense lawyers; promoting appreciation of the role of

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

defense lawyers in the civil justice system; and anticipating and addressing substantive and procedural issues germane to defense lawyers and the fairness of the civil justice system. DRI participates as *amicus curiae* in the U.S. Supreme Court and federal courts of appeals, and also joins -- at the request of its affiliated, state civil defense organizations, such as the IDC -- important *amicus curiae* efforts in state courts in an ongoing effort to promote fairness, consistency, and efficiency in the civil justice system.

4. The IDC and DRI submits that this Court should disregard the Illinois Trial Lawyers Association's invitation to abolish the application to *forum non conveniens* to intrastate transfers.

Statement of the Applicant's Interest

5. The IDC and DRI have a substantial interest in this case because the continued viability of the intrastate *forum non conveniens* doctrine is fundamental to the rights of defendants and the handling of lawsuits in Illinois. The IDC and DRI submit ITLA's arguments in the *amicus curiae* brief calling for the abrogation of the intrastate *forum non conveniens* doctrine – are entirely irrelevant to the legal issues on review, and this Court should not address them. If this Court does consider the ITLA's argument, the intrastate *forum non conveniens* doctrine is vital to the proper functioning of Illinois courts. Its abandonment would result in a concentration of cases in select few Illinois counties, overwhelm those courts and burden local juries with deciding controversies that have little, if any, practical connection to these counties.

How the Amicus Curiae Brief will assist the Court

6. The IDC and DRI will aid the court in highlighting that an amicus brief is not the proper vehicle for consideration of the issue presented by ITLA and that even if this court reaches the merits of the issue, intrastate *forum non conveniens* is an important tool for Illinois courts to manage their dockets.

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7. A proposed Order is attached hereto.

WHEREFORE, the Illinois Defense Counsel and the DRI Center for Law and Public Policy respectfully requests that this Court grant it leave to appear and file its *amicus curiae* brief in support of the appellee Piasa Armory, LLC.

Respectfully submitted,

ILLINOIS DEFENSE COUNSEL and DRI CENTER FOR LAW AND PUBLIC POLICY, *Amici Curiae*

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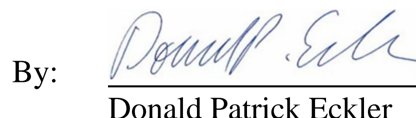
By: 
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Case No. 2023-LA-1129

AMICUS CURIAE BRIEF OF ILLINOIS DEFENSE COUNSEL AND DRI CENTER FOR LAW AND PUBLIC POLICY IN SUPPORT OF PLAINTIFF-APPELLEE

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SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

Table of Contents and Points and Authorities

Statement of the Amici's Interest 1

Argument 1

I. ABROGATING INTRASTATE *FORUM NON CONVENIENS* IS NOT NECESSARY FOR THIS CASE TO RESOLVE THIS DISPUTE………...2

735 ILCS 5/2-101.5……………………………………………………………..2

Bluthhardt v. Breslin, 74 Ill.2d 246, 251 (1979)……………………………...2

Tuttle v. Gunderson, 341 Ill. 36, 45-46 (1930)………………………………….2

Underground Contractors Ass'n v. City of Chicago, 66 Ill.2d 371, 375 (1977)…..2

II. THE SUPREME COURT RULES PROCESS, NOT AN AMICUS BRIEF, IS THE PROPER AVENUE TO CONSIDER THE CHANGE REQUESTED…3

Illinois Supreme Court Rule 187…………………………………………………..3

Ill. Const. 1970, art. VI, § 16………………………………………………………3

Illinois Supreme Court Rule 3 ...……………………………………………….3

735 ILCS 5/2-108 ……………………………………………………………...3

Passafiume v. Jurak, 2024 IL 129761, ¶¶ 52-53……………………………..4

III. THE SAME RATIONALE THAT SUPPORTED THE INTRASTATE APPLICATION OF *FORUM NON COVENIENS* IN *TORRES* (1983) SUPPORTS ITS CONTINUING VITALITY NOW..…………………………4

Whitney v. Madden, 400 Ill. 185 (1948)……………………………………………4

Gulf Oil Corporation v. Gilbert, 330 U.S. 501 (1947)……………………………4

Torres v. Walsh, 98 Ill. 2d 338 (1983)……………………………………………..5

Alabama -- Ala. Code § 6-3-21.1 …………………………………………………6

Alaska -- Alaska Stat. Ann. § 22.10.040 …………………………………………6

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

California -- Cal. Civ. Proc. Code § 397 …………………………………………6

Connecticut -- Conn. Gen. Stat. Ann. § 51-347a …………………………………6

Florida -- Fla. Stat. Ann. § 47.122 ………………………………………………..6

Georgia -- Ga. Code Ann. § 9-10-31.1 …………………………………………...6

Hawaii -- Haw. Rev. Stat. Ann. § 603-37 ………………………………………..6

Indiana -- Ind. Code Ann. § 34-35-1-1 …………………………………………...6

Louisiana -- La. Code Civ. Proc. Ann. art. 123.A. ………………………………6

Maryland -- Code of Maryland, Civil Procedure, Md. Rules 2-327 ……………..6

Michigan -- Mich Court Rules, Civil Procedure 2.222 …………………………..6

Minnesota -- Minn. Stat. Ann. § 542.11 …………………………………………6

Mississippi -- Miss. Code Ann. § 11-11-3 ………………………………………6

Nebraska -- Neb. Rev. Stat. Ann. § 25-4107 ……………………………………6

Nevada -- Nev. Rev. Stat. Ann. § 13.050 ………………………………………..7

New Hampshire -- N.H. Rev. Stat. Ann. § 507:11 ……………………………....7

New York -- N.Y. C.P.L.R. 510 (3) (McKinney) ………………………………..7

Oregon -- Or. Rev. Stat. Ann. § 14.110 …………………………………………7

Pennsylvania -- Pa.R.C.P. No. 1006 ……………………………………………..7

Texas -- Tex. Civ. Prac. & Rem. Code Ann. § 15.002 …………………………..7

West Virginia -- W. Va. Code Ann. § 56-1-1 ……………………………………7

28 U.S.C. § 1404 …………………………………………………………………7

Plotkin v. IP Axess, Inc., 168 F.Supp.2d 899, 902 (N.D.Ill. 2001) 7-8

Amoco Oil Co. v. Mobil Oil Corp., 90 F.Supp.2d 958, 960 (N.D.Ill. 2000) 8

Bryant v. ITT Corp., 48 F.Supp.2d 829, 831 (N.D.Ill. 1999) 8

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

Navarrette v. JQS Prop. Maint., No. 07 C 6164, 2008 WL 299084, at *1 (N.D. Ill. Jan. 29, 2008) 8

Gulf Coast Bank & Tr. Co. v. Home State Bank, N.A., No. 11-CV-2617, 2011 WL 5374098, at *4 (N.D. Ill. Nov. 4, 2011 8

Bjoraker v. Dakota, Minn. & E. R.R. Corp., No. 12 C 7513, 2013 WL 951155, at *1 (N.D. Ill. Mar. 12, 2013) 8

Villalobos v. Iowa Chicago & E. R.R. Corp., No. 09 C 2342, 2009 WL 10713600, at *1 (N.D. Ill. Aug. 3, 2009) 8

IV. TECHNOLOGICAL ADVANCES DO NOT WARRANT ABOLISHMENT OF INTRASTATE TRANSFERS UNDER THE *FORUM NON CONVENIENS* DOCTRINE.

Illinois Supreme Court Rule 241 9

Kowalczyk v. Illinois Central Railroad Co., 2021 IL App (1st) 210206-U ………9

In re Volkswagen of America, Inc., 545 F.3d 304, 316 (5th Cir. 2008) 10

In re TS Tech USA Corp., 551 F.3d 1315, 1321 (Fed. Cir. 2008)……………....…10

Trejo v. Alter Scrap Metal, Inc., 2008 WL 5070274 (C.D. Ill. 2008) 10

Conclusion 11

Rule 341(c) Certificate of Compliance 13

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

Statement of the *Amici's* Interest

The Illinois Defense Counsel (IDC) is a statewide association of attorneys who dedicate a significant amount of their practice to civil defense in Illinois. The DRI Center for Law and Public Policy (DRI) is the public policy think tank and advocacy voice of DRI, Inc. -- an international organization of around 16,000 attorneys representing businesses in civil litigation. DRI's mission includes enhancing the skills, effectiveness, and professionalism of defense lawyers; promoting appreciation of the role of defense lawyers in the civil justice system; and anticipating and addressing substantive and procedural issues germane to defense lawyers and the fairness of the civil justice system. DRI participates as *amicus curiae* in the U.S. Supreme Court and federal courts of appeals, and also joins -- at the request of its affiliated, state civil defense organizations, such as the IDC -- important *amicus curiae* efforts in state courts in an ongoing effort to promote fairness, consistency, and efficiency in the civil justice system.

The IDC and DRI have a substantial interest in this case because the continued viability of the intrastate *forum non conveniens* doctrine is fundamental to the rights of defendants and the handling of lawsuits in Illinois. The IDC and DRI submit that the arguments in the *amicus curiae* brief of the Illinois Trial Lawyers Association ("ITLA") – calling for the abrogation of the intrastate *forum non conveniens* doctrine – are entirely irrelevant to the legal issues on review, and this Court should not address them. If this Court does consider the ITLA's argument, the intrastate *forum non conveniens* doctrine is vital to the proper functioning of Illinois courts. Its abandonment would result in a concentration of cases in select few Illinois counties, overwhelm those courts and burden local juries with deciding controversies that have little, if any, practical connection to these counties.

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

ARGUMENT

I. ADDRESSING THE INTRASTATE *FORUM NON CONVENIENS* DOCTRINE IS UNNECESSARY TO RESOLVE LEGAL ISSUES IN THIS CASE.

The question before this Court is the constitutionality of an amendment to the venue statute providing that, in actions "against the State or any of its officers, employees, or agents acting in an official capacity . . . 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 . . . is proper only in the County of Sangamon and the County of Cook." 735 ILCS 5/2-101.5. The viability of the intrastate *forum non conveniens* doctrine is entirely separate from the statutory issue presented by the parties, and its consideration is unnecessary for this Court to resolve the parties' dispute. This Court has long held that "[i]f it becomes apparent that an opinion on a question of law cannot affect the result as to the parties or controversy in the case before it, the court should not resolve the question merely for the sake of setting a precedent to govern potential future cases." *Bluthhardt v. Breslin*, 74 Ill.2d 246, 251 (1979) (citing *Tuttle v. Gunderson*, 341 Ill. 36, 45-46 (1930)). Likewise, this Court has refused to "pass judgment on [a] mere abstract proposition of law, render an advisory opinion, or give legal advice as to future events." *Underground Contractors Ass'n v. City of Chicago*, 66 Ill.2d 371, 375 (1977).

Resolving an abstract proposition and giving an advisory opinion is precisely what ITLA's *amicus* brief asks this Court to do as the *forum non conveniens* doctrine presumes that venue is proper. Accordingly, the narrow issue before this Court -- the constitutionality of a venue statute -- does not present the issue of the propriety of intrastate

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

forum non conveniens. This Court should not decide the issues raised by an *amicus* brief, which are only tangentially related to the questions presented by the parties. In sum, ITLA's request is improper and should be disregarded.

II. THE SUPREME COURT RULES PROCESS, NOT AN *AMICUS* BRIEF, IS THE PROPER AVENUE TO CONSIDER THE REQUESTED CHANGE.

Even if this Court was inclined to address the intrastate *forum non conveniens* doctrine, the appropriate way to approach it would be through rule-making process, not in response to an *amicus* brief. The *forum non conveniens* doctrine is governed by Supreme Court Rule 187, not the Code of Civil Procedure. As articulated below, the doctrine is an important tool for this Court to execute its duties of "[g]eneral administrative and supervisory authority over all courts … exercised by the Chief Justice in accordance with its rules." Ill. Const. 1970, art. VI, § 16. The procedure for amending a Supreme Court Rule is Rule 3, not through the submission of an *amicus* brief on an issue that is, at best, only tangentially related to the legal issues raised by the parties. The Supreme Court Rules Committee process, which allows all interested parties to be heard, is the proper avenue to consider such a monumental change to Illinois civil practice. As Supreme Court Rule 3 states: "[t]hese procedures are adopted to provide for the orderly and timely review of proposed rules and proposed amendments to existing rules of the Supreme Court; to provide an opportunity for comments and suggestions by the public, the bench, and the bar; to aid the Supreme Court in discharging its rulemaking responsibilities; to make a public record of all such proposals; and to provide for public access to an annual report concerning such proposals."[1] While the Court has reserved its "prerogative" to depart from the Rule 3

[1] This is not the first improper attempt to change the intrastate *forum non conveniens* law. In the 101st General Assembly, HB5044 was introduced seeking to amend 735 ILCS 5/2-108 to abolish the intrastate *forum non conveniens* doctrine. After having been introduced on February 13, 2020, the bill did not advance.

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

procedures, it should certainly not do so through the vehicle of an *amicus* brief that relief not relevant to the case.

Instead of being a friend of this Court and aiding it in resolving the issue before it, ITLA seeks to aid itself and its members. This Court has not historically deemed an *amicus* brief to be proper simply because the relief requested bears a passing relationship to the issue on review -- a tactic this Court recently rejected. *See Passafiume v. Jurak*, 2024 IL 129761, ¶¶ 52-53. The *amicus* process should not be abused and allowed to become a suggestion box, where any interested party could submit its wish list to the Court simply because the trial court opinion mentioned an aspect of the law that an *amicus* wishes to change.

III. THE SAME RATIONALE THAT SUPPORTED THE INTRASTATE APPLICATION OF *FORUM NON COVENIENS* IN *TORRES* (1983) SUPPORTS ITS CONTINUING VITALITY NOW.

Should the Court address the intrastate *forum non conveniens* doctrine, it should not lose sight of the fact that it is deeply rooted in Illinois law and American law more generally.

This Court first applied *forum non conveniens* more than 65 years ago in *Whitney v. Madden*, 400 Ill. 185 (1948), a libel case alleging that an out-of-state defendant sent a libelous telegram from International Falls, Minnesota, to plaintiff's residence in Cleveland, Ohio. *Id.* at 186. This Court explained that citizens' constitutional "privilege of free access to the courts must be tempered with reasonable limitations," one of them being the doctrine of *forum non conveniens*. *Id.* at 189. This Court relied on the U.S. Supreme Court's decision in *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501 (1947) – delivered a year earlier – to explain that, "if the bringing of the action unduly burdens the defendant or causes him

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

great and unnecessary inconvenience, or unnecessarily burdens the court, the trial court may, in its discretion, decline the jurisdiction of the case, even though it may have proper jurisdiction over all parties and the subject matter involved." 400 Ill. at 189.

In *Torres v. Walsh*, 98 Ill. 2d 338 (1983), this Court applied the doctrine of *forum non convenies* to intrastate transfers. There, plaintiff brought a personal injury action in Cook County, even though it arose out of the accident that took place in Sangamon County, and that is where plaintiff was treated for his injuries. *Id.* at 341-42. Plaintiff named as defendants the hospital located in Sangamon County, as well as several physicians and nurses, all of whom practiced in Sangamon County. *Id.* at 342. This Court upheld a trial court order transferring the action from Cook County to Sangamon County. *Id.* at 353.

In applying *forum non conveniens* to intrastate transfers, this Court relied on federal precedent in *Gulf Oil*, as well as the practice of courts in sister states. *Id.* at 345-47. Specifically, this Court pointed out: "Courts in many of our sister States throughout the country have the statutory authority to transfer cases to other counties within the same State on the grounds of *forum non conveniens*, where the convenience of the witnesses and the ends of justice would be promoted." *Id.* at 346.

This Court explained that the same rationale that supports the application of *forum non conveniens* to interstate transfers, supports its application to transfers *within* the state. The Court held: "When the doctrine of *forum non conveniens* is available in transferring a case from Springfield, Illinois, to St. Louis, Missouri, we feel that a case should be able to be transferred from Chicago to Springfield—two cities in the same State—under the same theory." *Torres*, 98 Ill. 2d at 350. The Court continued: "If the reasons for applying the doctrine in certain interstate situations are good ones and in the best interest of justice, and

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

we believe they are, then such reasoning is also persuasive where a comparable situation exists within the boundaries of this State." *Id.*

The same reasons that supported the application of *forum non conveniens* to intrastate transfers in *Torres*, support its continuing vitality to this day. Both federal courts and courts in many sister states throughout the country have authority – by statute or court rules – to transfer cases to other counties within the same state.

For instance, our non-exhaustive search has revealed that courts in the following states have authority to transfer cases from one jurisdiction to another within the same state, for the convenience of the parties and witnesses and in the interest of justice:

Alabama -- Ala. Code § 6-3-21.1

Alaska -- Alaska Stat. Ann. § 22.10.040

California -- Cal. Civ. Proc. Code § 397

Connecticut -- Conn. Gen. Stat. Ann. § 51-347a

Florida -- Fla. Stat. Ann. § 47.122

Georgia -- Ga. Code Ann. § 9-10-31.1

Hawaii -- Haw. Rev. Stat. Ann. § 603-37

Indiana -- Ind. Code Ann. § 34-35-1-1

Louisiana -- La. Code Civ. Proc. Ann. art. 123.A.

Maryland -- Code of Maryland, Civil Procedure, Md. Rules 2-327

Michigan -- Mich Court Rules, Civil Procedure 2.222

Minnesota -- Minn. Stat. Ann. § 542.11

Mississippi -- Miss. Code Ann. § 11-11-3

Nebraska -- Neb. Rev. Stat. Ann. § 25-410

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

Nevada -- Nev. Rev. Stat. Ann. § 13.050

New Hampshire -- N.H. Rev. Stat. Ann. § 507:11

New York -- N.Y. C.P.L.R. 510 (3) (McKinney)

Oregon -- Or. Rev. Stat. Ann. § 14.110

Pennsylvania -- Pa.R.C.P. No. 1006

Texas -- Tex. Civ. Prac. & Rem. Code Ann. § 15.002

West Virginia -- W. Va. Code Ann. § 56-1-1

Like their state counterparts, federal courts continue to exercise their discretion to transfer cases from one jurisdiction to another *within the same state* pursuant to 28 U.S.C. § 1404, which codified the *Gulf Oil* holding. Specifically, sec. 1404(a) provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." 28 U.S.C. § 1404(a). Subsection 1404(c) further provides: "A district court may order any civil action to be tried at any place within the division in which it is pending." 28 U.S.C. § 1404(c).

Federal courts have consistently used their authority under subsections 1404(a) and 1404(c) to transfer cases both interstate and intrastate for the convenience of the parties and witnesses and in the interests of justice. In ruling on transfer motions under 28 U.S.C. § 1404, federal courts consider the same *Gulf Oil* factors that Illinois state courts consider in ruling on *forum non conveniens* motions. These factors include (1) the plaintiff's initial forum choice, (2) the convenience of the witnesses, (3) the relative ease of access to other evidence, (4) the situs of material events, and (5) the relative convenience of the parties in litigating in the respective forums. *See, e.g., Plotkin v. IP Axess, Inc.*, 168 F.Supp.2d 899,

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

902 (N.D. Ill. 2001) (balance of factors favored transfer); *Amoco Oil Co. v. Mobil Oil Corp.*, 90 F.Supp.2d 958, 960 (N.D.Ill. 2000) (same). While plaintiff's choice of forum ordinarily is entitled to substantial weight, it is lessened where the plaintiff's choice has a relatively weak connection with the operative facts giving rise to the claim. *Plotkin*, 168 F.Supp.2d at 902; *Bryant v. ITT Corp.*, 48 F.Supp.2d 829, 831 (N.D.Ill. 1999).

Federal courts in Illinois have taken advantage of this authority to effectuate intrastate transfers for the convenience of the parties and witnesses. For instance, courts in the Northern District of Illinois effectuated transfers from its Eastern Division in Chicago to the Western Division in Rockford. *See, e.g., Navarrette v. JQS Prop. Maint.*, No. 07 C 6164, 2008 WL 299084, at *1 (N.D. Ill. Jan. 29, 2008); *Gulf Coast Bank & Tr. Co. v. Home State Bank, N.A.*, No. 11-CV-2617, 2011 WL 5374098, at *4 (N.D. Ill. Nov. 4, 2011); *Bjoraker v. Dakota, Minn. & E. R.R. Corp.*, No. 12 C 7513, 2013 WL 951155, at *1 (N.D. Ill. Mar. 12, 2013); *Villalobos v. Iowa Chicago & E. R.R. Corp.*, No. 09 C 2342, 2009 WL 10713600, at *1 (N.D. Ill. Aug. 3, 2009).

Just like federal district courts and courts in sister states, Illinois state courts should continue to have authority to transfer a case intrastate for the convenience of the parties and witnesses and in the interests of justice. Indeed, it would be an unfitting result if a federal court in Illinois could order a transfer from Chicago to Rockford, but an Illinois state court would lack the same authority in a similar case.

IV. TECHNOLOGICAL ADVANCES DO NOT WARRANT ABOLISHMENT OF INTRASTATE TRANSFERS UNDER THE *FORUM NON CONVENIENS* DOCTRINE.

In its *amicus* brief, ITLA argues that the *forum non conveniens* doctrine is "outdated" with respect to intrastate transfers due to modern technological advancements

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

that have made it easier to travel and communicate and enabled activities that are traditionally done in person, such as depositions and court proceedings, to occur remotely via videoconference. ITLA's arguments do not withstand scrutiny.

This Court has emphasized that "the presentation of in-person testimony remains of utmost importance in trials and evidentiary hearings." S. Ct. Rule 241, Committee Comments, see also, *Kowalczyk v. Illinois Central Railroad Co.*, 2021 IL App (1st) 210206-U. ¶ 18 ("Defendants complain that the circuit court's speculation about the possibility of remote jury trials is unfounded and unsupported by the record, and also ignores both the demonstrated commitment of Illinois courts to return to in-person jury trials and the long-recognized understanding that there is no true substitute for live testimony at trial.") Just because, due to technological advances, witnesses can appear remotely does not mean that their remote appearance is equivalent in all respects to their in-person testimony. Although a jury may "hear" the testimony of a witness via remote means, they are unable to fully judge the witness's body language and mannerisms that may impact how jurors view the witness's credibility. It is only through live, in-person testimony that a jury can fully assess and make proper determinations of the credibility of a witness -- which is one of the key functions of a jury.

Remote appearances of witnesses also make the authentication and review of documents more difficult. Even though a witness may be able to see a document on a screen, the witness may be unable to quickly scroll through a voluminous document to find a relevant page. If the witness is adverse, then the attorney is unable to review the documents with the witness prior to the trial, thereby making the presentation of multiple

SUBMITTED - 29673615 - Lisa Williams - 10/7/2024 12:45 PM

documents burdensome and clunky, which could adversely impact the jury's view of the testimony, for reasons that should not interfere with the trial.

Further, while recognizing the impact of technology, courts generally conclude that the physical location of records and documents remains relevant. As one court explained: "That access to some sources of proof presents a lesser inconvenience now than it might have absent recent developments does not render this factor superfluous." *In re Volkswagen of Am., Inc*., 545 F.3d 304, 316 (5th Cir. 2008). Courts analyze this factor in light of the distance that documents, or other evidence, must be transported from their existing location to the trial venue. This factor will turn upon which party will most probably have the greater volume of documents relevant to the litigation and their location in relation to the transferee and transferor venues. *See, e.g., In re TS Tech USA Corp*., 551 F.3d 1315, 1321 (Fed. Cir. 2008) (The fact that access to proof involves lesser inconvenience than it might have before technological advances does not render the factor superfluous); *Trejo v. Alter Scrap Metal, Inc*., 2008 WL 5070274 (C.D. Ill. 2008) (location of medical records in transferee district supported transfer); *In re Connetics*, 2007 WL 1522614, *4 (S.D. N.Y. 2007) (Although location of documents may be less significant due to modern technology, it is nonetheless still relevant to venue inquiry). In summary, while technological advances are beneficial to the courts, the litigants, and the court personnel, they cannot support a wholesale abrogation of the equitable intrastate *forum non conveniens* doctrine.

The *forum non conveniens* factors should be applied on a case-by-case basis, taking into consideration the particular circumstances of each case. The fact that one case may be properly suited for the use of technological advances does not mean that all cases are so

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properly suited. It is through the application of Supreme Court Rule 187 and the factors adopted by this Court to the facts of each case that a trial court can determine if the chosen venue is proper. ITLA's position would take any and all such discretion away from the Illinois state courts. Such a position should not be entertained by this Court, especially in the context raised in this case.

CONCLUSION

WHEREFORE, the Illinois Defense Counsel and the DRI Center for Law and Public Policy respectfully request that this Court affirm the judgment below and reject the Illinois Trial Lawyers' Association's request to abolish intrastate *forum non conveniens*.

Respectfully submitted,

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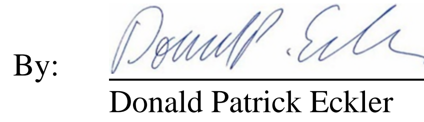
By: 

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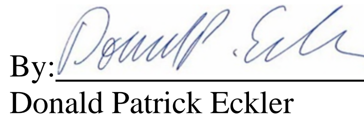
Rule 341(c) Certificate of Compliance

I certify that this Brief complies with the length and form requirements of Illinois Supreme Court Rule 341(a)&(b). The length of this Brief, excluding 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 13 pages.

Respectfully submitted,

ILLINOIS DEFENSE COUNSEL,

By: 
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CERTIFICATE OF FILING AND SERVICE

I certify that on October 7, 2024, I electronically filed the foregoing Motion of the Illinois Defense Counsel and DRI Center for Law and Public Policy for Leave to File Brief *Amicus Curiae* In Support of Plaintiff-Appellee, accompanied by the proposed Brief *Amicus Curiae* of the Illinois Defense Counsel in Support of Plaintiff-Appellee, with the Clerk of the Court for the Illinois Supreme Court 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.

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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.

Respectfully submitted,

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