No. 130539

IN THE
SUPREME COURT OF ILLINOIS

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

# BRIEF AND APPENDIX OF DEFENDANT-APPELLANT THE ATTORNEY GENERAL OF ILLINOIS

**KWAME RAOUL**
Attorney General
State of Illinois

**ALEX HEMMER**
Deputy Solicitor General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5526 (office)
(773) 590-7932 (cell)
CivilAppeals@ilag.gov (primary)
Alex.Hemmer@ilag.gov (secondary)

**JANE ELINOR NOTZ**
Solicitor General

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3312

Attorneys for Defendant-Appellant

E-FILED
7/31/2024 3:51 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

## TABLE OF CONTENTS

## NATURE OF THE ACTION

This appeal concerns a constitutional challenge to section 2-101.5 of the Code of Civil Procedure, which was enacted in 2023 and alters the venue rules applicable to "actions asserting constitutional claims against the State." Pub. Act No. 103-5, § 2 (eff. June 6, 2023). Section 2-101.5 provides that, in an action "brought 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 asserted federal or state constitutional claim, venue is proper only in Sangamon and Cook County. *Id.* (to be codified at 735 ILCS 5/2-101.5(a)).

Plaintiff is a firearms retailer based in Madison County. It brought this action in August 2023 in that county to challenge the constitutionality of the Illinois Firearm Industry Responsibility Act ("FIRA" or "the Act"), Pub. Act No. 103-559 (eff. Aug. 14, 2023), which it contends is facially unconstitutional on multiple grounds. Plaintiff also pled a separate claim against the amended venue statute, alleging that it violates plaintiff's federal due-process rights. The circuit court granted plaintiff's motion for partial summary judgment as to that claim, concluding that the venue statute violates the due-process rights of those not residing in or injured in Sangamon and/or Cook Counties, and certified that judgment for an interlocutory appeal under Supreme Court Rule 304(a). The Attorney General appealed directly to this Court under Rule 302(a).

## JURISDICTION

This Court has jurisdiction over this appeal under Supreme Court Rules 302(a) and 304(a). On March 4, 2024, the circuit court issued an opinion and order finding the amended venue statute, section 2-101.5, unconstitutional as to all individuals and entities not residing in or injured in Sangamon and/or Cook County. A11.[1] The court granted plaintiff partial summary judgment as to that count of its complaint and certified that judgment for interlocutory appeal under Rule 304(a). A11-12. The court's order contains the findings required by Rule 18. *Id.* The Attorney General filed a notice of appeal pursuant to Rule 302(a) on March 13, 2024, A14; *see Walker v. McGuire*, 2015 IL 117138, ¶ 7, which was timely under Rule 303(a)(1).

[1] The appendix is cited as "A__" and the common-law record as "C__."

## ISSUE PRESENTED FOR REVIEW

Whether section 2-101.5 of the Code of Civil Procedure, which sets venue in constitutional challenges to state statutes, rules, and other official actions in Sangamon and Cook County, violates the federal due-process rights of individuals and entities that reside in or were injured in other counties, or, in the alternative, violates plaintiff's own federal due-process rights.

## STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This appeal concerns the constitutionality of section 2-101.5 of the Code of Civil Procedure, which provides, as relevant:

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

Pub. Act No. 103-5, § 2 (eff. June 6, 2023) (to be codified at 735 ILCS 5/2-101.5(a)).

## STATEMENT OF FACTS

### Legal Background

Illinois has established a comprehensive statutory scheme for setting venue in civil actions. The general venue statute provides that venue is proper, in a civil case, in the defendant's county of residence or in the county in which "the transaction or some part thereof occurred out of which the cause of action arose." 735 ILCS 5/2-101 (2022). Other state statutes establish other, more specific rules, setting venue in the location where certain events occurred, *e.g., id.* § 5/2-103(b) (in quiet title action, venue is proper only in "the county in which the real estate is situated"); 775 ILCS 5/8-111(A)(1) (2022) (in certain civil rights cases, venue is proper only in "the county in which the civil rights violation was allegedly committed"); 765 ILCS 540/15 (2022) (in actions involving coal rights, venue is proper only in "the county in which coal lands" are located), or in specific counties — often, in Sangamon County, the seat of state government, or Cook County, where many government agencies maintain substantial presences. Indeed, many state statutes specifically set venue for cases challenging state action — generally cases seeking judicial review under the Administrative Review Law — in Sangamon and/or Cook County.[2]

[2] *See, e.g.*, 20 ILCS 3805/28 (2022) (setting venue in Sangamon County in cases seeking judicial review of certain conduct of the Illinois Housing Development Authority); 40 ILCS 5/16-200 (2022) (same for cases seeking judicial review of conduct of the Teachers' Retirement System of the State of Illinois); 205 ILCS 5/48(10), 5/48.3(c)(2) (2022) (setting venue in Sangamon or

In 2023, the General Assembly amended the Code of Civil Procedure to likewise set venue for constitutional challenges to state statutes, regulations, and executive orders in Sangamon and/or Cook County. *See* Pub. Act No. 103-5, § 2 (eff. June 6, 2023) (to be codified at 735 ILCS 5/2-101.5). That decision was driven in part by an increase in cases challenging state statutes and rules on constitutional grounds — often cases brought in multiple counties across the State featuring substantively identical facial claims (that is, claims that turn only on the constitutionality of a statute or rule, and do not require resolution of any factual questions regarding plaintiffs' circumstances). *See* C204-205 (statement of Rep. Hoffman) (describing this pattern); *see also, e.g.*,

---

Cook County for cases seeking judicial review of Illinois Department of Financial and Professional Regulation ("IDFPR") decisions applying the Illinois Banking Act); *id.* § 10/3.074(c) (same for IDFPR decisions applying the Illinois Bank Holding Company Act); *id.* § 205/9012(c)(2) (same for IDFPR decisions denying disclosure of supervisory information related to the enforcement of the Illinois Savings Bank Act); *id.* § 305/9.1(5)(b) (same for IDFPR decisions denying disclosure of supervisory information related to the enforcement of the Illinois Credit Union Act); *id.* § 616/60 (same for IDFPR decisions applying the Electronic Fund Transfer Act); *id.* § 620/5-8 (same for cases IDFPR decisions applying the Corporate Fiduciary Act); 215 ILCS 5/531.08(s) (2022) (setting venue in Cook County in cases seeking judicial review of certain conduct of the Illinois Life and Health Insurance Guaranty Association); 225 ILCS 230/1012(b)(2) (2022) (setting venue in Sangamon County for cases seeking judicial review of the Illinois Environmental Protection Agency's decision to revoke or deny certification as a landfill operator); 625 ILCS 5/18c-2401(1) (2022) (setting venue in Sangamon or Cook County for cases seeking judicial review of decisions of the Illinois Commerce Commission); *id.* § 5/5-504 (setting venue in Sangamon County for cases seeking judicial review of the Secretary of State's decision to deny a car dealership license); *see also* 15 ILCS 205/10(c) (2022) (setting venue in Sangamon or Cook County in cases brought by the Attorney General alleging systemic civil-rights violation); 820 ILCS 310/4(d) (2022) (same in some cases brought by Workers' Compensation Commission).

*Rowe v. Raoul*, 2023 IL 129248 (resolving cases challenging state statute reforming pretrial release procedures originally brought by 105 plaintiffs in 64 counties); *Accuracy Firearms, LLC v. Pritzker*, 2023 IL App (5th) 230035 (resolving case challenging state firearms law brought by over 850 plaintiffs residing in *every* county), *vacated on other grounds*, No. 129421 (Ill. Jan. 24, 2024).

The General Assembly thus determined that these cases should be treated essentially the same as the administrative review actions described above — *i.e.*, that they should be brought in the first instance in Sangamon or Cook County, where the official action being challenged either occurred or will be enforced. Pub. Act No. 103-5, § 2 (eff. June 6, 2023). As one of the sponsors explained on the House floor, the General Assembly has, "in other instances, indicated that Sangamon and Cook County would be the venues for certain actions," and the amended venue statute "simply say[s] that for constitutional actions that are brought against the state," the same rule should apply. C192 (statement of Rep. Hoffman). Requiring such cases to be brought in either of these counties, in the General Assembly's view, will centralize constitutional adjudication and promote the efficient adjudication of cases with statewide significance.

**Procedural History**

Plaintiff is a firearms dealer that resides in Madison County. C9. It filed this action in that county in August 2023. *Id.* The bulk of plaintiff's

complaint — counts I through IV — alleges facial constitutional challenges to the Firearms Industry Responsibility Act, Pub. Act No. 103-559 (eff. Aug. 14, 2023), which prohibits members of the firearms industry from engaging in certain conduct with respect to the sale, manufacture, and marketing of firearms. C9-13. Plaintiff alleges that the Act is preempted by the federal Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7902; is void for vagueness under the First and Fourteenth Amendments to the United States Constitution; violates the Second Amendment to the United States Constitution; and violates article VI, section 8, of the Illinois Constitution. *Id.*

Plaintiff also challenged the amended venue statute, section 2-101.5, on the ground that it violates its "federal due process rights," as well as the rights of all those who reside in or were injured in counties other than Sangamon and Cook. C13-17. Plaintiff contended that section 2-101.5 was invalid on due-process grounds because it "deprive[s] . . . litigant[s] of the opportunity to use the courts," thus making their legal rights "worthless." C15. But plaintiff did not allege that *it* had been deprived by section 2-101.5 of its right to access the courts, nor did it explain in its complaint how section 2-101.5 would make it more difficult for it to press its facial challenges to the Act.

Because plaintiff raised a constitutional challenge to a state statute, the Attorney General moved to transfer venue to Sangamon County pursuant to section 2-101.5. C73. In response, plaintiff opposed transfer and submitted two declarations (one from plaintiff's owner and one from its counsel). C168,

170. Plaintiff's owner stated in his declaration that Madison County was "a convenient forum for [him] to try this case" because the Madison County Courthouse was only "a 30 minute drive" from his place of business, whereas Sangamon County was "inconvenient" for him because it is "a 90 minute drive" from his business. C170. Plaintiff's owner did not provide any further details on the difficulties that transfer to Sangamon might pose to his challenge to the Act. Plaintiff's counsel likewise stated that Madison County was "a convenient forum" for him given that it was "a 30 minute drive" from his office, whereas Sangamon County was "inconvenient" because it was a 90-minute drive from his office. C168. Plaintiff also argued that, if the court agreed that the venue statute was unconstitutional, it should grant plaintiff partial summary judgment as to that claim and certify it for an immediate appeal under Rule 304(a). C128-29, 140.[3]

The circuit court denied the Attorney General's motion to transfer venue and granted plaintiff's motion for partial summary judgment. A1. The court held that section 2-101.5 violated the federal due-process rights of

[3] Plaintiff also argued, as a defense to transfer, that the amended venue statute could not be enforced because it violated article IV, section 8, of the Illinois Constitution, in that (in plaintiff's view) it was not "read by title on three different days in each house." C138. But plaintiff did not allege a claim in its complaint that the amended venue statute was unconstitutional on this ground and did not seek summary judgment on that theory, and the circuit court specifically disclaimed it in its opinion, explaining that its decision was "in no way based upon the Three Readings Rule." A11. And although plaintiff filed a notice of putative cross-appeal in an effort to place that question before this Court, the Court dismissed that cross-appeal for lack of jurisdiction. *See* C343. Plaintiff's three-readings theory is thus not before the Court.

"residents [of counties] outside of Cook or Sangamon County, as well as individuals injured outside of Cook or Sangamon County." A11. That was so, the court reasoned, because the statute had the effect of "depriving" such individuals and entities "of the ability to put up [their] best challenge to the constitutionality" of state statutes like the Act. A5. In doing so, the court relied on this Court's opinion in *Williams v. Illinois State Scholarship Comm'n*, 139 Ill. 2d 24 (1990), which held that venue statutes are generally constitutional, but recognized an exception for statutes "so arbitrary and unreasonable," *id.* at 42, as to deprive a litigant entirely of access to the courts. A5. The circuit court also held that plaintiff had shown that section 2-101.5 violated its own due-process rights, in that plaintiff had "presented evidence" showing that litigating its challenge to the Act in Sangamon County would be "inconvenien[t]," whereas the Attorney General had not shown that it would suffer any inconvenience from presenting his defense in Madison County. A5-6. In the end, the court reasoned, "Sangamon is an inconvenient forum" for litigating plaintiff's claim, A7, and section 2-101.5 thus violated plaintiff's due-process rights on that basis.

## ARGUMENT

Section 2-101.5 does not generally violate the due-process rights of individuals residing in (or injured in) counties other than Sangamon and Cook any more than do the many state statutes requiring that administrative review claims be brought in those counties, and the statute likewise does not violate plaintiff's own due-process rights based on the evidence plaintiff presented to the circuit court. The circuit court's contrary decision should be reversed.

### I. The Court reviews the decision below *de novo*, applying a presumption of constitutionality.

This appeal involves questions of law that this Court reviews *de novo*, without deference to the circuit court's decision. *See Bartlow v. Costigan*, 2014 IL 115152, ¶ 17 ("Our review of the constitutionality of the Act, and its proper statutory construction, is . . . subject to *de novo* review."); *Hayashi v. IDFPR*, 2014 IL 116023, ¶ 22 (same). In reviewing the statute, the Court "presume[s]" it "to be constitutional, and the party challenging the statute bears the burden of demonstrating its invalidity." *Hayashi*, 2014 IL 116023, ¶ 22. Indeed, the Court "has a duty to construe a statute in a manner that upholds its validity and constitutionality if it can reasonably be done." *Id.*

### II. Section 2-101.5 does not violate due-process principles categorically or as applied to plaintiff.

"[F]rom 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 [civil] actions." *Mapes v. Hulcher*, 363 Ill. 227, 230 (1936). Courts thus "generally cannot interfere with the legislature's province

in determining where venue is proper." *Williams*, 139 Ill. 2d at 41; *see, e.g.*, 14D Charles A. Wright *et al.*, *Federal Practice & Procedure* § 3801 (4th ed. 2013) ("[V]enue is merely a personal privilege; it implicates no constitutional principle."). Although this Court has recognized a narrow exception for laws that are "so arbitrary or unreasonable as to deprive defendants of due process," *Williams*, 139 Ill. 2d at 42, section 2-101.5 is not such a law: It does not generally violate the due-process rights of individuals residing in (or injured in) counties other than Sangamon or Cook who choose to assert facial constitutional challenges to state statutes, nor has plaintiff shown that its own case is somehow an exception to that general rule.

### A. Section 2-101.5 does not categorically violate the due-process rights of those who do not reside in or were not injured in Sangamon or Cook Counties.

The circuit court held that section 2-101.5 "violate[s] due process[] as applied to persons who reside or were injured outside of Cook or Sangamon County." A11. That conclusion is incorrect. As a general matter, it does not violate due-process principles to require entities asserting facial constitutional claims against state statutes to bring those claims in one of the counties that house state government.

To start, the circuit court's opinion effectively held section 2-101.5 facially unconstitutional. The circuit court held, as noted, that the statute violated the due process rights of all individuals "who reside or were injured outside of Cook or Sangamon County." A11. Although the circuit court

characterized this as an "as applied" holding, "merely a very broad" one (in that it does not formally apply to individuals or entities that would otherwise have chosen to file suit in Sangamon or Cook County), A4-5, the breadth of the court's reasoning would impair the statute's validity in every case in which it was actually enforced. The circuit court thus in effect found the statute facially invalid, because under its reasoning section 2-101.5 would have no practical effect in any case. But a statute is only facially unconstitutional if "no set of circumstances exists under which it would be valid." *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 29. And here, the statute is constitutional, at minimum, in essentially all cases that look like this one — that is, in which a litigant brings a facial constitutional challenge to a state statute. *Infra* pp. 22-23. Because section 2-101.5 is constitutional in at least that large category of cases, the circuit court erred in finding it facially invalid.

As this Court explained in *Williams*, the question whether a statute setting venue is "so arbitrary or unreasonable as to deprive defendants of due process," 139 Ill. 2d at 41, is generally measured by reference to the three-factor test set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976), *see id.* at 42. When considering whether a venue statute is "arbitrary or unreasonable," courts look to (1) the private interests at stake, (2) the risk of erroneous deprivation of such interests and the probable value of substitute procedural safeguards, and (3) the governmental interests secured by the procedure. *Id.* at 32-33; *Mathews*, 424 U.S. at 335. Applying these factors here, it does not

violate due-process principles to require individuals or entities asserting facial constitutional claims against state action to bring those claims in one of the counties that house state government. That is because there is no "private interest" that would be at risk of "deprivation," *Mathews*, 424 U.S. at 335, by requiring such individuals and entities to bring facial constitutional claims against the State in those counties.

To start, a litigant's right of "access to the courts" — the private interest at stake under the circuit court's analysis, A9 — does not encompass the right to file a lawsuit in a county of its choosing. Although the United States Supreme Court has recognized that litigants have a cognizable interest in accessing state courts, it has found state laws to impair that interest only where they prevent litigants from accessing the court system *altogether*. For instance, in *Boddie v. Connecticut*, 401 U.S. 371 (1971), the Court held that a State could not condition access to divorce proceedings on litigants' ability to pay filing fees, *id.* at 374; and in *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), it held that a State could not condition a parent's appeal of an order terminating parental rights on her ability to pay such fees, *id.* at 128.[4] But the Supreme

[4] Indeed, even this right is limited: The Court emphasized in *M.L.B.* that the common thread in these cases is the "fundamental interest" in "family association," *id.* at 113, 117, and it has repeatedly rejected efforts to extend this precedent outside that context, *see United States v. Kras*, 409 U.S. 434, 444-46 (1973) (no fundamental right to access the courts in order to obtain bankruptcy discharge); *Ortwein v. Schwab*, 410 U.S. 656, 659 (1973) (*per curiam*) (no fundamental right to access the courts in order to appeal the denial of welfare benefits).

Court has never held — or even hinted — that a State could impair a litigant's right of access to courts simply by setting venue in an inconvenient forum (as opposed to preventing such a litigant from accessing courts in the first place). Venue statutes thus generally do not infringe upon litigants' due-process rights.

*Williams* is consistent with that rule. In *Williams*, this Court held that a state statute setting venue in Cook County for delinquency actions brought by a state agency against students who had defaulted on their loans violated due-process principles. 139 Ill. 2d at 67. On the scope of the private interest, the Court explained that it viewed the case as comparable to *Boddie* because in each case the statute in question operated to shut the courthouse doors *entirely* to affected litigants. *Id.* at 42-43. Like in *Boddie*, the statute held invalid in *Williams* harmed "indigent" individuals who could not "afford the travel costs to [a] distant forum" when sued there, thus entirely "depriv[ing] [them] of any 'meaningful opportunity' to defend themselves." *Id.* (quoting *Boddie*, 401 U.S. at 377). The statute's infringement on the indigent borrowers' right to access the courts was exacerbated, the Court explained, by the fact that the agency in question was pursuing delinquency suits against the borrowers in a distant county and then seeking default judgments (and initiating post-judgment proceedings) based on the borrowers' failure to respond. *See id.* at 44-45. "The statute and [the agency's] practice, therefore, combined to effectively deny" the borrowers "full access to the legal process,"

thus (in the Court's words) bringing *Williams* within the "narrow construction of the right of access to the courts recognized in *Boddie*." *Id.* at 45.

As a general rule, however, venue statutes do not "effectively deny" plaintiffs all access to the courts in this manner, *id.*, and so do not violate due-process principles. *Accord Williams*, 139 Ill. 2d at 41 (courts "generally cannot interfere with the legislature's province in determining where venue is proper"); Wright, *supra*, at § 3801 ("venue . . . implicates no constitutional principle"). A venue statute may impose burdens on a plaintiff — for instance, by requiring it to file suit in the county in which the defendant resides, 735 ILCS 2-101 (2022), or in the county in which real property is located, *id.* § 2-103(b), no matter how distant from the plaintiff's home county those forums may be. But venue rules exist to protect *defendants* (as in *Williams*). *See, e.g.*, *Corral v. Mervis Indus., Inc.*, 217 Ill. 2d 144, 154 (2005) (only "[a] defendant" has "the right to insist that a lawsuit proceed in a proper venue"); *Turner v. Commonwealth Edison Co.*, 63 Ill. App. 3d 693, 700-01 (5th Dist. 1978) ("venue is a valuable privilege intended to protect a defendant"). Such rules may or may not be convenient, but they generally do not raise due-process concerns unless (as in *Williams*) they threaten to close the courthouse doors to litigants entirely.

Section 2-101.5 is no exception to that general rule. A litigant seeking to challenge a state statute or regulation on constitutional grounds is not barred by section 2-101.5 from doing so; he or she simply is required to file

such a challenge in Sangamon or Cook County. Any burdens imposed by that rule are no different than the burdens imposed on plaintiffs by any other state venue rule, including those requiring tort plaintiffs to file suit in the county in which a defendant resides, *supra* p. 5, or those that require plaintiffs aggrieved by agency action to file suit in Sangamon or Cook County, *supra* p. 5 & n.2. As a general matter, any burdens imposed by such a rule on a plaintiff's right of access to the courts simply do not rise to the level of a constitutional claim. The Court can reverse on that ground alone.

If anything, section 2-101.5 is particularly *unlikely* to result in the "erroneous deprivation" of any private interests held by litigants asserting facial constitutional claims. *Mathews*, 424 U.S. at 335. Such claims by their nature do not require the resolution of any factual questions about a plaintiff's own circumstances: As this Court has explained, "a facial challenge requires a showing that the statute is unconstitutional under *any* set of facts," and so "the specific facts related to the challenging party are irrelevant." *People v. Thompson*, 2015 IL 118151, ¶ 36 (emphasis added); *accord Kopf v. Kelly*, 2024 IL 127464, ¶ 23. In such a case, the plaintiff — unlike the plaintiff in a typical garden-variety tort or contract action — is unlikely to have to participate personally in the litigation, such as by having to offer testimony at trial or at a deposition, or by having to furnish documents or other evidence in support of his or her claim or in response to discovery requests. Indeed, to the Attorney General's knowledge, none of the civil cases this Court has heard over the last

five years alleging facial constitutional claims has required testimony or other personal involvement on a plaintiff's part while in the trial court — or, for that matter, any meaningful record development at all.[5] That makes sense, given that such cases generally turn on pure questions of law, not disputed factual questions.

Because a would-be constitutional litigant bringing a facial challenge to state action is not obligated to personally participate in such a case, there is no real risk of "erroneous deprivation" of any interest such a litigant might have. *Mathews*, 424 U.S. at 335. And even if there were some need for a litigant to personally participate in such a case, this Court has in recent years made it significantly easier to present evidence and otherwise participate in court proceedings remotely, including by broadening access to remote depositions, Ill. Sup. Ct. R. 206(h), remote testimony at trial and at evidentiary hearings, Ill. Sup. Ct. R. 241(b), and remote participation in other hearings, Ill. Sup. Ct. R. 45(c)(1). State courts have generally rejected due-process challenges to remote proceedings conducted pursuant to these rules, reasoning that courts

---

[5] *See, e.g.*, *Arlington Heights Police Pension Fund v. Pritzker*, 2024 IL 129471, ¶¶ 7-9 (case resolved on cross-motions for summary judgment with no live testimony or record development); *Caulkins*, 2023 IL 129453, ¶¶ 1-2 (case resolved on motion to dismiss); *Rowe*, 2023 IL 129248, ¶¶ 7-11 (case resolved on cross-motions for summary judgment with no live testimony or record development); *Noland v. Mendoza*, 2022 IL 127239, ¶¶ 10-22 (same); *Cahokia Unit Sch. Dist. No. 187 v. Pritzker*, 2021 IL 126212, ¶¶ 4-14 (case resolved on motion to dismiss); *Walker v. Chasteen*, 2021 IL 126086, ¶¶ 4-10 (case resolved on cross-motions for summary judgment with no live testimony or record development).

employing them have "ensure[d] that procedural safeguards are in place" to protect all parties' interests. *See, e.g.*, *In re Aa.C.*, 2021 IL App (1st) 210639, ¶ 13 (Cunningham, J.); *In re H.B.*, 2022 IL App (2d) 210404, ¶ 47; *In re P.S.*, 2021 IL App (5th) 210027, ¶ 60. These measures mitigate any risks that a venue rule might pose to a plaintiff in *any* case, much less a plaintiff bringing a facial constitutional challenge to a state statute. And they further distinguish this case from *Williams*, which predated these rules and which rested in part on this Court's concern that the borrowers there would be required to "travel to Chicago" to personally present their defenses. *Williams*, 139 Ill. 2d at 45.

At minimum, plaintiff cannot show that section 2-101.5 is *facially* unconstitutional on due-process grounds. As discussed, *supra* p. 13, a plaintiff in such a case must show that "no set of circumstances exists under which [the statute] would be valid." *Caulkins*, 2023 IL 129453, ¶ 29. And it is obvious that there are many "circumstances" under which the statute would be "valid," in the sense of not violating due-process principles. *Id*. For example, the state's attorneys who challenged the pretrial release provisions in *Rowe*, 2023 IL 129248, would have faced no procedural hurdles by presenting their case in Sangamon County, given that their claims turned in no way on evidence or testimony local to Kankakee County, where the action was brought. And a litigant who resides in DuPage County would not face any constitutionally significant obstacles by having to file a case in Cook County, a few miles away. Section 2-101.5 is thus, at minimum, not facially invalid on

due-process grounds; indeed, as discussed, *supra* pp. 14-19, it is constitutional in any action in which a plaintiff asserts a facial constitutional claim and does not allege that complying with the amended venue statute would completely preclude him or her from filing suit at all. *See Williams*, 139 Ill. 2d at 45.

A contrary conclusion would have detrimental consequences for the administration of justice in the State. Most obviously, it would call into question dozens of state statutes that likewise set venue in Sangamon or Cook County for certain claims. *Supra* p. 5 & n.2. The General Assembly has enacted statutes that make these counties the appropriate venues in cases challenging agency action for decades, in fields ranging from housing to banking to license revocations. Such a legislative choice makes sense in those contexts for the same reason it does here: These cases challenge government 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). As this Court has explained, "the historical practice of the legislature may aid in the interpretation of a constitutional provision," *Graham v. Ill. State Toll Highway Auth.*, 182 Ill. 2d 287, 312 (1998), and here the decision below raises constitutional questions about venue rules that have been enacted and enforced without question for decades.

To that end, an opinion affirming the circuit court would detrimentally impair the General Assembly's ability to enact venue statutes more generally

by opening the door to due-process challenges based on little more than an assertion of inconvenience. As this Court explained in *Williams*, courts "generally cannot interfere with the legislature's province in determining where venue is proper." 139 Ill. 2d at 41. Indeed, the circuit court identified no case other than *Williams* itself in which a federal or Illinois court has *ever* found a venue statute to violate due-process principles. But the circuit court's reasoning would allow litigants to second-guess the General Assembly's venue rules in a wide range of contexts, ranging from small-dollar contract claims to public-law actions like this. The Court should not invite such instability, and it should instead reverse the decision below.

### B. Section 2-101.5 does not violate plaintiff's own due-process rights.

As explained, section 2-101.5 does not violate the due-process rights of plaintiffs alleging facial constitutional claims as a general matter. And plaintiff's own challenge to the Firearm Industry Responsibility Act is no exception to this general rule.

To start, there is no reason to think that plaintiff possesses a "private interest" that will be at any risk of "erroneous deprivation" if plaintiff is required to press its constitutional challenge to the Act in Sangamon County instead of in Madison County. *Mathews*, 424 U.S. at 335.[6] Most notably,

[6] The Attorney General sought to transfer venue to Sangamon County, C73, and so, just as the circuit court did, A4, this brief focuses on the "risk of . . . erroneous deprivation," *Mathews*, 424 U.S. at 335, if plaintiff litigated its constitutional claims in that county, not in Cook County.

plaintiff does not allege, as did the plaintiffs in *Williams*, that it "cannot appear" in Sangamon County at all, as a result of indigency or some other circumstance. 139 Ill. 2d at 46. That alone is enough to reject plaintiff's due-process challenge, as this Court and federal courts have recognized a deprivation of the right to access the courts sufficient to trigger the Due Process Clause only when state statutes close the courthouse doors to litigants entirely, *see supra* pp. 14-16, as even plaintiff admits section 2-101.5 does not do.

Indeed, there is no reason to think that plaintiff will face any material disadvantage from litigating its constitutional challenge to the Act in Sangamon County. Plaintiff's claims are transparently facial in nature: It alleges that the Act is preempted by federal law because, as a textual matter, federal law immunizes the conduct that the Act prohibits, C9-10; that the Act is void for vagueness because the breadth of the statutory text "leav[es] uncertain what speech is even targeted," C11; that it violates the Second Amendment because it is "inconsistent with this Nation's historical tradition," C12; and that it was enacted in violation of the Illinois Constitution's three-readings rule, C13. It is hard to see how pressing these challenges could plausibly require plaintiff to amass factual evidence that might be difficult or impossible to marshal in a foreign county; instead, these claims are legal in nature, and a judge in Sangamon County is as well-positioned to consider them as a judge in Madison County. Any evidence plaintiff might offer about its own

circumstances is "irrelevant," *Thompson*, 2015 IL 118151, ¶ 36, to such claims. It thus does not impose any substantial burden on plaintiff — much less risk the "erroneous deprivation," *Mathews*, 424 U.S. at 335, of some private interest cognizable under the Due Process Clause — to require plaintiff to litigate those claims in Sangamon County.

Plaintiff's own filings in this case underscore the point. Plaintiff's complaint, for instance, does not identify any facts that might be relevant to adjudicating its claims that could require evidentiary development in Madison County; indeed, the only factual allegation that the complaint includes is the repeated claim that plaintiff is a "dealer of firearms and firearm accessories." *See* C9-17. Plaintiff's preliminary injunction motion is to the same effect: It argues that the circuit court should declare the Act unconstitutional based on a single out-of-circuit federal case, C111-12 (citing *Junior Sports Magazines, Inc. v. Bonta*, 80 F.4th 1109 (9th Cir. 2023)), and identifies no factual questions that might require evidentiary development in Madison County, *see* C113 (asserting that injunctive relief is warranted based only on alleged infringement of plaintiff's First and Second Amendment rights).

Even plaintiff's factual submissions in opposition to the transfer motion did not identify any specific reason why some private interest might be put at risk by litigating this case in Sangamon County. While plaintiff's owner and attorney both submitted declarations in opposition to transfer, C168, 170, each states only that "Madison County is a convenient forum" in which to litigate

the case and that Sangamon County is less convenient because it is a "90 minute drive, each way," from plaintiff's headquarters and its attorney's office. *Id.* But — even assuming any inconvenience to plaintiff's attorney is relevant to the analysis — a 90-minute drive is too slender a reed on which to hang a due-process claim. Litigants in the federal system, for instance, must often drive more than 90 minutes for hearings,[7] and many venue rules will require plaintiffs even in state court to traverse much longer distances to file suit or attend court proceedings in counties in which they do not reside, *supra* p. 5. This Court has taken significant steps to ease the burdens associated with remote participation in litigation, including by requiring litigants to initiate cases and file documents electronically, Ill. Sup. Ct. R. 9(a), and permitting them to give testimony and attend hearings remotely, *supra* p. 18 (citing rules). Against this backdrop, plaintiff's invocation of a 90-minute drive cannot be enough to establish a due-process violation.

In the end, it cannot be right that it violates due-process principles to require plaintiff to litigate facial constitutional claims that require little or no evidentiary development in a court that is 90 minutes away from its office. If a

[7] As one example, the drive from many areas within the jurisdiction of the U.S. District Court for the Southern District of Illinois to that court's Benton and East St. Louis courthouses exceeds two hours. *See* U.S. Dist. Ct. for S.D. Ill., *Court Locations*, https://www.ilsd.uscourts.gov/court-info/court-locations. And the drive from areas in LaSalle and Grundy Counties (each within the jurisdiction of the U.S. District Court for the Northern District of Illinois) to the federal courthouse in Chicago is equally long. *See* U.S. Dist. Ct. for N.D. Ill., *Courthouse Information*, https://www.ilnd.uscourts.gov/Pages.aspx?GWv81axJLewVPk7mI8oOh7Jk4O/51vr/.

litigant can obtain an exemption from a venue rule on the sole ground that it would be more "convenient," C168, to litigate in its home county, courts will be deluged with due-process claims that rest on no more than bare preference. This Court should reject plaintiff's invitation to create such a disruptive rule here.

## III. The circuit court's contrary reasoning lacks merit.

The circuit court reached a contrary conclusion, A1, but its reasoning lacks merit. The court relied heavily on *Williams*, but it stretched the holding of that case far beyond what it can bear. And it relied on principles associated with the *forum non conveniens* doctrine that are inapplicable here. At bottom, the court based its ruling on its view that it would simply be more convenient for plaintiff to litigate this action in Madison County, but if a plaintiff could opt out of a venue statute on that sole basis, venue statutes would have no force at all. The decision below should be reversed.

### A. The circuit court misconstrued *Williams*.

The circuit court primarily relied on this Court's decision in *Williams*, reasoning that section 2-101.5 "embodies" the concerns this Court expressed in that case. A8. That rationale is incorrect on multiple levels, most basically in that it rests on a misreading of *Williams*.

As discussed, *supra* p. 15, *Williams* considered the constitutionality of a state law setting venue in delinquency cases brought by a state agency against student-loan borrowers (that is, actions to recover the value of defaulted loans) in Cook County. 139 Ill. 2d at 29-32. This Court explained that, as a general

rule, courts "cannot interfere with the legislature's providence in determining where venue is proper," but acknowledged that a law fixing venue "could be so arbitrary or unreasonable as to deprive defendants of due process." *Id.* at 41-42. And although it had "never declared a venue statute unconstitutional," the Court concluded that the statute at issue in *Williams* was the exception to the rule. *Id.* at 42.

The Court reached that conclusion primarily because the statute had "the effect of depriving" indigent borrowers "of their right of meaningful access to the courts." *Id.* Specifically, the statute applied only to individuals who were delinquent on their loans, and so could not "afford the travel costs" to an out-of-county forum, thus "effectively depriv[ing]" those individuals "of any 'meaningful opportunity' to defend themselves." *Id.* at 42-43. The statute, the Court held, created a serious risk of the erroneous deprivation of all access to the court system that overcame the State's interest in permitting the agency in question to file all of its lawsuits in one venue. *Id.* at 63-64.

*Williams* is night and day from this case. Most importantly, as discussed, *supra* p. 15, the essential premise of *Williams* was that the statute at issue there operated exclusively on indigent individuals who categorically could not travel to or appear in an out-of-county forum, and thus had the effect of "depriving" them *entirely* of "their right of meaningful access to the courts." *Id.* at 42. But plaintiff here does not allege that it is indigent, nor that section 2-101.5 will result in the complete denial of its access to courts. *Supra* pp. 21-

22. And important to the Court in *Williams* was the fact that the indigent individuals there were *defendants*, haled into distant forums against their will and subjected to "vigorous" post-judgment litigation after suffering default judgments due to their failure to appear in those forums. *See id.* at 63 (explaining that the statute "effectively deprive[d]" the borrowers "of any means of defending themselves in these actions"). Section 2-101.5, in contrast, has no adverse effect on defendants at all; instead, like other venue statutes, it simply tells *plaintiffs* where to file suit (and directs them, like countless other venue statutes, *supra* p. 5, toward the county in which the challenged action occurred or will be enforced).

The circuit court failed to acknowledge these distinctions. Instead, it appeared to read *Williams* to authorize a court to examine whether the forum designated by a venue rule is "inconvenient" for a plaintiff, in which case it can be disregarded. The court reasoned, for instance, that plaintiff, "similar to the student loan borrowers in *Williams*," had shown that Sangamon County was an "inconvenient forum[]." A4. It echoed that reading of *Williams* later in its opinion, stating that because plaintiff had "chosen to handle the prosecution of this case in Madison County," and its owner had filed an affidavit attesting that "Madison County is convenient for him, and Sangamon County is not," plaintiff had "presented similar . . . evidence in this case as what was done in *Williams*." A5-6. And the court concluded by holding that plaintiff had shown that "Sangamon is an inconvenient forum," in that it was

"inconvenient to [p]laintiff," "inconvenient to [p]laintiff's witnesses," and even inconvenient to "[p]laintiff's counsel," who is "in Madison County." A7. The court's decision thus rested on the view that under *Williams* "it is enough [to establish] that the forum is inconvenient" to make out a due-process claim. A8.

The circuit court's reasoning badly distorts *Williams*. *Williams* does not authorize a plaintiff (or a court) to disregard a venue rule simply because abiding by it would be inconvenient. Instead, as discussed, *supra* pp. 15, 25, *Williams* set out the general rule that a litigant *cannot* challenge a venue rule unless it is wholly "arbitrary or unreasonable," 139 Ill. 2d at 41, a standard that has been met only once — in *Williams* itself. And the Court in *Williams* emphasized that its decision was based on *more* than "the burden of an inconvenient forum" — specifically, on "the indigence of the" borrowers, the agency's "lack of good faith" in facilitating out-of-court resolution of their claims, and the agency's aggressive pursuit of default judgments, all of which "deprived" the borrowers "of *any* means of defending themselves" in delinquency cases. *Id.* at 63 (emphasis added). By disregarding these critical aspects of the Court's reasoning, the circuit court transformed *Williams*'s limited holding regarding the arbitrariness of the statute at issue there into a freestanding rule that would permit the wholesale disregard of venue statutes that litigants dislike. Nothing in *Williams* licenses such a disruptive result.

Even if a litigant could establish a due-process violation by some showing of "inconvenience" short of outright inability to access the courts (as in *Williams*), the circuit court was also wrong to hold that plaintiff had made such a showing here. *See* A5-7. The circuit court relied principally on the fact that (in its view) plaintiff might later need to support its claims at trial "with testimonies, witnesses, and exhibits," all of which would presumably be in Madison County, whereas the Attorney General had identified "no witnesses that Sangamon County would be convenient for." A5, 7. But that reasoning is flawed on multiple levels. For one, a litigant cannot show that a venue statute must be set aside on due-process grounds simply by comparing the relative quantity of evidence available in each forum, as if in a *forum non conveniens* motion. *Cf.* A7 (citing a *forum non conveniens* case for the proposition that "Sangamon is an inconvenient forum" for plaintiff). "[I]ssues of convenience" that fall within the "common law concept of *forum non conveniens* should not be conflated with . . . due process concerns." *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 575 (2d Cir. 1996). To hold otherwise would dilute what it means for a venue statute to violate due-process principles, inviting endless litigation over venue rules.

Even beyond that legal error, the circuit court erred in concluding that it would be sufficiently "inconvenient" for plaintiff to litigate its constitutional claims in Sangamon County as to violate the Due Process Clause. The court stated that plaintiff had "identified potential witnesses who would need to

travel to Sangamon County to participate in this case," A5, but the record belies that assertion. Plaintiff submitted declarations opposing transfer only from its owner and its counsel, and each declaration did little more than state that the declarants would find it "inconvenient" to travel to Sangamon County for court proceedings. C168, 170. And although plaintiff stated in its brief opposing transfer that "[l]ikely witnesses . . . Messers. Heeren, Pulaski, and Duke" were not residents of Sangamon County, C132, it did not identify who these putative witnesses were or what evidence they might possess that could conceivably be needed at trial. Indeed, as discussed, *supra* pp. 23-24, plaintiff has never identified *any* factual matter relevant to its claims that might require development at trial, much less any reason why litigating its claims in Sangamon County might compromise its ability to develop those facts in a way that could give rise to a due-process violation. And it cannot be enough, as the circuit court reasoned, for a litigant to simply assert that it has "chosen to handle the prosecution" of one's case in one's home county. A6. Were that the rule, again, the evasion of venue rules would be the norm, not the exception.

The circuit court's *Mathews* analysis, A8-9, likewise had the effect of relieving plaintiff from its burden of showing a due-process violation. The court purported to apply *Mathews*'s three-factor analysis, A8-9, but gave little consideration to the key question, namely whether section 2-101.5 was likely to result in the unjustifiable "erroneous deprivation" of a "private interest" cognizable under the Due Process Clause. *See Williams*, 139 Ill. 2d at 32-33;

*Mathews*, 424 U.S. at 335. On that question, the court reasoned that *Williams* recognized litigants' private interest in "'the right of *meaningful* access to the courts,'" A9 (quoting 139 Ill. 2d at 42 (emphasis the circuit court's)), and stated without elaboration that that interest was put at risk by section 2-101.5 because "the greater the distance between the parties, witnesses, the sources of evidence, the more arduous it becomes to access the courthouse," *id.* But *Williams*, as discussed, rests on the fact that the statute at issue threatened to deprive the indigent litigants in that case *entirely* of their access to the courts, not on the idea that a venue statute could violate the Due Process Clause simply by imposing "distance" between a litigant and the forum designated by the legislature. The circuit court's cursory analysis justified neither that extreme reading of *Williams* nor the notion that plaintiff here had established that it would somehow be "arduous" to litigate its facial constitutional claims in Sangamon County.

The circuit court instead leaned heavily on what it described as the "minimal" public interest justifying section 2-101.5, stating that members of "the General Assembly will not be called as witnesses" in this and similar cases, making it "irrelevant" that Sangamon County is "the seat of state government." A9. That reasoning is flawed on multiple levels.

Most basically, it disregards the deference courts owe to the General Assembly's choice of venue. The General Assembly has enacted a wide range of venue statutes prescribing where plaintiffs may bring suit, *supra* pp. 5-6,

and, as the Court explained in *Williams*, courts "generally cannot interfere" with those legislative determinations, 139 Ill. 2d at 41. And almost all venue statutes set venue in the county in which the defendant resides, whether or not witnesses or other evidence can be found there. *See, e.g.*, *Bucklew v. G.D. Searle & Co.*, 138 Ill. 2d 282, 288-89 (1990) (general venue statute "restrict[s] proper venue to places that are convenient either to the defendant *or* to the potential witnesses" (emphasis added)); *Williams*, 139 Ill. 2d at 52 (legislature intended in passing general venue statute to "insulate defendants from being sued in faraway places where they neither reside nor carry on any activities"). Section 2-101.5, by setting venue in constitutional actions in the counties that house state government, is consistent with that tradition, which does not lose its force, or its purpose, simply because the State is the defendant and public officials may be unlikely to testify in constitutional cases.

Even if more were required, the General Assembly reasonably concluded that the public interest would be best served by setting venue for constitutional claims in Sangamon or Cook County. As discussed, *supra* p. 5 & n.2, a range of statutes establish essentially the same rule, providing for venue in the counties that house state government when litigants seek to challenge governmental action in cases that raise primarily questions of law. The General Assembly has concluded, in other words, that many public-law cases can (and should) be adjudicated in the counties in which the challenged decisions are made, consistent with the general rule that venue is proper in a

defendant's home county, *supra* p. 5. That rule promotes efficient and fair adjudication, given those circuit courts' expertise in handling public-law cases, and it will generally impose little or no burden on plaintiffs, given the fundamentally legal nature of the questions that courts resolve in such cases. In passing section 2-101.5, the General Assembly responded to the increase in constitutional litigation — with cases brought across the State in multiple contexts raising substantively identical facial claims in multiple fora, *supra* pp. 6-7 — by extending that basic rule to cases asserting constitutional challenges to state action. That decision will promote the efficient and just adjudication of cases with constitutional significance, in that it will reduce the likelihood of courts reaching conflicting opinions on significant questions of state law, while entrusting the responsibility for adjudicating those cases in the first instance to courts in the counties that have the most experience with public-law issues. The circuit court identified no reason to call that legislative judgment into question.

### B. The circuit court erred in relying on *forum non conveniens* principles.

The circuit court also referred repeatedly to *forum non conveniens* principles in its due-process analysis. *See* A5, 7, 9-10. But those principles have no bearing here.

To start, the circuit court erred in analogizing the question whether section 2-101.5 violates due-process principles to the analysis of a "motion for *forum non conveniens*." A9. Under the *forum non conveniens* doctrine, "a

court [may] decline jurisdiction of a case . . . if it appears that another forum can better serve the convenience of the parties and the ends of justice." *Fennell v. Illinois Cent. R. Co.*, 2012 IL 113812, ¶ 12. In resolving such a motion, a court considers factors ranging from the convenience of the parties to the availability of evidence to the relative congestion of the transferor and transferee courts. *Id.* ¶¶ 15-16. The ultimate question is which forum will be most convenient for the parties and the court system. *See Gridley v. State Farm Mut. Auto. Ins. Co.*, 217 Ill. 2d 158, 169 (2005). By contrast, a court considering a due-process challenge to a state venue statute does not simply ask whether it would be more convenient for the parties (or the court) if the statute were disregarded. A court considering such a challenge must evaluate it against the presumption that the statute is constitutional and "uphold its validity and constitutionality if it can reasonably be done." *Hayashi*, 2014 IL 116023, ¶ 22. In other words, the court does the opposite of what a court considering a *forum non conveniens* motion does: Rather than simply ask which of two available forums would be most convenient, it defers to the legislature's choice of forum "if it can reasonably be done." *Id.*

The circuit court was thus wrong to suggest that "many of the standards and purposes associated with" the *forum non conveniens* doctrine are relevant in a due-process challenge to a venue statute. A9. To the contrary, that view of plaintiff's due-process claim risks collapsing the discretionary and contextual standard that courts apply in evaluating *forum*

*non conveniens* motions with the highly deferential standard that courts apply in considering constitutional challenges to state statutes, including plaintiff's due-process challenge to section 2-101.5. In *Williams*, for instance, this Court did not simply ask (as the circuit court suggested, *supra* pp. 28-29) whether it would be better for the parties or the court system in the abstract for the suits against the borrowers to proceed in their home counties; it conducted an exhaustive analysis of the *Mathews* factors to determine whether the venue statute in question was "so arbitrary and unreasonable" as to violate due-process principles. *See Williams*, 139 Ill. 2d at 42-67. The court below erred in equating the two questions.

The court also erred in suggesting that section 2-101.5 violates due-process principles because it does not allow plaintiffs to seek transfer on *forum non conveniens* grounds. A7. But the court identified no authority for the notion that a litigant has a due-process right to assert intrastate *forum non conveniens* (*i.e.*, that another forum *within* the State would be a more convenient location for the case to proceed), and to our knowledge no court has ever held or even implied as much. To the contrary, intrastate *forum non conveniens* is a modern invention: "[N]o state permitted forum non conveniens dismissals of cases brought against [in-state] defendants before 1954," William S. Dodge *et al.*, *The Many State Doctrines of Forum Non Conveniens*, 72 Duke L.J. 1163, 1210 (2023), and Illinois did not recognize the doctrine until 1983, *see Torres v. Walsh*, 98 Ill. 2d 338, 353 (1983). Multiple

States — at least eight — still do not recognize it today, at least in some contexts, and no court has held, or even suggested, that such a decision might violate due-process principles.[8] Indeed, the United States Supreme Court has expressly recognized that a State may permissibly "reject . . . the [*forum non conveniens*] doctrine for all causes of action begun in its courts." *Missouri ex rel. Southern R. Co. v. Mayfield*, 340 U.S. 1, 3 (1950).

To the extent plaintiff's claim is that it is entitled to assert intrastate *forum non conveniens*, and that *forum non conveniens* principles favor venue in Madison County, *see* C131, 137, that argument illustrates the increasingly dated nature of the intrastate *forum non conveniens* doctrine. As this Court observed two decades ago, technological changes — "interstate highways, bustling airways, telecommunications," and, even then, "the world wide web" — have fundamentally changed the nature and relevance of the *forum non conveniens* doctrine. *First Am. Bank v. Guerine*, 198 Ill. 2d 511, 525 (2002). The technological advances that today make remote participation in court hearings and evidentiary development possible — and even, in many contexts, encouraged by this Court's rules, *supra* p. 18 — were unthinkable forty years

---

[8] *See, e.g.*, *Clark v. Luvel Dairy Prod., Inc.*, 731 So. 2d 1098, 1107 (Miss. 1998) (rejecting doctrine of intrastate *forum non conveniens*); *Willman v. McMillen*, 779 S.W.2d 583, 585-86 (Mo. 1989) (same); *First Financial Trust Co. v. Scott*, 929 P.2d 263, 267-68 (N.M. 1996) (same); Ala. Code §§ 6-5-430, 6-5-754 (*forum non conveniens* dismissal available only in cases involving out-of-state parties or claims); Colo. Rev. Stat. Ann. § 13-20-1004 (similar); La. Code Civ. Proc. Ann. art. 123(B) (similar); Tex. Civ. Prac. & Rem. Code Ann. § 71.051(E) (similar); Va. Code Ann. § 8.01-265 (*forum non conveniens* dismissal or transfer available only in cases involving out-of-state parties or claims).

ago, when this Court first applied the doctrine to intrastate transfers. *See Torres*, 98 Ill. 2d at 350. And in the interim, courts have increasingly agreed that the application of the doctrine in the intrastate context can result in "a battle of minutiae," *First Am. Bank*, 198 Ill. 2d at 519; *accord, e.g.*, *Wilton v. Illini Manors, Inc.*, 364 Ill. App. 3d 704, 706 (5th Dist. 2006), with litigants vigorously contesting whether (for instance) litigation should proceed in the forum in which it was brought or instead a forum a "90 minute drive," C170, away.

Because the questions raised by plaintiff's due-process challenge to section 2-101.5 and the questions raised in a *forum non conveniens* motion are not the same, and because plaintiff has no due-process entitlement to assert *forum non conveniens*, *supra* pp. 33-37, the Court does not need to consider the continuing relevance of the intrastate *forum non conveniens* doctrine here. But if it disagrees, and concludes that that the *forum non conveniens* doctrine bears on plaintiff's due-process challenge to section 2-101.5, it should once more consider modifying or overruling that doctrine. *See First Am. Bank*, 198 Ill. 2d at 514 ("evaluat[ing] the continued vitality of the intrastate *forum non conveniens* doctrine"); *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 330-36 (1994) (similar). Regardless, the circuit court erred in invoking the doctrine in support of its view that section 2-101.5 violates due-process principles.

* * *

Section 2-101.5 does not violate due-process principles, either facially or as applied to plaintiff itself. It extends a long-established venue rule, requiring certain claims to be filed in the two counties that house state government, to cases asserting constitutional claims against the State. Such a choice falls well within the General Assembly's substantial latitude to determine venue for civil actions, and unless a venue rule of this sort deprives a litigant entirely of its access to the courts, it does not violate the Due Process Clause. Because plaintiff's allegations and the circuit court's opinion rest not on any finding that section 2-101.5 has that effect here, but instead only on the view that it would be more "convenient" for plaintiff to bring its facial challenge to the Act in Madison County, there is no basis for a finding of unconstitutionality here. The circuit court's judgment should be reversed.

## CONCLUSION

For these reasons, defendant asks this Court to reverse the judgment below.

Respectfully submitted,

**KWAME RAOUL**
Attorney General
State of Illinois

**JANE ELINOR NOTZ**
Solicitor General

/s/ Alex Hemmer
**ALEX HEMMER**
Deputy Solicitor General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5526 (office)
(773) 590-7932 (cell)
CivilAppeals@ilag.gov (primary)
Alex.Hemmer@ilag.gov (secondary)

July 31, 2024

## 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 39 pages.

/s/ Alex Hemmer
ALEX HEMMER
Deputy Solicitor General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5526 (office)
(773) 590-7932 (cell)
CivilAppeals@ilag.gov (primary)
Alex.Hemmer@ilag.gov (secondary)

# APPENDIX

## TABLE OF CONTENTS TO APPENDIX

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

PIASA ARMORY, LLC,

Plaintiff,

v.

KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois,

Defendant.

No. 2023 LA 1129



**ORDER**

This matter is before the Court on Plaintiff's motion for summary judgment as to the Venue Count (i.e. Count V), and Defendant's, Kwame Raoul, in his official capacity as Attorney General of Illinois ("Attorney General"), motion to transfer this case to Sangamon County under section 2-101.5(a) of the Code of Civil Procedure, 735 ILCS 5/2-101.5(a) ("section 2-101.5(a)").

Plaintiff Piasa Armory, LLC ("Piasa Armory") filed a combined response in opposition and cross-motion for summary judgment on Count V* of its complaint on November 22, 2023. The parties have briefed the matter and the Court heard oral argument on January 10, 2024.

Piasa Armory was present by and through its counsel, Thomas Maag. The Attorney General was present by and through his counsel, Darren Kinkead. For the following reasons, the Court DENIES the motion to transfer and GRANTS Piasa Armory's motion for summary judgment.

* Piasa Armory's motion states it is moving for summary judgment on Count II of its complaint. At oral argument, in response to the Court's question seeking clarification, Piasa Armory explained this is a typo and its motion should have stated Count V instead.

The Attorney General contends, and Piasa Armory concedes, that section 2-101.5(a) applies to this action by virtue of the date of it being filed and this being a constitutional case. The Court agrees. Section 2-101.5(a) provides:

> Notwithstanding any other provisions of this Code, if an action is brought against the State or any of its officers, employees, or agents acting in an official capacity on or after the effective date of this amendatory Act of the 103rd General Assembly [June 6, 2023] seeking declaratory or injunctive relief against any State statute, rule, or executive order based on an alleged violation of the Constitution of the State of Illinois or the Constitution of the United States, venue in that action is proper only in the County of Sangamon and the County of Cook.

735 ILCS 5/2-101.5(a).

First, Piasa Armory brought this action against the Attorney General in his official capacity.

Second, Piasa Armory filed its complaint on August 17, 2023.

Third, Piasa Armory seeks declaratory and injunctive relief concerning the Firearm Industry Responsibility Act ("FIRA"), which amended the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505, effective August 12, 2023.

Fourth, Piasa Armory contends those amendments violate the Supremacy Clause, First Amendment, Second Amendment, Fifth Amendment and Fourteenth Amendment of the United States Constitution; and the Three Readings Rule of the Illinois Constitution.

Therefore, each of section 2-101.5(a)'s requirements is satisfied, and the plain language of the statute provides that venue in this action is proper only in Sangamon County or Cook County. Further, the Attorney General timely objected to venue in Madison County by filing a motion to transfer this action to Sangamon County pursuant to section 2-101.5(a) within the time he was granted to answer or move with respect to Piasa Armory's complaint. *See* 735 ILCS 5/2-104(b).

Piasa Armory opposes the Attorney General's motion because, it argues, section 2-101.5(a) violates Amendments 1, 2, 5 and 14 of the U.S. Constitution, and the Three Readings Rule of the Illinois Constitution. "[C]ourts generally cannot interfere with the legislature's province in determining where venue is proper, unless constitutional provisions are violated." *Williams v. Illinois State Scholarship Commission*, 139 Ill. 2d 24, 41 (1990) (citation omitted). Because the Attorney General has moved the Court to transfer this action from Piasa Armory's preferred forum pursuant to Section 2-101.5(a), the Court finds Piasa Armory has standing to challenge the constitutionality of the statute at least as applied here. *E.g., CTU v. Board of Education*, 189 Ill. 2d 200, 206 (2000) ("To have standing to challenge the constitutionality of a statute, one must have sustained or be in immediate danger of sustaining a direct injury as a result of enforcement of the challenged statute.").

To determine whether section 2-101.5(a) would violate Piasa Armory's rights under the Due Process Clause of the United States Constitution, the Court considers federal and state cases because due process provides the same rights under the federal and state constitutions. *E.g., Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 47; *People v. Kizer*, 365 Ill. App. 3d 949, 960–61 (4th Dist. 2006). Due process under the state constitution is held in limited lockstep with the federal constitution.

The Illinois Supreme Court applied these principles in *Williams*, 139 Ill. 2d 24, which is its only Illinois state court precedent addressing whether a statute fixing venue violated a litigant's due process rights. The law at issue in *Williams* set Cook County as the "exclusive venue" for lawsuits brought against student loan borrowers by the state agency tasked with administering those loans. *Id.* at 28. The court "admit[ted] that, standing alone, requiring venue to be in a particular county does *not necessarily* infringe upon [the] right of access to the courts."

*Id.* at 63. This Court interprets "not necessarily" to mean that depending on the matter, it might, or it might not, without more.

In the case before it, however, the court found the state agency "regularly" obtained default judgments "against [borrowers] who, for all practical purposes, cannot appear" in Cook County because they "are indigent" and "cannot afford the travel costs to [that] distant forum." *Id.* at 42–43, 46. The court also found "there was no evidence that [borrowers] could have defended their interests without making a personal appearance" in Cook County. *Id.* at 64. The Supreme Court thus concluded that, in that particular case, "the burden of an inconvenient forum, when combined with the indigence of the [borrowers]" and other factors, "effectively deprive[d] [the borrowers] of any means of defending themselves in these actions" and therefore constituted "a due process deprivation." *Id.* at 63 (citing *Boddie*, 401 U.S. at 377).

In the present matter, Piasa Armory, similar to the student loan borrowers in *Williams*, has demonstrated that both Sangamon and Cook Counties are inconvenient forums for the Plaintiff. While Sangamon County will be the primary focus due to its closer proximity, Cook County presents significantly greater inconvenience to the Plaintiff. However, it is fair to say that, in this case, for this Plaintiff, the inconvenience of Cook County is exponentially greater than the inconvenience of Sangamon County. For counties closer to the northern part of the state, the opposite may well be true.

To the extent that this statute merely *permits*, a Plaintiff to file in Cook or Sangamon County, and bars the State from moving for transfer, the Court finds it is Constititonal. To the extent that a resident of Cook or Sangamon County wished to file a lawsuit in their home county, this Court also finds that would be constitutional and permitted under the statute. Therefore, as this statute is constitutional under at least those circumstances, this is not a facial challenge, it is

an as applied challenge. It is merely a very broad as applied challenge. As applied to Plaintiff in this case, as a practical matter, transferring this action to Sangamon County will deprive it of the ability to put up its best challenge to the constitutionality of FIRA.

As the Plaintiff in the underlying causes of action, Piasa Armory has the burden of providing initial proof for its case. Assuming the parties do not agree on the facts, which is likely, this would require a trial with testimonies, witnesses, and exhibits. Piasa Armory has identified potential witnesses who would need to travel to Sangamon County to participate in this case if it were transferred. *See Williams*, 139 Ill. 2d at 64 ("there was no evidence that [the student loan borrowers] in this case could have defended their interests without making a personal appearance [in Cook County]"). It is unclear how Plaintiff could present its case without witnesses or documents.

Plaintiff has submitted evidence, in the form of maps showing Sangamon (as well as Cook County), much farther away from Plaintiff than Madison County. Plaintiff submits an affidavit from Scott Pulaski, setting forth Madison County is convenient for him, and Sangamon County is not. Plaintiff's counsel, and Plaintiff itself, is located in Madison County. While the location of Plaintiff's counsel is not entitled to much consideration, just as in the *forum non conveniens* analysis, it is entitled to some. For its part, the State cites to not a single witness that it would actually call that hails from Sangamon County, and does not provide a single affidavit on witness convenience. Transfer to Sangamon County also totally prevents the possibility of a jury view, such as Plaintiff's store, should there be a dispute about Plaintiff's business.

The State contends that Piasa Armory has failed to establish that its corporate representatives are incapable of traveling to Sangamon County. While it is indeed possible for

witnesses to physically travel long distances, the issue at hand pertains to reasonableness and convenience, not mere physical capability.

Piasa Armory has asserted that its corporate representatives have chosen to handle the prosecution of this case in Madison County (as affirmed by Scott Pulaski's affidavit). The State has made no effort to counter this claim or provide alternative witnesses. Consequently, the State's presentation, or lack thereof, falls short of the precedent set by the Illinois Supreme Court. In *Williams* the student loan borrowers presented evidence showing the inconvenience to Cook County. 139 Ill. 2d at 42–43. Piasa Armory has presented similar such evidence in this case as what was done in *Williams*.

Furthermore, the Defendant asserts that Sangamon County is a suitable location for conducting remote proceedings, such as using zoom or similar systems. The Court is aware that Supreme Court Rule 206(h), Supreme Court Rule 45(c)(1) and 241(b) allows broad use of video conference or telephone at an evidentiary hearing or trial "for good cause shown and upon appropriate safeguards" or even as of right. Remote hearings conducted pursuant to these rules *can* provide adequate due process to all participants. *E.g., In re P.S.*, 2021 IL App (5th) 210027, ¶ 62. This Court is very familiar with the use of remote proceedings, as it makes said available in many circumstances, and indeed, finds then quite useful in many cases.

However, the availability of remote proceedings does not bolster the State's argument. The State could also participate in Madison County using the same remote means. Certainly, for persons with appropriate computer equipment and subscriptions, which the Court takes judicial notice of, includes the Attorney General's Office, as they do often appear in this Court remotely by zoom and the like making some hearings more convenient. But that does not follow that *all* persons have such equipment or subscriptions. There is nothing in the record to suggest that

Plaintiff, or its employees, have such equipment, which may well be relatively common for lawyers, but not all persons are lawyers. Additionally, this service is not without flaws, and the Court's experience suggests that complex factual matters requiring documentation are best dealt with in-person. Online remote appearances, much like telephone depositions and appearances by telephone, which have been done for literally decades, are most useful for simple matters, and less useful the more complicated and disputed the matters. The Court takes 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*, if one includes the use of telephones in the term.

The Illinois Supreme Court held in *Williams* "the burden of an inconvenient forum, when combined with the indigence of the [student loan borrowers]" *and other factors* caused the Illinois Supreme Court to find the venue statute unconstitutional in that case. *Id.* at 63–64.

In this case, Sangamon is an inconvenient forum. Just as Sangamon County was an inconvenient forum in an oil and gas case brought by the State in *People ex rel. Madigan v. Leavell*, 905 NE 2d 849 - Ill: Appellate Court, 4th Dist. 2009, Sangamon County is simply inconvenient to Plaintiff, inconvenient to Plaintiff's witnesses, and Defendant lists no witnesses that Sangamon County would be convenient for. While hardly entitled to any weight, even the location of Plaintiff's counsel is in Madison County. While documents may be relatively easy to move, there is no showing that any relevant documents are anywhere other than Madison County.

Furthermore, by abolishing *forum non conveniens* under this statute, the procedural safeguard of *forum non conveniens* is eliminated. The *Leavell* case is a classic example of why technically proper venue for the State can be unreasonable for a private litigant, and how *forum*

*non conveniens* can ameliorate that. Unfortunately, this protection has been abolished by the State.

Essentially, this statute embodies precisely what the Supreme Court apprehended would transpire if it ruled differently in *Williams*. The Court observed the arbitrary and abrupt departure of the legislature from established venue principles, not only for one agency, as in *Williams*, but for all state agencies. This effectively exposes every party involved in a dispute with the State of a constitutional magnitude to "be entirely at [an agency's] mercy, since such an action could be made oppressive and unbearably costly" (Heldt, 329 Ill.App. at 414, 69 N.E.2d 97), and place venue "in a faraway place where [the party] neither resides nor carries on any kind of activities" (American Oil Co., 133 Ill.App.2d at 261, 273 N.E.2d 17). *Williams*, 139 Ill. 2d at 58.

In *Williams* it is enough that the forum is inconvenient, and that the statute is not consistent with traditional notions of substantial justice and fair play when it comes to venue. This finding is supported by applying the three factors established in *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976), which the Illinois Supreme Court used to frame its due process analysis of the venue statute at issue in *Williams*. *See, e.g.*, 139 Ill. 2d at 63. "Per *Mathews*, when evaluating a procedural due process challenge, [courts] should consider (1) the government's interest in the procedure, including the function involved and the fiscal or administrative burdens that the additional or substitute procedure would entail, (2) the private interest affected by the governmental action, and finally (3) the risk of an erroneous deprivation of said interest through the procedures being contested and the probable value, if any, of additional or substitute procedural safeguards." *People v. Deleon*, 2020 IL 124744, ¶ 27.

Considering the first *Mathews* factor, the Court finds the government interest here minimal at best. Sangamon County is not more important than any other county in this State. The fact that it is the seat of state government is ultimately irrelevant. Based on the record before the Court, the General Assembly will not be called as witnesses. The Defendant in this case, as noted in *Williams*, has offices throughout Illinois, including St. Clair County, whose attorneys regularly appear in this Court, and are familiar with this Court's rules and customs. The Attorney General is responsible for representing the State and its officers in court in every county. Therefore, for all these reasons, transferring this action to Sangamon County would simply make it more difficult for the Plaintiff to prosecute its constitutional claims.

The Court hereby concludes that the second *Mathews* factor, namely the private interest factor, strongly disfavors transfer. In *Williams*, the Illinois Supreme Court explained the private interest at issue in a due process challenge to a venue statute is the "right of *meaningful* access to the courts." 139 Ill. 2d at 42. While this Court acknowledges without hesitation that the judges in Sangamon County would impartially handle this case, the reality remains that the greater the distance between the parties, witnesses, the sources of evidence, the more arduous it becomes to access the courthouse.

Likewise, the Court determines the third *Mathews* factor, the risk of erroneous deprivation, again strongly disfavors transfer, for the reasons set forth above.

While the Court recognizes that this is not a motion for *forum non conveniens,* many of the standards and purposes associated with that doctrine are relevant to this case. For instance, several *forum non conveniens* factors align with the *Mathews* factors, which considers both government and private interests. Despite the Attorney General's assertion that *forum non conveniens* no longer serves any practical purpose, this Court lacks jurisdiction to contradict the

Supreme Court. If the Supreme Court wishes to abolish *forum non conveniens*, it can do so in the same way it adopted it, by having the Supreme Court declare it to be so. This Court has no power to overrule the Supreme Court.

The State's argument, that the Illinois Supreme Court acknowledged over two decades ago in the case *First American Bank v. Guerine*, 198 Ill. 2d 511, 525 (2002), that changing world circumstances undermine the doctrine's relevance, does not grant this Court authority to abolish the doctrine. If the Attorney General were to appeal, and the Supreme Court declared its decades of *forum non conveniens* law should be discarded, this Court will comply. If, as the State suggests, the Illinois Supreme Court should thus consider modifying or eliminating Supreme Court Rule 187, that would be an argument to take place in that Court.

Piasa Armory also contends section 2-101.5(a) is unconstitutional because the bill enacting it violated the Three Readings Rule of the Illinois Constitution. Legislative history shows that HB3062, which became the Public Act in question, started out as a landlord tenant bill, ultimately passing out of the House as a landlord tenant bill. The bill, however, was amended in the Senate, by striking all reference to landlord tenant law, and replacing same with a new venue statute at issue herein. Once "gutted and amended", the statute was not read three times in the Senate, and as a venue bill, was not read three times in the House. On its face, this appears to violate the three readings rule, and possibly the single subject rule. However, as Piasa Armory correctly concedes, the Court must follow Illinois Supreme Court precedent foreclosing such challenges under the Enrolled Bill Doctrine of the Illinois Constitution. *E.g., Friends of Parks v. Chicago Park District*, 203 Ill. 2d 312, 328–29 (2003). Thus, while Plaintiff concedes this Court cannot rule in its favor on the issue, it is clear that Plaintiff intends to challenge existing law at a higher court. To that end, Plaintiff's Three Readings Rule challenge is denied,

and this Court's ruling in this case is in no way based upon the Three Readings Rule. If the precedent of the Supreme Court were different, this Court would apply that precedent.

However, as 735 ILCS 5/2-101.5(a) does violate due process, as applied to persons who reside or were injured outside of Cook or Sangamon County, the motion to transfer is Denied, as 735 ILCS 5/2-101.5 is unconstitutional, as Defendant seeks to apply it. This triggers obligations under Illinois Supreme Court Rule 18.

Pursuant to Supreme Court Rule 18, this Court states and finds as follows:

(a) the court makes the finding in a written order or opinion, or in an oral statement on the record that is transcribed;

In this case, this order fulfills the requirement as a written order.

(b) such order or opinion clearly identifies what portion(s) of the statute, ordinance, regulation or other law is being held unconstitutional;

In this case, the Court declares that Public Act 103-0005 is unconstitutional when applied to residents outside of Cook or Sangamon County, as well as individuals injured outside of Cook or Sangamon County.

(c) such order or opinion clearly sets forth the specific ground(s) for the finding of unconstitutionality, including:

(1) the constitutional provision(s) upon which the finding of unconstitutionality is based;

In this case, it is based on Constitutional Due Process.

(2) whether the statute, ordinance, regulation or other law is being found unconstitutional on its face, as applied to the case sub judice, or both;

While the statute is generally unconstitutional, there may be instances where it could be considered constitutional. Therefore, it is pronounced unconstitutional as applied.

(3) that the statute, ordinance, regulation or other law being held unconstitutional cannot reasonably be construed in a manner that would preserve its validity;

There is no reasonable interpretation of the statute.

(4) that the finding of unconstitutionality is necessary to the decision or judgment rendered, and that such decision or judgment cannot rest upon an alternative ground; and

There is no alternative non-constitutional argument that can be applied.

(5) that the notice required by Rule 19 has been served, and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute, ordinance, regulation or other law challenged.

Rule 19 has been complied with.

ACCORDINGLY, the motion to transfer to Sangamon County is DENIED. Piasa Armory's cross-motion for summary judgment on Count V is GRANTED. The Court finds IL Public Act 103-0005 unconstitutional as applied. Pursuant to Supreme Court Rule 304, this Court finds no just reason to delay enforcement or appeal of this Order.

The Defendant is expected to appeal this Order. It is also anticipated that as Plaintiff brought its count under 42 USC 1983, that it will file a fee and cost petition under Section 1988. Thus,

1. Defendant is ordered to file an answer to Counts I through IV within 30 days of this date.
2. Plaintiff is ordered to file its fee and costs petition, for Count V, within 45 days of this date, unless Defendant files a notice of appeal of this Order.

3. If the Defendant files an appeal of this Order within 30 days, this Court will address fees and costs for Count V following disposition of the appeal.
4. If the Defendant does not file an appeal of this Order within 30 days, Defendant may file any response or objection to the fee petition within 30 days of same being filed. A reply in support may be filed 14 days thereafter. This Court will either rule on said petition, or set same for argument, depending on what is filed by the parties.

IT IS ORDERED.

Dated: 3/1/24

Honorable Ronald J. Foster, Jr.

***EFILED***
Case Number 2023LA001129
Date: 3/13/2024 4:53 PM
Thomas McRae
Clerk of Circuit Court
Third Judicial Circuit, Madison County Illinois

**APPEAL TO THE ILLINOIS SUPREME COURT**

**FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT**
**MADISON COUNTY, ILLINOIS**

| | |
|---|---|
| PIASA ARMORY, LLC,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>KWAME RAOUL, in his official capacity as Illinois Attorney General,<br><br>Defendant-Appellant. | No. 2023 LA 1129<br><br>Hon. Ronald J. Foster, Jr.<br><br>Judge Presiding |

## NOTICE OF APPEAL

PLEASE TAKE NOTICE that under Illinois Supreme Court Rules 302(a) and 304(a), Defendant Kwame Raoul, in his official capacity as Attorney General of Illinois, by and through his attorney, hereby appeals directly to the Illinois Supreme Court from the partial final judgment entered on March 4, 2024 (Attachment A) ("Op."), by the Honorable Ronald J. Foster, Jr., Judge of the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, in this case, granting Plaintiff summary judgment on its claim that section 2-101.5(a) of the Code of Civil Procedure, 735 ILCS 5/2-101.5(a), violates the United States Constitution's Due Process Clause as applied to "persons who reside or were injured outside of Cook or Sangamon County." Op. 11. Rule 304(a) is satisfied because the circuit court entered a final judgment as to one or more but fewer than all of Plaintiff's claims, namely, Count V of Plaintiff's complaint, which challenges section 2-101.5(a) on due-process grounds, and the circuit court made an express finding that there is no just reason to delay appeal, Op. 12.

By this appeal, Defendant requests that the Illinois Supreme Court reverse and vacate the circuit court's order to the extent it was adverse to him, and grant him any other relief deemed appropriate.

Dated: March 13, 2024

Respectfully submitted,

/s/ Darren Kinkead
Darren Kinkead, ARDC No. 6304847
Office of the Attorney General
115 South LaSalle Street
Chicago, IL 60601
(773) 590-6967
Darren.Kinkead@ilag.gov

**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, certify that I will cause to be served copies of the foregoing *Notice of Appeal* via electronic mail upon those listed below on March 13, 2024:

Thomas G. Maag
Peter J. Maag
Maag Law Firm, LLC
22 West Lorena Avenue
Wood River, IL 62095
(618) 216-5291
tmaag@maaglaw.com
lawmaag@gmail.com

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

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

# COMMON LAW RECORD
# TABLE OF CONTENTS

| | | |
|---|---|---|
| 4/2/24 | Record Request | C341-42 |
| 4/12/24 | Supreme Court Order | C343 |
| 4/15/24 | Supreme Court Order | C344 |
| 4/19/24 | Supreme Court Order | C345 |

# REPORT OF PROCEEDINGS
# TABLE OF CONTENTS

## CERTIFICATE OF FILING AND SERVICE

I certify that on July 31, 2024, I electronically filed the foregoing **Brief and Appendix 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.

Thomas G. Maag
tmaag@maaglaw.com

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

/s/ Alex Hemmer
ALEX HEMMER
Deputy Solicitor General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5526 (office)
(773) 590-7932 (cell)
CivilAppeals@ilag.gov (primary)
Alex.Hemmer@ilag.gov (secondary)