IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

BRAD WEISENSTEIN, DAWN ELLIOT, and KENNY COOK, Plaintiffs, v. KWAME RAOUL, in his official capacity as Illinois Attorney General, Defendant.	No. 23-CH-0061 Hon. Leah Captain

ATTORNEY GENERAL'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS UNDER SECTIONS 2-615 AND 2-619(a)(9)

Earlier this year, the General Assembly amended the Code of Civil Procedure to provide that venue in constitutional challenges to state statutes is proper only in Sangamon or Cook County. *See* Pub. Act No. 103-5 (2023) (codified at 735 ILCS 5/2-101.5) ("section 101.5"). Plaintiffs, three St. Clair County taxpayers, disagree with the General Assembly's determination that such cases should be heard in the counties that house our state government. Plaintiffs do not allege any intent to bring a constitutional challenge to any other state statute, but nonetheless ask the Court to assess the constitutionality of section 101.5 as a facial matter, and to strike it down under either of two novel and expansive legal theories.

The Court should deny plaintiffs' request, and instead dismiss their suit under sections 2-619(a) or 2-615 of the Code of Civil Procedure. Plaintiffs lack standing to challenge section 101.5 because they are entirely unaffected by the operation of that statute. And plaintiffs' claims fail on the merits in any event, because section 101.5 neither infringes upon the courts' jurisdiction nor violates equal-protection principles. Their case should therefore be dismissed with prejudice.

BACKGROUND

A. Statutory Background

Illinois has established a comprehensive statutory scheme for determining where venue is proper 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. Many 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 (in civil rights case, venue is proper only in "the county in which the civil rights violation was allegedly committed"); 765 ILCS 540/15 (in action involving coal rights, venue is proper only in "the county in which coal lands" are located), or in specific counties, *e.g.*, 625 ILCS 5/18c-2401(1) (in case arising under Illinois Vehicle Code, venue proper only in Sangamon or Cook County); 205 ILCS 5/48(10) (same for cases arising under Illinois Banking Act); *id.* 620/5-8 (same for cases arising under Corporate Fiduciary Act).

Earlier this year, the General Assembly amended the Code of Civil Procedure to set venue in constitutional challenges to state statutes in Sangamon or Cook County. *See* Pub. Act No. 103-5 (2023) (codified at 735 ILCS 5/2-101.5). The legislature's decision was driven by a significant increase in constitutional litigation challenging state statutes, regulations, and executive orders in counties across the State. *See, e.g.*, *Rowe v. Raoul*, 2023 IL 129248 (disposing of cases challenging state statute reforming pretrial release procedures brought originally by 105 plaintiffs in 64 counties); *Accuracy Firearms, LLC v. Pritzker*, 2023 IL App (5th) 230035 (disposing of case challenging state firearms statute brought by over 850 plaintiffs residing in *every* county). These cases generally share one or more of the following features: (a) they are facial challenges (meaning

that plaintiffs' own circumstances are not relevant to the case, *see Caulkins v. Pritzker*, 2023 IL 129453, ¶ 29); (b) they are duplicative, meaning that the same or substantively the same complaint is filed in multiple counties across the State, *see, e.g.*, *Rowe*, 2023 IL 129248, ¶ 9; and (c) they are consolidated in one circuit court under Supreme Court Rule 384 to prevent needless overlapping litigation, *see, e.g.*, *id.*; *Pate v. Pritzker*, No. 127825 (Ill. Nov. 22, 2021) (attached as Exh. 1), before ultimately being resolved on appeal by the Illinois Supreme Court.

Given these common features, the General Assembly has determined that constitutional challenges to state statutes should be brought in the first instance in one of two counties: Sangamon County, the seat of government, *see, e.g.*, Ill. Const. art. V, § 1; 5 ILCS 190/1, or Cook County, the State's most populous county, in which most executive agencies maintain offices. *See* 735 ILCS 5/2-101.5. Requiring such cases to be brought in one of these counties, in the General Assembly's view, will promote the efficient adjudication of constitutional cases with statewide significance.

B. Plaintiffs' Action

Plaintiffs are three residents of St. Clair County who disagree with the General Assembly's decision that constitutional challenges to state statutes should be brought in Sangamon or Cook County. They brought this challenge to section 101.5, alleging that it violates two constitutional provisions on its face: article VI, section 9, which grants circuit courts jurisdiction over "all justiciable matters," Compl. ¶ 40, and article I, section 2, which guarantees Illinois residents the equal protection of the laws, *id.* ¶ 53. Plaintiffs do not allege any intent to challenge a state statute other than this one; they simply allege that section 101.5 impairs their interests as voters and taxpayers, in that it bars them from "bringing constitutional claims in their local [c]ircuit [c]ourt," "disenfranchises them" from voting for judges who may hear constitutional challenges to state statutes, and diverts their "tax money . . . for an unconstitutional purpose." *Id.* ¶¶ 30-32.

LEGAL STANDARD

The Attorney General has moved to dismiss the action under both section 2-615 and section 2-619(a)(9) of the Code of Civil Procedure. *See* 735 ILCS 5/2-619.1 (section 2-615 and 2-619 motions "may be filed together as a single motion"); *Cedarhurst of Bethalto Real Est., LLC v. Vill. of Bethalto*, 2018 IL App (5th) 170309, ¶ 11. "A section 2-615 motion [asks] whether the facts alleged in the complaint . . . are sufficient to state a cause of action upon which relief may be granted." *Vill. of Kirkland v. Kirkland Properties Holdings Co., LLC I*, 2023 IL 128612, ¶ 44. "A motion to dismiss under section 2-619(a)(9) admits the legal sufficiency of the plaintiff's complaint but asserts that the claim against the defendant is barred by an affirmative matter that avoids the legal effect of or defeats the claim." *Archford Cap. Strategies, LLC v. Davis*, 2023 IL App (5th) 210377, ¶ 13. "When ruling upon either a section 2-615 or section 2-619 motion to dismiss, the court should accept all well-pleaded facts in the complaint as true and make reasonable inferences from those facts in favor of the nonmoving party." *Cedarhurst of Bethalto*, 2018 IL App (5th) 170309, ¶ 11.

"The judiciary's power to declare a statute unconstitutional is 'the gravest and most delicate duty that [courts are] called on to perform.'" *Rowe*, 2023 IL 129248, ¶ 19. Statutes "have a strong presumption of constitutionality, and [courts] must uphold the constitutionality of a statute when reasonably possible." *Caulkins*, 2023 IL 129453, ¶ 28. The "party challenging the constitutionality of a statute bears the burden of clearly establishing a constitutional violation." *Wirtz v. Quinn*, 2011 IL 111903, ¶ 17.

ARGUMENT

Plaintiffs ask the Court to declare section 101.5 facially unconstitutional on either of two novel and expansive legal theories: that it violates article VI, section 9, of the Constitution by

"limiting the subject-matter jurisdiction of every circuit court" other than those in Sangamon and Cook County, Compl. ¶ 36, and that it violates their equal-protection rights by discriminating against residents of Illinois who do not reside in Sangamon or Cook County, *id.* ¶ 44. Plaintiffs' suit should be dismissed for two independent reasons. First, plaintiffs lack standing to challenge section 101.5, because they are not affected by its operation in any way. Second, plaintiffs' claims fail on the merits, because statutes restricting venue to certain counties or locations (and limiting an individual's ability to bring suit in his or her own county of residence) are an ordinary feature of civil litigation and violate neither of plaintiffs' identified constitutional provisions.

I. The Court Should Dismiss The Action Under Section 2-619(a)(9) Because Plaintiffs Lack Standing.

To start, plaintiffs' suit fails at the threshold for the basic reason that they are unaffected by the operation of section 101.5. Plaintiffs do not allege any intent to bring a constitutional challenge to a state statute other than this one, and the State has not moved to transfer venue under section 101.5 in this case. Plaintiffs thus are not injured by section 101.5; indeed, they are not affected by section 101.5 in any way. Plaintiffs seek to remedy this issue by claiming standing as taxpayers and voters, but they cannot satisfy the demanding standards associated with those lines of caselaw. Their case should therefore be dismissed under section 2-619(a)(9) for lack of standing.

a. Plaintiffs lack standing to challenge section 101.5 because they are not injured—or, indeed, affected in any way—by the statute. "The doctrine of standing is intended to assure that issues are raised only by those parties with a real interest in the outcome of the controversy." *Chicago Tchrs. Union, Loc. 1 v. Bd. of Educ. of City of Chicago*, 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." *Id.* Such an injury must be "distinct and palpable," not merely a "generalized grievance common

to all members of the public." *Illinois Rd. & Transportation Builders Ass'n v. Cnty. of Cook*, 2022 IL 127126, ¶ 17.

Plaintiffs cannot meet that standard. Plaintiffs identify no constitutional challenge they intend to bring to a state statute—none, that is, other than this one. But the Attorney General has not sought to transfer venue in this case pursuant to section 101.5, and the time for doing so has now expired. *See* 735 ILCS 5/2-104(b) (a venue transfer motion is due "on or before the date upon which [the defendant] is required to appear or within any further time that may be granted him or her to answer or move with respect to the complaint"). Absent some specific allegation that plaintiffs intend to bring a constitutional challenge to a state statute in the future, then, there is no reason to think that section 101.5 will ever affect them at all, much less cause them a "distinct and palpable" injury not "common to all members of the public." *Illinois Rd. & Transportation Builders Ass'n*, 2022 IL 127126, ¶ 17. For that basic reason, plaintiffs lack standing to challenge section 101.5.

b. Plaintiffs attempt to remedy this obvious defect by claiming standing as voters and taxpayers. Compl. ¶¶ 31-34. But plaintiffs cannot manufacture an injury where none exists by asserting an abstract harm of this sort; were it otherwise, the rule against entertaining "generalized grievances," *Illinois Rd. & Transportation Builders Ass'n*, 2022 IL 127126, ¶ 17, would have no meaning. Plaintiffs' effort to allege voter and taxpayer standing thus fails.

To start, plaintiffs lack standing as voters. The thrust of plaintiffs' voter-standing argument is that section 101.5 "disenfranchises them" by altering the kinds of cases that may appropriately be brought in St. Clair County, thus depriving plaintiffs of the opportunity to vote for circuit court judges "who may hear constitutional claims." Compl. ¶ 31. But that argument is mistaken. To be sure, an Illinois resident may challenge a statute that deprives him or her of the right "to be

represented by a duly elected legislator" or other public official. *Kluk v. Lang*, 125 Ill. 2d 306, 317 (1988). But plaintiffs *are* represented by circuit court judges, as the Constitution requires. *See* Ill. Const. art. VI, § 12(a); 705 ILCS 35/2. Section 101.5 does not remove those judges from office or interfere in any way with plaintiffs' ability to vote for (or against) them in the future. Indeed, it has no impact whatsoever on any "representational right" plaintiffs enjoy with respect to circuit court judges. *Kluk*, 125 Ill. 2d at 319.

Plaintiffs' argument to the contrary appears to rest on the view that they have the right not only to vote for public officials, but to vote for public officials with specific duties, such that any diminution of an official's authority injures the voters who selected him or her. But that argument proves too much. Were that the law, an Illinois voter would have standing to challenge virtually any law governing the performance of a public official's duties, whether the voter is personally "in immediate danger of sustaining a direct injury" from such a law or not. *Chicago Tchrs. Union*, 189 Ill. 2d at 206. Under such a theory, plaintiffs would have standing as voters to challenge any law that eliminated a cause of action over which circuit courts had jurisdiction, on the theory that it "disenfranchise[d] them," Compl. ¶ 31, from voting for judges who could hear such claims. Plaintiffs would likewise have standing as voters, on such a theory, to challenge any law making changes to the Criminal Code, on the theory that it "disenfranchise[d] them," *id.*, from voting for prosecutors with the authority to prosecute (or not) specific crimes. Such a limitless understanding of voter standing cannot be squared with the rule against entertaining "generalized grievances," *Illinois Rd. & Transportation Builders Ass'n*, 2022 IL 127126, ¶ 17; indeed, it would open the floodgates and permit virtually any lawsuit challenging any official action on the theory that it distantly impacts the right to vote. That cannot be right.

Plaintiffs' claim to taxpayer standing is, if anything, much weaker. "Taxpayer standing is a narrow doctrine that provides taxpayers the ability to challenge the misappropriation of public funds." *Mendez v. City of Chicago*, 2023 IL App (1st) 211513, ¶ 46; *accord, e.g.*, *Illinois Ass'n of Realtors v. Stermer*, 2014 IL App (4th) 130079, ¶ 29. But "a simple allegation of taxpayer status is insufficient to assert a taxpayer suit." *Mendez*, 2023 IL App (1st) 211513, ¶ 46. Rather, because "[t]he key to taxpayer standing" is that the plaintiff will personally be required to replenish "public revenues depleted by an allegedly unlawful governmental action," *id.*, a plaintiff "whose claims rest on his or her standing as a taxpayer must allege [an] equitable ownership of funds depleted by misappropriation and his or her liability to replenish them in the complaint," *Stermer*, 2014 IL App (4th) 130079, ¶ 29. "[O]therwise, the complaint is fatally defective." *Id.*

Plaintiffs do not—and cannot—satisfy that standard. Plaintiffs do not identify any *specific* funds they believe have been "depleted by allegedly unlawful governmental action," *Mendez*, 2023 IL App (1st) 211513, ¶ 46, much less why they believe that they personally will have to replenish those funds. Rather, plaintiffs offer no more than a "simple allegation of taxpayer status," *id.*, alleging merely that they are "injured when the state uses its general revenue funds—i.e., [p]laintiffs' tax money—for an unconstitutional purpose." Compl. ¶ 32. That is insufficient to establish taxpayer standing. Nor could plaintiffs remedy this defect by repleading: Section 101.5 does not cause the State to expend additional public revenues of any kind, as it merely diverts cases that would have been filed in one Illinois county to another. And to the extent plaintiffs' suggestion is that section 101.5 will cause *some* courts to expend additional funds handling additional cases, those courts are in Sangamon and Cook County, not St. Clair County, and so any additional expenditures could not be traced to plaintiffs in any event. Plaintiffs' effort to allege taxpayer standing thus fails.

II. In The Alternative, The Court Should Dismiss The Action Under Section 2-615 Because Plaintiffs' Claims Fail On The Merits.

Plaintiffs' suit also fails on the merits. Plaintiffs identify two constitutional provisions that they contend are violated by section 101.5: article VI, section 9, which gives the circuit courts of the State jurisdiction over "all justiciable matters," with some exceptions, Ill. Const. art. VI, § 9; and article I, section 2, which guarantees to Illinois residents "the equal protection of the laws," *id.* art. I, § 2. But no case, to our knowledge, has ever found a statute setting venue in a civil action to violate either provision, and, indeed, plaintiffs' arguments would call into question countless other provisions limiting venue to specific counties or locations. The case should be dismissed with prejudice under section 2-615 for failure to state a claim.

A. Plaintiffs' justiciability claim fails.

Plaintiffs first contend (Compl. ¶¶ 35-40) that section 101.5 violates article VI, section 9, of the Constitution, by "limiting the subject-matter jurisdiction" of courts outside Sangamon and Cook County. But a statute that limits venue in civil cases to certain counties or locations does not deprive the "Circuit Courts" of "jurisdiction," Ill. Const. art. VI, § 9, and so does not violate section 9. But plaintiffs identify no case striking down a venue statute on such a reading of section 9, and for good reason: Plaintiffs' theory is flawed on multiple levels.

To start, as the Supreme Court has explained, "[j]urisdiction and venue are distinct legal concepts." *Baltimore & O.R. Co. v. Mosele*, 67 Ill. 2d 321, 328 (1977). "[J]urisdiction relates to the power of a court to decide the merits of a case while venue determines where the case is to be heard." *Id.* "Statutory venue requirements," that is, "are procedural only and do not have any relation to the question of jurisdiction." *Id.* For that reason, plaintiffs are simply wrong to assert that section 101.5 has any effect on courts' subject-matter jurisdiction; to the contrary, it does no more than establish a procedural rule regarding where cases should be heard.

Plaintiffs also misunderstand the purpose and effect of section 9. That section does not limit the General Assembly's authority to determine where and under what conditions civil actions may be maintained. Rather, as the Supreme Court has explained, it clarifies that a litigant's failure to comply with a statutory limitation on a cause of action—statutes of limitations, exhaustion rules, venue, and the like—does not generally deprive a circuit court of subject-matter jurisdiction over the case. *See People ex rel. Graf v. Vill. of Lake Bluff*, 206 Ill. 2d 541, 553-54 (2003); *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334-36 (2002); *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 529-30 (2001). Under a prior constitutional rule, a litigant's failure (or, for that matter, a court's failure) to follow a statutory condition to suit would have been "fatal to the circuit court's jurisdiction," rendering subsequent proceedings "void." *Steinbrecher*, 197 Ill. 2d at 529. The purpose and effect of section 9 was to override that rule, clarifying that a court's subject-matter jurisdiction is conferred by the Constitution, not by statute, and that limitations placed on the courts by the legislature are not "*jurisdictional* prerequisite[s] to suit." *Belleville Toyota*, 199 Ill. 2d at 341 (emphasis added). Thus, as the Supreme Court explained in *Belleville Toyota*, as a general matter, a litigant's failure to comply with a statute of limitations does not go to the court's subject-matter jurisdiction; it simply gives the defendant an affirmative defense that can be invoked or forfeited. *Id.* at 342.

Section 101.5—like all statutes limiting venue to certain counties or locations—is entirely consistent with that principle. Like a statutory limitations period, a statute that establishes venue in a particular county or location allows a defendant to seek to transfer a case filed in an improper venue to the proper one. 735 ILCS 5/2-104(b). But such statutes do not—and could not, consistent with article VI, section 9—deprive a court of *jurisdiction* to hear a claim for which venue is proper elsewhere. *See Baltimore & O.R. Co.*, 67 Ill. 2d at 328 ("Jurisdiction and venue are distinct legal

concepts.") Indeed, the Code of Civil Procedure expressly provides that an objection of improper venue, if not timely asserted, is "waived," 735 ILCS 5/2-104(b), and that, as a general matter, "[n]o order or judgment is void because rendered in the wrong venue," *id.* 5/2-104(a). A statute setting venue in a particular location or county, like section 101.5, thus does not deprive "Circuit Courts" of "jurisdiction," Ill. Const. art. VI, § 9, contrary to plaintiffs' assertion; indeed, it has no bearing on subject-matter jurisdiction at all. *See Baltimore & O.R. Co.*, 67 Ill. 2d at 328.

A contrary reading of article VI, section 9, would be profoundly disruptive for our system of justice and the General Assembly's authority to set venue in civil cases. Plaintiffs' complaint about section 101.5 is that it "limit[s] the subject-matter jurisdiction" of St. Clair County courts by making venue in certain cases improper in those courts. But virtually *every* venue provision in the Compiled Statutes has the purpose and effect of limiting venue in certain cases to certain courts—thus, in plaintiffs' view, "limiting the subject-matter jurisdiction" of *some* circuit courts, Compl. ¶ 36, in exactly the same way as section 101.5. Take the general venue provision, section 101. That section limits venue in most civil actions to (a) the defendant's county of residence or (b) the county "out of which the cause of action arose." 735 ILCS 5/2-101. Even that provision generally makes venue proper in any given case in only two counties, thus (in plaintiffs' view) "limiting the subject-matter jurisdiction," Compl. ¶ 36, of the remaining courts. Similarly, those statutes setting venue in the county in which certain property exists, *see, e.g.*, 735 ILCS 5/2-103(b) ("the county in which real estate is situated"); 765 ILCS 540/15 ("the county in which coal lands" are located), likewise limit venue to a single county in the State, to the detriment of all other courts.

But under plaintiffs' theory, each of these of these venue statutes violates article VI, section 9, because they have the effect of stripping "jurisdiction" from most counties' circuit courts in favor of only a few. That reading of section 9 would transform venue law by effectively requiring

all courts to be able to hear *all* cases, thus prohibiting the legislature from enacting sensible venue regulations, as it has done for decades without incident. "[T]he 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 plaintiffs' interpretation of article VI, section 9, would call into question countless venue provisions across the Compiled Statutes, enacted over the course of decades. Plaintiffs identify no precedent whatsoever supporting such a reading of section 9, and no sensible reason to adopt such a novel and disruptive rule for the first time here. Count I should therefore be dismissed under section 2-615.

B. Plaintiffs' equal protection claim fails.

Plaintiffs' alternative claim—that section 101.5 deprives them of the "equal protection of the laws," Ill. Const. art. I, § 2—also fails, because section 101.5 does not discriminate against anyone, much less do so on the basis of a protected trait or by infringing on a fundamental right.

The Illinois Constitution's equal protection clause "guarantees that similarly situated individuals will be treated in a similar manner." *Caulkins*, 2023 IL 129453, ¶ 46. The clause "does not forbid the legislature from drawing distinctions in legislation among different categories of people as long as the legislature does not draw those distinctions based on criteria wholly unrelated to the legislation's purpose." *Id.* "The applicable level of scrutiny applied to an equal protection challenge is determined by the nature of the right impacted." *People v. Masterson*, 2011 IL 110072, ¶ 24. Heightened scrutiny, which requires the government to justify an enactment by reference to a particularly important governmental interest, applies only "when a fundamental right or suspect classification"—that is, a classification based on race, national origin, gender, and similar traits—"is involved." *Id.* Otherwise, the statute is constitutional as long as it "bears a rational relationship to a legitimate government purpose." *Id.* Plaintiffs appear to concede that section 101.5 does not

discriminate against anyone on the basis of a protected characteristic; rather, they argue only that it infringes on a fundamental right. Compl. ¶ 50. That argument, too, fails on multiple levels.

To start, section 101.5—like all venue statutes—does not implicate the equal protection clause at all, for the basic reason that it does not discriminate against individuals in the first place. Venue statutes do not impair individuals' ability to bring civil actions (for instance, by providing that certain people may bring certain kinds of actions and others may not); they merely determine the appropriate forum for such actions. To the extent such statutes operate to channel certain kinds of cases toward certain counties and away from others, that determination does not implicate equal-protection principles at all; it is simply an ordinary facet of civil litigation. Indeed, in an analogous context, the Supreme Court has repeatedly rejected efforts to bring equal protection challenges in cases involving the administration of the state's judicial system. The General Assembly frequently enacts legislation that establishes new judgeships for certain counties but not others, thus treating the residents of one county different than the residents of another for purposes of the administration of the judicial system. *E.g.*, *Madison Cnty. v. Illinois State Bd. of Elections*, 2022 IL App (4th) 220169, ¶¶ 4-8 (describing 2022 amendment to judicial districting). But the Supreme Court has repeatedly rejected efforts to invalidate such legislation on an equal-protection theory, even though it arguably "treats citizens in [some] circuits . . . worse than citizens in other circuits." *Bridges v. State Bd. of Elections*, 222 Ill. 2d 482, 493-94 (2006); *see also Hirschfield v. Barrett*, 40 Ill. 2d 224, 232 (1968) (same for special-legislation theory); *Madison Cnty.*, 2022 IL App (4th) 220169, ¶ 64 (same). In the Supreme Court's words, those constitutional provisions that generally prohibit disparate treatment cannot "be utilized to upset legislation enacted in compliance with the Judicial Article" of the Constitution, which expressly contemplates geographical variation. *Hirschfield*, 40 Ill. 2d at 232. That principle applies with equal force here.

Even considered on the merits, plaintiffs' equal protection claim fails. Plaintiffs assert that section 101.5 infringes on "a fundamental right" by setting venue for "all constitutional claims" in Sangamon and Cook County. Compl. ¶ 50. But plaintiffs do not identify any *specific* fundamental right that they believe section 101.5 infringes (presumably because it does not infringe upon any). Plaintiffs do not identify any precedent establishing that they have a "fundamental right" to bring civil actions—even constitutional ones—in the counties of their choice. Nor would such a rule make practical sense: As discussed, *supra* pp. 11-12, *all* venue statutes have the purpose and effect of limiting where plaintiffs can permissibly bring certain civil actions, and so plaintiffs' proposed fundamental right would raise constitutional questions about every venue statute in the Compiled Statutes. And to the extent plaintiffs' argument is merely that they have a fundamental right to bring constitutional claims *at all*, any such right would not be impaired by section 101.5, because plaintiffs may still bring claims of that kind; they must simply do so in Sangamon or Cook County.

To the extent plaintiffs' argument is that they have some sort of broader due-process right to litigate cases in the counties they view as most convenient (i.e., that they have a constitutional right to some form of *forum non conveniens*), *see* Compl. ¶ 50, that argument, too, would fail. For one, plaintiffs have not brought a due-process challenge to section 101.5, and thus have waived any such claim. *See Caulkins*, 2023 IL 129453, ¶ 42. For another, litigants enjoy no categorical right to litigate cases in the counties of their choosing. Due process requires only that litigants are afforded "a meaningful opportunity to be heard," *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971), and in an era in which technological advances permit remote appearances by parties and remote testimony by witnesses, *see* Ill. S. Ct. R. 45(b), 241(b), it will be an unusual case in which a venue statute serves as a meaningful impediment to a litigant's right to access the courts. *Cf., e.g.*, *First American Bank v. Guerine*, 198 Ill.2d 511, 525 (Ill. 2002) ("Today we are connected by interstate

highways, bustling airways, telecommunications, and the world wide web. Today, convenience . . . has a different meaning."); *In re P.S.*, 2021 IL App (5th) 210027, ¶ 62 (concluding that court "used the Zoom videoconference platform to conduct a hearing that protected the rights of the parties, as well as the integrity of the judicial process"). So even if plaintiffs had not waived a due-process challenge to section 101.5, it would still fail.

Finally, to the extent plaintiffs argue that section 101.5 somehow impacts their fundamental rights as *voters*, Compl. ¶ 7, that argument also fails. To be sure, plaintiffs enjoy the fundamental right to participate in an election on equal footing as other voters, including, under the conditions set out in article VI of the Constitution, for state-court judges. *See* Ill. Const. art. VI, § 12; *Quinn v. Bd. of Educ. of City of Chicago*, 2018 IL App (1st) 170834, ¶ 75. But section 101.5 does not infringe upon that right. Plaintiffs had the opportunity to vote for (or against) circuit and appellate court judges in the most recent election, and they will have the same opportunity in the upcoming election. Section 101.5 does not impair that opportunity in any way; it simply alters the responsibilities of the duties of the judges whom plaintiffs elect by channeling certain claims to other courts. Plaintiffs identify no case holding that a statute altering an elected official's duties impairs the fundamental right to vote of those who elected the official, thus triggering strict scrutiny. And for good reason: Were that the law, a wide range of statutes could be characterized as infringing upon the right to vote, including virtually all of the venue statutes that (like section 101.5) channel cases away from certain courts and towards others. Plaintiffs identify no sensible reason to adopt such a disruptive rule for the first time here.

In the end, because section 101.5 neither discriminates on the basis of a protected trait nor infringes on a fundamental right, it is constitutional unless plaintiffs show that it does not "bear[] a rational relationship to a legitimate government purpose." *Masterson*, 2011 IL 110072, ¶ 24.

Plaintiffs do not even attempt to make that showing, nor could they: Section 101.5 represents an eminently rational response by the General Assembly to the increase in constitutional challenges to statutes and other official action, often brought in counties far from the seat of government and raising substantively identical claims to those raised by other litigants in other cases. The General Assembly's determination that cases of this kind should be consolidated in Sangamon and Cook County in the first instance, rather than scattered across the State, represents a reasonable decision to ensure the efficient adjudication of constitutional cases with statewide significance. The statute thus survives rational-basis review, meaning that Count II, too, should be dismissed with prejudice under section 2-615.

CONCLUSION

The Court should dismiss plaintiffs' action under section 2-619(a)(9) for lack of standing or, alternatively, under section 2-615 for failure to state a claim.

November 8, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, hereby certify that I will cause to be served copies of the foregoing Memorandum in Support of Motion to Dismiss via electronic mail upon those listed below on November 8, 2023:

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

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