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

ORDER

Plaintiffs, three St. Clair County residents and taxpayers, filed suit on August 29, 2023, to challenge a new statute setting venue for constitutional challenges to state laws, regulations, and executive orders in Sangamon and/or Cook County. *See* 735 ILCS 5/2-101.5(a) ("section 101.5"). Defendant Kwame Raoul, in his official capacity as Attorney General, filed a motion to dismiss under sections 2-619(a)(9) and 2-615 of the Code of Civil Procedure, and that motion is now fully briefed. The Court heard argument on the motion on February 1, 2024. Plaintiffs were present by and through their counsel, Jeffrey Schwab, and the Attorney General was present by and through his counsel, Alex Hemmer. For the following reasons, the Court grants the Attorney General's motion to dismiss the complaint.

BACKGROUND

This case concerns an amendment to Illinois's statutory scheme setting venue in civil cases enacted by the General Assembly in 2023. The challenged amendment provides that, "if an action is 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 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). The effect of this amendment is to set venue for constitutional cases only in Sangamon and Cook Counties.

Plaintiffs are three St. Clair County residents and taxpayers. They filed this civil action in St. Clair County alleging that the amended venue statute, section 101.5, violates the Constitution in two respects. First, plaintiffs say, section 101.5 violates article VI, section 9, of the Constitution by depriving certain circuit courts of "original jurisdiction" over certain "justiciable matters" (that is, constitutional cases) in contravention of the constitutional design. Second, plaintiffs say, section 101.5 violates article I, section 2, of the Constitution by depriving residents of St. Clair County of the equal protection of the laws. Plaintiffs argue that section 101.5 injures them as litigants, as taxpayers, and as voters.

The Attorney General has moved to dismiss the case under sections 2-619(a)(9) and 2-615 of the Code of Civil Procedure. He argues that plaintiffs lack standing to challenge section 101.5 because he has waived his venue transfer defense in this case and plaintiffs do not allege an intent to bring any future constitutional cases. He also contends that plaintiffs lack standing as taxpayers and voters. The Attorney General alternatively argues that plaintiffs' claims fail on the merits, in that section 101.5 sets venue rather than purporting to strip jurisdiction (and so does not implicate article VI, section 9) and does not violate equal protection principles.

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.

DISCUSSION

The Attorney General argues that the complaint should be dismissed (a) under section 2-619(a)(9) because plaintiffs lack standing and (b) under section 2-615 because plaintiffs' claims fail on the merits. The Court agrees on both counts.

I. Standing

Plaintiffs contend that they have standing to challenge section 101.5 on three grounds: (a) as litigants, (b) as taxpayers, and (c) as voters. (At the hearing on the motion and in their sur-reply,

plaintiffs clarified that they rely on taxpayer standing only as to Count I and on voter standing only as to Count II.) The Attorney General bears the burden to show that plaintiffs lack standing, *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill. 2d 217, 252 (2010), and the Court holds he has borne that burden as to all three proffered bases for standing.

First, plaintiffs lack standing to challenge section 101.5 as litigants. "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." *Chicago Tchrs. Union, Loc. 1 v. Bd. of Educ. of City of Chicago*, 189 Ill. 2d 200, 206 (2000). But plaintiffs face no danger, immediate or otherwise, of being injured by section 101.5 in their capacity as litigants. Plaintiffs do not allege that they intendd to bring a constitutional suit against the State, its officers, or its agencies. Plaintiffs have only brought *this* suit challenging section 101.5. But the Attorney General has now waived his right to move to transfer this action to Sangamon or Cook County, as the general venue statute permits him (and all other defendants) to do. *See* 735 ILCS 5/2-104 ("[a]ll objections of improper venue are waived by a defendant unless a motion to transfer to a proper venue is made by the defendant" on or before the defendant's answer deadline). Plaintiffs thus face no prospect that section 101.5 will injure or otherwise affect them in the future.

Plaintiffs' only response is that they *had* standing "at the time [they] filed their complaint," Opp. 6, and that events that arise after the filing of the complaint do not affect a case's justiciability. The Court disagrees. The cases setting out this rule—like *U.S. Bank Trust N.A. v. Lopez*, 2018 IL App (2d) 160967, which plaintiffs cite—generally concern whether a plaintiff who lacks standing at the time a complaint is filed can acquire it later, a question not relevant here. By contrast, courts regularly hold that events arising after a complaint is filed can and do render it no longer justiciable. *See In re Shelby R.*, 2013 IL 114994, ¶ 15 (case is not justiciable "if events have occurred which

foreclose the . . . court from granting effectual relief to the complaining party"); *In re Estate of Wellman*, 174 Ill. 2d 335, 345 (1996).[1] That is the case here: Because the Attorney General has waived any ability to rely on section 101.5 here, there is no likelihood that it will injure or affect plaintiffs, and so they lack standing as litigants.

Second, plaintiffs lack standing to bring Count I as taxpayers for multiple reasons. For one, the General Assembly has set out a statutory scheme by which individuals can bring taxpayer suits: section 11-303 of the Code of Civil Procedure. *See* 735 ILCS 5/11-303. But plaintiffs chose not to avail themselves of the procedure set out at section 11-303, and so they cannot rely on their status as taxpayers for standing. And plaintiffs' effort to allege taxpayer standing would fail in any case: The supreme court has held that a taxpayer plaintiff must plead his or her "equitable ownership of . . . funds and his [or her] liability to replenish the treasury in case of misappropriation," else his or her complaint is "fatally defective." *Golden v. City of Flora*, 408 Ill. 129, 130 (1951); *accord, e.g.*, *Mendez v. City of Chicago*, 2023 IL App (1st) 211513, ¶ 46 (taxpayer cannot rely on a "simple allegation of taxpayer status" for standing). But plaintiffs have not pled such facts in the complaint, and so they have not alleged standing to bring Count I as taxpayers.

Finally, plaintiffs lack standing to bring Count II as voters. Plaintiffs allege that they are "disenfranchised" by section 101.5, in that it alters the kinds of cases that may be brought before the circuit court judges they have elected. Compl. ¶ 31. But section 101.5 does not "disenfranchise" plaintiffs, because they are still entitled to vote for (or against) circuit court judges, as article VI

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[1] To be sure, some courts describe this rule as one of mootness, not standing. *See Shelby R.*, 2013 IL 114994, ¶ 15. But courts use the terms interchangeably. *See Wellman*, 174 Ill. 2d at 350 (single event both "render[ed] moot" a claim and "deprived [the claimant] of standing"); *People v. McDonald*, 2018 IL App (3d) 150507, ¶ 15 ("courts . . . use the terms 'standing' and 'mootness' in reference to the same general principles"). Regardless, plaintiffs advance no argument that the case is not moot or that mootness principles might yield a different result, and so have waived any such argument.

of the Constitution requires. It simply alters those judges' responsibilities, in the same way that a statute establishing or repealing a new cause of action might. Plaintiffs cite no authority for their view that such a statute "disenfranchises" voters or injures them in any other way cognizable in a civil action. Indeed, plaintiffs' only cited case, *Fumarolo v. Chicago Board of Education*, 142 Ill. 2d 54 (1990), proves the point: The statute at issue in *Fumarolo* did not alter the duties of elected officials, as section 101.5 does; it deprived individuals *entirely* of their ability to vote for certain positions. Section 101.5 does not prohibit anyone from voting for any elected official. Plaintiffs thus lack standing as voters to bring Count II.

II. Merits

The Attorney General also moves to dismiss the complaint under section 2-615 because, even presuming plaintiffs have standing, their claims fail on the merits. The Court agrees.

A. Article VI, section 9 (jurisdiction)

Plaintiffs' first claim is that section 101.5 violates article VI, section 9, of the Constitution. That section provides, as relevant here, that the circuit courts "shall have original jurisdiction of all justiciable matters." Ill. Const. art. VI, § 9. Plaintiffs allege that section 101.5 violates this rule by depriving certain circuit courts (those not in Sangamon or Cook County) of jurisdiction over certain cases (cases challenging state laws and similar enactments on constitutional grounds). The Attorney General responds that section 101.5 does not divest the circuit courts of jurisdiction; it simply sets venue for certain cases in certain counties.

The Court agrees that section 101.5 goes only to venue, not to jurisdiction, and so does not violate article VI, section 9. As the supreme court has explained, "[j]urisdiction and venue are distinct." *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," like section 101.5, "are procedural only and do not have any relation to the question of jurisdiction." *Id.* Section 101.5 is a statutory venue rule that specifies "where [a] case is to be heard," *id.*, not whether the courts have the power to hear it. Accordingly, it does not violate article VI, section 9.

The procedural rules that accompany section 101.5 confirm that it does not go to the courts' jurisdiction. Under these rules, a state defendant sued in the wrong county may seek to transfer venue to Sangamon or Cook County on the basis that section 101.5 makes venue proper there. *See* 735 ILCS 5/2-104(b). But section 101.5 does not purport to withdraw *jurisdiction* from courts in other counties. Indeed, the relevant statutory provisions expressly provide that an improper venue objection is "waived" if it is not timely asserted, *id.* 5/2-104(b), and that "[n]o order or judgment is void because rendered in the wrong venue," *id.* 5/2-104(a). Section 101.5 thus does not establish (or purport to establish) a "jurisdictional prerequisite to suit," in violation of article VI, section 9, *see Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 341 (2002); rather, it simply establishes a statutory venue requirement, similar to dozens of other venue rules that, like section 101.5, instruct plaintiffs where to file suit and allow defendants to seek to transfer venue if plaintiffs fail to comply.

Plaintiffs appear to agree that venue rules ordinarily do not go to jurisdiction; they simply dispute that section 101.5 is such a rule. In plaintiffs' view, section 101.5 is not genuinely a venue rule because it operates "solely on the subject matter of a plaintiff's claims." Opp. 4. But plaintiffs offer no authority—and, for that matter, no reason—why a venue rule that operates on the basis of subject matter would not be subject to the same legal principles as any other venue rule. Moreover, as the Attorney General has observed, many venue rules *do* turn on a case's subject matter, setting venue in certain counties because a case arises under the Housing Development Act, 20 ILCS

3805/28, or others because it concerns coal rights, 765 ILCS 540/15. Plaintiffs' proposed rule would thus be profoundly disruptive for the General Assembly's ability to set venue in civil cases, as it has done without question for decades. *See Graham v. Ill. State Toll Highway Auth.*, 182 Ill. 2d 287, 312 (1998) ("[T]he historical practice of the legislature may aid in the interpretation of a constitutional provision . . . ."). The Court for that reason agrees that section 101.5 does not violate article VI, section 9, of the Constitution, and so grants the Attorney General's motion to dismiss Count I under section 2-615 of the Code of Civil Procedure.

B. Article I, section 2 (equal protection)

Plaintiffs' second claim is that section 101.5 violates article I, section 2, of the Constitution by denying them "the equal protection of the laws." Ill. Const. art. I, § 2. Plaintiffs contend that section 101.5 violates equal-protection principles by treating residents of counties other than Cook and Sangamon differently than residents of Cook and Sangamon Counties in two ways: by barring such individuals from bringing constitutional cases in their home counties and by preventing them from voting for circuit court judges who can hear such cases. The Attorney General contends that section 101.5 is constitutional because it does not impair a fundamental right, is subject only to rational-basis review, and is rationally related to a legitimate government goal. The Court agrees with the Attorney General.

The Constitution's equal protection clause "guarantees that similarly situated individuals will be treated in a similar manner." *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 46. But 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"—i.e., a classification based on race, national origin, gender, and similar traits—"is involved." *Id.* Otherwise, a statute does not violate equal-protection principles as long as it "bears a rational relationship to a legitimate government purpose." *Id.*

Section 101.5 does not violate these principles. Section 101.5 plainly does not discriminate based on a protected characteristic, and plaintiffs do not argue otherwise. Rather, plaintiffs contend that section 101.5 impairs either of two fundamental rights: (a) their right to bring constitutional challenges to state laws in their home counties or (b) their right to vote for circuit court judges who can hear such cases. Both arguments fail for similar reasons.

To start, plaintiffs identify no case standing for the proposition that Illinois residents have a fundamental right to bring civil actions of any kind—even constitutional ones—in the counties in which they reside. As the Attorney General observes, such a rule would be seriously disruptive: All venue rules make venue appropriate in some counties and not others, and such rules often have the effect of forcing plaintiffs to file suit in counties that are *not* their own, instead directing those cases to counties with a greater connection to the defendant. *See, e.g.*, *Turner v. Commonwealth Edison Co.*, 63 Ill. App. 3d 693, 700 (5th Dist. 1978) ("[V]enue is a valuable privilege intended to protect a *defendant*." (emphasis added)). To the extent plaintiffs' argument is merely that they have a fundamental right to bring constitutional claims *at all*, any such right is not impaired by section 101.5, because plaintiffs may still bring those claims, subject to the venue rule established by that section.

Plaintiffs also fail to show that Illinois residents have a fundamental right to vote for circuit court judges who can hear constitutional challenges to state laws. Although 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, section 101.5 does not impair that right. Plaintiffs had the opportunity to vote for (or against) circuit court judges in the most recent election, and they can do so again in the upcoming election. Section 101.5 does not infringe upon that right; it simply alters the duties of the judges who are ultimately elected. Again, if plaintiffs' contrary view were accepted, a wide range of state statutes (including statutes eliminating or limiting new causes of action) would be called into question as infringements on the right to vote. Plaintiffs identify no reason to adopt such a rule for the first time here.

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 make any argument that the statute fails rational-basis review, and the Attorney General argues that it easily surmounts that low hurdle, in that it represents a "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." Because plaintiffs have failed to contest this issue, the Court grants the Attorney General's motion to dismiss Count II under section 2-615.

CONCLUSION

Plaintiffs' complaint is hereby dismissed under section 2-619(a)(9) for lack of standing and under section 2-615 for failure to state a claim.

Dated: 6/12/24

Honorable Leah Captain