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No. 5-24-0824

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

BRAD WEISENSTEIN, DAWN ELLIOT, *and* KENNY COOK, Plaintiffs-Appellants, v. KWAME RAOUL, *in his official capacity as Illinois Attorney General*, Defendant-Appellee.	Appeal from the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois No. 23-CH-0061 Hon. Judge Leah Captain, Judge Presiding

Brief of Appellants

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Oral Argument Requested

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Points and Authorities

Nature of the Case

House Bill 3062 (2023), codified at 735 ILCS 5/2-101.5, (hereinafter "Section 101.5"), purports to limit where a plaintiff may bring an action "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" to Cook County and Sangamon County.

Section 101.5 is unconstitutional in three ways. First, Section 101.5 unconstitutionally strips all but two of the state's 25 circuit courts of the subject-matter jurisdiction that article VI, section 9 of the Illinois Constitution grants them. Second, Section 101.5 denies residents of the 100 Illinois counties other than Sangamon County and Cook County the equal protection of the laws by allowing only residents of Sangamon County and Cook County to bring their constitutional claims in their local circuit courts. Finally, Section 101.5 violates equal protection by disenfranchising voters in counties outside of Sangamon County and Cook County by forcing them to present their constitutional claims to judges in other jurisdictions, whom they were not permitted to vote for or against.

The circuit court dismissed Plaintiffs' complaint, holding that Plaintiffs lacked standing under 735 ILCS 5/2-619(a)(9) on three bases—as litigants, as taxpayers, and as voters—and that Plaintiffs' claims fail on their merits under 735 ILCS 5/2-615.

Issues Presented for Review

1. Do Plaintiffs have standing to challenge Section 101.5 because it bars them from pursuing constitutional claims in their local circuit court?

2. Do Plaintiffs have standing to challenge Section 101.5 because, as taxpayers, they are forced to fund its implementation?

3. Do Plaintiffs have standing to challenge Section 101.5 as disenfranchised voters because the statute deprives them of their ability to vote for judges who decide constitutional cases?

4. Does Section 101.5 violate article VI, section 9 of the Illinois Constitution—which gives circuit courts original jurisdiction over all "justiciable matters"—by stripping all circuit courts except those in Sangamon County and Cook County, of jurisdiction over constitutional challenges to state laws, rules, and orders?

5. Does Section 101.5 violate Plaintiffs' equal protection rights as litigants in constitutional cases by depriving them of the ability to file constitutional claims against the state in their local circuit courts, while allowing residents of Sangamon County and Cook County to do so?

6. Does Section 101.5 violate Plaintiffs' equal protection rights as voters in judicial elections by depriving them of the ability to vote against circuit court and appellate judges who hear constitutional claims, while allowing residents of Sangamon County and Cook County to do so?

Jurisdiction

This is an appeal under Illinois Supreme Court Rules 301 and 303 from the circuit court's order, entered June 12, 2024, which granted Defendant's motion to dismiss with respect to all of Plaintiffs' claims. Plaintiffs filed their timely notice of appeal on July 11, 2024.

Statute Involved

This case presents constitutional challenges to 735 ILCS 5/2-101.5, the complete text of which is as follows:

> 735 ILCS 5/2-101.5. Venue in actions asserting constitutional claims against the State.
>
> (a) 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.
>
> (b) The doctrine of forum non conveniens does not apply to actions subject to this Section.
>
> (c) As used in this Section, "State" has the meaning given to that term in Section 1 of the State Employee Indemnification Act.
>
> (d) The provisions of this Section do not apply to claims arising out of collective bargaining disputes between the State of Illinois and the representatives of its employees.

Statement of Facts

In 2023, the Illinois General Assembly passed, and the Governor signed House Bill 3062, which strips all Illinois circuit courts but two of the power to hear constitutional challenges to state laws, rules, and orders. C 6. This case challenges that law as a violation of several provisions of the Illinois Constitution.

House Bill 3062 limits which courts may hear constitutional claims.

The Illinois Code of Civil Procedure, 735 ILCS 5/2-101, has long allowed a plaintiff to bring a lawsuit either (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose. For decades, under that provision, a plaintiff alleging that a state statute, rule, or order violates his or her constitutional rights could file that action in his or her county of residence because a violation of plaintiff's constitutional rights would be "in the county in which the transaction or some part thereof occurred out of which the cause of action arose."

But the adoption of House Bill 3062 in 2023 changed that.

HB 3062 was introduced and passed by the 103rd General Assembly of Illinois and signed by Governor Pritzker on June 6, 2023, when it became effective. C 6. HB 3062 amended the Code of Civil Procedure by adding 735 ILCS 5/2-101.5 ("Section 101.5"), which requires that constitutional

challenges to a state statute, rule, or executive order brought against the state or its agents be filed only in Sangamon County or Cook County. C 6.

Under Section 101.5, residents of Cook County and Sangamon County may file constitutional claims in their local circuit court, just as they could any other legal action in that court under section 2-101 of the Code of Civil Procedure. In contrast, residents of Illinois' other 100 counties may *not* file constitutional claims in their local circuit court. Instead, Section 101.5 requires them to file those claims in the circuit court of either Sangamon County or Cook County. C 7.

Unlike section 2-101 of the Code of Civil Procedure, which limits the venue in which a case may be heard based on the residence of a defendant or the location where the underlying transaction occurred, Section 101.5 limits the jurisdiction of the circuit courts based on the content of the plaintiff's underlying claim—thus effectively depriving all circuit courts except those in Sangamon County and Cook County of jurisdiction over constitutional claims. It also abolishes the doctrine of *forum non conveniens*, set forth in Illinois Supreme Court Rule 187, for cases in which constitutional claims are brought. 735 ILCS 5/2-101.5(b).

Further, the enactment of Section 101.5 means that residents of Sangamon County or Cook County may vote for or against the circuit court judges and district appellate court justices who hear constitutional claims, while residents of other Illinois counties may no longer do so. C 8. The only

exception is that residents in counties covered by the Fourth District Appellate Court may vote for or against district Appellate Court justices who will hear constitutional claims, although they cannot vote for or against circuit court judges who will hear such claims. C 8. But residents in counties covered by the Second, Third, and Fifth District Appellate Courts, including Plaintiffs, may neither vote for or against circuit court judges nor district appellate court justices who hear constitutional claims. C 8.

Section 101.5 injures Plaintiffs.

Plaintiffs are St. Clair County, Illinois residents and registered voters who pay income taxes, among other taxes, to the state. C 4. They are injured by Section 101.5, which prohibits them from bringing constitutional claims in their local circuit court, while permitting residents of Sangamon County and Cook County to bring constitutional claims in their local circuit courts. C 8. Plaintiffs are injured as voters because Section 101.5 disenfranchises them by permitting only residents in Sangamon County and Cook County to vote for or against circuit court judges and district appellate court justices who may hear constitutional claims, while Plaintiffs and residents of the other one hundred counties may not vote for circuit court judges and district appellate court justices who hear constitutional claims. Plaintiffs are additionally injured when the state uses its general revenue funds—i.e., Plaintiffs' tax money—for an unconstitutional purpose. C 8.

Procedural History

Plaintiffs filed their Complaint on August 29, 2023, before the Circuit Court of the Twentieth Judicial Circuit, St. Clair County. C 3–13. Plaintiffs' Complaint alleges two counts: First, they allege that Section 101.5 strips circuit courts of original jurisdiction of constitutional claims in violation of article VI, section 9 of the Illinois Constitution. C 9. Second, they allege that Section 101.5 violates Plaintiffs' equal protection rights under article I, section 2 of the Illinois Constitution. C 10–11.

Defendant filed a motion to dismiss both claims for lack of standing under 735 ILCS 5/2-619(a)(9) and on their merits under 735 ILCS 5/2-615. C 27–46. The parties fully briefed that motion, and the circuit court heard oral arguments on February 1, 2024. R 2. On June 12, 2024, the circuit court issued an order granting the motion to dismiss under section 2-619(a)(9), finding that Plaintiffs lacked standing as litigants, as taxpayers, and as voters. C 94–103. The court also granted dismissal under section 2-615, concluding that Section 101.5 does not violate article VI, section 9 of the Illinois Constitution because it is a venue statute, and that Section 101.5 does not violate Plaintiffs' equal protection rights because it does not infringe on Plaintiffs' fundamental rights to bring constitutional claims or to vote. C 94–103.

Plaintiffs filed a timely notice of appeal in this Court on July 11, 2024. C 105.

Argument

I. Plaintiffs have standing to challenge Section 101.5 as unconstitutional.

The circuit court wrongly dismissed Plaintiffs' Complaint for lack of standing. Plaintiffs have standing to bring their claims because Section 101.5 injures them in three ways: as individuals who are barred from pursuing constitutional claims in their local circuit court; as taxpayers who are forced to fund the state's implementation of Section 101.5; and as voters who are disenfranchised because, unlike voters in Cook County and Sangamon County, they cannot vote for judges who decide constitutional cases.

A motion to dismiss under section 2-619 admits the legal sufficiency of the plaintiff's complaint but asserts affirmative matter that defeats the claim. *Dawkins v. Fitness Int'l, LLC*, 2022 IL 127561, ¶ 24. A court considering a section 2-619 motion to dismiss must accept all well-pleaded facts in the complaint as true and will grant the motion only when it appears that no set of facts could be proved that would allow the plaintiff to recover. *Id*. A court must construe the pleadings in the light most favorable to the nonmoving party. *Id.* And all inferences that may reasonably be drawn in the plaintiff's favor from the well-pleaded facts must be accepted as true. *Id.* This Court reviews an order under section 2-619 de novo. *Id*.

A. Section 101.5 injures Plaintiffs because it bars them from pursuing constitutional claims in their local circuit court.

Section 101.5 injures Plaintiffs because it prohibits them from bringing constitutional claims in their local circuit court; rather they must file such

claims in a circuit court in Cook County or Sangamon County, far from where they live.

"The purpose of the doctrine of standing is to ensure that courts are deciding actual, specific controversies, and not abstract questions or moot issues." *In re Marriage of Rodriguez*, 131 Ill. 2d 273, 280 (1989). Standing is "not meant to preclude a valid controversy from being litigated." *Id*. The Illinois Supreme Court "has defined standing as requiring some injury in fact to a legally recognized interest." *Id*. (internal quotes omitted). A lack of standing is defendant's burden to prove. *Lebron v. Gottlieb Mem. Hosp*., 237 Ill. 2d 217, 252 (2010).

The circuit court found that Plaintiffs "face no danger, immediate or otherwise, of being injured by Section 101.5" because the Attorney General waived his right to transfer this case to Sangamon or Cook County, and Plaintiffs have not alleged that they intend to bring any other constitutional suit. C 97.

But "[a] party's standing to sue must be determined as of the time the suit is filed." *U.S. Bank Trust N.A. v. Lopez*, 2018 IL App (2d) 160967, ¶ 18. "[A] party either has standing at the time the suit is brought or it does not." *Kildeer v. Lake Zurich*, 167 Ill. App. 3d 783, 786 (2d Dist. 1988). Thus, Defendant's decision not to seek to transfer venue in this case cannot affect Plaintiffs' standing. And at the time Plaintiffs filed their complaint, they were injured by the requirement that they must file a constitutional

challenge in Cook or Sangamon counties set forth in Section 101.5. And at the time of filing their complaint, Plaintiffs had valid constitutional controversy against Defendant—the claims they brought in this case alleging that Section 101.5 is unconstitutional.

In holding that Plaintiffs lost their standing when "the Attorney General . . . waived any ability to rely on section 101.5," C 97–98, the circuit court misconstrued the doctrine of standing. "[S]tanding, by definition, is standing to bring the suit, not to maintain the suit." *People v. Coe*, 2018 IL App (4th) 170359, ¶ 42. "The doctrine of standing cares only about the date when the plaintiff filed the action, not the day after." *Id.* Thus, subsequent actions by the defendant cannot negate the plaintiff's standing to bring the suit. *Id.*; *U.S. Bank Trust N.A.*, 2018 IL App (2d) at ¶ 18. And here, on the day Plaintiffs filed their action, they were injured by Section 101.5, which prohibited them from filing a constitutional challenge in any circuit court outside of Cook County or Sangamon County. Defendant's later decision not to seek to transfer the case to Cook County or Sangamon County could not negate that.

Thus, this Court should reverse the circuit court's order dismissing Plaintiffs' Complaint for lack of standing under section 2-619(a)(9).

B. Plaintiffs have standing as taxpayers.

"It has long been the rule in Illinois that . . . taxpayers have a right to enjoin the misuse of public funds"—i.e., that "[t]he misuse of [public) funds

for illegal or unconstitutional purposes is a damage which entitles [taxpayers] to sue." *Barco Mfg. Co. v. Wright*, 10 Ill. 2d 157, 160 (1956). The use of public funds to administer an unconstitutional ordinance is a "misuse of public funds" that taxpayers have standing to challenge. *See Snow v. Dixon*, 66 Ill. 2d 443, 449–52 (1977) (taxpayer had standing to enjoin use of public resources to collect illegal tax); *Krebs v. Thompson*, 387 Ill. 471, 473 (1944) (taxpayer had standing to challenge licensing law for professional engineers because state used public funds to administer it); *Crusius v. Ill. Gaming Bd.*, 348 Ill. App. 3d 44, 51 (1st Dist. 2004) (taxpayer had standing to challenge statute regarding gambling licenses because state used public funds to administer it). The misuse of public funds injures taxpayers because they are the funds' "equitable owners" and will, by definition, be "liab[le] to replenish" State treasury funds after they are spent. *Barco* 10 Ill. 2d at 160.

Here, Plaintiffs pay Illinois state income taxes, C 4, and thus have standing to bring their claim that Section 101.5 violates article VI, section 9 of the Illinois Constitution, Count I of the Complaint, C 9–10. The circuit court erred in holding otherwise.

First, the circuit court erred in concluding that Plaintiffs could not bring their claim as taxpayers because they ""chose not to avail themselves of the procedure" set forth in the Disbursement of Public Moneys Act, 735 ILCS 5/11-301 *et seq*. C 98. Illinois taxpayers have a longstanding common-law right to sue to enjoin the misuse of public funds based on their status as

taxpayers. The Disbursement of Public Moneys Act did not create a new cause of action, or a new basis for standing, but simply acknowledges a preexisting common-law right of taxpayers. *See Snow*, 66 Ill. 2d at 450 ("Long before the enactment of the [Disbursement of] Public Monies Act, the citizens and taxpayers of this State have been permitted to sue to enjoin the misuse of public funds."); *see also Barco Mfg. Co.*, 10 Ill. 2d at 160 ("It has long been the rule in Illinois that citizens and taxpayers have a right to enjoin the misuse of public funds"). Indeed, "[s]ince 1917, by statute, a taxpayer has been permitted to challenge the validity of legislative action which involves the expenditure of public funds," but "even before the 1917 statute established procedural conditions governing a taxpayer's action, such actions had been regularly recognized." *Cusack v. Howlett*, 44 Ill. 2d 233, 236 (1969). The Illinois Supreme Court has "repeatedly held that tax-payers may resort to a court of equity to prevent the misapplication of public funds, and that this right is based upon the tax-payers' equitable ownership of such funds and their liability to replenish the public treasury for the deficiency which would be caused by the misappropriation." *Fergus v. Russel*, 270 Ill. 304, 314 (1915).

Plaintiffs have an equitable right as taxpayers to sue to prevent the misuse of public funds. Thus, the circuit court incorrectly dismissed Plaintiffs' article VI, section 9 claim for lack of taxpayer standing for failure to follow the procedures set forth in the Disbursement of Public Moneys Act.

Second, the circuit court erred in dismissing Plaintiffs' claim for lack taxpayer standing because they had not pleaded their equitable ownership of funds the state uses to implement the statute or their liability to replenish the treasury in case of misappropriation. To the contrary, under longstanding precedent, the allegation that Plaintiffs are taxpayers *is* an allegation that they are the equitable owners of general public money used to implement an unconstitutional statute, which they, by definition, will be liable to replenish. *See, e.g., Barco* 10 Ill. 2d at 160. Moreover, taxpayer plaintiffs need not plead or prove that the government's misuse of public funds will increase the amount of taxes they pay; indeed, the Illinois Supreme Court has repeatedly held that taxpayers have standing to challenge the use of public funds to administer an unconstitutional statute even if it generates a "profit" for the government. For example, in *Snow*, the Court held that taxpayers had standing to challenge the use of public funds to collect an illegal tax even though the tax allegedly only cost a "de minimis" amount to collect but generated millions in revenue. 66 Ill. 2d at 450–51; *see also Krebs*, 387 Ill. at 474–76 (taxpayer had standing regardless of whether fees statute generated would "result in a net profit to the State").

Here, Plaintiffs have alleged that they are taxpayers and Section 101.5 clearly causes the state to expend additional public funds: the Attorney General obviously expends general revenue funds to defend cases, including

this one defending the constitutionality of Section 101.5. That is sufficient for taxpayer standing. *See Krebs*, 387 Ill. at 474–76.

To the extent the First District Appellate Court recently said otherwise in *Mendez v. City of Chicago*, 2023 IL App (1st) 211513, on which the circuit court relied, C 98, that decision is contrary to Illinois Supreme Court precedent, and this Court need not and should not follow it.

Thus, Plaintiffs have standing as taxpayers to challenge the use of general revenue funds to implement Section 101.5.

C. Plaintiffs have standing as voters.

Plaintiffs have standing as voters to bring Count II of their Complaint, which alleges that Section 101.5 of the Code of Civil Procedure discriminates against Illinois voters who do not reside in Sangamon County or Cook County by allowing only residents of Sangamon and Cook counties—and not voters in any other Illinois county—to vote for or against circuit court judges and district appellate court justices who will hear claims against the state alleging that a law, rule, or executive order is unconstitutional.

The circuit court held that Section 101.5 does not disenfranchise Plaintiffs, and that they therefore lack standing as voters to bring Count II, because "they are still entitled to vote for (or against) circuit court judges," and Section 101.5 "simply alters those judges' responsibilities, in the same way that a statute establishing or repealing a new cause of action might." C 98–99.

But the circuit court misunderstood Plaintiffs' equal protection claim. Plaintiffs allege the equal protection clause forbids the state from enacting a law that gives some voters, but not others, the ability to vote for government officials who will effect statewide policy—in this case, decisions about whether state laws are constitutional—based solely on the voters' geographic location. Section 101.5 ensures that only voters in Cook County and Sangamon County can choose which state officials will decide constitutional issues.

A hypothetical illustrates the point: Surely the state could not enact a law providing that only legislators from Cook and Sangamon counties may vote to enact legislation that imposes or repeals state taxes. In that case, like this one, voters in counties outside of Cook and Sangamon counties would be disenfranchised; they could not vote for legislators who determine tax policy, while voters in Cook County and Sangamon County could vote for legislators who decide tax policy.

Along the same lines, the Illinois Supreme Court held that a law allowing only parents and teachers at a local school, but not any other members of the community, to vote for certain local school council positions violated equal protection. *Fumarolo v. Chicago Bd. of Educ.*, 142 Ill. 2d 54, 93–94 (1990).

The circuit court's attempt to distinguish that case from this one, on the ground that the statute at issue in *Fumarolo* did not alter the duties of elected officials, C 99, fails. According to the circuit court, the statute in

Fumarolo, unlike Section 101.5, *entirely* deprived individuals of their ability to vote for certain positions. C 99. But *Fumarolo* held that the problem with the voting scheme in that case was that it "significantly limit[ed] the weight of the vote of a section of the community that may have a strong interest in the school" and "denied an equal voice in the selection of local school council members." *Fumarolo*, 142 Ill. 2d at 93. Here, similarly, Section 101.5 denies voters outside of Cook and Sangamon counties an equal voice in the selection of judges who will hear constitutional cases. Surely, the government in *Fumarolo* could not have avoided the equal protection violation by allowing parents and teachers to vote for school officials with greater power than the officials while allowing other citizens to vote for school officials with less power. The harm in *Fumarolo*, as here, was that some voters did not have an equal opportunity to vote for public officials who make public policy.

Thus, the circuit court erred in dismissing Plaintiffs' equal protection claim for lack of standing as voters.

II. Plaintiffs have sufficiently alleged that Section 101.5 violates article VI, section 9 of the Illinois Constitution.

Article VI, section 9 of the Illinois Constitution gives the circuit courts jurisdiction over all "justiciable matters" (with limited exceptions not relevant here) and thus prohibits the General Assembly from depriving the circuit courts of jurisdiction over any justiciable matters. Yet Section 101.5 deprives almost all the state's circuit courts of their ability to hear certain

cases—constitutional claims—based entirely on their subject matter. Section 101.5 therefore violates article VI, section 9.

A motion to dismiss under section 2-615 challenges the legal sufficiency of the complaint. *Jarvis v. S. Oak Dodge*, 201 Ill. 2d 81, 85 (2002). "The critical inquiry is whether the allegations of the complaint, when considered in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." *Id.* at 86. All well-pleaded facts in the complaint must be taken as true. *Id.* This Court reviews the dismissal of a complaint under section 2-615 de novo. *Id.*

Article VI, section 9 of the Illinois Constitution provides:

> Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

"Article VI is clear that, except in the area of administrative review, the jurisdiction of the circuit court flows from the constitution. Ill. Const. 1970, art. VI, § 9. The General Assembly, of course, has no power to enact legislation that would contravene article VI." *Belleville Toyota v. Toyota Motor Sales, U.S.A.*, 199 Ill. 2d 325, 335 (2002).

The circuit court dismissed Plaintiffs' claim that Section 101.5 violates article VI, section 9 because it held that Section 101.5 is a venue-limiting statute and does not limit jurisdiction. C 99. But, regardless of its label, Section 101.5 is not merely a venue statute. Although it purports to restrict

"[v]enue in actions asserting constitutional claims against the State," 735 ILCS 5/2-101.5, it has the effect of limiting the subject-matter jurisdiction of most of the state's circuit courts.

Section 101.5 contravenes article VI by depriving the circuit courts outside Cook and Sangamon counties of jurisdiction over claims alleging violations of the Illinois Constitution, and effectively provides that the circuit courts in Cook and Sangamon counties alone have special jurisdiction over constitutional matters. By attempting to deprive the circuit courts of their ability to hear certain cases based entirely on their subject matter—i.e., the allegation of a constitutional claim against the State challenging a law, rule, or policy—the General Assembly acted in excess of its constitutional authority.

Nonetheless, the circuit court held that Section 101.5 is simply a statutory venue rule that specifies where a case is to be heard, not whether the courts have the power to hear it. C 100. But the General Assembly cannot accomplish what the constitution forbids by labeling a restriction a "venue" rule rather than a jurisdictional rule.

Until Section 101.5 was enacted, Illinois's venue statute—like the federal venue statute[1] and other state venue statutes—did not restrict venue to

[1] The U.S. Constitution differs from the Illinois Constitution in that it authorizes the legislature to establish and determine the jurisdiction of lower courts, within the bounds of Article III. *See* U.S. Constitution Art. III, § 1. Congress has done so through statutes expressly establishing the federal

certain forums based on a case's subject matter. Rather, the venue statute was "designed to insure (*sic*) that [an] action will be brought *either* in a location convenient to the defendant, by providing for venue in the county of residence, or convenient to potential witnesses, by allowing for venue where the cause of action arose. *Baltimore & O. R. Co. v. Mosele*, 67 Ill. 2d 321, 328 (1977) (emphasis added). The purpose of the venue statute was to "protect a defendant against being sued in a county arbitrarily selected by a plaintiff" because "[i]f a plaintiff could so select the county to bring his suit, obviously a defendant would be entirely at his mercy, since such an action could be made oppressive and unbearably costly." *Heldt v. Watts*, 329 Ill. App. 408, 414 (1st Dist. 1946).

But Section 101.5 flips this on its head, ensuring that the state, in constitutional cases brought against it, will get to select the county in which a plaintiff can bring suit. The result is that the state as a defendant can make a plaintiff's constitutional action against it "oppressive and unbearably costly." *Id*. And of course no litigant has as much money or power as the state—meaning that it's far more likely that restricting where a plaintiff may bring a claim will be oppressive and unbearably costly for the plaintiff than the state. Indeed, it's the duty of the Attorney General to defend all actions "in any of the courts of this State." 15 ILCS 205/4. It can hardly be argued that

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courts' jurisdiction over various types of cases—*see* 28 U.S.C. §§ 1330, *et seq*.—and not through the venue statute, 28 U.S.C. § 1391.

it's necessary for the convenience of the Attorney General to enact a statute limiting where citizens can bring constitutional claims against the state.

Even without Section 101.5, the state is not powerless as a defendant when it gets sued in an inconvenient forum. For example, the doctrine of *forum non conveniens* founded under common law in considerations of fundamental fairness and sensible and effective judicial administration, allows a party to seek to move a case to another forum that can better serve the convenience of the parties and the ends of justice. *Adkins v. Chicago, R. I. & P. R. Co.*, 54 Ill. 2d 511, 514 (1973); *see also* Illinois Supreme Court Rule 187. This doctrine can be invoked on the basis of things such as the capacity of the court to provide a fair trial, the relative convenience to witnesses and parties, and the burden placed on the taxpayers and residents where the cause of action takes place. *Adkins,* 54 Ill. 2d at 514. And while the doctrine of *forum non conveniens* would normally be invoked by a defendant, since the plaintiff generally chooses where to file a lawsuit, the result of Section 101.5 is that the burden and inconvenience of litigating in a particular court will be more likely felt by the plaintiff, not the state. But because Section 101.5 eliminates the doctrine of *forum non conveniens*, 735 ILCS 5/2-101.5, no matter the unfairness, inconvenience to plaintiff or witnesses, or burden placed on taxpayers, a plaintiff has no choice but to bring constitutional claims in Cook or Sangamon counties.

The result of Section 101.5 is to impose more burdens on time and cost on the citizens bringing constitutional claims against the state. Those burdens are compounded by the fact that, even when a plaintiff brings a successful case against the state for violating their constitutional rights, they will almost certainly *not* be entitled to damages or attorneys' fees from the state. *See e.g., Wilson v. Quinn*, 2013 IL App (5th) 120337, 12 (the State Lawsuit Immunity Act, 745 ILCS 5 *et seq.*, general prevents suits against the state for damages); *Johnson v. Mun. Emples. Annuity & Ben. Fund*, 2018 IL App (1st) 170732, 23 (holding that the Illinois Civil Rights Act of 2003, 740 ILCS 23/5(a) does not provide for fee shifting for prevailing plaintiffs in all constitutional claims against the state).

No other statute that limits venue does so solely on the subject matter of a plaintiff's claims. The Housing Development Act, 20 ILCS 3805/28, and the Coal Rights Act, 765 ILCS 540/15, which the circuit court cited, are not to the contrary. *See* C 100–101.

The Housing Development Act does not limit the venue of an action that can be brought by a member of the general public based on the subject matter of that suit. Rather, the Housing Development Act creates an administrative agency, the Illinois Housing Development Authority; gives it certain powers, including the powers to issue notes and bonds; and gives holders of those notes or bonds the power to appoint a trustee if the Authority defaults. 20 ILCS 3805/15, 16, 17, 25. The Housing Development Act then grants such

trustees certain powers over the Authority, including the power to enforce those powers against the Authority in court in Sangamon County. 20 ILCS 3805/26, 27, 28. In other words, the Housing Development Act does not limit the general public's ability to bring cases against the state based on subject matter.

And the Coal Rights Act, 765 ILCS 540/15, simply provides that proceedings under that Act "must be brought in the circuit court of the county in which coal lands sought to be affected, or the major portion of those lands, is located." That Act's venue rule, like all traditional venue rules, is based on *where the relevant events occurred*.

Nor are statutes that set venue in Cook and Sangamon counties for administrative appeals similar to Section 101.5. *See, e.g.,* Illinois Vehicle Code, 625 ILCS 5/18c-2401(1); Illinois Banking Act, 205 ILCS 5/48(10). Like the Coal Rights Act and all other traditional venue rules, these statutes' venue rules are based on where the relevant events occurred: Illinois administrative hearings take place in state agencies located in Cook and Sangamon counties, so judicial review of administrative decisions is proper in those counties. Section 5/18c-2401(1) of the Illinois Vehicle Code, for example, simply concerns venue in "[a]ctions for judicial review" of agency decisions, while the next section, 625 ILCS 5/18c-2402(2), provides that "[a]ctions to enforce this Chapter, Commission regulations and orders, other than suits for criminal misdemeanor penalties, may be brought in the circuit courts of *any*

county in which any part of the subject matter is located, or any part of the violation(s) occurred" (emphasis added).

In any event, article VI, section 9 of the Illinois Constitution specifically authorizes the General Assembly to define the circuit courts' "power to review administrative action." Thus, the Illinois Supreme Court has recognized that "the legislature may explicitly vest original jurisdiction in an administrative agency when it enacts a comprehensive statutory scheme that creates rights and duties that have no counterpart in common law or equity." *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 23. So even if some statutes effectively limit circuit courts' jurisdiction to hear administrative matters through a venue rule, they do so pursuant to article VI, section 9's express exception to its general rule that circuit courts "shall have original jurisdiction of *all* justiciable matters" (emphasis added). In contrast, the Illinois Constitution does not give the General Assembly such power with respect to constitutional cases filed against it.

The circuit court worried that plaintiffs' proposed rule would be profoundly disruptive for the General Assembly's ability to set venue in civil cases. C 101. But the circuit court points to no venue statutes adopted by the General Assembly that plaintiffs' proposed rule would affect, other than Section 101.5. And, of course, more concerning than the General Assembly's ability to cherry-pick where citizens may bring constitutional cases

challenging its legislation, is the burden that Section 101.5 places on citizens who are harmed by unconstitutional acts of the state.

The circuit court held that the procedural rules that accompany Section 101.5 confirm that it does not go to the courts' jurisdiction because under those rules a state defendant sued in the wrong county may seek to transfer venue to Sangamon or Cook County, and the state may waive its objection to venue if not timely asserted, 735 ILCS 5/2-104(b). C 100. True, Section 101.5's "venue" rule differs from a jurisdictional rule in that it is waivable: the state may elect not to remove a case to Cook or Sangamon County, as the state has done here. But that simply means that the Attorney General has unfettered discretion to determine whether circuit courts will exercise jurisdiction over constitutional cases—effectively delegating a power that the General Assembly has no power to exercise in the first place. This exemplifies the fundamental unfairness of Section 101.5. Not only does the state limit where a citizen may bring a constitutional case against it, but if that citizen happens to ignore Section 101.5 and file a constitutional claim in a court outside of Cook County or Sangamon County, then the Attorney General has the option to further game the system by deciding whether to seek to transfer venue to Sangamon or Cook County. This gives the state an additional tool to forum-shop constitutional cases filed against it.

Finally, the consequences of the circuit court's holding are concerning: if it stands, the state, through the legislature and governor, could effectively

forum shop any constitutional cases against it any time it pleases. In the future, should the state not like the outcome of decisions coming out of Sangamon County, for example, under the circuit court's holding, there's nothing stopping the state from simply amending Section 101.5 to omit Sangamon County and require all constitutional claims to be filed in Cook County. And if a future legislature and governor don't like those decisions, the circuit court would permit them to arbitrarily choose any other county in Illinois to be the exclusive jurisdiction for constitutional claims.

Section 101.5 is unlike any other venue statute and, despite its label as a venue statute, is truly a jurisdictional statute. And under article VI, section 9, the General Assembly has no authority to restrict the jurisdiction of the circuit courts. Thus, Plaintiffs have alleged a viable claim that Section 101.5 violates article VI, section 9 of the Illinois Constitution and this Court should reverse the circuit court's order dismissing this claim.

III. Plaintiffs have sufficiently alleged that Section 101.5 violates the equal protection clause in article I, section 2 of the Illinois Constitution.

The Equal Protection Clause of the Illinois Constitution "prohibit[s] the government from according different treatment to persons who have been placed by a statute into different classes on the basis of criteria wholly unrelated to the purpose of the legislation." *Jacobson v. Department of Pub. Aid*, 171 Ill. 2d 314, 322 (1996). That's exactly what Section 101.5 does. It places Illinois residents and voters into two categories—those who live in

Sangamon and Cook counties and those who do not—and discriminates against residents of all other Illinois counties, both as potential litigants in constitutional claims against the state and as voters in judicial elections. It violates Plaintiffs' equal protection rights as litigants in constitutional cases because it permits residents of Sangamon and Cook counties to file claims against the state alleging constitutional violations in their local circuit courts, while depriving residents of every other Illinois county the ability to do so. And it violates Plaintiffs' equal protection rights as voters in judicial elections because it permits residents of Sangamon and Cook counties to vote for or against circuit court judges and district court of appeals justices who will hear constitutional claims, while depriving residents of other Illinois counties from voting for or against such judges.

Strict scrutiny applies to a statute challenged on equal protection grounds if the classification at issue adversely impacts a fundamental right protected by the Illinois Constitution. *Jacobson*, 171 Ill. 2d at 323. In this case, strict scrutiny applies because Section 101.5 *always* adversely impacts a fundamental right protected by the Illinois Constitution because it applies to all constitutional claims.

The circuit court denied that strict scrutiny applies because it held that Illinois residents do not have a fundamental right to bring a civil action in the counties in which they reside. C 102. According to the circuit court,

Section 101.5 does not impair Plaintiffs' right to bring constitutional claims at all; they can still bring such claims in Cook or Sangamon counties. C 102.

But Section 101.5 *does* adversely affect Plaintiffs' fundamental rights because it allows the State to cherry-pick the courts in which Plaintiffs may seek to vindicate their fundamental rights. House Bill 3062 was passed by the General Assembly and signed by the governor entirely on partisan lines, purportedly to prevent "forum shopping," after a number of lawsuits filed throughout Illinois challenged the governor's COVID-19 mitigation orders, a law that would end cash bail, and a law banning "assault-style" weapons and large-capacity magazines. *See* C 27 (citing *Rowe v. Raoul*, 2023 IL 129248 (bail reform) and *Accuracy Firearms, LLC v. Pritzker*, 2023 IL App (5th) 230035 (firearms ban)).

According to the Attorney General, the purpose of Section 101.5 is that constitutional cases "should be consolidated in Sangamon and Cook County in the first instance, rather than scattered across the State . . . to ensure the efficient adjudication of constitutional cases with statewide significance." C 41. But Section 101.5 applies to *all* constitutional cases, regardless of whether there are one or many concurrent cases alleging that a particular law, rule, or order is unconstitutional, and regardless of whether those cases bring facial or as-applied claims. And even without Section 101.5, the state is not powerless to consolidate—*see, e.g.,* Illinois Supreme Court Rule 384; 735

ILCS 5/2-1006—or stay cases bringing the same claims, *see e.g.,* Illinois Supreme Court Rule 305.

Rather than prevent forum shopping, the justifications given by the Attorney General appear more likely to be about the state being unhappy with the *outcome* of these specific constitutional claims. And that, of course, should not be the basis for the state's restriction of where constitutional cases can be brought. In fact, Section 101.5 allows and encourages forum shopping *by the state* by allowing the government, in its discretion, to remove constitutional cases to Cook or Sangamon County. Indeed, as Defendant's motion shows, the state can "forum shop" when any plaintiff files a constitutional challenge outside of Cook and Sangamon counties, like Plaintiffs did here, by asserting the power to decide whether to seek to transfer venue to Cook or Sangamon counties after the complaint is filed. Thus, the state can generally force plaintiffs to file constitutional claims against it in Cook or Sangamon counties, but even if a plaintiff files such a case outside of those counties, the state can then strategically decide whether to seek to transfer venue in the case based on whether it believes doing so will benefit its defense. As the purported purpose of Section 101.5 was to prevent plaintiffs from "forum shopping"—implying that such forum shopping is a bad thing—the Attorney General must implicitly acknowledge that the state's use of "forum shopping" adversely affects Plaintiffs' ability to adjudicate constitutional claims.

The circuit court also held that Section 101.5 does not impair Plaintiffs' fundamental right to participate in an election on equal footing as other voters for state court judges. C 103. According to the circuit court, Plaintiffs still have the opportunity to vote for or against circuit judges, and Section 101.5 simply "alters the duties of the judges who are ultimately elected." C 103. But Plaintiffs' claim is that Section 101.5 violates their equal protection rights because it allows voters in Cook and Sangamon counties to vote for or against judges who will decide constitutional cases, while depriving voters in every other county in Illinois from voting for or against judges that will decide constitutional cases. *See Fumarolo*, 142 Ill. 2d at 93–94 (finding a statute that provided "a substantial bias in favor of certain voters and denied or substantially restricted the weight of the vote of others" violated equal protection). As discussed above, *Fumarolo* would not have come out differently if, instead of prohibiting citizens who were not parents or teachers of public schools from voting for certain candidates, they were permitted to vote only for candidates that had fewer powers or duties than voters who were parents or teachers in public schools. Contrary to the circuit court's view, a decision in plaintiffs' favor on this issue would not call into question a wide range of state statutes. Section 101.5 is not like legislation simply establishing new judgeships for certain counties but not others. Section 101.5 does the exact opposite: it *removes* the power to hear constitutional claims from some judges and *removes* the ability of some

citizens—based on where the live—to litigate and vote for judges who will hear constitutional claims. This case is about giving some courts (and voters of those judges) power that other courts (and voters) do not have.

Thus, Plaintiffs have properly alleged viable equal protection claims under article I, section 2 of the Illinois Constitution against Section 101.5 both as litigants and as voters. And this Court should reverse the circuit court's order dismissing Plaintiffs' equal protection claims.

Conclusion

Plaintiffs have standing to allege that Section 101.5 violates article VI, section 9 and article I, section 2 of the Illinois Constitution. And Plaintiffs have sufficiently alleged claims under these sections. Therefore, this Court should reverse the circuit court's order dismissing Plaintiffs' complaint for lack of standing under section 2-619(a)(9) and for failure to state a claim under section 2-615.

Dated: October 17, 2024

Respectfully submitted,

By: /s/ Jeffrey M. Schwab

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Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 314(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 30 pages.

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Certificate of Service

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.

I, Jeffrey Schwab, an attorney, certify that on October 17, 2024, I electronically filed the foregoing Brief of Appellants with the Clerk of the Court for the Illinois Appellate Court, Fifth Judicial District, by using the eFile IL system. I further certify that I served a copy of this Brief on Defendants' counsel of record by the Court's Electronic Filing System.

/s/ Jeffrey M. Schwab

No. 5-24-0824

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

BRAD WEISENSTEIN, DAWN ELLIOT, *and* KENNY COOK, Plaintiffs-Appellants, v. KWAME RAOUL, *in his official capacity as Illinois Attorney General*, Defendant-Appellee.	Appeal from the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois No. 23-CH-0061 Hon. Judge Leah Captain, Judge Presiding

Appendix to Brief of Appellants

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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

[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

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.	Case No. 23CH0061 **Complaint for Declaratory and Injunctive Relief**

INTRODUCTION

1. Article VI, Section 9 of the Illinois Constitution gives the Circuit Courts of this state jurisdiction over "all justiciable matters" except those reserved to the Illinois Supreme Court.

2. But the Illinois General Assembly has attempted to strip all Circuit Courts but two of the power to hear constitutional challenges to state laws, rules, and orders.

3. Under House Bill 3062 (2023), citizens may now only bring such cases in either Sangamon County or Cook County.

4. This lawsuit challenges HB 3062 because it is unconstitutional in several respects.

5. First, HB 3062 unconstitutionally strips all but two of the state's 25 Circuit Courts of the subject-matter jurisdiction that Article VI, Section 9 of the Illinois Constitution grants them. The Illinois General Assembly has no constitutional authority to limit the venue of lawsuits based on their claims' substance.

6. Second, HB 3062 denies residents of counties other than Sangamon County and Cook County the equal protection of the laws: residents of Sangamon County and Cook County may bring their constitutional claims in their local circuit courts, but residents of any of the other 100 counties cannot.

7. HB 3062 also violates the equal protection of the law by disenfranchising voters in counties outside of Sangamon County and Cook County by forcing them to present their constitutional claims to judges in other jurisdictions, whom they were not permitted to vote for or against.

8. Plaintiffs—who are residents of St. Clair County—ask this Court to declare HB 3062 unconstitutional and enjoin the Attorney General from enforcing it.

PARTIES

9. Plaintiff Brad Weisenstein is a resident of St. Clair County, pays income taxes to the State of Illinois, and is a registered voter.

10. Plaintiff Dawn Elliot is a resident of St. Clair County, pays income taxes to the State of Illinois, and is a registered voter.

11. Plaintiff Kenny Cook is a resident of St. Clair County, pays income taxes to the State of Illinois, and is a registered voter.

12. Defendant Kwame Raoul is the Attorney General of the State of Illinois and is sued in his official capacity as the representative of the State of Illinois charged with the enforcement of state laws, including the provisions challenged in this case.

JURISDICTION AND VENUE

13. This Court has subject-matter jurisdiction over this matter, which challenges an Illinois statute as violating the Illinois Constitution. HB 3062 would deprive this

Court of jurisdiction over this case because it presents a constitutional challenge to a state law, but, as set forth below, that statute is unconstitutional and should be of no effect.

14. This Court has personal jurisdiction over Defendants because this lawsuit arises from their activity in the State of Illinois.

15. Venue is proper in St. Clair County because the facts giving rise to this action occurred, in part, in St. Clair County. HB 3062 would bar venue in this Court because this case presents a constitutional challenge to a state law, but, as set forth below, that statute is unconstitutional and should be of no effect.

STATEMENT OF FACTS

16. The Illinois General Assembly has enacted a statute, HB 3062, that would bar all Circuit Courts in this state, except those in Sangamon County and Cook County, from hearing constitutional challenges to state laws, rules, and orders brought against the State or its agents—even though the Illinois Constitution grants all Circuit Courts in this state jurisdiction over "all justiciable matters."

17. The Illinois Code of Civil Procedure, 735 ILCS 5/2-101, allows plaintiffs to bring a lawsuit in either (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose.

18. Under that provision, a plaintiff alleging that a state statute, rule, or order violates his or her constitutional rights would be permitted to file that action in his

or her county of residence because a violation of plaintiff's constitutional rights would be "in the county in which the transaction or some part thereof occurred out of which the cause of action arose."

19. House Bill 3062, however, changes that.

20. HB 3062 was introduced and passed by the 103rd General Assembly of Illinois and signed by Governor Pritzker on June 6, 2023.

21. HB 3062 amended the Illinois Code of Civil Procedure, 735 ILCS 5, by adding Section 2-101.5, which requires that constitutional challenges to a state statute, rule, or executive order brought against the State or its agents (hereafter referred to as a "constitutional claim"), be filed only in Sangamon County or Cook County. It states:

> Sec. 2-101.5. Venue in actions asserting constitutional claims against the State.
>
> (a) 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.
>
> (b) The doctrine of forum non conveniens does not apply to actions subject to this Section.
>
> (c) As used in this Section, "State" has the meaning given to that term in Section 1 of the State Employee Indemnification Act.
>
> (d) The provisions of this Section do not apply to claims arising out of collective bargaining disputes between the State of Illinois and the representatives of its employees.

22. HB 3062 states that the Act takes effect upon becoming law. HB 3062, Section 2-101.5 of the Illinois Code of Civil Procedure, became effective on June 6, 2023.

23. Under HB 3062, residents of Cook and Sangamon Counties may file constitutional claims in their local Circuit Court, just as they could any other legal action in that court under Section 2-101 of the Code of Civil Procedure.

24. In contrast, residents of Illinois' other one hundred counties may *not* file constitutional claims in their local Circuit Court. Instead, HB 3062 requires them to file those claims in the Circuit Court of Sangamon County or Cook County.

25. Thus, HB 3062 deprives Illinoisians in 100 of Illinois's 102 counties of their ability to file constitutional claims in their respective local Circuit Courts—and deprives the Circuit Courts with jurisdiction over those 100 counties of the ability to hear such cases.

26. Unlike Section 2-101 of the Code of Civil Procedure, which limits the venue in which a case may be heard based on the residence of a defendant or the location where the underlying transaction occurred, Section 2-101.5 limits the jurisdiction of the circuit courts based on the content of the underlying claim alleged by the plaintiff—and thus effectively deprives all Circuit Courts except those in Sangamon County and Cook County of jurisdiction over such claims.

27. Section 2-101.5 of the Code of Civil Procedure thus discriminates against residents of Illinois who do not reside in Sangamon County or Cook County in favor of residents that do.

28. Further, residents of Sangamon County or Cook County may vote for or against the Circuit Court judges and district Appellate Court justices[1] who will hear constitutional claims, while residents of other Illinois counties may no longer do so.

HB 3062 injures Plaintiffs.

29. Plaintiffs are St. Clair County, Illinois residents and registered voters who pay income taxes, among other taxes, to the state.

30. Plaintiffs are injured because HB 3062 purports to prohibit them from bringing constitutional claims in their local Circuit Court, while permitting residents of Sangamon County and Cook County to bring constitutional claims in their local Circuit Courts.

31. Plaintiffs are injured as voters because HB 3062 disenfranchises them by permitting only residents in Sangamon County and Cook County to vote for or against Circuit Court judges and district Appellate Court justices who may hear constitutional claims, while Plaintiffs and residents of the other one hundred counties may only vote for Circuit Court judges and district Appellate Court justices who cannot hear constitutional claims.

32. Plaintiffs are additionally injured when the state uses its general revenue funds—i.e., Plaintiffs' tax money—for an unconstitutional purpose.

---

[1] It is true that residents in counties covered by the Fourth District Appellate Court may vote for or against district Appellate Court justices who will hear constitutional claims even though they cannot vote for or against Circuit Court judges who will hear such claims. But residents in counties covered by the Second, Third, and Fifth District Appellate Courts, including plaintiffs, may neither vote for or against Circuit Court judges nor district Appellate Court justices who will hear constitutional claims. Thus, only residents from Cook and Sangamon counties may vote for or against Circuit Court judges, district Appellate Court justices, and Supreme Court justices who will hear constitutional claims.

33. As set forth below, Plaintiffs allege that HB 3062 violates the Illinois Constitution.

34. Thus, Plaintiffs will suffer injury if the state uses their tax money to enforce HB 3062.

COUNT I

HB 3062 strips circuit courts of subject matter jurisdiction in violation of the Illinois Constitution.

35. Plaintiffs repeat and reallege the allegations of the foregoing paragraphs as if fully set forth herein.

36. Section 2-101.5 of the Illinois Code of Civil Procedure requires that any constitutional challenge to a state statute, rule, or executive order be filed only in Sangamon County or Cook County, thus limiting the subject-matter jurisdiction of every circuit court that does not cover Sangamon County or Cook County.

37. Article VI, Section 9 of the Illinois Constitution provides:

> Circuit Courts shall have original jurisdiction of *all justiciable matters* except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.
>
> (Emphasis added.)

38. The Illinois General Assembly does not have the authority to limit the subject-matter jurisdiction of the Circuit Courts in contradiction of the Illinois Constitution.

39. The Illinois General Assembly lacks the authority to limit the venue of claims to select Circuit Courts based on the claims' subject matter.

40. HB 3062 therefore violates Article VI, Section 9 of the Illinois Constitution.

WHEREFORE, Plaintiffs respectfully request that this Court grand the following relief:

A. Enter a judgment declaring that HB 3062 violates Article VI, Section 9 of the Illinois Constitution because the Illinois General Assembly does not have the constitutional authority to enact venue rules that limit the subject-matter jurisdiction of some Circuit Courts in favor of others;

B. Permanently enjoin the Attorney General from enforcing HB 3062;

C. Award Plaintiffs their reasonable costs, expenses, and attorneys' fees pursuant to any applicable law; and

D. Award Plaintiffs any additional relief the Court deems just and proper.

COUNT II

HB 3062 violates Plaintiffs' equal protection rights under Article I, Section 2 of the Illinois Constitution.

41. Plaintiffs repeat and reallege the allegations of the foregoing paragraphs as if fully set forth herein.

42. Article I, Section 2 of the Illinois Constitution provides that:

> No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

43. The Equal Protection Clause of the Illinois Constitution "prohibit[s] the government from according different treatment to persons who have been placed by a statute into different classes on the basis of criteria wholly unrelated to the

purpose of the legislation." *Jacobson v. Department of Pub. Aid*, 171 Ill. 2d 314, 322 (1996).

44. Section 2-101.5 of the Code of Civil Procedure discriminates against residents of Illinois who do not reside in Sangamon County or Cook County, and in favor of residents who do live in those counties, in two ways.

45. First, residents of Sangamon County or Cook County may file claims against the state or its agents alleging that a state statute, rule, or executive order is unconstitutional, in their local Circuit Courts, while residents of the other one hundred Illinois counties may not file such claims in their local Circuit Courts.

46. Second, residents of Sangamon County or Cook County may vote for or against Circuit Court judges and district Appellate Court justices[2] who will hear claims against the state or its agents alleging that a state law, rule, or executive order is unconstitutional, while residents of other Illinois counties may not.

47. HB 3062 denies Plaintiffs the equal protection of the laws because it forces them to file their constitutional claims outside of their local Circuit Court while permitting residents of Sangamon County and Cook County to file constitutional claims in their local Circuit Courts.

48. Further, HB 3062 denies Plaintiffs the equal protection of the law by denying them the ability to vote for or against Circuit Court judges and district Appellate Court justices who will decide constitutional claims while allowing residents of Sangamon County and Cook County to do so.

---

[2] See footnote 1.

49. Strict scrutiny applies to a statute challenged on equal protection grounds if the classification adversely impacts a fundamental right protected by the Illinois Constitution. *Jacobson*, 171 Ill. 2d at 323.

50. In this case, HB 3062 always adversely impacts a fundamental right protected by the Illinois Constitution because it applies to all constitutional claims. Therefore, strict scrutiny applies.

51. The State does not have a compelling governmental interest in limiting all constitutional claims against the state to courts in Sangamon County and Cook County.

52. Even if it did have a compelling interest, the government's limitation on where plaintiffs may bring constitutional claims against it is not narrowly tailored to further that interest.

53. HB 3062 therefore violates the equal protection of the law provided by Article I, Section 2 of the Illinois Constitution.

WHEREFORE, Plaintiffs respectfully request that this Court grand the following relief:

A. Enter a judgment declaring that HB 3062 violates Plaintiffs' equal protection rights under Article I, Section 2 of the Illinois Constitution;

B. Permanently enjoin the Attorney General from enforcing HB 3062;

C. Award Plaintiffs their reasonable costs, expenses, and attorneys' fees pursuant to any applicable law; and

D. Award Plaintiffs any additional relief the Court deems just and proper.

Dated: August 29, 2023

Respectfully submitted,

Brad Weisenstein, Dawn Elliot,
and Kenny Cook

By: /s/ Jeffrey M. Schwab
One of their Attorneys

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

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

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

Notice of Appeal

Plaintiffs Brad Weisenstein, Dawn Elliot, and Kenny Cook appeal to the Illinois Appellate Court, Fifth Judicial District, from the Order entered by Judge Leah Captain of the Circuit Court for the Twentieth Judicial District, St. Clair County, Illinois on June 12, 2024, granting Defendant's motion to dismiss the complaint. A true and correct copy of that order is attached hereto.

By this appeal, Plaintiffs ask the Appellate Court to reverse the circuit court's order of June 12, 2024, dismissing the complaint, remand the case back to the circuit court, and grant any other appropriate relief.

Dated: July 11, 2024

Respectfully submitted,

Brad Weisenstein, Dawn Elliot, and Kenny Cook

By: /s/ Jeffrey M. Schwab
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Certificate of Service

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.

I, Jeffrey Schwab, an attorney, certify that on July 11, 2024, I electronically filed the foregoing Notice of Appeal and served a copy on Defendant's counsel of record by the Court's Electronic Filing System and electronic mail to Alex Hemmer, Deputy Solicitor General, at alex.hemmer@ilag.gov.

/s/ Jeffrey M. Schwab
Jeffrey M. Schwab

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

[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

APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

WEISENSTEIN BRAD

Plaintiff/Petitioner

Appellate Count No: **5-24-0824**

Circuit Court/Agency No: **23-CH-0061**

V.

Trial Judge/Hearing Officer: **Hon. Leah Captain**

RAOUL, KWAME

Defendant/Respondent

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5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS
5-24-0824

WEISENSTEIN BRAD

Plaintiff/Petitioner

Appellate Count No: **5-24-0824**
Circuit Court/Agency No: **23-CH-0061**
Trial Judge/Hearing Officer: **Hon. Leah Captain**

V.

RAOUL, KWAME

Defendant/Respondent

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