

NOTICE
Decision filed 11/10/25. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-24-0824

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

BRAD WEISENSTEIN, DAWN ELLIOT, and	)	Appeal from the
KENNY COOK,	)	Circuit Court of
	)	St. Clair County.
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 23-CH-61
	)	
KWAME RAOUL, in his official capacity as	)	
Illinois Attorney General	)	Honorable
	)	Leah A. Captain,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court.
Justices Cates and Vaughan concurred in the judgment.

ORDER

¶ 1 Plaintiffs, Brad Weisenstein, Dawn Elliot, and Kenny Cook, filed a complaint on August 29, 2023, in the circuit court of St. Clair County, challenging the constitutionality of section 2-101.5 of the Code of Civil Procedure (Code) (Pub. Act 103-5, § 2 (eff. June 6, 2023) (adding 735 ILCS 5/2-101.5)). Defendant, Kwame Raoul, in his official capacity as Illinois Attorney General, filed a motion to dismiss pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2022)). On June 12, 2024, the circuit court issued an order granting defendant’s motion to dismiss under section 2-619 of the Code (*id.* § 2-619), finding that plaintiffs lacked standing as litigants, as taxpayers, and as voters. Further, the circuit court granted dismissal under section 2-615 of the Code (*id.* § 2-615), and held that plaintiffs’ challenge failed on the merits, because the statute neither infringed upon the courts’ jurisdiction nor violated equal-protection principles.

Plaintiffs filed a timely appeal on July 11, 2024. Upon review, we affirm the decision of the circuit court.

¶ 2 Section 2-101.5 of the Code (*id.* § 2-101.5) determines the proper venue for actions asserting constitutional claims against the state of Illinois. It provides, in relevant part:

“(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.” *Id.* § 2-101.5(a).

¶ 3 On appeal, plaintiffs argue that the circuit court erred by dismissing their complaint for lack of standing. Plaintiffs argue they have standing for three reasons: (1) as individuals who are barred from pursuing constitutional claims in their local circuit court; (2) as taxpayers who are forced to fund the state’s implementation of section 2-101.5; (3) and as voters who are disenfranchised because, unlike voters in Cook County and Sangamon County, they cannot vote for judges who decide cases “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.” *Id.* Plaintiffs also argue that they sufficiently alleged that section 2-101.5 violates article VI, section 9 of the Illinois Constitution.

¶ 4 A motion to dismiss under section 2-615 of the Code (*id.* § 2-615) challenges the legal sufficiency of the plaintiff’s claim, while a motion to dismiss under section 2-619(a) (*id.* § 2-619(a)) admits the legal sufficiency of the claim but raises certain defects or defenses outside of the pleading that defeat the claim. See *Provenzale v. Forister*, 318 Ill. App. 3d 869, 878 (2001). Our standard of review under either section is *de novo*. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006).

¶ 5 Plaintiffs argue they have standing to challenge section 2-101.5 as litigants, taxpayers, and voters. First, as litigants, plaintiffs argue they have standing because section 2-101.5 bars them from pursuing constitutional claims in their local circuit court and requires them to file such claims in Cook County or Sangamon County.

¶ 6 “The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit.” *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). “The doctrine assures that issues are raised only by those parties with a real interest in the outcome of the controversy.” *Id.* In *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492 (1988), our supreme court set forth the general principle that standing requires some injury in fact to a legally cognizable interest. The claimed injury may be actual or threatened, and it must be (1) distinct and palpable; (2) fairly traceable to the defendant’s actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Id.* at 492-93.

¶ 7 “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 Teachers Union, Local 1 v. Board of Education of City of Chicago*, 189 Ill. 2d 200, 206 (2000). Such injury must be “distinct and palpable,” not merely a “generalized grievance common to all members of the public.” (Internal quotation marks omitted.) *Illinois Road & Transportation Builders Ass’n v. County of Cook*, 2022 IL 127126, ¶ 17 (2022). “In deciding whether a party has standing, a court must look at the party to see if he or she will be benefitted by the relief granted.” *In re Marriage of Rodriguez*, 131 Ill. 2d 273, 279-80 (1989).

¶ 8 In support of their argument that they have standing as litigants, plaintiffs assert that at the time they filed their complaint, they were injured by the requirement that they must file a constitutional challenge in Cook County or Sangamon County. Plaintiffs argue that “[a] party’s

standing to sue must be determined as of the time the suit is filed.” *U.S. Bank Trust National Ass’n v. Lopez*, 2018 IL App (2d) 160967, ¶ 18; *Davis v. Yenchko*, 2024 IL 129751, ¶ 13. Plaintiffs further assert “a party either has standing at the time the suit is brought or it does not.” *Village of Kildeer v. Village of Lake Zurich*, 167 Ill. App. 3d 783, 786 (1988). Thus, plaintiffs argue that defendant’s decision to not seek transfer of the case cannot affect plaintiffs’ standing.

¶ 9 Plaintiffs’ relied upon authorities do not directly support their argument. In *Davis*, the question before the court was whether the plaintiffs had standing to challenge the suspension of their Firearm Owner’s Identification (FOID) cards even though their cards had been returned before they filed suit. *Davis*, 2024 IL 129751, ¶¶ 19-21. Our supreme court held that the plaintiffs lacked standing because they “no longer had a legally recognizable interest sufficient to achieve standing.” *Id.* ¶ 22. Plaintiffs suggest that the court in *Davis* concluded it could not consider facts that occurred after the complaint was filed but before a motion to dismiss or summary judgment. However, that is not what the *Davis* court concluded. Rather, the supreme court found because plaintiffs’ FOID cards were reissued before the filing of their complaint, plaintiffs no longer had a legally recognizable interest sufficient to achieve standing. *Id.*

¶ 10 Standing is determined on a case-by-case basis. *In re M.I.*, 2013 IL 113776, ¶ 32. In the case at hand, plaintiffs cannot establish a “distinct and palpable injury.” In their complaint, plaintiffs did not allege that they intended to bring a future constitutional challenge against the State, its officers, or its agencies, other than the suit at hand. Further, defendant waived his right to transfer the matter to Sangamon County or Cook County. “All 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. See 735 ILCS 5/2-104(b) (West 2022). As such, plaintiffs faced no danger, immediate or otherwise, of being injured by section 2-101.5 in their

capacity as litigants. Therefore, we agree with the circuit court that plaintiffs lacked standing as litigants.

¶ 11 Next, plaintiffs assert that they have standing as taxpayers. “An action to restrain and enjoin the disbursement of public funds by any officer or officers of the State government may be maintained either by the Attorney General or by any citizen and taxpayer of the State.” 735 ILCS 5/11-301 (West 2022). When such an action is brought by a taxpayer, the taxpayer must first petition the court for leave to file the action. *Id.* § 11-303.

¶ 12 Section 11-303 requires the taxpayer to attach a copy of the complaint to his petition. *Id.* The petition must be presented to the circuit court, and the court shall set a date for hearing the petition. *Id.* Such hearing must take place between 5 and 10 days after the petition is filed. *Id.* After the hearing, if the court “is satisfied that there is reasonable ground for the filing of [the taxpayer] action, the court may grant the petition and order the complaint to be filed and process to issue.” *Id.*

¶ 13 In the case at hand, plaintiffs did not file a petition in the circuit court seeking leave to file an action as taxpayers under section 11-303. Plaintiffs argue that compliance with section 11-303 was unnecessary and futile and they “were not required to comply with Section 11-303 *** because taxpayer standing is just one ground for standing that they allege.” Plaintiffs argue “[t]he law did not require them to follow the procedure of Section 11-303 to bring claims based on those grounds for standing.” We disagree. Plaintiffs need not comply with section 11-303 to file suit as litigants or voters, but plaintiffs must comply with Section 11-303 to file a taxpayer action. “ ‘One of the purposes of the [taxpayer leave-to-file statute] was to provide a check upon the indiscriminate filing of taxpayers’ suits.’ ” *Tillman v. Pritzker*, 2021 IL 126387 (2021) (quoting *People ex rel. White v. Busenhart*, 29 Ill. 2d 156, 161 (1963)). As such, we agree with the circuit

court’s dismissal of plaintiff’s claim for failing to comply with the statutory requirements of section 11-303.

¶ 14 Lastly, plaintiffs argue they have standing as voters. Plaintiffs assert they have standing because section 101.5 discriminates against voters who do not reside in Sangamon County or Cook County and only allows residents of those two counties (and appellate districts) to vote for judges who will hear constitutional challenges. The circuit court rejected plaintiffs’ theory of voter standing and found that section 101.5 does not “disenfranchise” plaintiffs because they are still entitled to vote for (or against) circuit court judges and section 101.5 simply alters those judges’ responsibilities. On appeal, plaintiffs argue that the circuit court misunderstood their 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 based solely on the voters’ geographic location.

¶ 15 In other words, plaintiffs argue they are injured because section 101.5 deprives them of the opportunity to vote for circuit judges that decide claims against the state alleging that a law, rule or executive order is unconstitutional. Illinois residents have a right to be represented by their duly elected officials. *Kluk v. Lang*, 125 Ill. 2d 306, 317 (1988). Further, the Illinois Constitution requires that plaintiffs be represented by circuit court judges. Ill. Const. art. VI, § 12(a).

¶ 16 Defendants correctly clarify that section 101.5 does not completely strip St. Clair County judges of the authority to “decide constitutional issues.” Rather, section 101.5 only applies to certain categories of civil cases brought by private litigants against the State or its officers. “Constitutional issues” arise in criminal cases, cases brought between private parties, and in cases brought by the State and state agencies—none of which are affected by section 101.5. See 735 ILCS 5/2-101.5 (West 2024).

¶ 17 In support of their argument, plaintiffs rely on our supreme court's decision in *Fumarolo v. Chicago Board of Education*, 142 Ill. 2d 54 (1990). In *Fumarolo*, the plaintiffs challenged the constitutionality of the Chicago School Reform Act which allowed only parents and teachers at a local school, but not any other members of the community, to vote for certain school council positions. *Id.* at 62. The plaintiffs' claim was that the statute in question deprived them of their right to vote for the school officials. Our supreme court held that the voting scheme enacted by the Chicago School Reform Act violated equal protection. The case at hand is easily distinguishable from *Fumarolo*. Here, plaintiffs can still vote for St. Clair County circuit judges.

¶ 18 Plaintiffs are not injured by a statute that specifies what lawsuits those judges may hear in performing their duties. Plaintiffs' argument, if accepted, would permit individuals to challenge *any* provision that alters the power of elected officials. Further, plaintiffs *are* represented by circuit court judges, as required by article VI, section 12 of the Illinois Constitution. Section 101.5 does not remove St. Clair County circuit court judges from office or interfere with plaintiffs' ability to vote in circuit court judge elections. As such, we agree with the circuit court's determination that plaintiffs lack standing as voters. *Illinois Gamefowl Breeders Ass'n v. Block*, 75 Ill. 2d 443, 451 (1979) (one who challenges the constitutionality of a statute by a declaratory judgment action must have sustained or be in immediate danger of sustaining a direct injury from enforcement of the challenged statute).

¶ 19 Because we find the plaintiffs lacked standing, we need not address the merits of their claim that section 101.5 infringed upon the circuit court's jurisdiction and violated their equal protection rights. For the foregoing reasons and pursuant to Illinois Supreme Court Rule 23(c)(2) (eff. June 3, 2025), we affirm the decision of the St. Clair County Circuit Court.

¶ 20 Affirmed.