No. _____

IN THE
SUPREME COURT OF ILLINOIS

BRAD WEISENSTEIN, DAWN ELLIOT, *and* KENNY COOK, Plaintiffs-Petitioners, v. KWAME RAOUL, *in his official capacity as Illinois Attorney General*, Defendant-Respondent.	Petition for Leave to Appeal from an Order of the Appellate Court of Illinois, Fifth Judicial District, Case No. 5-24-0824 There heard on appeal from the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois Case No. 23-CH-0061, the Honorable Leah Captain, Judge Presiding

Petition for Leave to Appeal

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CYNTHIA A. GRANT
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Prayer for Leave to Appeal

This Court should grant leave to appeal from the appellate court's order in *Weisenstein v. Raoul*, 2025 IL App (5th) 240824-U, because it presents an important question about Illinois citizens' ability to bring constitutional challenges to state statutes, rules, and executive orders in their local circuit courts.

House Bill 3062 (103d Gen. Assem. 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.

Plaintiffs-Petitioners—residents of St. Clair County, Illinois who are registered to vote and pay income taxes, among other taxes, to the State—brought an action before the Circuit Court of the Twentieth Judicial Circuit, St. Clair County alleging that 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 and Cook Counties the equal protection of the laws by allowing only residents of Sangamon and Cook Counties 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 and Cook Counties 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 they lacked standing as litigants, taxpayers, and voters under 735 ILCS 5/2-619(a)(9) and that their claims fail on the merits under 735 ILCS 5/2-615. The appellate court affirmed the standing ruling and did not reach the merits. Because both courts erred, this Court should grant this petition for leave to appeal.

Judgment of the Appellate Court

The appellate court entered its order on November 10, 2025. No petition for rehearing was filed.

Points Relied Upon for Review

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

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

3. 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 civil constitutional cases against the State.

4. Section 101.5 violates article VI, section 9 of the Illinois Constitution—which gives circuit courts original jurisdiction over all "justiciable matters"—

because it strips all circuit courts, except those in Sangamon County and Cook County, of jurisdiction over civil constitutional challenges to state laws, rules, and orders.

5. Section 101.5 violates 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. Section 101.5 violates Plaintiffs' equal protection rights as voters in judicial elections by depriving them of the ability to vote for or against circuit court and appellate judges who hear civil constitutional cases against the State, while allowing residents of Sangamon County and Cook County to do so.

Statement of Facts

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."

In 2023, the Illinois General Assembly passed, and the Governor signed House Bill 3062, which requires all constitutional claims against the State be brought in either Sangamon County or Cook County. C 6. 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 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. 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 or Cook Counties. C 7.

Further, the enactment of Section 101.5 means that residents of Sangamon or Cook Counties 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 partial

exception is that residents in counties covered by the Fourth District Appellate Court may vote for or against appellate justices who will hear constitutional claims, although they still 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 nor 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 and Cook Counties 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 and Cook Counties 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 civil constitutional cases against the State. C 8. Plaintiffs are additionally injured when the State uses 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, it alleges 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, it alleges that Section 101.5 violates Plaintiffs' equal protection rights under article I, section 2 of the Illinois Constitution. C 10–11.

Defendant-Respondent 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. 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. A 8–17. 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. A 8–17.

Plaintiffs filed a timely notice of appeal in the Appellate Court of Illinois, Fifth Judicial District on July 11, 2024. C 105. On November 10, 2025, the appellate court entered an order filed under Supreme Court Rule 23 affirming the circuit court's holding that Plaintiffs lacked standing. Because

it affirmed the holding of lack of standing, the appellate court did not address the merits of Plaintiffs' claim.

Argument

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

The appellate court erred in affirming the circuit court's dismissal of 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 and Sangamon Counties, they cannot vote for judges who decide civil constitutional cases against the State.

A. Plaintiffs have standing as litigants.

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 or Sangamon Counties, far from where they live.

The appellate court held that Plaintiffs lacked standing as litigants because they "faced no danger, immediate or otherwise, of being injured by section 101.5 in their capacity as litigants," because they have not alleged that they intend to bring future constitutional challenges against the State,

its officers, or its agencies, and because the Attorney General waived his right to transfer this case to Sangamon or Cook Counties. A 4.

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." *Village of Kildeer v. Village of Lake Zurich*, 167 Ill. App. 3d 783, 786 (2d Dist. 1988). The Attorney General's decision not to seek to transfer venue in this case does not affect Plaintiffs' standing. At the time Plaintiffs filed their complaint, they were injured by Section 101.5's requirement that they file a constitutional challenge in Cook or Sangamon Counties. 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.

The appellate court disregarded this point, asserting—without explanation—that Plaintiffs' authorities do not directly support their argument. A 4. The appellate court asserted that this Court's decision in *Davis v. Yenchko*, 2024 IL 129751—a case which Plaintiffs never relied upon—does not support Plaintiffs' argument.

But the appellate court did not refute the point that "standing, 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 or Sangamon Counties. Defendant's later decision not to seek to transfer the case to Cook or Sangamon Counties could not negate that.

Thus, the appellate court erred in affirming the dismissal of the complaint for lack of standing as litigants and this Court should grant the Petition and hold that Plaintiffs have standing to bring their claims as litigants.

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.

The appellate court held that Plaintiffs did not have standing to bring their claim as taxpayers because they failed to comply with the procedure set forth in the Disbursement of Public Moneys Act, 735 ILCS 5/11-301 *et seq*. A 5–6. That holding in incorrect.

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 acknowledged 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*, 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). This 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).

Section 11-303 requires that a taxpayer action "be commenced by petition for leave to file an action to restrain and enjoin the defendant or defendants from disbursing the public funds of the State." 735 ILCS 5/11-303. The petition must attach a copy of the complaint and be presented to the court, which must hear the petition between five and ten days thereafter. The petitioner must also give notice to the defendants and the Attorney General. Section 11-303 states that "if the court is satisfied that there is reasonable ground for the filing of such action, the court may grant the petition and order the complaint to be filed and process to issue."

But Plaintiffs also alleged that they have standing as litigants as to their article VI, section 9 claim and standing as litigants and as voters as to their equal protection claims. Thus, there would be no point in making them follow Section 11-303's procedures. The purpose of Section 11-303 is to screen out obviously meritless taxpayer cases before a complaint is even filed. *Hamer v. Dixon*, 61 Ill. App. 3d 30, 32 (2d Dist. 1978). It could not serve that purpose here—Plaintiffs could file their complaint anyway based on their other alleged grounds for standing—so compliance would have been futile and

would have wasted resources rather than conserve them as the statute intends. *See Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 501 (2008) (holding that where seeking recourse before an administrative agency would be futile, an exception to the exhaustion requirement applies).

Nothing would have been gained by following Section 11-303 in this case. No administrative record would have been created, and Defendant was not deprived of an opportunity to address Plaintiffs' claim of standing. Because Plaintiffs have a right in equity to sue on the basis of taxpayer standing, the fact that they did not file a petition under Section 11-303 before filing the complaint cannot serve as a basis for dismissing the complaint for lack of standing as taxpayers.

Thus, the appellate court erred in affirming the dismissal for lack of taxpayer standing, and this Court should grant the Petition and hold that Plaintiffs also have standing as taxpayers.

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 or Cook Counties 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 appellate court held that Plaintiffs do not have standing as voters because they are represented by circuit court judges, as required by article VI, section 12 of the Illinois Constitution, and 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. A 7.

But Section 101.5 ensures that only voters in Cook and Sangamon Counties can choose which state officials will decide constitutional issues. The appellate court held that Section 101.5 does not completely strip St. Clair County judges of the authority to decide constitutional issues—constitutional issues arise in criminal cases, cases brought between private parties, and in cases brought by the State. A 6. The appellate court held that Section 101.5 "only applies to certain categories of civil cases brought by private litigants against the State or its officers." A 6. The appellate court warned that Plaintiffs' "argument, if accepted, would permit individuals to challenge any provision that alters the power of elected officials." A 7.

But surely the State could not enact a law allowing only legislators from Cook and Sangamon Counties to vote on statewide tax legislation. In that scenario, as here, voters in counties outside of Cook and Sangamon Counties would be disenfranchised: they could not elect legislators who control tax policy, while Cook and Sangamon County voters could. And it does not correct the problem if non-Cook and non-Sangamon legislators might still vote on *some* taxes but not others. Similarly, the appellate court's assertion that

Section 101.5 does not strip circuit courts of deciding constitutional issues outside of civil constitutional claims brought against the State does not remove the equal protection violation. The fact remains that Illinois voters outside of Sangamon or Cook Counties cannot not vote for or against circuit court judges and district appellate court justices who decide civil constitutional cases against the State, even though those cases may be the only means of challenging many constitutional violations that do not arise in criminal prosecutions, private disputes, or State-initiated cases. Unequal control over a critical category of policy would still offend equal protection.

This 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 appellate court held that this case is "easily distinguishable from *Fumarolo*" because Plaintiffs "can still vote for St. Clair County circuit judges." A 7. But in *Fumarolo* this Court held that the problem with the voting scheme 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 (emphasis added). 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.

The appellate court's assertion that Plaintiffs' "argument, if accepted, would permit individuals to challenge any provision that alters the power of elected officials," A 7, is also incorrect. The appellate court ignored the most important part of Plaintiffs' equal protection claim: that while *Plaintiffs'* right to vote for judges who rule on certain constitutional claims has been curtailed, *other voters* continue to have the right to vote for judges who rule on those constitutional claims. Plaintiffs' argument would not permit any individual to challenge any provision of law simply because it alters the power of elected officials. Rather, the specific equal protection argument that Plaintiffs make is that the State may not remove some elected officials' powers, while allowing other elected officials to retain those same powers, where the only difference between those elected officials is the geographic area from which they are elected.

Thus, the appellate court erred in affirming the dismissal of Plaintiffs' equal protection claim for lack of standing as voters and this Court should grant the Petition and hold that Plaintiffs have standing to bring their claims as voters.

II. Plaintiffs have sufficiently alleged their claims on the merits.

Because the appellate court affirmed the dismissal of the complaint for lack of standing, it did not reach the question of whether Plaintiffs had sufficiently alleged claims on the merits. But the circuit court found that Plaintiffs had not done so. Thus, Plaintiffs briefly address the merits of their claims, and request that if the Court grants this Petition that it address the question of whether Plaintiffs have sufficiently alleged their claims on the merits to overcome a motion to dismiss.

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

By depriving every circuit court outside Cook and Sangamon Counties of the power to hear civil constitutional challenges to state laws, rules, and executive orders, Section 101.5 exceeds the General Assembly's authority under article VI, section 9.

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. "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). 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.

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. A 13. 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 exceeded its constitutional authority.

Until Section 101.5 was enacted, Illinois's venue statute did not restrict venue to 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.

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 Counties, and the State may waive its objection to venue if not timely asserted, 735 ILCS 5/2-104(b). A 14. 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 Counties, as the Attorney General 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 or Sangamon Counties, then the Attorney General has the option to further game the system by deciding whether to seek to transfer venue to Sangamon or Cook Counties. This gives the State an additional tool to forum-shop constitutional cases filed against it.

If the lower court's decision 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 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 do not 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, effectively operates as a jurisdictional restriction in violation of article VI, section 9.

B. 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. Dep't 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.

The purported 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 in support of Section 101.5 appear more likely to be about the State being unhappy with the *outcome* of these specific constitutional claims. 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 Counties. 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.

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 because Plaintiffs still have the opportunity to vote for or against circuit judges. A 17. According to the circuit court, Section 101.5 simply "alters the duties of the judges who are ultimately elected." A 17.

The circuit court misses the point: Section 101.5 violates Plaintiffs' equal protection rights because it allows voters in Cook and Sangamon Counties to vote for or against judges who will decide civil constitutional cases against the State, while depriving voters in every other county in Illinois from voting for or against judges that will decide such 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). *Fumarolo* would not have come out differently if, instead of prohibiting citizens who were not parents or teachers in 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.

Thus, Plaintiffs have properly alleged viable equal protection claims under article I, section 2 of the Illinois Constitution— both as litigants and as voters—against Section 101.5.

Conclusion

For these reasons, Plaintiffs request this Court grant leave to appeal from the judgment of the appellate court.

Dated: December 15, 2025

Respectfully submitted,

By: /s/ Jeffrey M. Schwab

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Certificate of Compliance

I certify that this petition conforms to the requirements of Rule 315 and, to the extent applicable, Rule 341. The length of this petition, excluding the cover, the certificate of compliance, the certificate of service, and appendix is 5,555 words.

/s/ Jeffrey M. Schwab

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 December 15, 2025, I electronically filed the foregoing Petition for Leave to Appeal with the Clerk of the Illinois Supreme Court using the eFile IL system. I further certify that I served a copy of this petition on Defendant's counsel of record by the Court's Electronic Filing System.

/s/ Jeffrey M. Schwab

Appendix

NO. 5-24-0824

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH 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 St. Clair County. No. 23-CH-61 Honorable Leah A. Captain, 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 it 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.

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