IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PIASA ARMORY, LLC, Plaintiff, v. KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, Defendant.	No. 2023 LA 1129

FILED
MAR 04 2024
CLERK OF CIRCUIT COURT #66
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

ORDER

This matter is before the Court on Plaintiff's motion for summary judgment as to the Venue Count (i.e. Count V), and Defendant's, Kwame Raoul, in his official capacity as Attorney General of Illinois ("Attorney General"), motion to transfer this case to Sangamon County under section 2-101.5(a) of the Code of Civil Procedure, 735 ILCS 5/2-101.5(a) ("section 2-101.5(a)").

Plaintiff Piasa Armory, LLC ("Piasa Armory") filed a combined response in opposition and cross-motion for summary judgment on Count V[*] of its complaint on November 22, 2023. The parties have briefed the matter and the Court heard oral argument on January 10, 2024.

Piasa Armory was present by and through its counsel, Thomas Maag. The Attorney General was present by and through his counsel, Darren Kinkead. For the following reasons, the Court DENIES the motion to transfer and GRANTS Piasa Armory's motion for summary judgment.

[*] Piasa Armory's motion states it is moving for summary judgment on Count II of its complaint. At oral argument, in response to the Court's question seeking clarification, Piasa Armory explained this is a typo and its motion should have stated Count V instead.

The Attorney General contends, and Piasa Armory concedes, that section 2-101.5(a) applies to this action by virtue of the date of it being filed and this being a constitutional case. The Court agrees. Section 2-101.5(a) provides:

> 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 [June 6, 2023] 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).

First, Piasa Armory brought this action against the Attorney General in his official capacity.

Second, Piasa Armory filed its complaint on August 17, 2023.

Third, Piasa Armory seeks declaratory and injunctive relief concerning the Firearm Industry Responsibility Act ("FIRA"), which amended the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505, effective August 12, 2023.

Fourth, Piasa Armory contends those amendments violate the Supremacy Clause, First Amendment, Second Amendment, Fifth Amendment and Fourteenth Amendment of the United States Constitution; and the Three Readings Rule of the Illinois Constitution.

Therefore, each of section 2-101.5(a)'s requirements is satisfied, and the plain language of the statute provides that venue in this action is proper only in Sangamon County or Cook County. Further, the Attorney General timely objected to venue in Madison County by filing a motion to transfer this action to Sangamon County pursuant to section 2-101.5(a) within the time he was granted to answer or move with respect to Piasa Armory's complaint. *See* 735 ILCS 5/2-104(b).

Piasa Armory opposes the Attorney General's motion because, it argues, section 2-101.5(a) violates Amendments 1, 2, 5 and 14 of the U.S. Constitution, and the Three Readings Rule of the Illinois Constitution. "[C]ourts generally cannot interfere with the legislature's province in determining where venue is proper, unless constitutional provisions are violated." *Williams v. Illinois State Scholarship Commission*, 139 Ill. 2d 24, 41 (1990) (citation omitted). Because the Attorney General has moved the Court to transfer this action from Piasa Armory's preferred forum pursuant to Section 2-101.5(a), the Court finds Piasa Armory has standing to challenge the constitutionality of the statute at least as applied here. *E.g., CTU v. Board of Education*, 189 Ill. 2d 200, 206 (2000) ("To have standing to challenge the constitutionality of a statute, one must have sustained or be in immediate danger of sustaining a direct injury as a result of enforcement of the challenged statute.").

To determine whether section 2-101.5(a) would violate Piasa Armory's rights under the Due Process Clause of the United States Constitution, the Court considers federal and state cases because due process provides the same rights under the federal and state constitutions. *E.g., Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 47; *People v. Kizer*, 365 Ill. App. 3d 949, 960–61 (4th Dist. 2006). Due process under the state constitution is held in limited lockstep with the federal constitution.

The Illinois Supreme Court applied these principles in *Williams*, 139 Ill. 2d 24, which is its only Illinois state court precedent addressing whether a statute fixing venue violated a litigant's due process rights. The law at issue in *Williams* set Cook County as the "exclusive venue" for lawsuits brought against student loan borrowers by the state agency tasked with administering those loans. *Id.* at 28. The court "admit[ted] that, standing alone, requiring venue to be in a particular county does *not necessarily* infringe upon [the] right of access to the courts."

Id. at 63. This Court interprets "not necessarily" to mean that depending on the matter, it might, or it might not, without more.

In the case before it, however, the court found the state agency "regularly" obtained default judgments "against [borrowers] who, for all practical purposes, cannot appear" in Cook County because they "are indigent" and "cannot afford the travel costs to [that] distant forum." *Id.* at 42–43, 46. The court also found "there was no evidence that [borrowers] could have defended their interests without making a personal appearance" in Cook County. *Id.* at 64. The Supreme Court thus concluded that, in that particular case, "the burden of an inconvenient forum, when combined with the indigence of the [borrowers]" and other factors, "effectively deprive[d] [the borrowers] of any means of defending themselves in these actions" and therefore constituted "a due process deprivation." *Id.* at 63 (citing *Boddie*, 401 U.S. at 377).

In the present matter, Piasa Armory, similar to the student loan borrowers in *Williams*, has demonstrated that both Sangamon and Cook Counties are inconvenient forums for the Plaintiff. While Sangamon County will be the primary focus due to its closer proximity, Cook County presents significantly greater inconvenience to the Plaintiff. However, it is fair to say that, in this case, for this Plaintiff, the inconvenience of Cook County is exponentially greater than the inconvenience of Sangamon County. For counties closer to the northern part of the state, the opposite may well be true.

To the extent that this statute merely *permits*, a Plaintiff to file in Cook or Sangamon County, and bars the State from moving for transfer, the Court finds it is Constititonal. To the extent that a resident of Cook or Sangamon County wished to file a lawsuit in their home county, this Court also finds that would be constitutional and permitted under the statute. Therefore, as this statute is constitutional under at least those circumstances, this is not a facial challenge, it is

an as applied challenge. It is merely a very broad as applied challenge. As applied to Plaintiff in this case, as a practical matter, transferring this action to Sangamon County will deprive it of the ability to put up its best challenge to the constitutionality of FIRA.

As the Plaintiff in the underlying causes of action, Piasa Armory has the burden of providing initial proof for its case. Assuming the parties do not agree on the facts, which is likely, this would require a trial with testimonies, witnesses, and exhibits. Piasa Armory has identified potential witnesses who would need to travel to Sangamon County to participate in this case if it were transferred. *See Williams*, 139 Ill. 2d at 64 ("there was no evidence that [the student loan borrowers] in this case could have defended their interests without making a personal appearance [in Cook County]"). It is unclear how Plaintiff could present its case without witnesses or documents.

Plaintiff has submitted evidence, in the form of maps showing Sangamon (as well as Cook County), much farther away from Plaintiff than Madison County. Plaintiff submits an affidavit from Scott Pulaski, setting forth Madison County is convenient for him, and Sangamon County is not. Plaintiff's counsel, and Plaintiff itself, is located in Madison County. While the location of Plaintiff's counsel is not entitled to much consideration, just as in the *forum non conveniens* analysis, it is entitled to some. For its part, the State cites to not a single witness that it would actually call that hails from Sangamon County, and does not provide a single affidavit on witness convenience. Transfer to Sangamon County also totally prevents the possibility of a jury view, such as Plaintiff's store, should there be a dispute about Plaintiff's business.

The State contends that Piasa Armory has failed to establish that its corporate representatives are incapable of traveling to Sangamon County. While it is indeed possible for

witnesses to physically travel long distances, the issue at hand pertains to reasonableness and convenience, not mere physical capability.

Piasa Armory has asserted that its corporate representatives have chosen to handle the prosecution of this case in Madison County (as affirmed by Scott Pulaski's affidavit). The State has made no effort to counter this claim or provide alternative witnesses. Consequently, the State's presentation, or lack thereof, falls short of the precedent set by the Illinois Supreme Court. In *Williams* the student loan borrowers presented evidence showing the inconvenience to Cook County. 139 Ill. 2d at 42–43. Piasa Armory has presented similar such evidence in this case as what was done in *Williams*.

Furthermore, the Defendant asserts that Sangamon County is a suitable location for conducting remote proceedings, such as using zoom or similar systems. The Court is aware that Supreme Court Rule 206(h), Supreme Court Rule 45(c)(1) and 241(b) allows broad use of video conference or telephone at an evidentiary hearing or trial "for good cause shown and upon appropriate safeguards" or even as of right. Remote hearings conducted pursuant to these rules *can* provide adequate due process to all participants. *E.g., In re P.S.*, 2021 IL App (5th) 210027, ¶ 62. This Court is very familiar with the use of remote proceedings, as it makes said available in many circumstances, and indeed, finds then quite useful in many cases.

However, the availability of remote proceedings does not bolster the State's argument. The State could also participate in Madison County using the same remote means. Certainly, for persons with appropriate computer equipment and subscriptions, which the Court takes judicial notice of, includes the Attorney General's Office, as they do often appear in this Court remotely by zoom and the like making some hearings more convenient. But that does not follow that *all* persons have such equipment or subscriptions. There is nothing in the record to suggest that

Plaintiff, or its employees, have such equipment, which may well be relatively common for lawyers, but not all persons are lawyers. Additionally, this service is not without flaws, and the Court's experience suggests that complex factual matters requiring documentation are best dealt with in-person. Online remote appearances, much like telephone depositions and appearances by telephone, which have been done for literally decades, are most useful for simple matters, and less useful the more complicated and disputed the matters. The Court takes judicial notice that telephones were in widespread use at the time *Williams* was decided. Thus, contrary to the argument of the State, the remote appearance option was available to the student loan borrowers in *Williams*, if one includes the use of telephones in the term.

The Illinois Supreme Court held in *Williams* "the burden of an inconvenient forum, when combined with the indigence of the [student loan borrowers]" *and other factors* caused the Illinois Supreme Court to find the venue statute unconstitutional in that case. *Id.* at 63–64.

In this case, Sangamon is an inconvenient forum. Just as Sangamon County was an inconvenient forum in an oil and gas case brought by the State in *People ex rel. Madigan v. Leavell*, 905 NE 2d 849 - Ill: Appellate Court, 4th Dist. 2009, Sangamon County is simply inconvenient to Plaintiff, inconvenient to Plaintiff's witnesses, and Defendant lists no witnesses that Sangamon County would be convenient for. While hardly entitled to any weight, even the location of Plaintiff's counsel is in Madison County. While documents may be relatively easy to move, there is no showing that any relevant documents are anywhere other than Madison County.

Furthermore, by abolishing *forum non conveniens* under this statute, the procedural safeguard of *forum non conveniens* is eliminated. The *Leavell* case is a classic example of why technically proper venue for the State can be unreasonable for a private litigant, and how *forum*

non conveniens can ameliorate that. Unfortunately, this protection has been abolished by the State.

Essentially, this statute embodies precisely what the Supreme Court apprehended would transpire if it ruled differently in *Williams*. The Court observed the arbitrary and abrupt departure of the legislature from established venue principles, not only for one agency, as in *Williams*, but for all state agencies. This effectively exposes every party involved in a dispute with the State of a constitutional magnitude to "be entirely at [an agency's] mercy, since such an action could be made oppressive and unbearably costly" (Heldt, 329 Ill.App. at 414, 69 N.E.2d 97), and place venue "in a faraway place where [the party] neither resides nor carries on any kind of activities" (American Oil Co., 133 Ill.App.2d at 261, 273 N.E.2d 17). *Williams*, 139 Ill. 2d at 58.

In *Williams* it is enough that the forum is inconvenient, and that the statute is not consistent with traditional notions of substantial justice and fair play when it comes to venue. This finding is supported by applying the three factors established in *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976), which the Illinois Supreme Court used to frame its due process analysis of the venue statute at issue in *Williams*. *See, e.g.*, 139 Ill. 2d at 63. "Per *Mathews*, when evaluating a procedural due process challenge, [courts] should consider (1) the government's interest in the procedure, including the function involved and the fiscal or administrative burdens that the additional or substitute procedure would entail, (2) the private interest affected by the governmental action, and finally (3) the risk of an erroneous deprivation of said interest through the procedures being contested and the probable value, if any, of additional or substitute procedural safeguards." *People v. Deleon*, 2020 IL 124744, ¶ 27.

Considering the first *Mathews* factor, the Court finds the government interest here minimal at best. Sangamon County is not more important than any other county in this State. The fact that it is the seat of state government is ultimately irrelevant. Based on the record before the Court, the General Assembly will not be called as witnesses. The Defendant in this case, as noted in *Williams*, has offices throughout Illinois, including St. Clair County, whose attorneys regularly appear in this Court, and are familiar with this Court's rules and customs. The Attorney General is responsible for representing the State and its officers in court in every county. Therefore, for all these reasons, transferring this action to Sangamon County would simply make it more difficult for the Plaintiff to prosecute its constitutional claims.

The Court hereby concludes that the second *Mathews* factor, namely the private interest factor, strongly disfavors transfer. In *Williams*, the Illinois Supreme Court explained the private interest at issue in a due process challenge to a venue statute is the "right of *meaningful* access to the courts." 139 Ill. 2d at 42. While this Court acknowledges without hesitation that the judges in Sangamon County would impartially handle this case, the reality remains that the greater the distance between the parties, witnesses, the sources of evidence, the more arduous it becomes to access the courthouse.

Likewise, the Court determines the third *Mathews* factor, the risk of erroneous deprivation, again strongly disfavors transfer, for the reasons set forth above.

While the Court recognizes that this is not a motion for *forum non conveniens*, many of the standards and purposes associated with that doctrine are relevant to this case. For instance, several *forum non conveniens* factors align with the *Mathews* factors, which considers both government and private interests. Despite the Attorney General's assertion that *forum non conveniens* no longer serves any practical purpose, this Court lacks jurisdiction to contradict the

Supreme Court. If the Supreme Court wishes to abolish *forum non conveniens*, it can do so in the same way it adopted it, by having the Supreme Court declare it to be so. This Court has no power to overrule the Supreme Court.

The State's argument, that the Illinois Supreme Court acknowledged over two decades ago in the case *First American Bank v. Guerine,* 198 Ill. 2d 511, 525 (2002), that changing world circumstances undermine the doctrine's relevance, does not grant this Court authority to abolish the doctrine. If the Attorney General were to appeal, and the Supreme Court declared its decades of *forum non conveniens* law should be discarded, this Court will comply. If, as the State suggests, the Illinois Supreme Court should thus consider modifying or eliminating Supreme Court Rule 187, that would be an argument to take place in that Court.

Piasa Armory also contends section 2-101.5(a) is unconstitutional because the bill enacting it violated the Three Readings Rule of the Illinois Constitution. Legislative history shows that HB3062, which became the Public Act in question, started out as a landlord tenant bill, ultimately passing out of the House as a landlord tenant bill. The bill, however, was amended in the Senate, by striking all reference to landlord tenant law, and replacing same with a new venue statute at issue herein. Once "gutted and amended", the statute was not read three times in the Senate, and as a venue bill, was not read three times in the House. On its face, this appears to violate the three readings rule, and possibly the single subject rule. However, as Piasa Armory correctly concedes, the Court must follow Illinois Supreme Court precedent foreclosing such challenges under the Enrolled Bill Doctrine of the Illinois Constitution. *E.g., Friends of Parks v. Chicago Park District*, 203 Ill. 2d 312, 328–29 (2003). Thus, while Plaintiff concedes this Court cannot rule in its favor on the issue, it is clear that Plaintiff intends to challenge existing law at a higher court. To that end, Plaintiff's Three Readings Rule challenge is denied,

and this Court's ruling in this case is in no way based upon the Three Readings Rule. If the precedent of the Supreme Court were different, this Court would apply that precedent.

However, as 735 ILCS 5/2-101.5(a) does violate due process. as applied to persons who reside or were injured outside of Cook or Sangamon County, the motion to transfer is Denied, as 735 ILCS 5/2-101.5 is unconstitutional, as Defendant seeks to apply it. This triggers obligations under Illinois Supreme Court Rule 18.

Pursuant to Supreme Court Rule 18, this Court states and finds as follows:

(a) the court makes the finding in a written order or opinion, or in an oral statement on the record that is transcribed;

In this case, this order fulfills the requirement as a written order.

(b) such order or opinion clearly identifies what portion(s) of the statute, ordinance, regulation or other law is being held unconstitutional;

In this case, the Court declares that Public Act 103-0005 is unconstitutional when applied to residents outside of Cook or Sangamon County, as well as individuals injured outside of Cook or Sangamon County.

(c) such order or opinion clearly sets forth the specific ground(s) for the finding of unconstitutionality, including:

(1) the constitutional provision(s) upon which the finding of unconstitutionality is based;

In this case, it is based on Constitutional Due Process.

(2) whether the statute, ordinance, regulation or other law is being found unconstitutional on its face, as applied to the case sub judice, or both;

While the statute is generally unconstitutional, there may be instances where it could be considered constitutional. Therefore, it is pronounced unconstitutional as applied.

(3) that the statute, ordinance, regulation or other law being held unconstitutional cannot reasonably be construed in a manner that would preserve its validity;

There is no reasonable interpretation of the statute.

(4) that the finding of unconstitutionality is necessary to the decision or judgment rendered, and that such decision or judgment cannot rest upon an alternative ground; and

There is no alternative non-constitutional argument that can be applied.

(5) that the notice required by Rule 19 has been served, and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute, ordinance, regulation or other law challenged.

Rule 19 has been complied with.

ACCORDINGLY, the motion to transfer to Sangamon County is DENIED. Piasa Armory's cross-motion for summary judgment on Count V is GRANTED. The Court finds IL Public Act 103-0005 unconstitutional as applied. Pursuant to Supreme Court Rule 304, this Court finds no just reason to delay enforcement or appeal of this Order.

The Defendant is expected to appeal this Order. It is also anticipated that as Plaintiff brought its count under 42 USC 1983, that it will file a fee and cost petition under Section 1988. Thus,

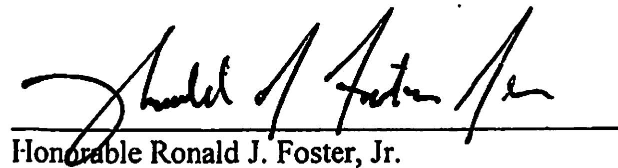
1. Defendant is ordered to file an answer to Counts I through IV within 30 days of this date.
2. Plaintiff is ordered to file its fee and costs petition, for Count V, within 45 days of this date, unless Defendant files a notice of appeal of this Order.

3. If the Defendant files an appeal of this Order within 30 days, this Court will address fees and costs for Count V following disposition of the appeal.

4. If the Defendant does not file an appeal of this Order within 30 days, Defendant may file any response or objection to the fee petition within 30 days of same being filed. A reply in support may be filed 14 days thereafter. This Court will either rule on said petition, or set same for argument, depending on what is filed by the parties.

IT IS ORDERED.

Dated: 3/1/24



Honorable Ronald J. Foster, Jr.