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No. 130539

IN THE SUPREME COURT OF ILLINOIS

PIASA ARMORY, LLC, *Plaintiff-Appellee*, v. KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, *Defendant-Appellant*.	Interlocutory Appeal from the Circuit Court of the Third Judicial Circuit, Madison County, Illinois No. 2023-LA-1129 The Honorable RONALD J. FOSTER, JR., Judge Presiding.

MOTION OF THE ILLINOIS MANUFACTURERS' ASSOCIATION, ILLINOIS RETAIL MERCHANTS ASSOCIATION, CHICAGOLAND CHAMBER OF COMMERCE, CHEMICAL INDUSTRY COUNCIL OF ILLINOIS, ILLINOIS COALITION FOR LEGAL REFORM, ISMIE MUTUAL INSURANCE COMPANY, ILLINOIS INSURANCE ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, AMERICAN TORT REFORM ASSOCIATION, AND AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE* IN SUPPORT OF PRESERVING INTRASTATE *FORUM NON CONVENIENS*

The Illinois Manufacturers' Association, Illinois Retail Merchants Association, Chicagoland Chamber of Commerce, Chemical Industry Council of Illinois, Illinois Coalition for Legal Reform, ISMIE Mutual Insurance Company, Illinois Insurance Association, National Association of Manufacturers, American Tort Reform Association, and American Property Casualty Insurance Association, pursuant to Rules 345 and 361 of the Illinois Supreme Court, respectfully move this Court for leave to file the accompanying

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brief as *amici curiae* in support of the availability of intrastate *forum non conveniens*. In support of their motion, proposed *amici* state the following:

Identity and Interest of the Proposed *Amici*

1. Proposed *amici* collectively represent the interests of Illinois manufacturers, retailers, and other businesses, healthcare professionals, and their insurers. They also include organizations that promote fairness, balance, efficiency and predictability in civil litigation, and that are concerned with litigation abuse.

2. Proposed *amici* have a strong interest in this case because the doctrine of intrastate *forum non conveniens*, which the Attorney General and *amicus curiae* Illinois Trial Lawyers Association (ITLA) invite this Court to abandon,[1] is critical to preserving the fair administration of justice in a wide range of cases that affect *amici*'s members.

3. The proposed brief takes no position on the constitutionality of 735 ILCS 5/2-101, which limits venue in challenges to the constitutionality of state statutes, rules, or executive orders to Sangamon and Cook counties, or the Plaintiff's underlying challenge to the constitutionality of the Illinois Firearm Industry Responsibility Act, Pub. Act. No. 103-559. Rather, the brief responds to arguments urging this Court to overrule *Torres v. Walsh*, 98 Ill. 2d 338 (1983), and its progeny, which has implications far beyond this case.

[1] *See* Attorney General Br. at 36-37; ITLA Br. at 1.

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4. The Illinois Manufacturers' Association (IMA) is an Illinois not-for-profit corporation founded in 1893 and is the oldest and largest state-wide manufacturing association in the United States. More than 4,000 Illinois manufacturing companies currently hold IMA membership. The IMA's members, which include businesses of all sizes, employ over seventy-five percent of Illinois' manufacturing workforce. The IMA's mission is to preserve and strengthen the Illinois manufacturing base by providing information to and advocating on behalf of member companies on issues that relate to the Illinois business climate, such as industrial relations, federal and state regulations, insurance, public affairs, and environmental matters. The IMA works actively in the judicial and legislative arenas in furtherance of this objective and has filed amicus briefs in other important cases affecting manufacturers' interests in Illinois.

5. The Illinois Retail Merchants Association (IRMA) serves as the voice of retailing in Illinois. IRMA represents stores of all sizes and merchandise lines. From the nation's largest retailers to independent businesses in every corner of the State, merchants count on IRMA to promote the best environment to do business in Illinois. The IRMA works actively in the judicial, legislative and executive branches in furtherance of its mission and has filed *amicus* briefs in other important cases impacting the interests of retailers doing business in Illinois.

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6. The Chicagoland Chamber of Commerce advocates on behalf of Chicagoland businesses to help create and maintain a competitive business environment that encourages sustained economic growth, specifically developing employer-friendly policies for the greater Chicago area to enhance job creation and retention. The Chicagoland Chamber is a unifying voice for businesses across the region, and includes retailers of all sizes, in addition to other commercial entities.

7. The Chemical Industry Council of Illinois (CICI) has represented the chemical industry since 1951, and today continues to serve as the unified voice of a sector that supports nearly 230,000 jobs in the state. CICI has 205 members representing over 656 facilities in Illinois. CICI's advances responsible policies that grow the industry and make Illinois a better place to create jobs.

8. The Illinois Coalition for Legal Reform (ICFLR) is a nonpartisan organization formed in 2023 to combat abusive litigation and excessive jury verdicts by creating a fair, efficient, and predictable legal system for all Illinois citizens. Through legislative advocacy and education efforts, the ICFLR is fighting for a civil justice system that is fair to all litigants and conducive to job and economic growth.

9. ISMIE Mutual Insurance Company ("ISMIE") is a policyholder-owned national medical professional liability carrier headquartered in Illinois. ISMIE supports, advocates for, and protects healthcare professionals and all

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they do to provide care in the community. It is ISMIE's pledge to present a strategic, vigorous defense for every claim. ISMIE has participated as *amicus curiae* in cases of importance to healthcare professionals and the medical community.

10. The Illinois Insurance Association (IAA), founded in 1959, is an insurance trade association representing the largest property and casualty insurance companies in Illinois. The IIA's mission is to preserve and enhance a positive insurance climate in which member companies may conduct business, responsibly serve the needs of Illinois consumers, and grow and prosper in a highly competitive insurance market.

11. The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs nearly 13 million men and women, contributes $2.87 trillion to the United States economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

12. The American Tort Reform Association (ATRA) is a national, nonpartisan, nonprofit coalition of large and small businesses, trade

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associations, and professional firms. ATRA is dedicated to improving the civil justice system, with a focus on promoting fairness, balance, efficiency and predictability in civil litigation. ATRA has a longstanding concern with improper forum shopping to jurisdictions that are perceived favorable to plaintiffs or imbalanced in their rulings on liability or damages. ATRA frequently files *amicus curiae* briefs in cases involving important civil justice issues.

13. The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent 65 percent of the U.S. property-casualty insurance market, including 63.2 percent of the property-casualty insurance market in the State of Illinois. On issues of importance to the property and casualty insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members in legislative and regulatory forums at the state and federal levels and files *amicus curiae* briefs in significant cases before federal and state courts. This allows APCIA to share its broad national perspective with the judiciary on matters that shape and develop the law.

Reasons to Allow the Proposed *Amici Curiae* Brief

14. The proposed *amici* respectfully submit that due to their roles as the voice of businesses, healthcare professionals, and insurers in Illinois, their unique perspectives will assist the Court in answering the questions presented

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in this case and explaining the adverse consequences on businesses and other entities of accepting the invitation to eliminating the availability of intrastate *forum non conveniens* in Illinois.

15. Though not necessary to deciding the constitutionality of section 2-101.5 of the Code of Civil Procedure, enacted in 2023 to limit venue for constitutional challenges to state statutes to Sangamon and Cook County, ITLA and the Attorney General invite this Court to use this case as a vehicle for abandoning the longstanding availability of this doctrine. This Court granted ITLA's motion for leave to file a brief as *amicus curiae* in support of the Appellant on August 1, 2024.

16. Proposed *amici* submit the accompanying brief to explain the continued importance of the doctrine of *intrastate forum non conveniens* to "fundamental fairness and sensible and effective judicial administration." *Dawdy v. Union Pac. R.R. Co*., 297 Ill. 2d 167, 171 (2003). The brief will show that, regardless of advances in technology that may, in some cases, make it easier to litigate in a distant county, intrastate *forum non conveniens* also serves the underlying purpose of "curtailing forum shopping by plaintiffs" when there is no legitimate connection between the chosen venue and the litigation. *First Am. Bank v. Guerine*, 198 Ill. 2d 511, 521 (2002). The brief will also show that when a plaintiff's choice of forum can only be explained as an attempt to pursue a case in a court perceived as more likely to find liability, award larger damages, or provide other strategic advantages, courts should

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retain authority to transfer that case to an appropriate county connected to the litigation, such as where the plaintiff lives or the alleged tortious conduct or injury occurred. The brief will explain why the judiciary's ability to respond to cases of forum shopping in such exceptional circumstances through application of the doctrine is important not only to the convenience of litigants and witnesses, but also to the integrity and fairness of the civil justice system and the public interest.

For the foregoing reasons, the undersigned proposed *amici curiae* respectfully request leave to file the attached brief.

Respectfully submitted,

ILLINOIS MANUFACTURERS' ASSOCIATION, ILLINOIS RETAIL MERCHANTS ASSOCIATION, CHICAGOLAND CHAMBER OF COMMERCE, CHEMICAL INDUSTRY COUNCIL OF ILLINOIS, ILLINOIS COALITION FOR LEGAL REFORM, ISMIE MUTUAL INSURANCE COMPANY, ILLINOIS INSURANCE ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, AMERICAN TORT REFORM ASSOCIATION, AND AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION

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BRIEF OF *AMICI CURIAE* OF THE ILLINOIS MANUFACTURERS' ASSOCIATION, ILLINOIS RETAIL MERCHANTS ASSOCIATION, CHICAGOLAND CHAMBER OF COMMERCE, CHEMICAL INDUSTRY COUNCIL OF ILLINOIS, ILLINOIS COALITION FOR LEGAL REFORM, ISMIE MUTUAL INSURANCE COMPANY, ILLINOIS INSURANCE ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, AMERICAN TORT REFORM ASSOCIATION, AND AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION IN SUPPORT OF PRESERVING INTRASTATE *FORUM NON CONVENIENS*

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INTEREST OF *AMICI CURIAE*

Amici curiae include the Illinois Manufacturers' Association, Illinois Retail Merchants Association, Chicagoland Chamber of Commerce, Chemical Industry Council of Illinois, Illinois Coalition for Legal Reform, ISMIE Mutual Insurance Company, Illinois Insurance Association, National Association of Manufacturers, American Tort Reform Association, and American Property Casualty Insurance Association. These organizations collectively represent the interests of Illinois manufacturers, retailers, other businesses, healthcare professionals, and their insurers. They also include organizations that promote fairness, balance, efficiency and predictability in civil litigation. *See* Motion for Leave to File a Brief of *Amici Curiae* in Support of the Availability of Intrastate *Forum Non Conveniens*. *Amici* have a strong interest in this case because the doctrine of intrastate *forum non conveniens*, which the Attorney General and *amicus curiae* Illinois Trial Lawyers Association (ITLA) invite this Court to abandon,[1] is critical to preserving the fair administration of justice in a wide range of cases that affect *amici's* members.

This brief takes no position on the constitutionality of 735 ILCS 5/2-101, which limits venue in challenges to the constitutionality of state statutes, rules, or executive orders to Sangamon and Cook counties, or the Plaintiff's underlying challenge to the constitutionality of the Illinois Firearm Industry Responsibility Act, Pub. Act. No. 103-559. Rather, this brief responds to

[1] *See* Attorney General Br. at 36-37; ITLA Br. at 1.

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arguments urging this Court to overrule *Torres v. Walsh*, 98 Ill. 2d 338 (1983), and its progeny, which has implications far beyond this case.

INTRODUCTION

The doctrine of intrastate *forum non conveniens* is "founded in considerations of fundamental fairness and sensible and effective judicial administration." *Torres*, 98 Ill. 2d at 344 (quoting *Adkins v. Chicago, Rock Island & Pac. R.R. Co.*, 54 Ill. 2d 511, 514 (1973)). This Court has repeatedly maintained and applied the doctrine to advance these purposes. *See, e.g., Dawdy v. Union Pac. R.R. Co.*, 297 Ill. 2d 167, 171 (2003); *Pelle v. Skelgas, Inc.*, 163 Ill. 2d 323, 345 (1994). Regardless of advances in technology that may, in some cases, make it easier to litigate in a distant county, the doctrine's underlying goal of "curtailing forum shopping by plaintiffs" when there is no legitimate connection between the chosen venue and the litigation, *First Am. Bank v. Guerine*, 198 Ill. 2d 511, 521 (2002), remains as salient today as ever. Local controversies should be decided in local courts.

The doctrine of intrastate *forum non conveniens* is highly deferential to a plaintiff's choice of forum, providing courts with authority to transfer an action in "exceptional circumstances" in which a plaintiff has chosen a county that has "no practical connection" to the case—where the plaintiff does not live and when the conduct or incident at issue occurred elsewhere. *Pelle*, 163 Ill. 2d at 330, 333. The doctrine permits a court to transfer a case not only for the convenience of the parties, but to better serve "the ends of justice." *Dawdy*, 297 Ill. 2d at 172. That is why this Court has established both private and public

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interest factors to guide a circuit court when evaluating whether to transfer a case.

The alternative, allowing a case to proceed in any Illinois county in which any defendant resides, does business, or has a registered office or agent, *see* 735 ILCS 5/2-101, 5/2-102, will invite plaintiffs' attorneys to select courts (and name defendants) purely for strategic reasons. Without the check of an intrastate *forum non conveniens* motion, plaintiffs' attorneys will increasingly file complaints in counties in which they expect a more favorable outcome – anticipating that its judges are more likely to grant their motions, its juries are more likely to find liability, or that the ultimate outcome will be a larger damage award. This unrestrained forum shopping will take a toll not only on defendants and witnesses, but also unnecessarily burden local jurors and courts, fail to protect local interests in deciding local cases, and undermine the integrity of the civil justice system.

The Court should reject this latest invitation to abandon the doctrine of intrastate *forum non conveniens*, which does not appear necessary to deciding the constitutionality of a venue law that governs only the proper forum for filing constitutional claims against the state, 735 ILCS 5/2-101.5.

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ARGUMENT

I. Intrastate *Forum Non Conveniens* is a Valuable and Fair Mechanism for Courts to Address Unjustifiable Forum Shopping.

This Court has established public and private interest factors for evaluating intrastate *forum non conveniens* motions that consider the interests of parties and other participants in the litigation as well as broader concerns of fairness and justice beyond those individuals. ITLA's invitation to abandon the doctrine, which narrowly focuses on advances in technology like the ability to conduct remote hearings, misses many of the key purposes that the doctrine serves.

When evaluating a *forum non conveniens* motion, courts consider private interests that include "(1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive," such as the ability of a jury to view a site of importance in the litigation. *Guerine*, 198 Ill. 2d at 516. Courts also evaluate how the plaintiff's choice of forum affects the public and the judicial system by considering "(1) the interest in deciding local controversies locally; (2) the unfairness of imposing the expense of trial and the burden of jury duty on residents of a county with little connection to the litigation; and (3) the administrative difficulties presented by adding further litigation to court dockets in an already congested fora." *Id.* at 516-17. The purpose of this

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approach is not only to facilitate the convenience of the parties, but also to "better serve . . . the ends of justice." *Dawdy*, 297 Ill. 2d at 172.

Far from opening the door to abusive motions to transfer cases, defendants face a heavy burden to prevail. The doctrine is highly deferential to the plaintiff's chosen court. *See id.* at 520-21 ("[T]he battle over forum begins with the plaintiff's choice already in the lead."). If a plaintiff files a lawsuit in the county in which that person lives or the accident or injury occurred, courts will assume that county is convenient because it will be "decided at home." *Guerine*, 198 Ill. 2d at 518 (quoting *Brummett v. Wepfer Marine, Inc.*, 111 Ill. 2d 495, 500 (1986)). Likewise, when two or more counties share a connection to the litigation, the case will ordinarily proceed where filed. *See Langenhorst v. Norfolk S. Ry. Co.*, 219 Ill. 2d 430, 447, 453 (2006). It is only when a plaintiff is not a resident of the chosen forum and the injury did not occur there that Illinois courts provide less deference to the plaintiff's choice of forum. *See Guerine*, 198 Ill. 2d at 517. Even in such instances, "[u]nless the factors weigh strongly in favor of transfer, the plaintiff's choice of forum should be rarely disturbed." *Dawdy*, 207 Ill. 2d at 173; *see also Pelle*, 163 Ill. 2d at 345 ("[T]he balance of factors must strongly favor the defendants' motion for *forum non conveniens* before a case should be transferred to a forum other than the one chosen by the plaintiff.").

Plaintiffs' attorneys sometimes cross the line, however, by suing in a county that has "no practical connection" to the litigation, filing there solely

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because that location is viewed as more favorable to a client and without regard to the adverse consequences this choice has on others. *Pelle*, 163 Ill. 2d at 330, 333. In these "exceptional circumstances"—in which the plaintiff's choice can only be understood as an attempt to gain a strategic advantage because the county's judges or juries are perceived as favoring liability, possessing anti-corporate bias, or prone to high damage awards—the doctrine permits transfer to a "more appropriate forum." *Id.; see also Langenhorst*, 219 Ill. 2d at 442; *Guerine*, 198 Ill. 2d at 520.

While curtailing "forum shopping" by plaintiffs is not itself a factor in deciding a motion for intrastate *forum non conveniens,* such concerns underlie the doctrine. *See Guerine*, 198 Ill. 2d at 521. Plaintiffs' attorneys understandably may file an action in a favorable forum when permitted to do so by the general venue statute, but this practice must be balanced against the judiciary's interest in "protect[ing] its own good name as well as protect[ing] defendants . . . against the practice of seeking out soft spots in the judicial system in which to bring particular kinds of litigation." *Dawdy*, 207 Ill. 2d at 175 (quoting *Espinosa v. Norfolk & Western Ry. Co.*, 86 Ill. 2d 111, 122-23 (1981) and *Miles v. Illinois Central R.R. Co.*, 315 U.S. 698, 706 (1942) (Jackson, J., concurring)). "Decent judicial administration could not tolerate forum shopping as a persuasive or even legitimate reason for burdening communities with litigious controversies which arose elsewhere and should in all justice be tried there." *Id.* (quoting *Pruitt Tool & Supply Co. v. Windham*, 379 P.2d 849,

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850 (Okla. 1963), alterations omitted); *see also Fennell v. Illinois Cent. R. Co.*, 369 Ill. Dec. 728, 734 (2012) (reaffirming these concerns in the context of interstate *forum non conveniens*). "A plaintiff's right to choose a forum 'cannot be permitted to override the public's interest in, and need for, an orderly, efficiently operated judicial system.'" *Dawdy*, 207 Ill. 2d at 175 (quoting *Espinosa*, 86 Ill. 2d at 123).

This Court's decisions establishing the doctrine of intrastate *forum non conveniens* and reaffirming its availability illustrate the type of unjustifiable forum shopping that animates and continues to necessitate the doctrine across a wide range of litigation. For example, in *Torres*, a medical liability action following a car accident, the defendants included eighteen doctors and nurses who practiced in Sangamon County, a hospital in Sangamon County, and a motorist who lived in Sangamon County. Yet, the plaintiff sued in Cook County. *See Torres*, 98 Ill. 2d at 340. This venue was technically proper because the plaintiff also sued the hospital's data processing service, which was not involved in patient care, as well as the company that owned the hospital, which had registered agents in Cook County. *See id.* at 343. There, the trial court acted within its sound discretion in transferring the case from Cook County to Sangamon County. *See id.* at 353.

In *Pelle*, a plaintiff filed a product liability action in St. Clair County stemming from a gas explosion and fire, even though the plaintiff's destroyed home, the medical and firefighting personnel, the defendant propane company,

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and all the workers involved were in Pike County, 100 miles away. *See* 163 Ill. 2d at 338. St. Clair County's sole connection to the suit was that a facility that supplied propane to a defendant was located there. *See id.* at 338-39. The forum shopping was particularly glaring as the plaintiff initially filed the lawsuit in Madison County and, after the trial court transferred the case to Pike County, the plaintiff amended the complaint to add the St. Clair County defendant, voluntarily dismissed the action before trial, and refiled it in St. Clair County. *See id.* at 344. This Court found the St. Clair County Circuit Court abused its discretion in denying transfer to Pike County.

This Court next visited intrastate *forum non conveniens* in the context of an automobile accident case. There, the plaintiffs' attorney filed the action in Madison County even though his client lived a four-hour drive away in Greene County and the accident occurred in Macoupin County where the other driver and most of the eighteen potential witnesses lived. *See Dawdy,* 297 Ill. 2d at 169-70. Madison County's sole ties to the action consisted of one defendant conducting business there and another defendant maintaining a post office box in the county. *See id.* at 182, 184. The Court rejected those weak links, finding Madison County had no "legitimate interest" in the case that warranted burdening the defendants, witnesses, local residents who would serve as jurors, as well as Madison County's congested circuit court. *Id.* at 181-83.

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As these cases demonstrate, this Court's application of intrastate *forum non conveniens* is not only driven by the inconvenience to defendants and potential witnesses of trying a case in a distant county. Rather, it is often a response to transparent forum shopping that has broader effects on the public interest and judicial system. Yet, ITLA's brief relegates the Court's established private and public interest factors to a footnote (ITLA Br. at 2 n.1) and instead focuses exclusively on the impact of technology on parties and witnesses of trying a case in the plaintiff's chosen county. This approach inappropriately considers just the first two private interest factors, while disregarding all other concerns, including the public's interest in deciding local cases locally. *See Pelle*, 163 Ill. 2d at 336-37 (instructing that *forum non conveniens* "requires evaluation of the total circumstances rather than concentration on any single factor").

II. Advances in Communication Technology Do Not Eliminate the Need for Intrastate *Forum Non Conveniens.*

In the post-pandemic era, even with advances in communications technology and their increased acceptance in litigation, courts continue to judiciously apply intrastate *forum non conveniens* in a manner that is fair to all litigants and the public, and protects the integrity of the civil justice system. Recent appellate decisions demonstrate the continuing need for courts to have the flexibility to decline jurisdiction over cases that lack a connection to the locality and transfer those cases to a more appropriate forum.

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This Court has already recognized that "[w]e live in a smaller world" due to increased ease of traveling and communicating, and development of the internet. *Langenhorst*, 219 Ill. 2d at 550 (quoting *Guerine*, 198 Ill. 2d at 525). Indeed, Illinois courts, in recent years, have acknowledged that advances in modern communication methods have rendered the ease of access to documentary evidence a "less significant factor" today than in the past. *Fennell v. Illinois Cent. R. Co.*, 369 Ill. Dec. 728, 734 (2012); *see also Monteagudo v. Gardens of Belvidere, LLC*, 468 Ill. Dec. 964, 975-76 (1st Dist. 2023); *Hendricks v. Petersen Health Quality, LLC*, 2021 IL App (3d) 200171-U, at ¶ 32 (2021). While the latest advances in technology may further alleviate some inconvenience for defendants and witnesses of litigating in a distant county, they do not eliminate the need for intrastate *forum non conveniens* to address situations in which a plaintiff's choice continues to pose obstacles to fairly litigating a case.

Remote trials today are simply not the norm and can present practical and due process problems. For instance, they present risks that judges or jurors miss critical evidence due to a technical issue with a webcam or microphone, that participants cannot fully examine evidence presented on a screen, and that judges are unable to monitor and control jurors and witnesses as they would in a courtroom. *See* Vincent Cail, *Mental Health Court in the Age of Zoom*, 8 Mental Health Matters 1 (Ill. Bar Ass'n, Nov. 2021). They do not allow an attorney to lean over and whisper to his or her client or an expert

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witness to gather needed information. *See id.* It may also be more difficult to read a witness's or juror's body language or effectively cross examine an expert. *See* Pail D. Motz et al., *Can You Hear Me Now? Eight Things We Wish We Had Known Before Having a Trial by Zoom*, For the Def. (May 2021) (discussing experience in a complex medical malpractice trial conducted remotely in Cook County). It may also not be possible, through a remote trial, for jurors to visit a distant accident site when a case may require it. Remote trials are feasible when circumstances necessitate them, but they are suboptimal.

Even if remote trials become more commonplace, advances in technology do not eliminate the need for courts to retain authority to address extreme, unjustifiable forum shopping that may damage the public's faith in a fair and impartial judicial system and cause administrative problems for courts.

The doctrine's importance is particularly evident in the medical liability context, where attorneys may choose from multiple courts in which to file an action given the number of potential defendants. In such instances, plaintiffs may establish venue based on the residence of any healthcare professional involved in the plaintiff's treatment; where a hospital or other medical practice, or its management company, does business or has a registered agent; or any county in which any portion of the alleged negligence occurred. Burdening healthcare providers with distant litigation can adversely affect patients and the public.

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There are many recent examples where this would have occurred, but for the availability of the doctrine of intrastate *forum non conveniens*. For instance, the First District addressed a wrongful death action against a long-term care facility that a plaintiff filed in Cook County, about 70 miles away from Boone County, where the facility was located and the decedent, plaintiff, and other family members lived. *See Monteagudo v. Gardens of Belvidere, LLC*, 468 Ill. Dec. 964, 969 (1st Dist. 2023). Cook County's only link to the litigation was that the facility's management company, whose operations were unrelated to the decedent's care, was located there. *See id.* at 977.

In another instance, a plaintiff brought a medical liability action in Cook County, even though the plaintiff, decedent, and hospital were all in DuPage County, which also was where most of the doctors named as defendants lived. *See Meier v. Ryan*, 469 Ill. Dec. 71 (1st Dist. 2023). That nonparty treating doctors lived in Cook County and the attorneys for both parties were located in Cook County, the appellate court found, did not shift the balance from DuPage County, where the care at issue occurred. *See id.* at 79, 80.

The Fifth District has also addressed a situation in which a plaintiff filed a medical liability action in St. Clair County, about 60 miles away from the Marion County hospital at which the defendant radiologist allegedly failed to timely diagnose the plaintiff's cancer. *See Brandt v. Shekar*, 443 Ill. Dec. 840 (5th Dist. 2020). St. Clair County had "absolutely no practical connection to

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the litigation" aside from it serving as the residence of one of the two defendant radiologists and location of the plaintiff's attorney's office. *Id.* at 850.

St. Clair County was again the preferred forum in *Kuhn v. Nicol*, 444 Ill. Dec. 719 (5th Dist. 2020), in which Clinton County plaintiffs alleged that medical professionals at a Clinton County hospital negligently failed to diagnose a stroke. To create a nexus to St. Clair County, plaintiffs' counsel submitted an affidavit indicating that 25 lay witnesses would testify on the plaintiff's condition, as well as individuals providing rehabilitative services, who were located in St. Clair County. *See id.* at 725. The Fifth District recognized this as a possible attempt to tip the scales of the *forum non conveniens* analysis toward St. Clair County, according the location of these potential witnesses little weight. *See id.* at 726 (citing *Bland v. Norfolk & Western Ry. Co.*, 116 Ill. 2d 217, 227 (1987)).

Similar tactics are employed outside the medical liability context. For example, in a case involving an injury from a workplace fire, the plaintiff sought to litigate the case in Sangamon County, rather than in Adams County, where the fire occurred and all key witnesses were located. *See Pratt v. Archer Daniels Midland Co.*, 2020 IL App (4th) 190476-U (2020). Nevertheless, the plaintiff contended that Sangamon County was "convenient" because they planned to call ten physicians who treated the plaintiff after his transfer from Adams County to Sangamon County for further medical care. *See id.* at ¶ 36. The plaintiff also argued that Sangamon County would be more convenient for

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expert witnesses, some of whom would be traveling from out-of-state. *See id.* at ¶ 35. The appellate court rejected these attempts to build a Sangamon County connection, recognizing that physician testimony regarding the plaintiff's medical care "would likely be duplicative and irrelevant" to the negligence claims. *See id*. at ¶ 35-36. Instead, the court placed the interests of numerous fact witnesses in Adams County before that of compensated expert witnesses. *See id*.

In each of these cases, developments in technology did not alter the appellate court's finding that deciding local controversies locally, not imposing jury service on residents of a community unrelated to an action, and not unduly congesting the local court, on balance with other factors, strongly supported transfer. *See Meier*, 469 Ill. Dec. at 80-81; *Monteagudo*, 468 Ill. Dec. at 979-80; *Brandt*, 443 Ill. Dec. at 855; *Kuhn*, 444 Ill. Dec. at 726-27. In some cases, there may be a need for a jury to view the accident site or at least have that option available to them. *See, e.g., Pratt*, 2020 IL App (4th) 190476-U, at ¶ 38; *see also Matthiessen v. Greenwood Motor Lines, Inc.*, 2021 IL App (1st) 200405-U, at ¶ 17.

These cases also underscore the importance of the availability of intrastate *forum non conveniens* to public health and safety. If plaintiffs have an absolute right to proceed in their forum of choice, doctors and nurses will need to travel substantially further distances from where the incident or injury occurred. *See, e.g.*, *Monteagudo*, 468 Ill. Dec. at 976-78. Without the doctrine,

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healthcare providers will be increasingly "pull[ed] . . . away from their work responsibilities, creating disruptions to staffing and disturbances in continuity of care," so that they can testify in medical liability actions. *Hendricks v. Petersen Health Quality, LLC*, 2021 IL App (3d) 200171-U, at ¶ 29 (2021). Requiring healthcare providers to travel to Cook County, for example, rather than the county in which they treated the plaintiff, live, and work would "require them to postpone or disrupt treatment of their patients, causing both logistical and increased work-related inconvenience." *Kearns v. Presence Central & Suburban Hospitals Network*, 2020 IL App (1st) 191470-U, at ¶ 20 (2020). Illinois residents could find it more difficult to access medical services as a result. *See Brandt v. Shekar*, 443 Ill. Dec. at 852 (finding that litigating in St. Clair County rather than Marion County, where the alleged malpractice occurred, could cause coverage issues for the radiology practice defendant).

The lack of *forum non conveniens* may also make first responders who frequently serve as witnesses in personal injury cases unavailable to serve their communities, simply so a plaintiff can obtain a perceived strategic advantage in an unrelated court. *See, e.g., Pratt*, 2020 IL App (4th) 190476-U at ¶¶ 7, 37 (indicating that pursuing litigation in the plaintiff's chosen forum rather than the county in which the incident occurred would require six first responders, as witnesses, to travel from Adams to Sangamon County—about 100 miles).

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Finally, ITLA incorrectly contends that intrastate *forum non conveniens* is abused by defendants to stall claims and burden courts with "wasteful satellite litigation." ITLA Br. at 3-4. Plaintiffs' attorneys, not defendants, set down the path of unnecessary litigation by choosing to sue in a county with no practical connection to their client, the conduct, or the injury. The case law presented in this brief demonstrates that what often occurs is: (1) a plaintiff files in a complaint in a county that is technically proper, but has no legitimate connection to the litigation, by naming multiple defendants and identifying one or more that lives, is headquartered, or operates in the favored venue or by finding some other remote link between the favored county and claim; (2) the plaintiff may retain expert witnesses or treating physicians in the favored county in an attempt to shift the "convenience" balance toward that forum; (3) rather than agree to transfer the claim to a fair forum that is closely connected to the litigation and proceed without delay, the plaintiff opposes a *forum non conveniens* motion; (4) after a trial court rules that, even after giving deference to the plaintiff's choice of forum, private and public interests strongly favor transfer, the plaintiff appeals that ruling rather than proceeds in the more suitable forum; and (5) throughout this process, the plaintiff uses the threat of trying the case in a more plaintiff-friendly forum and mounting legal fees to pressure the defendant to settle and demand higher amounts.

Intrastate *forum non conveniens* provides courts with the ability to respond to such tactics, protecting the interests of other parties, witnesses, the

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public, and the judicial system. It remains true today that "the *forum non conveniens* doctrine continues to serve a valuable policy that the courts of this State are sufficiently equipped to effectuate." *Pelle*, 163 Ill. 2d at 336.

III. Unjustifiable Forum Shopping Continues to Burden Courts and Jurors, and Tarnishes the State's Civil Justice System.

As the cases in this brief indicate, certain Illinois counties are often the favored choice of plaintiffs' attorneys and the subject of intrastate *forum non conveniens* motions. Court statistics, empirical studies, and anecdotal evidence indicate that these counties host a disproportionate level of litigation compared to their population and that plaintiffs' attorneys file actions there because of the likelihood of a more favorable result.

According to the latest statistical study prepared by the Administrative Office of the Illinois Courts, plaintiffs' attorneys filed 54,544 new civil cases seeking over $50,000 in the Cook County Circuit Court in 2022—an astounding 91% of 59,925 filings of this kind statewide. *See* Admin. Office of the Ill. Cts., *Illinois Courts: Statistical Summary 2022*, at 55. Of the 78,749 civil cases seeking over $50,000 that remained open in all circuit courts at the conclusion of 2022, nearly two-thirds (49,462) were pending in Cook County. *See id.* Yet, Cook County's 2022 population (5,109,292) is only 40.6% of the state's total (12,582,032). *See id.* at 7, 26.

Based on these statistics, plaintiffs' lawyers filed one lawsuit seeking over $50,000 for every 94 Cook County residents in 2022. Meanwhile, the circuit court for Illinois's second most populous county, DuPage County

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(920,901), received just 59 new civil filings seeking over $50,000 in 2022, *see id*. at 52—one lawsuit filed per 15,608 residents. Lake County, the third largest county by population (709,150), had 303 new civil filings seeking over $50,000 in 2022, *id*. at 53—one lawsuit filed per 2,340 residents.

Other counties aside from Cook County host a disproportionate share of the state's civil caseload. For example, plaintiffs' attorneys filed 101 new lawsuits seeking over $50,000 in St. Clair County (population 252,671) in 2022. *See id*. at 7, 53. In other words, St. Clair County, which has less than one-third of DuPage County's population, had nearly double as many large lawsuits filed. While Madison County (population 263,864) did not have as many new filings in 2022, its 1,480 open civil cases seeking over $50,000 at the conclusion of that year exceeded the number of cases pending in larger DuPage, Lake, Kane, and McHenry counties *combined*. *See id.* at 7, 39, 52-54.

When given the choice by the state's general venue statute and possible defendants, plaintiffs' attorneys choose to file in certain Illinois counties because they believe their clients will get a better result—through favorable rulings, outcomes, and higher damage awards. For example, a study of verdicts of $10 million or more in personal injury and wrongful death cases over a ten-year period found that "[a]ll but a handful of Illinois' nuclear verdicts came from the Cook County Circuit Court." Cary Silverman & Christopher E. Appel, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* 27 (U.S. Chamber Inst. for Legal Reform, 2024). Another study, evaluating a broader

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range of civil actions, found that Cook County hosted 79% of the state's verdicts over $10 million against corporations between 2009 and 2022. *See* Marathon Strategies, *Corporate Verdicts Go Thermonuclear* 49 (2023). The risk of multi-million dollar medical liability verdicts is particularly high there. *See id.; see, e.g.,* Marianna Wharry, *Record $41M Jury Verdict Awarded to Lawyer for Medical Malpractice Claims*, Law.com, May 15, 2024 (reporting largest amount ever awarded in Illinois, in Cook County, in a medical liability case to a plaintiff over seventy years old). Madison and St. Clair counties are also the first and second most popular jurisdictions in the nation, respectively, to file asbestos claims, and Cook County places fifth. *See* KCIC, *Asbestos Report – 2024 Midyear Update* (Aug. 7, 2024).

Whether the reputation of certain counties as plaintiff-friendly or anti-corporate defendant is true or not, the concentration of lawsuits in a few counties fuels that perception. Elimination of the doctrine of intrastate *forum non conveniens* will create a downward spiral. Unrestrained, plaintiffs' attorneys will file more claims in those counties. Defendants will be unable to seek a transfer of lawsuits with no relationship to that county to a more appropriate forum. More lawsuits filed in those counties will lead to more plaintiffs' verdicts and, in turn, draw attorneys to file more lawsuits there. Ultimately, the burden of this forum shopping will fall on courts and jurors, in addition to parties and witnesses, and the public's interest in deciding local cases locally will suffer.

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This Court should reject the latest invitation to overrule *Torres* and abandon the intrastate *forum non conveniens*, as it has repeatedly done in the past, s*ee Guerine,* 198 Ill. 2d at 514; *Pelle*, 163 Ill. 2d at 336, and maintain the doctrine as a needed check on unjustifiable, extreme forum shopping.

CONCLUSION

For the foregoing reasons, the Court should reaffirm the availability of the doctrine of intrastate *forum non conveniens* or find the issue unnecessary to resolving the issues before the Court.

Respectfully submitted,

ILLINOIS MANUFACTURERS' ASSOCIATION, ILLINOIS RETAIL MERCHANTS ASSOCIATION, CHICAGOLAND CHAMBER OF COMMERCE, CHEMICAL INDUSTRY COUNCIL OF ILLINOIS, ILLINOIS COALITION FOR LEGAL REFORM, ISMIE MUTUAL INSURANCE COMPANY, ILLINOIS INSURANCE ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, AMERICAN TORT REFORM ASSOCIATION, AND AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 4,902 words.

Dated: October 7, 2024 */s/ Matthew C. Wolfe*

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No. 130539

IN THE SUPREME COURT OF ILLINOIS

PIASA ARMORY, LLC, *Plaintiff-Appellee*, v. KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, *Defendant-Appellant*.	Interlocutory Appeal from the Circuit Court of the Third Judicial Circuit, Madison County, Illinois No. 2023-LA-1129 The Honorable RONALD J. FOSTER, JR., Judge Presiding.

ORDER

This cause coming to be heard on Motion of the Illinois Manufacturers' Association, Illinois Retail Merchants Association, Chicagoland Chamber of Commerce, Chemical Industry Council of Illinois, Illinois Coalition for Legal Reform, ISMIE Mutual Insurance Company, Illinois Insurance Association, National Association of Manufacturers, American Tort Reform Association, and American Property Casualty Insurance Association to file brief *instanter* as *amici curiae* in support of preserving the availability of intrastate *forum non conveniens*, and the Court being advised in the premises,

IT IS HEREBY ORDERED that the motion to for leave to file is

ALLOWED / DENIED.

Dated: _____

_____
Justice

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

I, Matthew C. Wolfe, an attorney, hereby certify that on **October 7, 2024**, I caused a true and complete copy of the foregoing **Motion of The Illinois Manufacturers' Association, Illinois Retail Merchants Association, Chicagoland Chamber of Commerce, Chemical Industry Council of Illinois, Illinois Coalition for Legal Reform, Ismie Mutual Insurance Company, Illinois Insurance Association, National Association of Manufacturers, American Tort Reform Association, and American Property Casualty Insurance Association for Leave to File a Brief as *Amici Curiae* in Support of Preserving Intrastate *Forum Non Conveniens*** and **Brief of *Amici Curiae*** to be filed electronically with the Clerk's Office of the Illinois Supreme Court, using the **Odyssey eFileIL** system, which sends notification and a copy of this filing by electronic mail to all counsel of record.

I further certify that I caused an additional courtesy copy of this filing to be served by electronic mail upon the following:

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Under penalties by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this notice of filing and certificate of service are true and correct to the best of my knowledge, information, and belief.

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