

IN THE CIRCUIT COURT
FOR THE FOURTH JUDICIAL CIRCUIT
CLAY COUNTY, ILLINOIS

DARREN BAILEY,

Plaintiff,

v.

GOVERNOR JB PRITZKER, in his official
capacity,

Defendant.

Case No. 2020 CH 6

Judge Michael McHaney

MOTION FOR TRANSFER PURSUANT TO *FORUM NON CONVENIENS*

Defendant JB Pritzker, through his attorney, Kwame Raoul, Attorney General for the State of Illinois, respectfully moves to transfer venue to Sangamon County pursuant to the doctrine of *forum non conveniens*. Plaintiff's complaint revolves around the issuance of orders from the State's principal offices in Sangamon County, and the litigation of this action will require the participation of witnesses located in Sangamon County. Furthermore, the state-wide implications of this litigation weigh in favor of transfer to the State Capitol. This Court should, therefore, do what Peoria County Circuit Court Judge Derek Asbury did only a few days ago in a case presenting identical issues—transfer the matter to Sangamon County under the doctrine of *forum non conveniens*. See May 12, 2020 Order in *Running Central Inc. v. Pritzker*, Cause No. 2020 CH 128 (Peoria County, Ill.) attached as Ex. 1, at 2–4.

I. The COVID-19 Pandemic and Plaintiff's Theory of Relief.

Faced with the unprecedented and ongoing COVID-19 public health emergency, Governor Pritzker has exercised his legal authority under the Illinois Emergency Management Agency Act, 20 ILCS 3305/1 *et seq.*, and the Illinois Constitution to issue a series of emergency disaster proclamations and executive orders. In the meantime, as of May 13 nearly 85,000 Illinoisans have tested positive for COVID-19 in at least 97 counties across the State, and 3,792

Illinoisans with COVID-19 have died.¹ Darren Bailey (“Plaintiff”) challenges both the Governor’s issuance of official proclamations that a COVID-19 disaster exists, and certain subsequent executive orders to combat that disaster and protect Illinois residents. These proclamations and orders give State and local officials the tools they need to effectively combat the ongoing spread of the virus. Plaintiff argues that the emergency actions taken by Governor Pritzker since April 8, 2020 are unlawful, because, in his view, the Governor was entitled to issue only one proclamation that a disaster exists, and therefore his March 9, 2020 proclamation was “required to lapse on or before April 8, 2020” and could not be renewed even if the COVID-19 disaster continues to exist. (Compl. ¶¶ 21–34.)

The transactions that gave rise to Plaintiff’s cause of action—the Governor’s disaster proclamations and certain of his following executive orders—officially occurred in Sangamon County at the seat of Illinois government. The witnesses required to be called to testify, including public health officials and experts, are not located in Clay County—they work in Sangamon County and Cook County. Finally, the consequences of this suit are not limited to local interests—it will affect every resident of the State of Illinois. Sangamon County, as the seat of Illinois government, is therefore the most convenient venue.²

¹ Illinois Department of Public Health, “COVID-19,” <http://dph.illinois.gov/covid19> (last visited May 13, 2020); *see also* IL R. Evid. 201(b) (“[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”).

² That the Court already ruled on a motion for a temporary restraining order by Plaintiff and a motion to dismiss by Governor Pritzker does not waive Governor Pritzker’s right to move for *forum non conveniens* transfer. *See Walker v. Iowa Marine Repair Corp.*, 132 Ill. App. 3d 621, 629 (1st Dist. 1985) (ruling *forum non conveniens* transfer appropriate even after defendant appeared and filed papers with the court); *Grant v. Starck*, 96 Ill. App. 3d 297, 300 (1st Dist. 1981) (prior motion to dismiss did not waive subsequent motion to transfer pursuant to the doctrine of *forum non conveniens*).

II. This Case Should Be Transferred To Sangamon County As The More Convenient Forum.

The *forum non conveniens* doctrine assumes more than one forum exists with power to hear the case. *Gridley v. State Farm Mut. Auto. Ins. Co.*, 217 Ill. 2d 158, 169 (2005). The doctrine is founded on considerations of sensible and effective judicial administration. *Id.* *Forum non conveniens* is a flexible doctrine that requires courts to evaluate of the total circumstances rather than the consideration of any single factor. *Id.* Although a plaintiff has a right to choose a forum in the first instance, transfer is proper if the factors strongly favor transfer. *Id.* at 170. The pertinent factors strongly favor transfer to Sangamon County.

A. Venue is proper in Sangamon County.

Forum non conveniens operates where venue may be proper in more than one county. Even if venue is proper in Clay County, it also is proper (and, as shown below, is more proper) in Sangamon County because (a) it is an official residence of Governor Pritzker, and (b) the transactions that gave rise to this suit officially occurred Sangamon County. Plaintiff sued Governor JB Pritzker as a defendant in his official capacity. Venue is proper in Sangamon County pursuant to the general venue statute, 735 ILCS 5/2-101 because one of the Governor's two principal offices, and one of the Governor's two official residences, is in Springfield, Illinois, in Sangamon County (the Governor's other principal office and residence is in Cook County.)³ See Ill. Const., art. V, § 1 (requiring the Governor to "maintain a residence at the seat of government during [his] term of office."); 5 ILCS 190/0.01 *et seq.* ("[T]he seat of government

³ The Court may take judicial notice that Governor Pritzker maintains two offices, in Springfield and Chicago, and that an official residence of the Governor is in Springfield. Office of Governor JB Pritzker, "About Our Office," <https://www2.illinois.gov/sites/gov/about/Pages/AboutOurOffice.aspx>; Office of Governor JB Pritzker, "Welcome to the Illinois Governor's Mansion," <https://www2.illinois.gov/sites/governorsmansion> (both last visited May 13, 2020).

shall continue to be at Springfield, in the County of Sangamon, at which place all acts shall be done which are required to be done at the seat of government.”⁴ Furthermore, the transactions out of which this suit arose occurred in Sangamon County. Illinois law recognizes that the Office of the Governor is principally located in Sangamon County. *See, e.g.,* 20 ILCS 405/405-1 *et seq.*; 5 ILCS 190/1. Sangamon County was also the place where the orders and proclamations at issue here were promulgated. (Compl. Exs. 1–4.)

B. Sangamon County is the more convenient venue for this action.

In determining whether to transfer a case under the *forum non conveniens* doctrine, a “trial court must balance private interest factors affecting the convenience of the litigants and public interest factors affecting the administration of the courts.” *Gridley*, 217 Ill. 2d at 169–70. The trial court does not weigh the private interest factors against the public interest factors; rather, the trial court must evaluate the total circumstances of the case to determine whether the balance of factors strongly favors transfer. *Id.* at 170. Private interest factors 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 making trial of a case easy, expeditious, and inexpensive. *Id.* at 170. Public interest factors include but are not limited to (1) the interest in deciding localized controversies locally; (2) the unfairness of imposing the burden of jury duty and the expense of a trial 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 already congested forums. *Id.*

Here, the private factors plainly weigh in favor of transferring venue on *forum non conveniens* grounds. Governor Pritzker maintains his official residence in Sangamon County,

⁴ The Court can take judicial notice that the City of Springfield lies within Sangamon County, Illinois.

and does not reside in Clay County. The orders Governor Pritzker issued for the purpose of combatting COVID-19 were issued in Sangamon County, not Clay County. In fact, the documents attached to Bailey’s complaint further illustrate why the private interests weigh in favor of transfer to Sangamon County. All of the documents, and the actions they memorialize, are intrinsically connected with Sangamon County. Both proclamations confirm they were sealed at “the Capitol in the City of Springfield” and both executive orders include headings stating:

STATE OF ILLINOIS
EXECUTIVE DEPARTMENT
SPRINGFIELD, ILLINOIS

(Compl. Exs. 1–4). Additionally, all executive orders and proclamations issued by the Governor must be filed with the Secretary of State within 10 days of enactment, or otherwise the order is invalidated. 15 ILCS 305/6a. Those filings with the Secretary of State also occur in Springfield, Illinois. 2 Ill. Admin. Code 552.20. All of these materials and documents, and the individuals who will testify regarding their promulgation, can be most easily accessed in Sangamon County. *See* 5 ILCS 190/0.01 *et seq.* (“[T]he seat of government shall continue to be at Springfield, in the County of Sangamon, at which place all acts shall be done which are required to be done at the seat of government.”).

The public factors are either neutral, or weigh heavily against retaining this action in Clay County. A consideration of public interests is particularly important in cases, like this one, where the issues may “touch the affairs of many persons” not parties to the action. *McClain v. Illinois Cent. Gulf R. Co.*, 121 Ill. 2d 278, 289 (1988) (reversing denial of *forum non conveniens* relief and noting public interest factors include considering whether the case will “touch the affairs of many persons”);⁵ *see also Wieser v. Missouri Pac. R. Co.*, 98 Ill. 2d 359, 371 (1983) (applying

⁵ *McClain*, like other cited cases, was an interstate transfer action. But the Illinois Supreme Court has held that the factors that may be considered when evaluating a motion for intra-state transfer or dismissal

forum non conveniens and noting public interest factors include considering whether the case will “touch the affairs of many persons”); *Jones v. Searle Labs.*, 93 Ill. 2d 366, 373 (1982) (same); *People ex rel. Compagnie Nationale Air France v. Giliberto*, 74 Ill. 2d 90, 111 (1978) (same); *Marchlik v. Coronet Ins. Co.*, 40 Ill. 2d 327, 336 (1968) (same) (Ward, J. concurring).

Although there may be a “local interest in having localized controversies decided at home,” *McClain*, 121 Ill. 2d at 289, the issues in this matter are far from “localized.” Plaintiff’s central claims concern orders that are of significant interest to all Illinois residents, because they relate to the ongoing fight against COVID-19. (Compl. Exs. 1–4.) Indeed, Plaintiff seeks declarations that Governor Pritzker’s “emergency powers” and COVID-19 Executive Orders “lapsed on April 08, 2020,” and that any further “emergency executive orders in response to the COVID-19 continuing disaster” are “void ab initio.” *Id.*, Wherefore Clause, Count I, ¶¶ B, C, and E. Given the relief requested, the issues here span all of Illinois and as a result “touch the affairs of many persons,” not parties to the action. Finally, this is not a jury matter, and there is no evidence either Sangamon⁶ or Clay Counties⁷ are experiencing congested dockets. Sangamon County is therefore the most convenient and central place for this dispute to be resolved. *See Healey v. Teachers Ret. Sys.*, 200 Ill. App. 3d 240, 246–47 (4th Dist. 1990) (case against Illinois state official and agency transferred to Sangamon County on the basis of *forum non conveniens*).

under the doctrine of *forum non conveniens* are the same as the factors considered for inter-state transfer or dismissal. Accordingly, the reasoning used in both types of cases may guide the Court. *See Fennell v. Ill. Cent. R. Co.*, 2012 IL 113812, ¶ 17; *Torres v. Walsh*, 98 Ill. 2d 338, 350 (1983).

⁶ Fewer than 110 Chancery cases appear to have been filed in Sangamon County in 2020 through May 13, 2020. *See* Circuit Clerk-Sangamon County, “Case Number Search,” <http://records.sangamoncountycircuitclerk.org/sccc/FullDisclaimer.sc?nextForward=caseNumberSearch> (last visited May 13, 2020).

⁷ Fewer than 10 Chancery cases appear to have been filed in Clay County in 2020 through May 13, 2020. *See* Judici, <https://www.judici.com/> (last visited May 13, 2020).

C. Another Illinois Circuit Court Judge Exercised His Discretion In Transferring a Case With Identical Issues to Sangamon County.

On May 12, 2020, in *Running Central v. Pritzker*, Case No 2020-CH-128 (Peoria County, Ill.), a case advancing an identical legal theory to this one, the Honorable Judge Derek Asbury ordered transfer to Sangamon County on *forum non conveniens* grounds, reasoning:

[T]he public and private interest factors are neutrally balanced except the public's interest in deciding localized controversies. The Court turns to the Plaintiff's pleadings and relief requested to assist in its venue analysis

The Plaintiff's verified complaint strictly deals with the executive order promulgated and issued from Sangamon County. The only requested relief by the Plaintiff is that this Peoria County Trial Court declare the statewide executive emergency order unconstitutional on its face as a violation of his emergency powers. Although it is accompanied with a TRO as it pertains to the Plaintiff, the majority of the verified complaint addresses a requested declaration that effects the entire State. While the Plaintiff requests that this Court only consider it in the context of his case, the pleadings seem to suggest otherwise. The Court cannot ignore the public interest factor of this being a localized verses statewide controversy, touching every corner of the State. Further, the Plaintiffs complaint offers very little substance regarding the application of the executive order to his business that is unique to him or localized

Certainly, if the most fundamental rights and due process axioms must to some extent yield to greater public interest, it is logical that transferring venue on a statewide issue for the purpose of uniformity is in the public's greater interest. The Court finds it is as important to have consistency in rulings on a statewide issue during this pandemic Therefore, this Court grants the Defendant's motion and transfers venue to Sangamon County, where the executive order originated as to all of the State's citizens and businesses.

See Order, Ex. A, at 2–4.

Judge Asbury's reasoning applies with equal force here – “it is logical that transferring venue [to the seat of Illinois government] on a statewide issue for the purpose of uniformity is in the public's greater interest.” Given Judge Asbury's Order transferring the Peoria County filed action to Sangamon County, the reasons supporting transfer of this action to Sangamon County “for the purpose of uniformity” on “a statewide issue” are even more compelling.

Conclusion

The Court should grant the Governor's motion to transfer this case to Sangamon County based on *forum non conveniens*. Sangamon County is a more central location, the repercussions of this suit are not be localized to Clay County, and the actions of Governor Pritzker that Plaintiff describes as serving the basis for its causes of action principally occurred in Sangamon County.

WHEREFORE, for the above reasons, Governor JB Pritzker respectfully requests this Court grant his motion to transfer venue to Sangamon County based on *forum non conveniens*.

Dated: May 13, 2020

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned hereby certifies the statements set forth in this certificate of service are true and correct and that he has caused a copy of the foregoing to be served upon:

Thomas G. DeVore
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via email at the address noted above on May 13, 2020.

By: /s/ Thomas J. Verticchio
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Assistant Chief Deputy Attorney General

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NOTICE OF MOTION FOR TRANSFER PURSUANT TO FORUM NON CONVENIENS

YOU ARE HEREBY NOTIFIED that on May 15, 2020, at 1:00 P.M., Governor Pritzker will appear before the Honorable Judge Michael McHaney or any other judge who may be sitting in his stead, in the Circuit Court of Clay County, Clay County Courthouse, 111 Chestnut Street, Louisville, Illinois, and then and there present the *Motion to Transfer Pursuant to Forum Non Conveniens* of Governor JB Pritzker.

Dated: May 13, 2020

Respectfully Submitted,

KWAME RAOUL
Attorney General of Illinois

/s/ Thomas J. Verticchio

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