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Effort to end intrastate forum non conveniens is bad news

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Often neglected or forgotten altogether, oaths are fundamental to the American system of government.

The judicial system, in particular, relies on oaths. Attorneys, judges, court reporters, jurors and witnesses all take oaths of one kind or another. Article XIII, Section 3, of the Illinois Constitution provides that every Illinois elected official take an oath to support and defend both the federal and the Illinois Constitution.

The structure of American constitutions, both state and federal, relies on a separation of powers between the branches. Much of constitutional law is about this political philosophy, developed principally by John Locke and Baron De Montesquieu, upon which the Framers of the federal Constitution relied on to prevent any one person or branch of government from collecting too much power.

By harnessing the human desire for power, this structure sets the branches against one another to prevent one branch from aggrandizing to itself more power because the Framers saw the gathering of the executive, legislative and judicial power in one person or branch as the very essence of tyranny.

That competition for power between the branches was a feature of the Constitution that prevented what the Framers feared.

The Illinois Constitution, consistent with this long tradition of American constitutions, has a similar separation of powers. Article VI, Section 16, of the Illinois Constitution declares, "General administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules."

Among the powers that the court has found it has under the Illinois Constitution is the power to transfer cases from one county to another county. *Horn v. Rincker*, 84 Ill.2d 139, 149-51 (1981). The Illinois Supreme Court has held that "if a statute conflicts with a rule that involves a matter within the judicial authority, the statute must yield to the rule." *Peile v. Skelgas Inc.*, 163 Ill.2d 323, 334 (1994).

Codifying this powers granted the court in the Illinois Constitution, it has enacted Supreme Court Rule 187 that governs transfer under forum non conveniens and Supreme Court Rule 384 that allows the court to consolidate cases that are filed in different judicial circuits.

Forum non conveniens is an equitable doctrine that is "founded in considerations of fundamental fairness and sensible and effective judicial administration." *Vinson v. Allstate*, 144 Ill.2d 306, 310 (1991). "This doctrine allows a trial court to decline jurisdiction when trial in another forum would better serve the ends of justice." *Langenhorst v. Norfolk Southern Railway*, 219 Ill.2d 430, 441 (2006).

The factors to be considered in determining the propriety of a transfer under the doctrine speak directly to the authority granted the Illinois Supreme Court by the Constitution. The 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 that make trial of a case easy, expeditious and inexpensive." *Langenhorst*, 219 Ill.2d 430, 443 (2006) (quoting *First National Bank v. Guerine*, 198 Ill.2d 511, 516 (2002)).

Public interest factors include (1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the administrative difficulties presented by adding litigation to already congested court dockets. Id. at 443-44.

These factors show the central interest of Illinois to accomplish their constitutionally mandated role of managing their dockets.

Despite the language of the Illinois Constitution and the very well developed law on this issue, HB 5044, filed on Feb. 13 in Springfield, now in the Judiciary-Civil Committee and, if enacted, would eliminate intrastate forum non conveniens.

When it comes to the allocation of judicial resources, courts are best suited to make these decisions, as compared to attorneys filling lawsuits. But HB 5044 would violate the Illinois Constitution by placing that power with plaintiff's counsel instead of Illinois courts.

The Illinois Supreme Court has two rules directly on this issue that conflict with this proposed legislation. Unfortunately, plainly unconstitutional legislation that fundamentally changes the civil justice system, is not a new phenomenon in Illinois. The Illinois Supreme Court has not hesitated to protect constitutional rights, as evidenced in *Kakos v. Butler*, 2016 IL 12037, when it struck down legislation that required only six jurors in civil trials, as that legislation directly contradicted the plain language of Article I, Section 13, of the Illinois Constitution's Bill of Rights.

In addition to HB 5044 being constitutionally infirm, there will be dilatory practical effects of this proposal. If enacted and allowed to stand, this legislation would likely concentrate cases in Madison, St. Clair and Cook Counties and strain the courts and the budgets of the courts in those countries.

Such congestion and the burden it would impose on the taxpayers and jurors of those counties are precisely the public-interest factors that the doctrine of forum non conveniens is designed to alleviate and it is the courts that are in the best position to manage their dockets, not the General Assembly.

It is the responsibility of all who have taken an oath to support and defend the Illinois Constitution to oppose legislation, such as HB 5044, that is so plainly contrary to it and preserve the separation of powers that is fundamental to our system of government.