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Does Allowing Employees to Work From Home Put Corporations at Risk of Expanding Where They Can Be Properly Sued Under Illinois' Venue Statute? The Illinois Supreme Court Weighs In

BY EDWARD CASMERE & BRIAN O'CONNOR WATSON

Can an employee's home office establish residency of their corporate employer for determining proper venue? That is one of the questions the Illinois Supreme Court faced in its October 2020 decision in *Tabirta v. Cummings*. 2020 IL 124798. In *Tabirta*, the Illinois high court wrestled with whether an employee's Cook County home office qualified as an "other office" under the venue statute. The court had to alternatively assess whether the corporation was "doing business" in Cook County sufficient to create residency through that home office work. While the facts of *Tabirta* were unrelated to the

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Supporting the Illinois Bar Foundation's Lincoln Legacy Society

BY HON. EDWARD J. SCHOENBAUM, RET.

The Lincoln Legacy Society is the Planned Giving Program of the Illinois Bar Foundation, supporting the Foundation's mission to administer access to justice programs throughout Illinois and offer financial aid to attorneys and their families during times of crisis. There are a number of easy ways to make a planned gift to our foundation, with perhaps the simplest way being to name the foundation as a beneficiary of a property such as a bank account, life insurance policy, or retirement plan.

I recently used one of those ways to

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Does Allowing Employees to Work From Home Put Corporations at Risk of Expanding Where They Can Be Properly Sued Under Illinois' Venue Statute? The Illinois Supreme Court Weighs In

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current COVID-19 pandemic, given the current "work from home" phenomenon, the court's decision could have wide-ranging impact on venue fights.

Sergiu Tabirta filed his personal injury action in Cook County, Illinois after a December 2016 tractor-trailer accident in Ohio caused multiple severe injuries, including the loss of both of his legs. He sued two defendants, Gilster-Mary Lee Corporation (GML) and James Cummings, the respective owner and driver of the tractor-trailer. While neither defendant was a Cook County resident, plaintiff still argued that venue was proper in Cook County because a GML employee – who had no connection to the accident – maintained an office in his home in Cook County. That home office, plaintiff argued, constituted an "other office" to make venue proper under the statute (735 ILCS 5/2-102(a)). Plaintiff's alternative venue hook was that GML was "doing business" in Cook County adequate enough to establish residency for venue purposes. The circuit court denied the defendants motion to transfer venue. The appellate court, in turn, affirmed on the home office issue, mooting plaintiff's alternate venue theory.

The Illinois Supreme Court took the case and examined both the "doing business" and "other office" arguments. While firmly rooted in the factual nuances presented in *Tibirta*, the Court's ruling sheds light on how future venue assessments in a "work from home" economy might be evaluated.

The Circuit Court and Appellate Court Rulings

Cummings was not an Illinois resident, and GML was a Missouri corporation with its principal place of business and registered agent in Randolph County, Illinois. Not surprisingly, the defendants moved to transfer venue arguing that Cook County was an improper venue, since the accident did not occur in Cook County and neither defendant was a resident of Cook County as defined by statute. Limited venue-related discovery revealed that in 2011 GML hired a retired 50-year veteran of the food industry, who had lived in Cook County since 1956, to serve as a part-time customer service and account representative while working out of his home. The employee handled three accounts with locations in DuPage, Kane, Kendall, Will, and Cook Counties. Only 5% of his time was devoted to the sole Cook County customer. No customers visited the employee's Cook County home office, and GML had no ownership interest in the employees' home, did not pay any portion of the employee's mortgage, real estate taxes, utilities, cell phone bills, Internet charges, office supplies, or any other expenses associated with his home office. *Tibirta,* 2020 IL 124798, at ¶¶ 6-8.

Discovery also revealed that GML did not advertise that it had an office in Cook County and that the county of residence of the part-time employee had no significance to his hiring or continued employment. Nor did GML design, manufacture, advertise, finance, or sell its products from within Cook County. Additionally, GML's Cook County sales were only 0.19% of its 2016 total sales, and less than 0.5% of total sales in any year during the five-year period before plaintiff's accident. *Id*. at ¶10.

Plaintiff opposed the defendants' motions arguing that venue was proper in Cook County because the GML employee had maintained a home office to conduct business for GML in Cook County thus constituting an "other office" under the venue statute. *See* 735 ILCS 5/2-102(a) (West 2020)(stating in relevant part "Any private corporation or railroad or bridge company, organized under the laws of this State, and any foreign corporation authorized to transact business in this State is a resident of any county in which it has its registered office or other office or is doing business.").

Bench & Bar

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OFFICE
ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS
Evan Bruno
Edward M. Casmere

PUBLICATIONS MANAGER
Sara Anderson
sanderson@isba.org

The circuit court denied the defendants' motion to transfer finding that the part-time employee's home office was an "other office" because he serviced clients on behalf of his employer from his Cook County residence. The trial court rejected the plaintiff's alternative "doing business" argument based on the proportionally low sales to Cook County customers. The defendants requested leave to appeal under Rule 306(a)(4), which the appellate court denied. The defendants then asked the Illinois Supreme Court to hear their appeal. The Illinois Supreme Court denied the direct appeal, but exercised its supervisory authority directing the appellate court to vacate its prior order and allow the petition for leave to appeal. *Tibirta,* 2020 IL 124798, at ¶12. The appellate court ultimately affirmed the circuit court holding that the home office was enough to qualify as an "other office" under the venue statute.

The Illinois Supreme Court then allowed the defendants petition for leave to appeal pursuant to Rule 315(a) and also permitted the Illinois Association of Defense Trial Counsel and the Illinois Trial Lawyers Association to file *amicus curiae* briefs in support of the defendants and plaintiff, respectively.

The Illinois Supreme Court's Analysis

The Illinois Supreme Court began with a reminder that proper venue is a valuable privilege belonging to the defendant, and the Illinois venue statute "'reflect[s] the legislature's view that a party should not be put to the burden of defending an action in a county where the party does not maintain an office or do business and where no part of the transaction complained of occurred.'" *Id*. at ¶16 (internal citations omitted). Even so, the defendant challenging the plaintiff's chosen venue bears the burden of establishing, with specific facts, that venue is improper. *Id*. at ¶17. In deciding a defendant's challenge to venue, a trial court "should construe the statute liberally in favor of effecting a change of venue," based on factual findings that will be disturbed only if they are against the manifest weight of the evidence upon *de novo* review. *Id*.

Unlike the equitable doctrine of *forum non conveniens* where courts look beyond the statutory criteria for venue and balance relevant public and private interest factors to determine if one proper venue is more convenient than another, venue is purely statutory in Illinois. *Id*. at ¶19; *see also* 735 ILCS 5/2-101 and 102(a). As a result, based on the facts established, venue could only be proper if GML was a resident of Cook County through an "other office" or "doing business" under the statute.

Is incidental work "doing business" under the statute?

The *Tabirta* Court made clear that work merely incidental to the usual and customary business of a corporation is not "doing business" under the venue statute. *Tibirta*, 2020 IL 124798, at ¶¶ 34-35. Establishing corporate residency under the "doing business" part of the statute requires more than the minimum contacts that may subject a defendant to jurisdiction of the Illinois courts. Soliciting business or selling goods/services within a county does not automatically qualify as the venue-triggering level of "doing business" required. While the quantity or volume of business conducted by the defendant in the county is a relevant factor, the defendant will only cross the threshold of a venue-creating level of business where its activities are "'of such a nature so as to localize the business and make it an operation within the district.'" *Id*. (internal citations omitted). In *Tabirta*, because the work of the GML employee with the home office was merely incidental to GML's usual and customary business of food product manufacturing, and because GML had no other office, or facility in Cook County, and did not otherwise manufacture, design, finance, or sell its products from within the county, the court held that GML was not "doing business" in Cook County under the venue statute. *Id.* at ¶34.

Questioning an "office" – not whether, but whose.

The Illinois Supreme Court found no dispute existed whether the part-time employee's home office was an "office," or that it was used to further GML's corporate business interests. But that, the court held, is not enough. The venue statute requires that the *corporation* have an office in the county, not merely that one of its employees has one. So, the court sought to determine whether the employee's Cook County home office was an "office" of the corporation. The court found it was not. To make that finding, the court considered several facts that had been clearly developed in the record below.

First, while GML knew that the employee would be working out of his home, there was no evidence that GML had hired him because he lived in Cook County. Testimony established that the employee's county of residence was not a factor in his hiring, or his continued employment. Second, there was no evidence that the corporation intended on opening an office in Cook County. Third, the record made clear that the employee was hired because of his skills and experience, not because GML sought to purposely select a fixed location within Cook County to carry on its business – the company hired a person, it didn't select a location from which to conduct its business activities. *Id.* at ¶¶28-29.

That the company did not own, lease, or pay residence-related expenses weighed even more against characterizing the employee's home office as an office of the corporation. So too did the fact that GML had not held out to the public that the home office was an office of the company, and that GML had not paid any part of the mortgage, real estate taxes, or utilities for the employee's home. Merely conducting work from a home office, standing alone, was insufficient for plaintiff to establish that the home office was a corporation's "other office" under the venue statute. *Id.* at ¶32.

Justice Kilbride's Special Concurrence

Justice Kilbride wrote separately to emphasize that the court's holding "should not be read to imply, or even to suggest, that we would reach the same conclusion in all cases involving an employee's use of a home office." *Id*. at ¶43. Justice Kilbride's concurrence strove to draw attention to the point that examining whether an employee's home office meets the definition of an "other office" under the venue statute is a fact-specific analysis for which a one-sized solution does not fit. *Id*. at ¶44. The "sole goal" of the special concurrence was "to expressly recognize the necessarily narrow holding represented" by the court's decision.

Id. at ¶45. A court's ultimate conclusion about whether a home office qualifies as an "other office" under the statute, Justice Kilbride underscored, hinges on its review of specific facts adduced in each case. *Id*. at ¶¶43-45.

Takeaways?

So where does *Tabirta* leave Illinois practitioners, employers, courts, and litigants on the question of whether a home office may put corporations at risk of expanding where they may be properly sued? The answer, after *Tabirta*, is a solid "it depends." Why? Simply put, the venue statute codifies some ambiguity and the circumstances under which the issue may arise are far too varied, thus defying broad brushstrokes. Because the *Tabirta* record was well developed through targeted discovery and affidavits, the court had ample fact-specific evidence to evaluate. And it did just that. Justice Kilbride's special concurrence drove the point home with the admittedly singular goal of stressing how narrowly and fact-dependent the court's holding should be read.

The *Tabirta* opinion does, however, paint some contours. To begin with, the court full-throatedly reminds everyone that proper venue is a privilege belonging to the defendant, it is the defendant's burden to establish the plaintiff's chosen venue is inappropriate, and that courts should liberally construe the venue statute in favor of effecting a change venue. The *Tibirta* Court also clearly rejected incidental work as satisfying the "doing business" part of the statute. Similarly rebuffed was the argument that having "an" office that furthers the company's business will satisfy the "other office" component. The *Tabirta* Court made clear that a venue analysis is purely statutory, and no balancing of interests is appropriate. Finally, the court's analysis amplified the view that parties litigating venue questions, without a solid factual record, do so at their peril.■

Edward Casmere and Brian O'Connor Watson are partners at Riley Safer Holmes & Cancila LLP in Chicago.

Supporting the Illinois Bar Foundation's Lincoln Legacy Society

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establish my first planned gift and intend to set up more in the future. At 78 years old, I need to move quickly.

Gifts to the Lincoln Legacy Society benefit the Illinois Bar Foundation programs, such as the Warren Lupel Lawyers Care Fund, which provides aid to attorneys and their families who are struggling and unable to support themselves and their families due to catastrophic health crisis from heart attacks, injuries from an auto accident, falling down the stairs at home, or any other type of serious health problem. I have served on this important committee for the last three years and have learned so much from reviewing the needs of these attorney applicants.

When COVID-19 broke out this year, we received a cy pres award, recommended by Edelson PC, that enabled us to expand our Lawyers Care Fund to provide grants to attorneys impacted by the COVID-19 crisis and statewide shutdown. Through the COVID-19 Lawyers Care Relief Fund, we were able to provide one-time grants of $2,000 to more than 60 attorneys throughout Illinois who were hit very hard when they could not go to work and needed help covering basic expenses. Our Lawyers Care Fund Committee reviewed dozens of applications and funded what we could. The need for assistance remains great, and with coronavirus case numbers rising again, we are hoping to raise more money so that we can continue funding those still suffering from COVID-19. The vast majority of our COVID-19 Lawyers Care Relief Fund recipients are solo practitioners or attorneys at small firms, many of whom serve low- income clients or other underserved populations, creating a ripple effect of aid into the community at large. One of our recipients shares her story below:

I think as attorneys we try to plan as much as we can. The one thing we could not plan for was a pandemic that would change the way our personal and work lives operate for the foreseeable future. I have never been more grateful to be a part of a community of professionals that support one another. Just as I was losing hope, the IBF COVID-19 Lawyers Care Relief Fund has helped me stay on track and remain focused on regaining momentum with my law firm. I would like to thank those who donated to the Fund for paying it forward and the committee for coming together to support our community.

Another one of the important initiatives that the Lincoln Legacy Society supports is our Access to Justice Grants Program, which distributes funding to non-profit organizations around Illinois which provide direct civil legal aid services to those in need. Our grantee organizations work to enhance the availability of legal aid to those of limited means, encourage pro bono legal work, and educate Illinois residents about their rights and responsibilities under the law. With our statewide focus, the Foundation has distributed $230,000 to organizations serving our neighbors in need in all parts of Illinois, including the Center for Disability and Elder Law, the Chicago Alliance Against Sexual Exploitation, Family Shelter.

Service, Prairie State Legal Services, Land of Lincoln Legal Aid, the James B. Moran Center for Youth Advocacy, and many more.

Illinois attorneys have supported these programs for years and we hope that if you are not one of the many who have that you will think seriously of how you can help support these people in need. We would encourage you to check with your own attorney to have them assist you in reviewing

your estate planning options and how much you want to invest in the Lincoln Legacy Society to support these worthy programs. On behalf of the Illinois Bar Foundation, I thank you for your consideration. Please contact Jessie Reeves at 312-920-4681 or jreeves@illinoisbarfoundation.org for more information or to receive a Lincoln Legacy Society enrollment form. I also encourage you to reach out to members of the Lincoln Legacy Society you may know to learn more. A full list of current members is available on our website, www.IllinoisBarFoundation.org.■

From Crisis to Crisis: The CFPB's COVID-19 Mortgage Regulation

BY JOSHUA L. ROQUEMORE & RODNEY PERRY

Introduction

The Dodd-Frank Act established the Consumer Financial Protection Bureau ("CFPB") in 2011, on the heels of the Great Recession.[1] Now, the agency created in response to one crisis is poised to lead the regulatory charge in another crisis. The new agency—and its "regulation by enforcement" approach—has already established a penchant for taking initiative with respect to developing industries.[2] One such emerging area of regulation pertains to COVID-19 mortgage forbearance. The end of the current forbearance period is likely to cause a surge in foreclosures and related disputes.[3] As foreclosures come to the regulatory forefront, lenders and servicers may witness an unprecedented expansion of CFPB authority.

The CFPB Continues to Expand Mortgage Regulation

The CFPB is the agency tasked with rulemaking and enforcement with respect to the CARES Act, which implemented the freeze on mortgage foreclosures.[4] On April 3, 2020, the CFPB issued a joint statement with all other federal financial regulators.[5] In the statement, the CFPB indicated that it did not intend to take action against mortgage servicers for delays in: (1) sending loss mitigation notices; (2) establishing or making good faith efforts to establish live contact with delinquent borrowers; or (3) sending written early intervention notice to delinquent borrowers.[6] While this statement appears to offer mortgage servicers regulatory flexibility, the statement also warns that initial forbearance of up to 180 days must be granted without a request for initial documentation.[7] The borrower can extend that period for an additional 180 days.[8]

In a COVID-19 forbearance guide, the CFPB stated that servicers are prohibited from requiring proof of borrowers' financial hardship.[9] In addition, servicers may be at risk of a legal violation by simply discouraging or steering borrowers away from a CARES Act forbearance.[10] Determination of the latter violation would be subject to the discretion of CFPB examiners.[11]

The CFPB has not yet started to bring COVID-19 forbearance actions, but it has remained active in other areas of enforcement. In fact, the CFPB brought a total of 19 public civil and administrative actions between July and September of this year.[12] Nearly half of these actions involve mortgage lenders and servicers.[13] This increase represents the agency's highest new case volume in five years.[14] This number is likely to increase as forbearance ends.[15]

The CFPB continues to pursue enforcement actions against mortgage lenders and servicers.[16] One such example is a federal case filed by the CFPB against one of the largest mortgage servicers in the United States, Ocwen Financial Corporation ("Ocwen").[17] Although this case pre-dates COVID-19, the CFPB has remained vigilant in pursuing claims against Ocwen in 2020.[18] In its most recent complaint, the CFPB alleges that Ocwen: (1) serviced loans based on inaccurate borrower information: (2) relied on a deficient servicing platform; (3) relied excessively on manual data entry and reports to address servicing issues; and (4) harmed borrowers through its use of inaccurate and incomplete information.[19]

In its complaint, the CFPB cites six distinct areas of harm to consumers stemming from Ocwen's mishandling of consumer loan information.[20] These actions are alleged to be in violation of Ocwen's statutory obligations under the Real Estate Settlement Procedures Act of 1974,[21] the Consumer Financial Protection Act of 2010,[22] the Truth in Lending Act,[23] the Homeowners Protection Act,[24] and/or the Fair Debt Collection Practices Act.[25] The relief sought by the CFPB includes: (1) permanent injunctive relief to prevent future statutory violations; (2) relief to harmed consumers (rescission of contracts, restitution, monetary damages, etc.); (3) disgorgement of unlawful gains; and (4) civil monetary penalties.[26]

Additional enforcement actions have been filed by the agency during the ongoing pandemic. For example, the CFPB initiated an action against Washington Federal Bank, N.A. on October 27, 2020, alleging mortgage servicing reporting errors.[27] The administrative action seeks implementation of a new compliance and reporting system, as well as payment of civil penalties.[28]

As mortgage servicers continue to draw greater scrutiny from the CFPB during the pandemic, it is likely that similar enforcement actions will be filed in 2021.[29]

The CFPB Continues Regulation by Enforcement

The CFPB has traditionally adopted an enforcement-based regulatory approach, as opposed to a rule-based approach. Accordingly, the CFPB often imposes penalties on consumer-facing entities without warning or rulemaking. The agency has drawn criticism for this approach.[30] This defining feature, however, allows the agency to nimbly respond to emerging consumer issues. Looking ahead to regulation in 2021, there is speculation that a Biden administration could result in an even more aggressive use of the agency's authority.[31] Until recently, the President could only remove the CFPB director for cause. The Supreme Court recently ruled, however, that this "for cause" requirement is unconstitutional.[32] Accordingly, it is likely that the change in administration will result in a new director and increased enforcement actions across all sectors, including mortgage servicing.[33]

The CFPB Looks to Further Define Its Arbitrary 'Abusive' Standard

The CFPB is a leader in regulation of developing industries because of its broad (perhaps ambiguous) regulatory authority. Pursuant to the Dodd-Frank Act, the agency has the authority to prevent and punish any unfair, deceptive, or abusive acts or practices. Although all three standards are broadly defined, the abusive standard represents a particularly powerful tool for the CFPB. Unlike "unfair" or "deceptive" acts or practices, the standard for "abusive" acts or practices is accompanied by almost no independent case law or regulatory history.[34] While this vague standard grants the CFPB broad regulatory discretion, it creates significant compliance difficulties for regulated entities.[35]

Earlier this year, CFPB Director Kathleen L. Kraninger stated her desire to further define the abusive standard through the agency's trademark regulation-by-enforcement approach.[36] In cases of "good-faith but unsuccessful effort[s] to comply" with the abusive standard, the CFPB will pursue damages and restitution.[37] Where bad-faith violations occur, the agency will seek civil penalties and/or disgorgement.[38]

As COVID-19 forbearance ends, we are likely to see unprecedented numbers of foreclosures and mortgage servicing disputes. On the regulatory side, the CFPB will lead the charge in punishing lenders and servicers for what are deemed wrongful acts. Given Director Kraninger's statements, a new administration and the possibility of a more aggressive agency, and an impending mortgage crisis, the CFPB may use the pandemic as an opportunity to define the abusive standard. Financial institutions should be wary, as this clarity may come in the form of enforcement actions against mortgage lenders and servicers.[39] ■

Joshua L. Roquemore is an associate at Riley Safer Holmes & Cancila LLP in its Irvine/Los Angeles office; Rodney Perry is a partner at Riley Safer Holmes & Cancila LLP in its Chicago office.

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6. *Id.* at 6–7.
7. *Id.* at 4.
8. *Id.*
9. Consumer Fin. Prot. Bureau, CARES Act Forbearance & Foreclosure, 2–3, https://files.consumerfinance.gov/f/documents/cfpb_csbs_industry-forbearance-guide_2020-06.pdf.
10. *Id.* at 3.
11. *Id.*
12. See Jon Hill, *CFPB Enforcement Sees Highest New Case Volume in 5 Years*, Law360 (Oct. 14, 2020), https://www.law360.com/articles/1317407/cfpb-enforcement-sees-highest-new-case-volume-in-5-years.
13. *Id.*; *see also* Consumer Fin. Prot. Bureau, Enforcement Actions, https://www.consumerfinance.gov/policy-compliance/enforcement/actions/ (last visited on November 8, 2020).
14. *Id.*
15. See Consumer Fin. Prot. Bureau, Joint Advisory Committee Meeting Presentations, 5 (May 1, 2020), https://files.consumerfinance.gov/f/documents/cfpb_presentations_combined-advisory-committee-meeting_2020-05.pdf ("Nearly 7% of mortgages were in a forbearance plan as of April 19.").
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17. Consumer Fin. Prot. Bureau v. Ocwen Fin. Corp. et al., 2019 WL 5423097 (S.D.Fla.).
18. *Id.*
19. *Id.*
20. *Id.*
22. 12 U.S.C. § 2601, *et seq.*
22. § 5562, *et seq.*
23. 15 U.S.C. § 1601, *et seq.*
24. 12 U.S.C. § 4901, *et seq.*
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28. *Id.*
29. *Supra* notes 12–15.
30. See U.S. Dept. of the Treasury, Banks and Credit Unions: Report to the President Donald J Trump, 82 (2017), https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf ("In practice, the CFPB has avoided notice-and-comment rulemaking and instead relied to an unusual degree on enforcement actions and guidance documents, which the CFPB has consistently issued without opportunity for public comment, to announce new standards of conduct.").
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32.Seila Law LLC v. Consumer Fin. Prot. Bureau, 140 S. Ct. 2183, 207 L. Ed. 2d 494 (2020).

33. Johnson, *supra* note 17.
34. See Joshua L. Roquemore, *The CFPB's Ambiguous "Abusive" Standard*, 22 N.C. Banking Inst. 191, 192–93 (2018) ("While the unfair and deceptive standards were defined by the FTC in cases spanning several decades, the CFPB was given a clean slate with respect to the abusive standard.").
35. *Id.* at 194–96 ("While there may be benefits to greater regulatory oversight, there are also risks associated with vague and arbitrary legal standards, and this is even more pronounced in the highly regulated consumer finance industry.").
36. Consumer Fin. Prot. Bureau, Statement of Policy Regarding Prohibition on Abusive Acts or Practices, 12-13 (Jan. 21, 2020), https://files.consumerfinance.gov/f/documents/cfpb_abusiveness-enforcement-policy_statement.pdf.
37. *Id.* at 13–14.
38. *Id.*
39. See Consumer Fin. Prot. Bureau, Joint Advisory Committee Meeting Presentations, 5 (May 1, 2020), https://files.consumerfinance.gov/f/documents/cfpb_presentations_combined-advisory-committee-meeting_2020-05.pdf (listing "mortgage" as the financial product with the most consumer complaints related to COVID-19); *see also* Kelley Connolly Barnaby and Michelle Prendergast, *CFPB Reflects on the Impact of COVID-19 and Provides a Window into Future Enforcement*, JDSUPRA (May 19, 2020), https://www.jdsupra.com/legalnews/cfpb-reflects-on-the-impact-of-covid-19-26134/ ("The CFPB's analysis of complaints suggests that enforcement is likely to arise with mortgage and credit card products. This is particularly true for forbearance arrangements and communications, which have been impacted by rapidly evolving regulatory guidance . . . .").

The Unfinished Work of Cannabis Reform in Illinois

BY EVAN BRUNO

Amongst the ongoing clamor and chaos of the November 2020 election cycle lies one tea leaf whose message is unmistakable: the majority of Americans are ready to move on from criminalized cannabis. Arizona, New Jersey, Montana, and South Dakota became the latest states to embrace recreational cannabis, bringing the total number to 15. Nowhere in the United States did a pro-cannabis ballot measure fail to pass. It's difficult to think of a shift in the tide of public opinion more steady and predictable over recent years than the rejection of old-school criminal cannabis prohibition.

Although the Illinois Cannabis Regulation and Tax Act of 2019 brought recreational adult-use cannabis to Illinois, its failure to eliminate the evils of prohibition has left the promise of cannabis reform unfulfilled. Rather than repealing or softening existing criminal penalties for minor cannabis use and possession, the new law stretches a tightrope over those existing penalties and invites adults over 21 to enjoy their pot out on the tightrope. One slip, and the user drops smack into the old, harsh, pre-legalization criminal cannabis laws. In other words, a minor violation of the new law carries a harsher penalty than a minor violation of the old law.

An example for illustration. The new law permits adults to legally possess up to 30 grams of cannabis. Prior to the new law taking effect, possession of 10 grams or less of cannabis was punishable by a small civil fine between $100 and $200, the penalty for 10-30 grams was a Class B misdemeanor, 30-100 grams a Class A misdemeanor, 100-500 grams a Class 4 felony, and so on. Under this old system, possession of a few grams more than the legal limit of zero grams incurred a small civil fine. Under the new law, however, possession of a few grams over the legal limit—say, 32 grams—is not punishable by a small civil fine, but by a Class A misdemeanor and up to a year in jail. The new law, instead of softening the penalties, essentially declares that the penalties don't apply so long as you walk the tightrope of the new law's requirements[1]. Put another way, the new law provides a shield against the old criminal cannabis laws, but that shield materializes only in the presence of complete compliance with the strictures of the new law. Anything short of complete compliance means no shield, and full exposure to the harshness of the old penalties.

Exceeding your 30-gram limit is not the only sin that will deprive you of any protection from the old criminal cannabis penalties. The old penalties apply in full force if your cannabis is located in an accessible area of a motor vehicle, merely possessed on the grounds of a school (including high schools), used in a place that can be observed by others (for example, a private balcony or backyard), or transferred in any amount to any person (so much for passing around the joint). These acts are not only exempted from what the new law allows, their commission *voids all protections* of the Illinois Cannabis Regulation and Tax Act of 2019, flinging the just-barely criminal back into the dark ages of cannabis criminalization, where he is to be punished as if cannabis reform never happened.

Illinois' new cannabis regime fails to recognize that slight deviations from the law should incur proportionately slight penalties. In 2019, the General Assembly decided that the existing boundary lines were too restrictive, so it expanded the permissible field of play. But by neglecting to adjust the penalties to match the new field of play, stepping out of bounds at the margins is now a much bigger deal than it was prior to the change. This reflects a failure on the part of lawmakers to appreciate the meaning of *meaningful* cannabis reform.

Popular support for cannabis reform is about much more than simply providing an accommodation for adults who want to get high—it's a recognition that cannabis and the criminal law should not be so intertwined. The General Assembly should stop treating cannabis and the criminal law as two warring interest groups. Handing a victory to cannabis does not require handing an in-kind victory to the criminal law in the form of harsher penalties at the margins. It's not a zero-sum game. Meaningful cannabis reform begins with

the recognition that personal cannabis use and possession need not be a criminal issue. Cannabis is not the bogeyman that Richard Nixon or Nancy Reagan thought it was. With each election cycle that goes by, more and more Americans sign onto this belief (67 percent of Americans support legalization, according to a Pew Research poll conducted this time last year). That's the real trend in public opinion throughout the country, and Illinois should continue being a trend-setter by revisiting the way it penalizes violations at the margins of its cannabis laws.■

Evan Bruno is an attorney in private practice at Bruno Law Offices, LLC, in Urbana, concentrating in criminal defense.

1. 410 ILCS 705/10-5(a).

Recent Appointments and Retirements

1. Pursuant to its constitutional authority, the supreme court has appointed the following to be circuit judge:
   - L. Dominic Kujawa, 20th Circuit, October 22, 2020

2. The following judges have retired:
   - Hon. Scott Shipplett, 9th Circuit, October 2, 2020
   - Hon. Michael P. McCuskey, 10th Circuit, October 19, 2020
   - Hon. Clark E. Erickson, 21st Circuit, October 31, 2020
   - Hon. Marcia B. Orr, Cook County Circuit, October 31, 2020

3. The circuit judges have appointed the following to be associate judge:
   - Demetrios N. Panoushis, 18th Circuit, October 26, 2020
   - Louis B. Aranda, 18th Circuit, October 29, 2020

4. The following judge is deceased:
   - Hon. Diane Gordon Cannon, Cook County Circuit, October 31, 2020

5. The following judge has resigned:
   - Hon. Mauricio Araujo, Cook County Circuit, 6th Subcircuit, October 5, 2020■