Received 7/8/2020 11:59:49 AM Superior Court Eastern District

Filed 7/8/2020 11:59:00 AM Superior Court Eastern District
611 EDA 2020

No. 611 EDA 2020

In the Superior Court of Pennsylvania

Eastern District

QUIERA DOCKERY,

Appellant,

v.

THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC., *ET AL.*

Appellees.

On appeal from the November 4, 2019 Order of the Philadelphia Court of Common Pleas (Cohen, J.), at No. 997, Nov. Term 2018

**BRIEF OF *AMICI CURIAE*,
PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM
AND ITS HEALTH CARE, INSURANCE, PROFESSIONAL,
INDUSTRY, MANUFACTURING, AND BUSINESS MEMBERS**

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The **Pennsylvania Coalition for Civil Justice Reform** is a statewide, nonpartisan alliance of organizations and individuals representing health care providers, professional and trade associations, businesses, nonprofit entities, taxpayers, and other perspectives. The Coalition is dedicated to bringing fairness to litigants by elevating awareness of civil justice issues and advocating for reform.

This brief is also submitted on behalf of these Coalition members, which represent the health care, insurance, professional, industry, manufacturing, and other business communities:

> The **Pennsylvania Medical Society** represents physicians of all specialties and is the largest physician organization in the Commonwealth. The Society regularly participates as *amicus curiae* in Pennsylvania appellate courts in cases raising important health care issues. The Society also represents the American Medical Association Litigation Center, which is made up of the AMA and state medical societies and advances the views of organized medicine in the courts.
>
> The **Pennsylvania Chapter of the American College of Physicians** is the Commonwealth's largest medical specialty organization. Of the College's 159,000 nationwide members, 7,900 are based in Pennsylvania. Members include physicians practicing general internal medicine and its related subspecialties. The organization's mission is to enhance the quality and effectiveness of

health care by fostering excellence and professionalism in the practice of medicine.

The **Pennsylvania Chapter of the American Academy of Pediatrics** has more than 2,300 member pediatricians and pediatric specialists. The Academy includes more than 67,000 pediatricians nationwide. The organization's mission is to attain optimal physical, mental, and social health and well-being for all infants, children, adolescents and young adults.

The **Pennsylvania Health Care Association** represents more than 400 for-profit, not-for-profit, and government nursing and assisted living facilities and personal care communities across the Commonwealth. The Association advocates for approximately 40,000 Pennsylvanians in its member long-term care communities and the nearly 50,000 caregivers who provide them with compassionate and high-quality care every day. The Association and its members are dedicated to serving and protecting our most vulnerable populations.

LeadingAge PA is a trade association representing more than 365 nonprofit senior housing, health care, and community services in Pennsylvania. These committed providers serve more than 75,000 Pennsylvania seniors and employ over 50,000 dedicated caregivers on a daily basis. LeadingAge PA advocates on behalf of its members to affect a healthy vision for the delivery of quality, affordable, and ethical care for Pennsylvania's most vulnerable population.

UPMC (the University of Pittsburgh Medical Center) is a world-renowned health care provider and insurer that creates new models of patient-centered, cost-effective, and accountable care. It provides more than $1 billion a year in benefits to its communities. UPMC is the largest nongovernmental employer in Pennsylvania, with approximately 87,000 employees, 40 hospitals, 700 doctors' offices and outpatient sites, and a 3.5-million-member insurance division.

The **Insurance Federation of Pennsylvania** is Pennsylvania's leading insurance trade association, representing over 200 insurance companies. The Federation's members are of all sizes, issue every type of insurance policy, and represent half of the insurance premiums written in the Commonwealth. The Federation routinely serves as the voice of the insurance trade in litigation in the Commonwealth where those interests are implicated.

Curi is a mutual company dedicated to helping physicians with medicine, business, and life insurance needs. It covers nearly two thousand Pennsylvania healthcare providers with medical professional liability insurance.

The **Doctors Company** is the largest physician-owned medical practice insurer in the nation. In Pennsylvania alone, it insures over 1,000 healthcare professionals.

The **Pennsylvania Chamber of Business and Industry** is the largest broad-based business advocacy association in Pennsylvania.

Thousands of its members from every industry sector employ more than half of the Commonwealth's private workforce. The Chamber's mission is to serve as the statewide voice of businesses, advocate for job creation, and lead Pennsylvania to greater prosperity for its residents.

The **Pennsylvania Association of Community Bankers** counts among its members more than 70 community banks chartered, doing business, and paying taxes in and to the Commonwealth.

The **Pennsylvania Institute of Certified Public Accountants** is among the oldest and largest CPA organizations in the nation. Its membership includes more than 20,000 CPA practitioners in business, industry, government, and education. The Institute speaks for its members on matters of interest to the profession and public.

The **Pennsylvania Manufacturers' Association** represents the Commonwealth's manufacturing sector. Manufacturing drives Pennsylvania's economy, adding value and jobs, and sustains communities through jobs with higher salaries and better benefits.

The **National Federation of Independent Business** is the nation's leading small business association. Its members include 13,000 in Pennsylvania alone. The Federation's mission is to promote and protect its members' rights to own, operate, and grow their businesses.

The Coalition and its Members have a significant interest in the outcome of this case. They are concerned about the serious, adverse consequences that will follow from a ruling that neither Pennsylvania's General Assembly nor its Supreme Court may reasonably regulate venue in medical malpractice actions.

In the early 2000s, the Commonwealth faced a medical malpractice crisis. The three Branches of government worked together to avoid a health care catastrophe. The General Assembly passed legislation, the Governor signed that legislation into law, and the Supreme Court changed its rules. These steps included measures specifying that venue in a medical malpractice case is where the cause of action arose. There is no real debate that these remedial steps—including the venue change—averted a systemic disaster.

In her appeal, appellant asks the Court to throw away all of those efforts and put the Commonwealth back on a ruinous path. Reverting to the prior venue scheme will shift nearly all medical malpractice cases back to Philadelphia and other city courts. Verdicts will spike in both number and size. Doctors' liability insurance premiums will skyrocket. Many doctors will give up and leave and new graduates will start practicing elsewhere. This will trigger the worst harm of all: a lack of access to quality care for the patients who need medical attention. The Court should decline appellant's invitation to set this chain of dominoes in motion.

The Coalition and its Members agree with and support the position of appellees, Thomas Jefferson University Hospitals, Inc., *et al*. The Coalition and its Members submit this brief to provide the Court with the benefit of their perspective relating to the issues confronting the Court.[1]

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[1] No person or entity other than the Coalition and its Members paid for or authored this brief, either in whole or in part. *See* Pa.R.A.P. 531(b)(2). The Coalition and its Members adopt by reference the sections of the brief of appellees, Thomas Jefferson University Hospitals, Inc., *et al*., not included here.

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

"[E]very enactment of the General Assembly is presumed valid." *Weeks v. Dep't of Human Servs.*, 222 A.3d 722, 727 (Pa. 2019). A statute will "only be stricken if the challenger demonstrates that it clearly, palpably, and plainly violates the Constitution." *Id.* (cleaned up); *see also* 1 Pa.C.S. §1922(3) (presumption that the Legislature does not intend to violate the state or federal constitutions).

"The party seeking to overcome the presumption of validity bears a heavy burden of persuasion." *Weeks*, 222 A.3d at 727 (citation omitted). "Any doubts about whether a challenger has met this high burden are resolved in favor of finding the statute constitutional." *Germantown Cab Co. v. Phila. Parking Auth.*, 206 A.3d 1030, 1041 (Pa. 2019). Constitutional challenges to legislative enactments present questions of law, so review is *de novo* and plenary. *Id.*

The above standards also apply to review of a constitutional challenge to a Rule of Court. *See Com. v. Ricker*, 120 A.3d 349, 362 (Pa. Super. 2015); *AmeriChoice Fed. Credit Union v. Ross*, 135 A.3d 1018, 1023 (Pa. Super. 2015); Pa.R.Civ.P. 128(c) (presumption that Supreme Court, in promulgating any rule, does not intend to violate the state or federal constitutions).

STATEMENT OF THE ISSUES PRESENTED

1. May the Pennsylvania General Assembly provide by statute that a plaintiff must file a medical malpractice action where the cause of action arose?

Suggested answer: Yes.

2. May the Pennsylvania Supreme Court provide by rule that a plaintiff must file a medical malpractice action where the cause of action arose?

Suggested answer: Yes.[2]

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[2] These issues correspond with issues 2 and 3 in appellant's statement of matters on appeal. In her statement, she asserts only that the venue provisions are "unconstitutional," without stating how they offend any particular constitutional provision. (Br. at 9 & Appx. C.) The trial court thus did not address appellant's claim that the Supreme Court has exclusive power to determine venue. That flaw should lead the Court to find appellant's issues waived. *See Commonwealth v. Reeves*, 907 A.2d 1, 2-3 (Pa. Super. 2006) (holding issue waived where statement of issues was too vague for trial court to address issue); *Commonwealth v. Thompson*, 778 A.2d 1215, 1223-24 (Pa. Super. 2001) (same; appellant's statement asserted his criminal sentence was "unconstitutional," but did not say how).

SUMMARY OF THE ARGUMENT

This Court should hold that Pennsylvania's General Assembly and Supreme Court each may regulate where medical malpractice actions may be filed.

Under the Pennsylvania Constitution, the Legislature generally regulates substantive law, while the Supreme Court usually handles matters of procedure. But as the Supreme Court has recently—and wisely—recognized, "substance" and "procedure" are slippery, indistinct concepts. They are not independent of one another. Laws can have both substantive and procedural characteristics. These features often overlap. In those situations, the Legislature and Judiciary each may govern. And here, even if the venue statute has procedural traits, it still has roots in a law—the MCARE Act—that addressed a substantive issue: health care policy.

Appellant's perfunctory brief omits these nuances and oversimplifies the issues to the point of unhelpfulness. She takes the incredible position that the Pennsylvania and Federal Constitutions forbid any Branch of the Pennsylvania government from regulating venue in medical malpractice cases. But both the Legislature and Judiciary may. And the General Assembly also may do so because it has the exclusive power to determine the courts' jurisdiction—a subject intertwined with venue.

Appellant's Equal Protection claim is equally dubious. Assuming the venue rule creates a class susceptible of Equal Protection review, appellant ignores that the Court must uphold it if <u>any</u> conceivable rational basis lends it support. At least one does: ensuring even distribution of medical malpractice cases among the common pleas courts to prevent overburdening the city courts' judicial resources. That basis has everything to do with the needs of justice and its administration—unquestionably areas where the Supreme Court may act—and nothing to do with appellant's erroneous suggestion that the Court was making public health policy.

Appellant may think the venue provisions are obsolete. But striking them will mean shifting massive and disproportionate numbers of cases back to the static judicial resources of the city courts. The venue provisions thus retain continuing value. The ounce of prevention they provide is worth a pound of cure. After all, we still inoculate our children even after a vaccine successfully controls a disease.

For these reasons, detailed below, appellant fails to meet her heavy burden to show that each of the venue statute and rule clearly, palpably, and plainly violate the Constitution. This Court should affirm.

ARGUMENT

A. The venue statute is constitutional.

Appellant contends that the venue statute, 42 Pa.C.S. §5101.1, encroaches on the Pennsylvania Supreme Court's powers under Article V, Section 10(c) of the Pennsylvania Constitution. In a terse argument, she says that only the Supreme Court may regulate procedure, that venue is purely procedural, and thus that the statute is unconstitutional. (Br. at 12-14.) But appellant does not discuss the actual language of Section 10(c) or the Supreme Court's most recent decision explaining what it means. They are discussed below—and they reveal the venue statute is constitutional.

1. The General Assembly may regulate procedure.

Section 10(c) states that the Supreme Court has "power to prescribe general rules governing practice, procedure and the conduct of all courts." PA. CONST. ART. V, §10(c). But the Court's "general rules" must be "consistent with th[e Pennsylvania] Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court." *Id.* Statutory laws are suspended only "to the extent that they are inconsistent with rules prescribed." *Id.* Thus, Section 10(c) permits the Supreme Court to issue general court rules. The rules (a) must be constitutional, (b) may not affect substantive rights, and (c) cannot impact the

General Assembly's exclusive power to define every court's jurisdiction. The Legislature also is free to pass procedural laws that fit with court rules.

In a recent, landmark decision, the Supreme Court recognized the nuances—and limitations—of this constitutional language. In *Villani v. Seibert*, 159 A.3d 478 (Pa. 2017), the Court held that a legislative enactment, the Dragonetti Act, did not unconstitutionally encroach on the Court's rulemaking powers. There, the party challenging the Act claimed (just like the appellant here) that the Act violated the Court's "exclusive" rulemaking powers.

The Court immediately viewed this core premise "with great circumspection." *Id.* at 490. "Exclusivity," the Court explained, could not be supported, given the many situations when the General Assembly had passed procedural laws. For instance, the Court noted, while the Court maintains Rules of Evidence, the Legislature also regulates evidence by statute. And the Court also enforces statutory procedures, like those in the Post-Conviction Relief Act. *Id.*

The *Villani* Court thus concluded that the General Assembly may pass laws addressing subjects with both substantive and rulemaking characteristics, as such topics "are suited to the province of the political branch." *Id.* at 490. The Court pointed out "the Legislature's superior resources and institutional prerogative in making social policy judgments upon a developed analysis." *Id.* at 492. And

while the Court recognized that it "retains a residual, common law role in substantive lawmaking," that role is secondary when the Legislature acts. *Id.*

In sum, then, the Court accepted the shared and overlapping powers of the Judiciary and Legislature in matters of procedure and substance. Sometimes, both may act. This finding mirrors the Court's historical recognition that "the separation of powers doctrine contemplates 'a degree of interdependence and reciprocity between the various branches.'"[3] *Id.* at 491 (citation omitted). Thus, in each Section 10(c) case, given "the multitude of mixed-faceted lawmaking and rulemaking ventures, some discerning judgment obviously must be brought to bear to sort through the pervading power questions." *Id.* at 491. For the Dragonetti

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[3] A month after deciding *Villani*, the Court reiterated and reinforced the concept of concurrent powers. In *Yocum v. Commonwealth Pennsylvania Gaming Control Board*, 161 A.3d 228 (Pa. 2017), the Court held that the General Assembly may regulate attorneys (who the Court also regulates, through its Rules of Professional Conduct) by a gaming statute restricting the employment of former gaming agency attorneys. *Id.* at 247-48. Even appellant's citations accept the basic proposition of shared powers. *See In re 42 Pa.C.S. §1703*, 394 A.2d 444, 451 (Pa. 1978) (recognizing that "the separation of powers doctrine does not 'contemplate total separation of [the] three ... branches of Government'" and "the existence of appropriate overlap between branches with respect to some functions of government" (citation omitted)); *accord* Durst, *et al.*, *Wielding and Yielding: Pennsylvania Judicial Procedural Rulemaking Authority and the Preemption Doctrine*, 26 WIDENER L.J. 45, 46, 65-66 (2017) (noting the Supreme Court's "subtle yielding of exclusivity in rulemaking, which suggests a limited sharing of powers rather than maintenance of impermeable separation" and the "concurrent power" of the Legislature and Judiciary in due process rulemaking).

Act, the Court held its substantial remedial thrust meant it did not violate Section 10(c). *Id.* at 491-93.

2. <u>The venue statute's purpose is remedial.</u>

Villani requires a careful analysis of the venue statute and its underlying purpose. Appellant's drive-by argument is anything but.

The venue statute stemmed from, and was part and parcel with, the comprehensive set of changes enacted by the General Assembly in the MCARE Act. *See generally* Act of Mar. 20, 2002, P.L. 154, No. 13 (codified at 40 P.S. §§1303.101, *et seq.*). The MCARE Act's purpose is to "ensure that medical care is available in this Commonwealth through a comprehensive and high-quality health care system." 40 P.S. §1303.102(1). "To maintain this system," the Legislature explained, "medical professional liability insurance has to be obtainable at an affordable and reasonable cost in every geographic region of this Commonwealth." *Id.*, §1303.102(3). At the same time, "[a] person who has sustained injury or death as a result of medical negligence by a health care provider must be afforded a prompt determination and fair compensation." *Id.*, §1303.102(4). The General Assembly found these and other elements "essential to the public health, safety and welfare of all the citizens of Pennsylvania." *Id.*, §1303.102(6).

When the venue statute followed a few months later as a direct result of the MCARE Act, the General Assembly sought to protect "physicians and health care

institutions," which "are essential to maintaining the high quality of health care that our citizens have come to expect." 40 P.S. §1303.514(a); *see* 42 Pa.C.S. §5101.1(a) (cross-referencing purpose of §514(a)). The Legislature noted that recent changes in health care entity structures triggered an effective expansion of existing court venues, which in turn compromised new physician training. 40 P.S. §1303.514(a). The General Assembly concluded there was "need," "as a matter of public policy," to regulate venue for medical malpractice cases. 42 Pa.C.S. §5101.1(a).

The venue statute thus was a key component in a comprehensive legislative endeavor addressing a pressing public policy issue: ensuring the public's access to quality health care.[4] There is no indication that the General Assembly sought to take away or encroach on the Judiciary's powers. Instead, the Legislature's objective was remedial and focused on a substantive issue. This is just what the *Villani* Court had in mind when it explained that laws addressing substantive issues but also having rulemaking characteristics "are suited to the province of the

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[4] Appellant concurs with this proposition. (*See* Br. at 18) (citing 40 P.S. §1303.102 and agreeing that "experimental policymaking with the purpose of overhauling 'Pennsylvania's policy with regard to medical malpractice and its reform' is certainly a legitimate objective of the Legislature" (quoting *Riggio v. Katz*, 64 Pa. D. & C. 4th 396 (C.P. Phila. 2003)).

political branch."[5] 159 A.3d at 490; *see also id.* at 492 (noting "the Legislature's superior resources and institutional prerogative in making social policy judgments upon a developed analysis").

3. **The cases appellant cites are no longer good law.**

Villani departs from the thinking of prior Supreme Court decisions. The Court acknowledged as much. *Id.* at 492 ("the judicial philosophy of this opinion may differ from predecessor ones"). But despite that decision's controlling and superseding significance, appellant does not mention it. Instead, she relies on three older decisions—not one of which is helpful.

Appellant first cites *In re 42 Pa.C.S. §1703*, 394 A.2d 444 (Pa. 1978), for the proposition that the General Assembly is "without power to control procedure."

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[5] Even though the *Villani* Court significantly altered the Section 10(c) landscape, some earlier decisions are instructive. For instance, in *Payne v. Commonwealth Department of Corrections*, 871 A.2d 795 (Pa. 2005), the Court upheld a statute that directed common pleas courts to dismiss frivolous prison conditions lawsuits. The Court admitted that, at first blush, the statute could be read as procedural. But "[u]pon closer scrutiny," the Court found it defined substantive rights "by setting forth the circumstances under which the right to file prison condition litigation shall be summarily denied." Put another way, the statute "regulates the substantive right to file prison conditions litigation" and "defines the parameters for the entitlement to a right." *Id.* at 802; *accord Commonwealth v. Morris*, 771 A.2d 721, 738 (2001). The same is true here. The venue statute regulates and defines one parameter for the entitlement to file a medical malpractice lawsuit.

(Br. at 13.) But that language cannot be squared with, and thus does not survive, the sea-change of *Villani*, which repeatedly acknowledges the Legislature's "power to control procedure." In fact, the only place where *In re §1703* is even mentioned in *Villani* is in Justice Donahue's opinion—a dissent that no other Justice joined. 159 A.3d at 496, 498. And in any event, *In re §1703* dealt with an open public meeting law, not a venue statute.[6]

Appellant fares no better in relying on *McGinley v. Scott*, 164 A.2d 424 (Pa. 1960). That decision predates the 1968 Pennsylvania Constitution by 8 years. It thus does not construe Section 10(c).[7] *McGinley* also did not involve the constitutional question of the Judiciary's and Legislature's respective powers over venue. Nor did it decide the constitutionality of a venue statute. The issue there was the basis for the defendants' preliminary objection that the Philadelphia common pleas court could not hear that case. *Id.* at 427. In that specific context,

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[6] Even before *Villani* effectively overruled its logic, *In re §1703* was on shaky ground. There, the Supreme Court penned an extraordinary and unprecedented advisory letter to the Governor and Legislature announcing the Court's refusal to comply with the statute. The letter appears in the Atlantic Reporter and looks like precedent even though it is not, as it did not decide a case or result from developed advocacy from parties to a contested legal dispute.

[7] Appellant's own citations admit this. *See In re §1703*, 394 A.2d at 447 ("It was in [1968] that the Judiciary Article of the Pennsylvania Constitution was altered to grant the Supreme Court in Article V, §10(c) 'the power to prescribe general rules governing practice, procedure and the conduct of all courts.'").

the Court offered a basic description of some possible conceptual differences between jurisdiction and venue. But nowhere in *McGinley* did the Court say that the General Assembly lacks the power to regulate venue.

Appellant's third and final case is *North-Central Pennsylvania Trial Lawyers Association v. Weaver*, 827 A.2d 550 (Pa. Commw. 2003). To begin, this Court has repeatedly held that *North-Central* is not precedential or binding on this Court.[8] And it is not even persuasive. That decision depended on the logic of *In re §1703* and *McGinley*, *id.* at 558-59, which do not survive *Villani*.

North-Central also was wrong when decided. As Judge Pellegrini, joined by Judge Leadbetter, explained in dissent, the majority overlooked the fact that *McGinley* predated the 1968 Constitution, and thus "the constitutional implications" of Section 10(c) were not in dispute there. *Id.* at 563. Judge Pellegrini also explained—in language eerily similar to that later employed by the *Villani* Court—that "there is not a bright line between what is within the purview

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[8] *See, e.g.*, *Connor v. Crozer Keystone Health Sys.*, 832 A.2d 1112, 1116 n.3 (Pa. Super. 2003) (applying venue statute despite *North-Central*, as "[i]t is well settled that we are not bound by any decision of the Commonwealth Court"); *Forrester v. Hanson*, 901 A.2d 548, 552 n.3 (Pa. Super. 2006) (same); *Peters v. Sidorov*, 855 A.2d 894, 895 n.2 (Pa. Super. 2004) (same).

of the Supreme Court or the General Assembly."[9] *Id.* He noted that the Constitution "does not vest total control in the Supreme Court of all matters relating to the operation of the courts." *Id.* In fact, the Pennsylvania Constitution commits to the Legislature the power to decide any court's jurisdiction to hear a case. In Judge Pellegrini's view, the "close relationship" between venue and jurisdiction meant "it is within the power of the General Assembly to place restrictions on a party's choice of venue." *Id.*

4. The Legislature has the constitutional power to decide what kinds of cases a court may hear.

Judge Pellegrini got it right. Venue and jurisdiction are, indeed, closely interrelated concepts. *See, e.g.*, *Commonwealth v. Graham*, 196 A.3d 661, 663 (Pa. Super. 2018) (describing venue and jurisdiction as "closely-related"). In fact, these "terms are often used interchangeably because they must exist simultaneously in order for a court to properly exercise its power to resolve a particular controversy." *Commonwealth v. Bethea*, 828 A.2d 1066, 1075 (Pa. 2003). "Venue can only be proper where jurisdiction already exists," and it "impos[es] geographic limitations on the exercise of jurisdiction." *Id.*

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[9] *See* Durst, *supra*, at 66 ("an approach of categorically rejecting all statutory procedures is fraught with challenges when the judiciary continues to struggle to discern what is substantive and what is procedural").

The Pennsylvania Constitution vests the General Assembly with the exclusive discretion to shape or change a court's jurisdiction—or even take it away. *See* PA. CONST. ART. V, §5(b) (providing that each common pleas court has jurisdiction in all cases "except as may otherwise be provided by law"); *Id.*, §8 ("[t]he General Assembly may establish additional courts or divisions of existing courts"). In fact, as noted, Section 10(c) itself clarifies that no Supreme Court rule may "affect the right of the General Assembly to determine the jurisdiction of any court." *Id.*, §10(c). The Constitution even provides that the Legislature gets to make the rules for changes of venue in civil and criminal cases. *Id.*, ART. III, §23.

In the exercise of this exclusive power, the General Assembly has passed countless statutes impacting seemingly every dimension of jurisdiction. To begin, each county's court of common pleas is defined as an independent court. *See* 2 Pa.C.S. §911(a) ("[t]here shall be one court of common pleas for each judicial district"); *see also* PA. CONST. ART. V, §5(b) (same). So the courts of common pleas are not one, monolithic court. The General Assembly thus may expand or contract the jurisdiction of each of the separate courts of common pleas. And, over time, it has done so—and not in a uniform fashion. For instance:

- Varying kinds of cases are taken away from the courts of common pleas and given to the minor courts. *See, e.g.*, 42 Pa.C.S. §1123 (jurisdiction of Philadelphia Municipal Court); *id.*, §1143 (jurisdiction of Pittsburgh Magistrates

Court); *id.*, §1515 (jurisdiction of Magisterial District Judges).

- Some courts of common pleas are divided into different and varying numbers of specialized divisions. Others are not divided at all. *See* 42 Pa.C.S. §951 (splitting Philadelphia into 3 divisions, Allegheny 4, and others into 2—while other courts have no divisions).

- Some divisions within the courts of common pleas may hear certain cases. The same divisions of other courts of common pleas may not hear those same cases. *See* 20 Pa.C.S. §713 (adoption and birth record matters are assigned to the Family Division in Philadelphia, but to the Orphans' Divisions of other courts).

- Some state agency-related cases are heard in the first instance by the common pleas courts. Others are first heard by the Commonwealth Court. *See* 42 Pa.C.S. §933.

- Some courts of common pleas include subsidiary, subject matter-specific problem-solving courts. Others do not. *See* 42 Pa.C.S. §916.

The General Assembly's adjustments and refinements to court jurisdiction do not stop with the trial-level courts. The Legislature also maintains special, case-specific jurisdictions for each appellate court:

- The Supreme Court has exclusive appellate jurisdiction in some cases, to the exclusion of both this and the Commonwealth Courts. *See* 42 Pa.C.S. §722 (exclusive appellate jurisdiction in death penalty and other cases).

- The Supreme Court has exclusive original jurisdiction in some cases, to the exclusion of every other Pennsylvania court. *See* 4 Pa.C.S. §1204 (exclusive original jurisdiction in gaming license cases).

- The Commonwealth Court's jigsaw-like jurisdiction includes original jurisdiction in cases that otherwise would be in the common pleas courts and exclusive appellate jurisdiction in some agency and other cases. *See, e.g.*, 42 Pa.C.S. §§761-64 (Commonwealth Court's jurisdiction); 65 Pa.C.S. §715 (exclusive jurisdiction in Sunshine Act appeals); 40 P.S. §221.4(d) (same; insurance insolvencies).

- Even this Court—which has the Commonwealth's most generalized appellate jurisdiction—has unique and exclusive jurisdiction over some types of cases. *See* 18 Pa.C.S. §§5702, 5708 (wiretap matters).

Of particular import here, the Legislature, time and again, has enacted unique venue requirements for specific kinds of cases and parties:

- 12 Pa.C.S. §6208 (venue in motor vehicle installment sales matters);

- 12 Pa.C.S. §6307 (venue in goods and services installment sales matters);

- 15 Pa.C.S. §2576(a) (venue for claims for disgorgement of profits from a controlling shareholder);

- 62 P.S. §1411 (venue in human services fraud and abuse cases);

- 20 Pa.C.S. §721 (venue in estate matters);

- 20 Pa.C.S. §5614 (venue in power of attorney matters);

- 20 Pa.C.S. §7714 (venue in trust matters);

- 23 Pa.C.S. §2302 (venue in adoption matters);

- 24 P.S. §5105.9 (venue for actions against Pennsylvania Higher Education Assistance Agency);

- 26 Pa.C.S. §301 (venue in eminent domain cases);
- 35 P.S. §6022.303(c) (venue in hazardous material cases);
- 42 Pa.C.S. §7304(c), §7319, §7321.28 (venue in arbitration matters);
- 42 Pa.C.S. §8523 (venue for claims against Commonwealth parties);
- 49 P.S. §1502 (venue in mechanic's lien cases);
- 53 P.S. §11002-A (venue in land use matters);
- 71 P.S. §7115 (venue in mental health matters); and
- 71 P.S. §807.2 (venue in cases involving unlicensed professional and occupational activities).[10]

In sum, the General Assembly enjoys exclusive power to decide court jurisdiction. Jurisdiction and venue are linked and overlap. The Legislature has, over time, constructed a vast network of multidimensional and interdependent jurisdiction and venue laws. Among them are laws directing venue in specific kinds of cases and for certain classes of defendants—just like the medical malpractice venue statute. That statute thus fits neatly within the array of commonplace statutes that have been routinely applied by our courts, for decades.

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[10] *See also* Durst, *supra*, at 63-65 (noting repeated instances of procedures in statutes and even times when the Supreme Court has issued rules that simply adopted the procedures found in statutes).

Appellant does not acknowledge any of this. Her position seems to be that the courts must hold that the above venue statutes are unconstitutional, across the board. But at the same time, she must admit those same laws would be unassailable if they used the word "jurisdiction" instead of "venue." So her argument distills to semantics—hardly a good reason to strike down a statute.

Appellant's claim falls short of her "heavy burden" to show the statute "clearly, palpably, and plainly violates the Constitution." *Weeks v. Dep't of Human Servs.*, 222 A.3d 722, 727 (Pa. 2019). If the Court has any doubt, it must uphold the statute. *See Germantown Cab Co. v. Phila. Parking Auth.*, 206 A.3d 1030, 1041 (Pa. 2019) ("Any doubts about whether a challenger has met this high burden are resolved in favor of finding the statute constitutional."). And in any event, the Court must uphold the statute because it tracks the venue rule. *See* PA. CONST. ART. V, §10(c) (laws are suspended only "to the extent that they are inconsistent with rules prescribed"). Thus, the Court should affirm the trial court's finding that the venue statute is constitutional.

B. **The venue rule is constitutional.**

Appellant asserts that the venue rule, Pa.R.Civ.P. 1006(a.1), violates her constitutional right to Equal Protection. She maintains that the rule may be explained only as a public health measure, but that the Supreme Court may not engage in policymaking because it merely decides cases, and thus the rule lacks a legitimate rational basis. (Br. at 14-23.) Appellant's view of the Supreme Court's powers is inappropriately narrow, she misapplies the rational basis standard, and the needs of judicial administration justify the rule. Thus, it is constitutional.

1. **The Supreme Court does more than just decide cases.**

Appellant grounds her Equal Protection claim on the assertion that the Supreme Court's only job is deciding cases. (Br. at 21.) But the Pennsylvania Constitution quickly dispenses with that crabbed view.[11]

The Constitution broadly charges the Supreme Court with "general supervisory and administrative authority over all the courts." PA. CONST. ART. V, §10(a). It must "appoint a court administrator and may appoint such subordinate

[11] Appellant's related contention that the three Branches are rigidly sealed off from one another is wrong under *Villani* and is not even consistent with her own citations. (Br. at 20-21); *see In re §1703* 394 A.2d at 451 (recognizing that "the separation of powers doctrine does not 'contemplate total separation of [the] three ... branches of Government'" and "the existence of appropriate overlap between branches with respect to some functions of government" (citation omitted)).

administrators and staff as may be necessary and proper for the prompt and proper disposition of the business of all courts." *Id.*, §10(b). The Court may create general rules governing "the administration of all courts and supervision of all officers of the Judicial Branch. *Id.*, §10(c). And while appellant gives short shrift to the concept of "justice" by trying to limit it to merely deciding cases, she repeatedly admits that the Supreme Court is responsible for its "efficient administration." (Br. at 10, 19-20, 21 n.4.)

The Supreme Court's administrative rulemaking power includes the ability "to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require." PA. CONST. ART. V, §10(c). The Court thus is directly authorized by the Constitution to do exactly what it did here (assign each medical malpractice case to the court in which the cause of action arose) if, in the Court's judgment, the "needs of justice" required it. And the Court obviously thought they do.

2. The rule is supported by the rational basis of protecting scarce judicial resources.

Appellant still presses on with her Equal Protection claim, contending the rule can be justified by just one "conceivable rationale": public health policy.[12] (Br. at 18.) But she claims that the Pennsylvania Constitution forbids the Supreme Court from dabbling in "experimental public health policymaking."[13] (*Id.* at 19-20.) Thus, she says the rule offends the Constitution.

Ultimately it is unnecessary to decide whether appellant is right about her "health policy" argument, as she misconstrues the standard of review. Contrary to appellant's contention, the rule need not be supported by a contemporaneously-stated basis. "It is enough that some rationale may conceivably be the purpose"

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[12] Another premise of appellant's Equal Protection claim—that the venue rule creates a "subclass of individuals"—also is suspect. If that were true, then some common pleas courts are subordinate to others. Surely the judges of those courts would be surprised to hear that they serve in such a hierarchy.

[13] If appellant is right, then many other rules with policy underpinnings are probably invalid. *See, e.g.*, Pa.R.Civ.P. 1901.1 (venue in Protection from Abuse Act actions); Pa.R.Civ.P. 1952 (venue in actions for protection of victims of sexual violence or intimidation); Pa.R.J.C.P. 1300 (venue in dependency matters); Pa.R.Civ.P. 1930.6 (venue in paternity actions); Pa.R.Civ.P. 3141 (venue in garnishment proceedings); Pa.R.Civ.P. 1072 (venue in replevin cases); Pa.R.Civ.P. 1062 (venue in actions to quiet title); Pa.R.Civ.P. 1552 (venue in partition actions); Pa.R.Civ.P. 1142 (venue in mortgage foreclosure cases); Pa.R.Civ.P. 1052 (venue in ejectment cases); Pa.R.Civ.P. 3122 (venue in judgment enforcement proceedings); Pa.R.Civ.P. 3278 (venue in deficiency judgment proceedings); Pa.R.Civ.P. 1092 (venue in mandamus actions).

behind the rule. *Kramer v. WCAB (Rite Aid Corp.)*, 883 A.2d 518, 534 (Pa. 2005) (emphasis added). Thus, a court will "hypothesize reasons" for the particular classification and, if it finds one, will sustain the rule—"even if its soundness or wisdom might be deemed questionable." *Id.* Appellant's cases state these principles verbatim. *See Commonwealth v. Albert*, 758 A.2d 1149, 1152-53 (Pa. 2000) (stating quoted principles); *Small v. Horn*, 722 A.2d 664, 672 (Pa. 1998) ("the government need not have articulated the purpose or rationale supporting its action" to pass the rational basis test).

Here, it is easy to perceive a rational basis for the rule: keeping metropolitan courts from suffering from an overburden of cases and inflicting the resulting decisional delays on parties to cases before those courts.[14] *See North-Central*, 827 A.2d at 563-64 (Pellegrini, J., dissenting) ("Where an individual may choose to have his or her case heard directly affects the needs of a specific judicial district in that it allows individuals to forum shop for the best forum to hear his or her case

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[14] Statistics bear out this purpose. Before the venue change, medical malpractice cases overwhelmed the Philadelphia court. In more recent years, the cases are more evenly distributed among the common pleas courts. *See Pennsylvania Medical Malpractice Filings*, Administrative Office of the Pennsylvania Courts (available at http://www.pacourts.us/assets/files/setting-2929/file-7458.pdf?cb=02eea5); *Medical Malpractice Statistics*, AOPC (available at http://www.pacourts.us/news-and-statistics/research-and-statistics/medical-malpractice-statistics).

based upon verdicts and awards in previous cases which are similar to their own case. As a result, certain judicial districts may be inundated with cases making it necessary to employ more judges to hear the cases, impacting both state and county budgets."). In fact, the MCARE Act—which, of course, led to the venue rule—states that very purpose.[15] *See* 40 P.S. §1303.102(4) ("[a] person who has sustained injury or death as a result of medical negligence by a health care provider must be afforded a prompt determination and fair compensation").

For these reasons, appellant's claim falls short of her heavy burden to show the venue rule clearly, palpably, and plainly violates the Constitution. *See Com. v. Ricker*, 120 A.3d 349, 362 (Pa. Super. 2015); *AmeriChoice Fed. Credit Union v. Ross*, 135 A.3d 1018, 1023 (Pa. Super. 2015). Thus, the Court should affirm the trial court's finding that the venue rule is constitutional.

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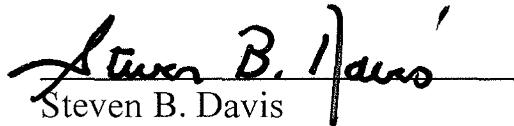
[15] The rule also finds support in the need to prevent parties, litigants, and witnesses from having to travel long distances to a court that happens to be the place where a defendant has a medical facility.

CONCLUSION

For these reasons, *amici curiae*, the Pennsylvania Coalition for Civil Justice Reform and its Health Care, Insurance, Professional, Industry, Manufacturing, and Business Members request that the Court find each of the venue statute and rule constitutional and thus affirm the trial court's decision.

Respectfully submitted,



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Dated: July 8, 2020

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