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Suesz V. Med-1 Solutions, LLC: Definition of a Judicial District in the Venue Requirement of the Fair Debt Collection Practices Act

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SUESZ V. MED-1 SOLUTIONS, LLC:
**DEFINITION OF A JUDICIAL DISTRICT
 IN
 THE VENUE REQUIREMENT OF THE
 FAIR DEBT COLLECTION PRACTICES
 ACT**

DANIEL MARK*

When a debt collector sues a debtor, the Fair Debt Collection Practices Act (FDCPA) requires the debt collector to file the suit in the same “judicial district” in which the debtor resides or where the contract giving rise to the suit was signed. This applies to state law actions filed in state courts. Normally this restriction is not an issue because state venue rules generally require a defendant to be sued in the county in which the defendant lives. And normally the courts in one county will not be construed as being more than one judicial district. However, the Seventh Circuit, sitting en banc, held that the municipal department districts in Cook County, Illinois and the township small claims courts in Marion County, Indiana constitute separate judicial districts within their respective counties for the purposes of the FDCPA venue rule. This venue rule, as interpreted by the Seventh Circuit goes against the commonly understood meaning of “judicial district” as it has been used by Congress. Further, this interpretation of the Act functionally operates to impose federal venue rules on state law actions in state courts—where venue rules are generally left to state discretion.

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* J.D. Candidate, May 2016, Northern Illinois University College of Law; B.A., Northern Illinois University, Notes and Comments Editor, Northern Illinois University Law Review. I would like to thank Judge Raymond Mitchell for inadvertently providing me with a topic. Thank you to the board and editors of the Review for your work in preparing this piece. I would also like to thank Professors Parness and Jones for their invaluable guidance.

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I. INTRODUCTION

In light of congressional recognition of a growing trend in abusive practices by unscrupulous debt collectors, Congress enacted the Fair Debt Collection Practices Act (FDCPA).¹ Congress intended the Act to combat abusive debt collection tactics, to provide a uniform and consistent standard for eliminating these practices across the states, and to attempt to even the playing field for debt collectors who do not employ abusive tactics.²

In passing the Act, Congress included the Fair Trade Commission’s “fair venue standards.”³ The Act specifically provides that when a debt collector brings a legal action against a debtor’s consumer debt, the debt collector shall bring such action “only in the *judicial district or similar legal entity* . . . in which such consumer signed the contract sued upon; or . . . in which such consumer resides at the commencement of the action.”⁴ This provision was included in an effort to combat abusive forum-shopping practices whereby debt collectors would sue debtors in courts so inconvenient or distant that the debtor would be very unlikely to appear—thereby allowing debt collectors to obtain default judgments.⁵ Congress provided in the statute’s declaration of purpose that “[e]ven where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.”⁶ So, even actions wholly based upon state law, filed in state courts, would have to comply with the venue provision of the FDCPA.⁷ Interestingly, Congress failed to include a definition of “judicial district or similar legal entity” from the definitions section of the Act; thus, it has been left to courts to try to determine what a “judicial district or simi-

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1. 15 U.S.C. § 1692(a) (2014).
 2. 15 U.S.C. § 1692(e) (2014).
 3. S. REP. NO. 95-382, at 40 (1977).
 4. 15 U.S.C. § 1692i (2014) (emphasis added).
 5. S. REP. NO. 95-382, at 40 (1977).
 6. 15 U.S.C. § 1692(d) (2014).
 7. *See id.*; 15 U.S.C. § 1692i (2014).

lar legal entity” is.⁸ Penalties for failure to comply with the Act include: any actual damage resulting from the debt collector’s failure to comply; additional damages for an individual not to exceed \$1,000; the statute also provides for much larger recoveries for successful class actions; and for costs and reasonable attorney’s fees when actions are found to have been brought in bad faith or for the purpose of harassing a debtor.⁹

In July of 2014 the Seventh Circuit United States Court of Appeals issued an opinion after an en banc rehearing of *Suesz v. Med-1 Solutions*.¹⁰ The case concerned the interpretation of the Fair Debt Collection Practices Act’s venue provision as applied to the Marion County township courts.¹¹ The court’s holding overturned the Seventh Circuit panel’s opinion for *Suesz* and the Seventh Circuit’s *Newsom v. Friedman* opinion, the case on which the *Suesz* panel based its holding.¹² Prior to this decision, whether a court constituted a “judicial district” under the venue provision of the FDCPA had been based upon the actual composition and administration of a given court system.¹³ The Seventh Circuit’s new approach defined “judicial district” under this Act as the “smallest geographic area that is relevant for determining venue in the court system in which the case is filed.”¹⁴ This new approach presents some interesting issues for how debt collection activities will now be forced to occur in certain “small claims” courts such as in Cook County, Illinois and Marion County, Indiana.

Part II of this Note provides a comprehensive overview of the three U.S. Circuit Court cases that addressed this issue prior to *Suesz II*. *Newsom v. Friedman* is a Seventh Circuit case which dealt with the Cook County Municipal Department Districts.¹⁵ *Hess v. Cohen & Slamowitz* is a Second Circuit case that analyzed the meaning of “judicial district” under the FDCPA as applied to a Syracuse, New York city court.¹⁶ The final background opinion in this Part is that filed by the *Suesz I* panel.

Part III provides a comprehensive overview of the *Suesz II* opinions. There were four opinions written for this case. Judges Posner and Hamilton wrote the majority opinion for this case. Judge Sykes wrote a concurring opinion. Judges Flaum and Kanne wrote separate dissents from the majority opinion.

8. See 15 U.S.C. § 1692a (2014).

9. 15 U.S.C. § 1692k (2014).

10. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 638 (7th Cir. 2014).

11. *Id.*

12. *Id.*

13. *Newsom v. Friedman*, 76 F.3d 813 (7th Cir. 1996).

14. *Suesz*, 757 F.3d at 638.

15. *Newsom*, 76 F.3d at 813.

16. *Hess v. Cohen & Slamowitz, LLP*, 637 F.3d 117 (2d Cir. 2011).

First, in Part IV, I will argue that in the majority's statutory construction of the venue provision new definition of "judicial district" and corresponding rule espoused by the majority simply missed the point. Second, I will argue that this rule leads to inconsistencies when actually put into practice. Finally, I will argue that while this rule does not mandate that states change their procedural law to accommodate the decision, by imposing a federal penalty on individuals acting within state court systems, pursuing state law claims, and abiding by state procedural law, it violates the Tenth Amendment and is unconstitutional.

II. INTERPRETATION OF § 1692i PRIOR TO SUEZ II

A. *NEWSOM V. FRIEDMAN*

Newsom v. Friedman was the Seventh Circuit's first opportunity to analyze what a "judicial district" meant under the FDCPA.¹⁷ In *Newsom*, Friedman, an attorney who specialized in debt collections, brought an action to recover unpaid medical bills that had been incurred at Elmhurst Memorial Hospital, located in DuPage County.¹⁸ Newsom, the debtor, was a resident of Schaumburg, Illinois, located in Cook County, and importantly in the Third Municipal District.¹⁹ Friedman filed the lawsuit in the first municipal department of the Circuit Court of Cook County which is located in the Daley Center, downtown Chicago.²⁰ Friedman subsequently obtained a default judgment against Newsom.²¹ When Friedman attempted to collect on the judgment, Newsom initiated proceedings against him, claiming that by Friedman's failure to file the action against her in the Third Municipal Department that he violated the venue provision of the FDCPA.²² Although the district court determined that the phrase "judicial district" was ambiguous, it granted Friedman's motion to dismiss, concluding that it had been properly filed.²³ Newsom's subsequent appeal gave the Seventh Circuit its first chance to determine what the meaning of a "judicial district" is under the FDCPA.²⁴

The Seventh Circuit was not convinced by the district court's categorization of the phrase "judicial district" as ambiguous.²⁵ Although the phrase

17. *Newsom*, 76 F.3d at 813.

18. *Id.* at 815.

19. *Id.*

20. *Id.* at 815-16.

21. *Id.* at 815.

22. *Newsom v. Friedman*, 76 F.3d 813, 815 (7th Cir. 1996).

23. *Id.* at 815-16.

24. *Id.*

25. *Id.* at 817.

“judicial district” was not defined in the statute, the court concluded that in such an absence a word is usually construed in a way that gives it its natural or ordinary meaning.²⁶ In an instance such as this, the court held, legal terms should be given their common law meaning.²⁷ The court relied on the definition of “judicial district” provided by Black’s Law Dictionary in order to determine the phrase’s plain language meaning:

One of the circuits or precincts into which a state is commonly divided for judicial purposes; a court of general original jurisdiction being usually provided in each of such districts, and the boundaries of the district marking the territorial limits of its authority; or the district may include two or more counties, having separate and independent county courts, but in that case they are presided over by the same judge.²⁸

After establishing the proper definition of a “judicial district,” the *Newsom* court looked at the structure of Illinois State courts—specifically looking to judicial circuits.²⁹ Article VI, Section 7 of the Illinois Constitution provides:

The State shall be divided into Judicial Circuits consisting of one or more counties. The First Judicial District shall constitute a Judicial Circuit. The Judicial Circuits within the other Judicial Districts shall be as provided by law.³⁰

Thus, under the Illinois Constitution, it is possible for one judicial circuit to be comprised of multiple counties, and in such a case there is one Chief Judge that presides over the circuit.³¹ Further, the Circuit Courts, when divided into divisions under Article VI section 7(c) possess original jurisdiction, and “the divisions are not considered jurisdictional.”³² It was clear to the court that based upon the Black’s definition, each Circuit Court

26. *Id.*

27. *Newsom v. Friedman*, 76 F.3d 813, 817 (7th Cir. 1996).

28. *Id.* (quoting BLACK’S LAW DICTIONARY 848 (6th ed. 1990)) (which provides the same definition for the phrase as the 4th edition which was the current edition when the statute was passed in 1977).

29. *Id.* at 818.

30. *Id.* (quoting ILL. CONST. art. VI, §7).

31. *Id.*

32. *Newsom v. Friedman*, 76 F.3d 813, 818 (7th Cir. 1996) (citing Bd. of Trs. of Cmty. Coll. Dist. No. 508 v. Rosewell, 635 N.E.2d 413, 429 (Ill. App. Ct. 1st Dist. 1992)); ILL. CONST. art. VI, § 7(c).

constituted a judicial district; however, Newsom's argument that each municipal department constituted a separate "judicial district" under the FDCPA required further inquiry.³³

To try to determine how the municipal department districts should be categorized, the court looked to the Procedures and Rules of the Court of the Circuit Court of Cook County that detailed the structure and rules for the court system.³⁴ This General Order describes what courts will hear what types of cases, and further provides: "that civil actions be filed in . . . the municipal department district of residence of any defendant, or . . . the municipal department district in which the transaction or some part thereof occurred out of which the cause of action arose."³⁵ Thus, to this point, the Cook County Court Rules reflect the same venue requirement as the FDCPA.³⁶ However, General Order 1.3 provides that:

[A]ny action may be assigned to any judge or associate judge of the Circuit Court of Cook County for hearing or trial, regardless of the department, division or district in which the case was filed or to which the judge is regularly assigned. Any action or proceeding may be heard or tried in any courtroom in the Circuit Court of Cook County, regardless of the department, district or division in which the case was filed or for which the courtroom is regularly used.³⁷

Under this rule then, the venue provision is really at the discretion of the courts and cases may be transferred from one court to another merely out of convenience. Further, even in the event that an action is filed in the wrong court, that action could not be dismissed, nor could a judgment be vacated merely because it was filed in the wrong court.³⁸ The rules also provide for the transfer of cases improperly filed and for the transfer of cases based on convenience to the parties or for reasons of efficiency.³⁹

It was important to the *Newsom* court that these rules govern all of the municipal district departments, that there is one Chief Judge for the entire Circuit, and that "the Circuit as a whole is the court of original jurisdiction

33. *Newsom*, 76 F.3d at 818.

34. *Id.*

35. *Id.*; GEN. ORDER OF THE CIRCUIT COURT OF COOK CTY., MUN. DEP'T. 1.2, 2.3(d)(1) (1996).

36. *Newsom*, 76 F.3d at 819.

37. *Id.* (emphasis omitted) (quoting GEN. ORDER OF THE CIRCUIT COURT OF COOK CTY. MUN. DEP'T. 1.3(a) (1996)).

38. *Id.* (citing GEN. ORDER 1.3(b) (1996)).

39. *Id.* (citing GEN. ORDER 1.3(c), (d) (1996)).

for all of Cook County, and the boundaries between the Municipal Department administrative subdistricts do not set any territorial limits to the subdistrict's authority within the Circuit."⁴⁰ Based upon this analysis, the court concluded that municipal department districts do not constitute separate judicial districts under the FDCPA.⁴¹

The *Newsom* court went on to describe how the plain meaning of judicial district was consistent with the purpose of the Act.⁴² The court explained that different state courts label their courts differently.⁴³ Some states might label their trial courts as district courts, similar to that of the federal court system.⁴⁴ Illinois, on the other hand, has chosen to label its trial courts as circuit courts and its appellate courts as district courts.⁴⁵ Thus, it seems as though Congress, in drafting this statute, chose the phrase "judicial district" because that is how the federal court system labels its trial courts.⁴⁶ This language should be viewed to be consistent with the legislative purpose, and it would be inconsistent with the purpose of the statute if debt collectors were able to ignore this provision just because of how that state chose to label its courts.⁴⁷

B. *HESS V. COHEN & SLAMOWITZ, LLP*

The Second Circuit Court also considered what "judicial district or similar legal entity" meant under the FDCPA's venue provision in *Hess v. Cohen & Slamowitz, LLP*.⁴⁸ Cohen & Slamowitz brought a debt collection suit against Hess in Syracuse City Court.⁴⁹ Hess was successful in having that case dismissed for lack of jurisdiction pursuant to Section 213 of New York's Uniform City Court Act due to none of the parties residing "in Syracuse or a town that was contiguous thereto by land."⁵⁰

This appeal followed the United States District Court for the Northern District of New York's dismissal of Hess' complaint against Cohen & Slamowitz, alleging a violation of the FDCPA's venue provision, for filing a debt collection action against him in the Syracuse City Court.⁵¹ The Northern District Court based its dismissal on two grounds: First, that based

40. *Id.*

41. *Newsom v. Friedman*, 76 F.3d 813, 819 (7th Cir. 1996).

42. *Id.*

43. *Id.* at 819-20.

44. *Id.* at 820.

45. *Id.*

46. *See Newsom v. Friedman*, 76 F.3d 813, 820 (7th Cir. 1996).

47. *Id.*

48. *Hess v. Cohen & Slamowitz, LLP*, 637 F.3d 117, 118 (2d Cir. 2011).

49. *Id.* at 119.

50. *Id.*

51. *Id.*

on its analysis of the Second Circuit's common law, the phrase "'judicial district' meant 'county.'"⁵² Second, the court did not believe that Cohen & Slamowitz had filed the action against Hess "in Syracuse City Court . . . 'intend[ing] to be unfair, harassing, and deceptive.'"⁵³ With this in mind, the court concluded that extending liability to Cohen & Slamowitz for having filed the suit in the Syracuse City Court would set a precedent that would "impose undue restrictions on ethical debt collectors."⁵⁴

The Second Circuit then set out attempting to determine what "judicial district or similar legal entity" means under the FDCPA.⁵⁵ The Second Circuit, as did the Seventh Circuit in *Newsom*, first looked to dictionary definitions in place at the time the statute was enacted.⁵⁶ The court also held that when determining what the phrase "judicial district" means in the context of a case filed in a state court system, courts must look to the structure of that state's courts.⁵⁷ However, the court dismissed, without much discussion, that the phrase might have been meant by Congress to reflect "judicial districts" in the context of the federal court system.⁵⁸ In summarily dismissing this potential meaning, the court only considered that the venue provision could not have been written to mean that actions could be brought anywhere within a federal district—as those "tend to be 'much larger than correlative state units.'"⁵⁹ The court failed to consider that Congress might have meant that cases could be filed in any state court similar to its correlative federal district court.⁶⁰

The court proceeded to analyze New York's state court system structure.⁶¹ Under New York law, "the place of trial shall be in the county in which one of the parties resided when it was commenced" and "the place of trial shall be the residence of a defendant."⁶² Here, the court noted that Cohen & Slamowitz did not bring their client's case against Hess "in the Onondaga County branch of the supreme court; rather, it brought suit in the city court for the City of Syracuse."⁶³ While New York's Uniform City Court Act does not specifically provide for venue, as previously noted, Hess was able to have the underlying case dismissed on the basis of lack of

52. *Id.* at 119-20.

53. *Hess v. Cohen & Slamowitz, LLP*, 637 F.3d 117, 120 (2d Cir. 2011) (quoting *Hess v. Cohen & Slamowitz, LLP*, 2010 WL 60322, at *7 (N.D.N.Y. Jan. 7, 2010)).

54. *Id.*

55. *Id.* at 120-21.

56. *Id.* at 121.

57. *Id.*

58. *Hess v. Cohen & Slamowitz, LLP*, 637 F.3d 117, 121 (2d Cir. 2011).

59. *Id.* (quoting *Dutton v. Wolhar*, 809 F.Supp. 1130, 1139 (D. Del. 1992)).

60. *Id.*

61. *Id.* at 121-22.

62. *Id.* at 122 (quoting N.Y. C.P.L.R § 503(a), (f) (McKinney 1981)).

63. *Hess v. Cohen & Slamowitz, LLP*, 637 F.3d 117, 122 (2d Cir. 2011).

jurisdiction.⁶⁴ Cohen & Slamowitz argued that the distinction between jurisdiction and venue is important—that jurisdiction is based on whether a court can hear a case or compel a defendant, but venue is more related to convenience of the parties.⁶⁵ Cohen & Slamowitz’s complaint alleged a number of connections that it believed Hess to have with the city of Syracuse, and therefore, venue would have been proper.⁶⁶

The court held that since Cohen & Slamowitz chose to sue Hess in the Syracuse city court, which is limited territorially by the “defendant’s contacts with the forum,” that for the purposes of the FDCPA’s venue provision “judicial district” in the context of these city courts must only extend to the city in which the debtor resides and the “towns within the same county that are contiguous by land thereto.”⁶⁷ Cohen & Slamowitz’s argument with regard to the difference between jurisdiction and venue was unpersuasive to the court, as the court focused on the territorial aspect of Section 213 of the UCCA, and used that as the basis for its definition of “judicial district” under the FDCPA. The court was similarly not persuaded by Cohen & Slamowitz’s argument that an FDCPA violation should not result because under Section 213 of the Uniform City Court Act when a case is dismissed based pursuant thereto the case may be re-filed in another city court that can exercise jurisdiction.⁶⁸ As the court noted, normally cases filed in an improper venue would be dismissed with prejudice and the plaintiff would be allowed to re-file.⁶⁹

The court considered *Newsom*, but distinguished *Hess* from *Newsom* based upon differences in the makeup of Cook County’s municipal department structure, and that of the City Courts in New York—specifically that the municipal departments do not set territorial limits.⁷⁰ Importantly, the court noted that if Cohen & Slamowitz would have chosen to sue Hess in an Onondaga County supreme court, then it would not have violated the FDCPA and venue would have been proper regardless of which supreme court in Onondaga County the case was filed.⁷¹

64. *Id.*

65. *Id.* at 123.

66. *Id.* at 119.

67. *Id.*

68. *Hess v. Cohen & Slamowitz, LLP*, 637 F.3d 117, 124 (2d Cir. 2011).

69. *Id.*

70. *Id.* at 126-27.

71. *Id.* at 125.

C. *SUESZ V. MED-1 SOLUTIONS, LLC I*

Med-1 Solutions is a company in the business of purchasing delinquent debts incurred from medical bills.⁷² Med-1 purchased the delinquent debts owed by Mark Suez from treatment he received at Community Hospital North in Indianapolis.⁷³ In an attempt to collect on this debt, Med-1 filed an action against Suez in the Marion County Small Claims Court for Pike Township.⁷⁴ Med-1 obtained a \$1,280 judgment against Suez.⁷⁵ Suez filed suit against Med-1 in federal court, claiming that Med-1 violated the venue provision of the FDCPA.⁷⁶ Suez's theory was that Med-1 violated the FDCPA by not filing the action in the small claims court in the Lawrence Township, where Community North Hospital was located, thus where Suez incurred the debt.⁷⁷ At the time Med-1 brought the action against Suez, he did not reside in Marion County; rather he lived in a county adjacent to Marion.⁷⁸ However, still at issue was whether "judicial district" as applied to where the debt was incurred meant venue was proper in any township court, or whether each township small claims court would be classified as a separate "judicial district" under the FDCPA.⁷⁹ The federal district court relied on *Newsom* and dismissed Suez's action.⁸⁰ The court supported its holding that the Marion County township courts were not "judicial districts" under the FDCPA by looking at the organization and administration of the courts.⁸¹ One of the factors considered by the court is that the township courts are not courts of record. The court also noted that plaintiffs could file claims in any township courts and upon a defendant's objection or request for transfer the judge could transfer the case to any of the other township courts.⁸² Further, circuit court judges assisted with the establishment of township court rules, noting that such factors regarding the structure of the court system of Marion County were similar enough to those of the Cook County Municipal Department districts at issue in *Newsom*, that Suez's action was dismissed.⁸³

72. *Suez v. Med-1 Solutions, LLC*, 734 F.3d 684, 685 (7th Cir. 2013).

73. *Id.* at 684-85.

74. *Id.* at 685.

75. *Id.*

76. *Id.*

77. *Suez v. Med-1 Solutions, LLC*, 734 F.3d 684, 685 (7th Cir. 2013).

78. *Id.*

79. *Id.* at 684.

80. *Id.*

81. *Id.*

82. *Suez v. Med-1 Solutions, LLC*, 734 F.3d 684, 684 (7th Cir. 2013).

83. *Id.*

The Seventh Circuit, in its analysis, looked specifically to the Indiana state court structure as established by the Indiana Constitution.⁸⁴ In Indiana, in all but one circuit, county lines are the boundaries for the individual circuits.⁸⁵ Indiana has, through statute, provided for the establishment of other courts to help relieve the caseload of the circuit courts.⁸⁶ Such courts include: standard superior courts which handle civil disputes with a value not to exceed \$6,000; city and town courts which handle misdemeanors, ordinance violations, and some small claims disputes; and, unique to Marion County, there are township courts.⁸⁷

There are nine statutorily established township courts in Marion County.⁸⁸ Each of these courts are supported by the individual township that it serves, including providing the court officials' salaries and facilities to be used by the courts.⁸⁹ With Marion County not having established the standard superior level courts that other Indiana judicial circuits have to handle small claims cases, these township courts take on that role.⁹⁰ The township courts "have original and concurrent jurisdiction over civil actions seeking up to \$6,000, though they are limited in subject matter jurisdiction to contract and tort cases."⁹¹ Individual township courts have county-wide jurisdiction, but if a defendant objected to venue, a township judge could transfer the case to another township court the judge believed to be the preferred venue for a given claim.⁹² In contract claims, such as the one at issue in *Suesz*, the preferred venue would be "the place where the contract was signed, followed in priority by the township where the transactions giving rise to the claim took place, or where the defendants reside or do business."⁹³

In upholding its decision in *Newsom*, and applying that holding to *Suesz*, the court placed much emphasis on "the lack of territorially-based limits on the courts' authority."⁹⁴ The township courts, like the municipal department division courts at issue in *Newsom*, were not limited to hear cases that only arose in that given township.⁹⁵ Thus, filing a claim in a township court that was not the preferred venue may, upon objection, result

84. *Id.* at 687.

85. *Id.* (citing IND. CODE § 33-28-1-2(a)(1)-(2) (2011)).

86. *Id.* at 687.

87. *Suesz v. Med-1 Solutions, LLC*, 734 F.3d 684, 687 (7th Cir. 2013).

88. *Id.*

89. *Id.* (citing IND. CODE § 33-34-6-1 (2006)).

90. *Id.*

91. *Id.* (citing IND. CODE § 33-34-3-2 (2004)).

92. *Suesz v. Med-1 Solutions, LLC*, 734 F.3d 684, 687 (7th Cir. 2013) (citing IND. CODE § 33-34-3-1(a) (2004)).

93. *Id.* at 687-88 (citing IND. CODE § 33-34-3-1(b) (2004)).

94. *Id.* at 688.

95. *Id.*

in the case being transferred.⁹⁶ However, it would not prevent any township court from deciding any case that could have been filed in any of the township courts.⁹⁷ The court concluded that while a case could be properly filed in any of the township courts, there was also a method in place for transferring the case, upon a defendant's motion, to the preferred venue for that claim.⁹⁸ Therefore, to the majority of the panel deciding *Suesz I*, the lack of territorial limits was the paramount reason for the court's decision that each of the township courts were not separate "judicial districts" under the FDCPA.⁹⁹

Judge Posner wrote a dissent to the *Suesz I* panel's majority opinion challenging the logic of the method of statutory construction used by the majorities in *Newsom* and *Suesz I*, further arguing that the conclusions reached by those panels' majorities were contrary to the intended purpose of the FDCPA.¹⁰⁰ This dissenting opinion would foreshadow what was to come as the Seventh Circuit voted to rehear *Suesz en banc*.¹⁰¹

III. SUESZ V. MED-1 SOLUTIONS, LLC EN BANC

A. MAJORITY OPINION

In rehearing this case, the Seventh Circuit's majority based its reversal of the panel's holding on what it viewed as a common practice of abusive forum shopping by debt collectors.¹⁰² The court was persuaded that it is a "common tactic for debt collectors . . . to sue in a court that is not convenient to the debtor, as this makes default more likely; or in a court perceived to be friendly to such claims; or, ideally, in a court having both of these characteristics."¹⁰³ The court additionally noted that because of the relatively low amounts in question in these cases—the Marion County township courts have a jurisdictional limit of \$6,000—it is more likely that defendants will elect to not retain an attorney to defend them in these suits, or to even bother to defend the suits *pro se*.¹⁰⁴

To begin its analysis, the court first looked to the makeup of the Township of Marion County Small Claims Courts, rehashing much of what

96. *Id.*

97. *Suesz v. Med-1 Solutions, LLC*, 734 F.3d 684, 687-88 (7th Cir. 2013) (citing IND. CODE § 33-34-3-1(b) (2004)).

98. *Id.* at 690-91.

99. *Id.*

100. *Id.* at 691 (Posner, J., dissenting).

101. *Id.*

102. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 638-39 (7th Cir. 2014).

103. *Id.* at 639.

104. *Id.*

was discussed by the panel.¹⁰⁵ However, the court noted that there was a discrepancy between the state venue statute and Small Claim Rule 12—which was a result of changes made in 1999 to settle a lawsuit based upon the Voting Rights Act.¹⁰⁶ Prior to 1999, all of the township courts were organized under the Marion Superior Court and venue in these courts was county-wide for claims other than those arising from landlord tenant disputes.¹⁰⁷ Because the process for election of judges under the system that had been in place led to an underrepresentation of overall population and racial minorities, the parties in the case settled on a plan that would reorganize the township court system.¹⁰⁸ Under this new system, venue was dependent on township—but cases could still be transferred between township courts if filed in the wrong court.¹⁰⁹

The court relied on the report of a task force comprised of two judges from Indiana’s Court of Appeals that found that most defendants do not know that they have the ability to have cases transferred from one township court to another if the case is filed in a court in non-compliance with the venue rules.¹¹⁰ In these instances, it may be more difficult for defendants to appear in court in certain townships because of the limitations of the public transportation system.¹¹¹ Further, this report expressed concerns that some debt collectors were filing cases in courts that appeared to be more favorable to “large-volume filers.”¹¹² This report also found that judges who “have made efforts to review settlement terms, as opposed to judges who allegedly rubber-stamp settlement agreements, have seen dramatic declines in new filings in their township courts.”¹¹³

The court next looked to the statutory language of “judicial district.”¹¹⁴ Unlike the Court in *Newsom* that based its interpretation on the plain language of the statute and the composition and structure of the court system at issue, the court focused its analysis on “the state court venue rules faced by parties and lawyers, and the relevant geographic unit for applying those rules.”¹¹⁵

105. *Id.* at 640.

106. *Id.* at 640-41; IND. CODE § 33-34-3-1 (2004); IND. R. OF CT. SMALL CL. R. 12.

107. *Suez v. Med-1 Solutions, LLC*, 757 F.3d 636, 641 (7th Cir. 2014).

108. *Id.* at 641-42.

109. *Id.* at 642.

110. *Id.* (citing SMALL CLAIMS TASK FORCE, REPORT ON THE MARION COUNTY SMALL CLAIMS COURTS, 13-14 (2012), www.in.gov/judiciary/files/pubs-smclaims-rept-2012.pdf).

111. *Id.*

112. *Suez v. Med-1 Solutions, LLC*, 757 F.3d 636, 642 (7th Cir. 2014) (citing SMALL CLAIMS TASK FORCE, REPORT ON THE MARION COUNTY SMALL CLAIMS COURTS, 13-14 (2012), www.in.gov/judiciary/files/pubs-smclaims-rept-2012.pdf).

113. *Id.* at 642

114. *Id.* at 642-43.

115. *Id.* at 643.

With regard to its analysis of the language of the statute, the court held that there was no “plain language” meaning of “judicial district.”¹¹⁶ First, the court determined that the phrase “judicial district” is too vague to attribute a plain language meaning to it.¹¹⁷ The court was not persuaded by the dictionary definition relied upon by the panel in *Newsom*:

[O]ne of the circuits or precincts into which a state is commonly divided for judicial purposes; a court of general original jurisdiction being usually provided in each of such districts, and the boundaries of the district marking the territorial limits of its authority; or the district may include two or more counties, having separate and independent county courts, but in that case they are presided over by the same judge.¹¹⁸

The court cautioned that lawyers and judges should not “overread” these dictionary definitions, holding that the definition relied upon by the *Newsom* panel—specifically with the terms “circuits or precincts,” “commonly divided,” “usually provided,” and “may include,”—are too loose to be given so much weight in determining the meaning of the FDCPA’s venue provision.¹¹⁹ Further, the court opined that the modifying language “or similar legal entity” added to the inability to determine the plain language meaning of the statute based on the Black’s Law Dictionary definition.¹²⁰

Next, the court refuted the *Newsom* panel’s “judicial administration approach”—that the Cook County Circuit Court’s municipal department’s administration and inner-workings lent itself to being viewed as but one “judicial district.”¹²¹ It was important to the panel in *Newsom* that the entire unified Cook County Circuit Court system had “one chief judge and one administration, and that the boundaries between the municipal department districts did not set any territorial limits to the legal authority of the courts sitting in particular districts.”¹²² The court held that by allowing the administrative policies to be afforded so much weight in determining what a “judicial district” means under the statute, then the purpose of the venue provision—the prevention of abusive forum-shopping—is diminished.¹²³ Moreover, the court held that such a definition would in fact allow debt collectors

116. *Id.*

117. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 643 (7th Cir. 2014).

118. *Id.* (quoting BLACK’S LAW DICTIONARY 848 (6th ed. 1990)).

119. *Id.* at 643-44.

120. *Id.* at 644.

121. *Id.* at 645.

122. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 645 (7th Cir. 2014).

123. *Id.* at 646.

to find courts that would be inconvenient to the debtor, or friendly to the debt collector, regardless of the court's distance from where the debtor resided, and use that choice of forum as a weapon to attain default judgments.¹²⁴

The court next pointed out that there are substantial differences in the administration and composition of the Cook County municipal department districts and the Marion County township courts.¹²⁵ Specifically, the court noted that the nine township courts are “established as separate courts with separate election districts, administration, staffing, and funding, and even separate seals, and their separate status and the accompanying venue rules having been created in order to remedy a problem . . . under the Voting Rights Act.”¹²⁶ However, rather than distinguishing *Suesz* from *Newsom*, the court chose to discount these differences, based upon its determination that these differences do not have anything to do with the purpose that the FDCPA's venue provision was intended to accomplish.¹²⁷ The court also failed to note that there is a fairly large gap in the jurisdictional amounts between the Cook and Marion County “small claims” courts. Where the jurisdictional limit of the township courts in Marion County is limited to \$6,000, the Cook County municipal department districts have a jurisdictional amount that can exceed \$100,000.¹²⁸

Rather than following either of the approaches laid out by the *Newsom* panel's opinion, the court created a different method of analysis for determining what a “judicial district” means under the Act.¹²⁹ The court called it the “venue approach” and modeled after the Second Circuit's *Hess* opinion.¹³⁰ Under the “venue approach” “judicial district or similar legal entity” means the “smallest geographic area that is relevant for determining venue in the court system in which the case is filed.”¹³¹ In doing so, the court reversed the holdings of the panels in both *Newsom* and *Suesz I*.

The court next looked to the relationship between federal and state law.¹³² The court stated that the federal law takes states as it finds them and that it was possible to comply with both the state and federal law simultaneously.¹³³ The majority also noted that it was possible to comply with a

124. *Id.*

125. *Id.*

126. *Id.*

127. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 646 (7th Cir. 2014).

128. *Municipal Department Overview*, STATE OF ILL. CIR. CT. OF COOK COUNTY, <http://www.cookcountycourt.org/ABOUTTHECOURT/MunicipalDepartment.aspx> (last visited Jan. 2, 2015).

129. *Suesz*, 757 F.3d at 638.

130. *Id.* at 646.

131. *Id.* at 638.

132. *Id.* at 648.

133. *Id.*

state's venue laws but run afoul of the FDCPA's venue provision.¹³⁴ This could occur if a debt collector failed to file a suit in the same "judicial district" as where the debtor resides if the state's venue laws allow for broader venue than that authorized by the federal law.¹³⁵ The court did not believe it was important to consider the source of the state's venue rules—whether created by a standing court order such as was the case in *Newsom* or by state statute as was the case in *Suesz*.¹³⁶

Interestingly, the court noted that "[t]he jurisdiction of the township small claims courts over small claims cases is concurrent with the jurisdiction of the county's circuit and superior courts."¹³⁷ However, venue is county-wide in Indiana's circuit and superior courts.¹³⁸ Thus, if there are a multiple circuit courts in a given county it seems possible that a case could be filed in any of those courts and still comply with the FDCPA's venue provision.¹³⁹ This exception seems to illustrate the court's emphasis on these being low dollar value cases, likely to cause defendants to fail to litigate, ultimately resulting in a default judgment in favor of the plaintiff.¹⁴⁰

B. *SUESZ V. MED-1 SOLUTIONS* – JUDGE SYKES CONCURRENCE

Justice Sykes wrote a concurrence to Judge Hamilton's and Judge Posner's majority opinion that agreed with the outcome of the case, but expressed concerns raised by Justice Flaum's dissent regarding issues of federalism that were cursorily glossed over by the majority's opinion.¹⁴¹ Her agreement with the majority with regard to the holding of the case was based on the rationale that the majority's holding should not be viewed as a venue rule, but as a penalty for debt collectors who fail to abide by the FDCPA's venue provision.¹⁴²

Sykes noted that most consumer debt collection cases are for relatively small amounts of money, involving state law contract claims, and do not generally meet the diversity jurisdictional amount-in-controversy requirement of being in more than \$75,000.¹⁴³ She also wrote that she did not be-

134. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 638 (7th Cir. 2014).

135. *Id.*

136. *Id.*

137. *Id.* (citing IND. CODE § 33-34-3-2 (2015)).

138. *Id.* at 648.

139. *See Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 648 (7th Cir. 2014).

140. *See generally id.*

141. *Id.* at 650-51.

142. *Id.* at 651.

143. *Id.* at 651 (citing FED. TRADE COMM'N, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION, 6 (2010); FED. RESERVE BANK OF N.Y., QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT, 15 (Nov. 2012); 28 U.S.C. § 1332 (2011)).

lieve “that Congress has the power to prescribe procedural rules for state-law claims in state courts.”¹⁴⁴ She addressed the fact that there are instances where federal law may require the state court to abide by certain federal procedural rules, especially when those federal procedural rules are “part and parcel” of the federal law claim being decided by the state court.¹⁴⁵ Sykes further noted that occasionally a state’s “procedural rules may be displaced when they conflict with or unnecessarily burden the substance of a federal cause of action being litigated in a state court.”¹⁴⁶ However, Sykes indicated that these scenarios seem fairly distinct from a state court using state procedural rules in the process of adjudicating a purely state law claim.¹⁴⁷

While it appears that Med-1 never raised a constitutional argument to the statute’s interpretation as decided by the court, Sykes’ concurrence wrote that it is still important to consider the “background principles of federalism” in interpreting federal statutes.¹⁴⁸ She acknowledged that the majority’s opinion with regard to this point does little more than summarily gloss over any objection based on federalism by holding that the court’s holding “takes state courts as it finds them,” as she stated, in attempt to “avoid serious constitutional difficulty.”¹⁴⁹

C. JUDGE FLAUM DISSENT

Judge Flaum wrote a dissent criticizing the majority’s decision to overturn the panel’s decision. This dissent was based primarily upon what he believed to be a flawed statutory construction analysis employed by the majority.¹⁵⁰ Flaum believed that it was Congress’s intent, by omitting a definition of “judicial district,” for the definition of the phrase to be based upon how they are “defined by the government that established the relevant courts.”¹⁵¹ Under his analysis, since most debt-collection suits are usually filed in state courts, one should look to how the state has established its courts and their administrative workings in order to determine at what level

144. *Suez v. Med-1 Solutions, LLC*, 757 F.3d 636, 651 (7th Cir. 2014) (citing Anthony J. Bellia Jr., *Federal Regulation of State Court Procedures*, 110 YALE L.J. 947 (2001); Wendy E. Parmet, *Stealth Preemption: The Proposed Federalization of State Court Procedures*, VILL. L. REV. 1 (1999)).

145. *Id.* (citing *Dice v. Akron, Canton & Youngstown R.R.*, 342 U.S. 359, 363 (1952)).

146. *Id.* at 651.

147. *Id.*

148. *Id.* at 652 (citing *Bond v. United States*, 134 S.Ct. 2077, 2090 (2014)).

149. *Suez v. Med-1 Solutions, LLC*, 757 F.3d 636, 652-53 (7th Cir. 2014).

150. *See generally id.* at 655-58 (Flaum, J., dissenting).

151. *Id.* at 655 (Flaum, J., dissenting).

a “judicial district” is formed.¹⁵² Thus, Flaum believed that the township courts in Marion County were not individual “judicial districts,” but subdivisions of the Marion County nineteenth judicial circuit, which he believed Indiana attempted to define as a single judicial district.¹⁵³

Flaum then challenged the majority’s position that if Congress had intended to defer to the states’ jurisdictional or venue rules, that §1692i would be meaningless.¹⁵⁴ He first attacked the majority’s contention by noting that normally if a case is filed in the wrong state court, and venue was objected to, that the case would be moved and there is no penalty imposed on the party that filed in the wrong venue.¹⁵⁵ However, under the FDCPA, if a plaintiff files in the wrong venue, a defendant can bring a claim under the FDCPA and the plaintiff may be assessed damages.¹⁵⁶ Second, Flaum noted that under some state statutes a plaintiff may be able to file in a venue in which the debtor works or has other connections—the FDCPA restricts plaintiffs from doing this even though it may be proper under the state rules.¹⁵⁷

D. JUDGE KANNE DISSENT

Judge Kanne also wrote a dissenting opinion. He first criticized the majority for having abandoned what he believed was good law in the *Newsom* and *Suesz I* opinions without having a proper basis for doing so.¹⁵⁸ Kanne then proceeds to criticize the majority’s process of statutory construction.¹⁵⁹ His initial arguments reaffirm his belief that the *Newsom* and *Suesz I* panels were correct in looking to the Black’s law definition for a plain and natural meaning of the phrase “judicial district.”¹⁶⁰ Kanne went on to emphasize that under the Black’s definition for “judicial district” (circuit or precinct commonly divided for judicial purpose¹⁶¹) that it is clear that the Indiana judicial circuits are the circuits commonly divided for judicial purposes.¹⁶² Kanne noted that within some of these districts, different counties

152. *Id.* (Flaum, J., dissenting).

153. *Id.* (Flaum, J., dissenting) (citing IND. CODE § 33-33-49-2 (2004) (“Marion County constitutes the nineteenth judicial circuit.”)).

154. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 655-56 (7th Cir. 2014) (Flaum, J., dissenting).

155. *Id.* at 656 (Flaum, J., dissenting).

156. *Id.* (Flaum, J., dissenting).

157. *Id.* (Flaum, J., dissenting).

158. *Id.* at 658 (Kanne, J., dissenting).

159. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 659 (7th Cir. 2014) (Kanne, J., dissenting).

160. *Id.* at 660 (Kanne, J., dissenting).

161. *See supra* text accompanying note 28.

162. *Suesz*, 757 F.3d at 660 (Kanne, J., dissenting).

have created additional courts to lighten the dockets of the circuit courts, but there is not a uniform way that these systems have been structured throughout Indiana. However, each system operates within one judicial circuit.¹⁶³ Thus, to Kanne, “judicial districts” would be individual circuits, as those are where there is uniformity across Indiana.¹⁶⁴ Rather, according to Kanne, the Marion County township courts are unique to Marion County and not found in the rest of the state, it therefore cannot be claimed that those courts are “a common division in the state court system in which they exist.”¹⁶⁵

Kanne then wrote that even if the Black’s definition was unpersuasive to the majority, that there is another definition that was intended by Congress—that “judicial district” means federal judicial district, and “or similar legal entity” refers to the corresponding state court level.¹⁶⁶

Kanne argued that rather than taking one of these approaches of statutory analysis, the majority seems to have made up their definition of “judicial district” (the “smallest geographic area that is relevant for determining venue in the court system in which the case is filed”) without any legal justification for having arrived at that definition.¹⁶⁷ Rather, it appeared to Kanne that the majority sought out a definition that they determined would be the most consistent with their idea of the purpose of the statute, and while laudable, the sole reliance on legislative intent as a means of altering the meaning of the statutory language was an impermissible method of resolving ambiguity.¹⁶⁸

Following his criticism of the majority’s statutory analysis, Kanne pointed out some of the practical absurdities that result from the majority’s approach.¹⁶⁹ Again going back to federal judicial districts, Kanne noted that there are a number of federal districts that are divided into divisions.¹⁷⁰ In some of these divided districts there are local rules that require actions to be filed within the proper division.¹⁷¹ Under the majority’s rule then, some federal districts are not “judicial districts” when there are divisions within

163. *Id.* (Kanne, J., dissenting).

164. *Id.* (Kanne, J., dissenting).

165. *Id.* (Kanne, J., dissenting).

166. *Id.* at 661 (Kanne, J., dissenting).

167. *Suez v. Med-1 Solutions, LLC*, 757 F.3d 636, 662 (7th Cir. 2014) (Kanne, J., dissenting).

168. *Id.* (Kanne, J., dissenting).

169. *Id.* (Kanne, J., dissenting).

170. *Id.* (Kanne, J., dissenting).

171. *Id.* (Kanne, J., dissenting) (citing *e.g.*, Northern and Southern Districts of Iowa Local Rule 3(b); District of Montana Local Rule 3.2(b); Western District of Virginia Local Rule 2(b)).

one district.¹⁷² In this case the divisions would be the “judicial district” since those are the “smallest geographic area[s] . . . relevant for determining venue in the court system in which the case is filed.”¹⁷³ However, if other federal districts were not so divided they would still then be considered a “judicial district.”¹⁷⁴ Thus, the only way under the majority’s approach to be able to define federal districts as a “judicial district” would be to analyze the “details of court administration,” which was the approach espoused by the *Newsom* court, but rejected by this majority.¹⁷⁵

This approach will also lead to inconsistencies within a given state’s judicial system according to Kanne. He referenced the Indiana state court system, specifically the trial court systems, being different from county to county.¹⁷⁶ In other counties that have given superior courts the role of handling small claims cases, of which there may be multiple in one county, those courts are not viewed as being individual “judicial districts,” but under this analysis viewed as a component of the circuit court.¹⁷⁷ Kanne argues that this is an inconsistent and arbitrary approach because “judicial district” in Marion County is now defined differently than it is in any other circuit in the Indiana state court system.¹⁷⁸ Kanne posited, “[h]ow can we define a ‘judicial district’—something which by the nature of the words themselves *must* be a division of some larger entity—in a way that is not consistent with respect to that larger entity?”¹⁷⁹

Finally, Kanne noted that if it really was the intent of Congress to take out of states’ hands the ability to enact venue rules that are fair to debtors, that this rule is not an adequate one to do so.¹⁸⁰ The entirety of the majority’s rule depends on a state’s given venue rules.¹⁸¹ States, if they so desired, would be able to rewrite venue rules to have venue not depend on geographic boundaries and circumvent this approach.¹⁸²

172. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 662 (7th Cir. 2014) (Kanne, J., dissenting).

173. *Id.* (Kanne, J., dissenting).

174. *Id.* (Kanne, J., dissenting).

175. *Id.* (Kanne, J., dissenting).

176. *Id.* (Kanne, J., dissenting).

177. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 663 (7th Cir. 2014) (Kanne, J., dissenting).

178. *Id.* (Kanne, J., dissenting).

179. *Id.* (Kanne, J., dissenting).

180. *Id.* (Kanne, J., dissenting).

181. *Id.* (Kanne, J., dissenting).

182. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 663 (7th Cir. 2014) (Kanne, J., dissenting).

IV. ARGUMENT

A. STATUTORY ANALYSIS OF § 1692I

I would agree with Judge Kanne that the method of statutory construction employed by the majority in *Suesz* seems a bit odd and without much support, especially to overturn what seemed to be a straightforward analysis under *Newsom*. When definitions of terms in statutes are not provided by the legislature, that word is generally construed in accordance with an ordinary or natural plain-language meaning—a legal dictionary is a perfectly valid means of finding such a meaning.¹⁸³ While the Black’s Law Dictionary definition of “judicial district” used by the *Newsom* court is helpful, it seems as though the possible intended definition mentioned by Judge Kanne is likely what was intended by Congress.¹⁸⁴

It is often said that the simplest explanation is usually the correct one. Here, it seems that the easiest explanation would be that the Federal Congress used “judicial district” to refer to federal district courts, and “similar legal entity” to refer to their corresponding state version since not all states structure or label their trial level courts in the same way. Congress has used the phrase “judicial district” in statutes and in Federal Rules of Civil Procedure in referring to federal district courts.¹⁸⁵ According to the United States Courts website, there are ninety-four federal judicial districts.¹⁸⁶ Most importantly for the purpose of this note, Congress used the phrase “judicial district” frequently in the General Venue statute for United States District Courts.¹⁸⁷ Certainly, when Congress uses the phrase “judicial district” in a statutory provision dealing with venue, such as § 1692i of the FDCPA, one cannot help but think that Congress was referring to the same entity that it referred to in legislation dealing with venue generally in the federal district courts.¹⁸⁸

Thus, it would seem that the definition of “judicial district” is fairly straight forward, and what would really be left to interpret is what under the statute constitutes the corresponding “similar legal entity” in a state. In both Marion County, Indiana and Cook County, Illinois there is one judicial cir-

183. *Smith v. United States*, 508 U.S. 223 (1993).

184. *See Suesz*, 757 F.3d 661 (Kanne, J., dissenting).

185. *See, e.g.*, 28 U.S.C. § 1391 (2011); FED. R. CIV. P. 4(e) (“Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a *judicial district* of the United States”) (emphasis added).

186. *Court Role and Structure*, U.S. CTS., <http://www.uscourts.gov/about-federal-courts/court-role-and-structure> (last visited Jan. 23, 2016).

187. 28 U.S.C. § 1391 (2011).

188. *Compare* 28 U.S.C. § 1391 (2011), *with* 15 U.S.C. § 1692i (2014).

cuit that is comprised of the entire county, but also contains smaller courts that have been created seemingly for the convenience of litigants and for the courts as well.¹⁸⁹ The majority in *Suesz* seems to find that the Marion County Circuit and by reference Cook County Circuit constitute “judicial districts” under the act.¹⁹⁰ These state circuits are the state equivalent of federal districts. So why then is this not the end of the inquiry? It would seem as though once a plaintiff has filed an action within a “judicial district” in which the debtor resides—which here would be any court in either county—that the plaintiff has complied with the statute. As noted by Judge Kanne, there are federal districts that are divided into divisions, one such district is the Federal District of Northern Illinois, which has an Eastern and Western Division.¹⁹¹ Some of these federal districts have local rules specifying which division venue is proper in for certain actions.¹⁹² Congress surely could not have intended to craft a rule that would occasionally cause some federal districts to not be “judicial districts” while others would be.¹⁹³ After having determined that, as in this case, the Illinois and Indiana circuit courts constitute “judicial districts,” it seems bizarre to continue to the inquiry as to whether other courts—located within, and established by that circuit for convenience—should too be considered separate “judicial districts.”

B. PRACTICAL INCONSISTENCIES WHEN APPLYING THE RULE TO ILLINOIS STATE COURTS

The Illinois Constitution provides for judicial circuits as trial courts to be comprised of one or more counties within the intermediate appellate level judicial districts.¹⁹⁴ There are currently twenty-four judicial circuits in Illinois; only six of those circuits are entirely comprised of one county—Cook County being one.¹⁹⁵ The remaining circuits are made up of two or more counties.¹⁹⁶ Because of this, there are usually multiple courthouses in

189. IND. CODE § 33-28-1-2(a)(1)-(2) (2011); IND. CODE § 33-34-6-1 (2006); ILL. CONST. art. VI, § 7; *Municipal Department Overview*, STATE OF ILL. CIR. CT. OF COOK COUNTY, <http://www.cookcountycourt.org/ABOUTTHECOURT/MunicipalDepartment.aspx> (last visited Jan. 2, 2015).

190. *See Suesz v. Med-1 Solutions, LLC*, 757 F.3d. 648-49 (7th Cir. 2014).

191. *Id.* at 662 (Kanne, J., dissenting).

192. *Id.* (Kanne, J., dissenting).

193. *Id.* (Kanne, J., dissenting).

194. ILL. CONST. art. VI, § 7.

195. *Illinois Circuit Court General Information*, ILL. COURTS, <http://www.state.il.us/court/CircuitCourt/CCInfoDefault.asp> (last visited Jan. 2, 2015).

196. *Id.*

a given circuit, one for each county.¹⁹⁷ The Illinois venue statute is similar to the FDCPA requirement in that venue is proper in the county in which the defendant resides; however, the opinion in *Suesz* seems to recognize such state circuits as judicial districts, and if Illinois' law allowed for broader venue, a plaintiff would theoretically be able to sue a debtor in any county within a circuit in which he resided, no matter how far or inconvenient, and still comply with the FDCPA.¹⁹⁸

The application of this rule becomes stranger yet in applying it to the Cook County Municipal Department Districts as compared to the preceding paragraph. There are six Municipal Departments in Cook County.¹⁹⁹ The First Municipal District is in Chicago, and the remaining Districts are spread out amongst the Cook County suburbs.²⁰⁰ While the First Municipal District is limited to cases involving under \$30,000 for civil cases, the rest of the Municipal Districts can hear cases up to \$100,000, and in some instances cases worth amounts in excess of \$100,000.²⁰¹ Further, the other Municipal Departments can hear other cases that cannot be heard in First Municipal Department courts such as, felony criminal cases, juvenile justice cases, domestic relations cases, and orders of protection, just to name a few.²⁰² Thus, the Second through Sixth Municipal Districts function much more like county courts of general jurisdiction than the First Municipal District, and certainly more so than the Marion County township courts at issue in *Suesz*. These Municipal Departments are more analogous to the multiple county courts operating within one judicial circuit in Illinois than they are to courts that function solely for hearing small claims cases not to exceed \$6,000.²⁰³ Yet, this rule would allow for venue anywhere within a multiple-county circuit when not prohibited by state law, but imposes a penalty for filing a case in the wrong court within a county, even when permitted by state law, as it is in Illinois.²⁰⁴

197. *E.g.*, *Circuit Courts*, ILL. SECOND JUD. CIR. CT., <http://illinoissecondcircuit.info/circuit-courts> (last visited Mar. 5, 2015).

198. 735 ILL. COMP. STAT. ANN. 5/2-101 (West 2012). *See Suesz v. Med-1 Solutions, LLC*, 757 F.3d. 636, 648-49 (7th Cir. 2014).

199. *Municipal Department Overview*, STATE OF ILL. CIR. CT. OF COOK COUNTY, <http://www.cookcountycourt.org/ABOUTTHECOURT/MunicipalDepartment.aspx> (last visited Jan. 2, 2015).

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*; IND. CODE ANN. § 33-34-3-2 (West 2015).

204. 735 ILL. COMP. STAT. ANN. 5/2-101 (West 2012). *See Suesz v. Med-1 Solutions, LLC*, 757 F.3d. 636, 648-49 (7th Cir. 2014).

It is true that Cook County rules provide that actions should be filed in the department district in which a defendant resides.²⁰⁵ But, as noted by the *Newsom* court, any case can be transferred upon a defendant's objection, and any case can be heard by any judge in any district regardless of where the action was filed—which would lead one to believe that there was a deliberate intention to leave discretion with the trial courts.²⁰⁶ These rules and procedures drastically differ from the scenario in *Hess*.²⁰⁷ As recognized by the Second Circuit in distinguishing *Hess* from *Newsom*, the Syracuse City Court set territorial limits on its ability to hear a case based upon the defendant's contacts with the jurisdiction.²⁰⁸ The Second Circuit was of the opinion that the Cook County Municipal Department Districts did not set territorial boundaries, because of General Order 1.3.²⁰⁹

C. CONSTITUTIONALITY OF THE *SUESZ* RULE

I am in agreement with the concurring and dissenting opinions in *Suesz*, that this rule espoused by the *Suesz* majority, that a penalty can be imposed on debt collectors under the FDCPA who file state court actions in state courts where venue is proper, is likely unconstitutional as a violation of the Tenth Amendment.²¹⁰ This issue, however, seems to be a fairly novel one with regard to the Tenth Amendment, as this rule, and the statute itself, do not mandate that a state or any of its actors actually do anything to comply with it.²¹¹ Rather, this rule infringes on the traditional notion of state sovereignty in enacting its own procedural rules for state causes of action by imposing penalties on plaintiffs operating in those state court systems, even when abiding by the state's procedural rules.²¹²

“The general rule, bottomed deeply in belief in the importance of state control of state judicial procedure, is that federal law takes the state courts as it finds them.”²¹³ While the *Suesz* majority cites this, it is not entirely clear how the rule it has put forward is consistent with that statement. While the rule does leave the state procedural rules in place, it in effect alters the

205. GEN. ORDER OF THE CIRCUIT COURT OF COOK CTY., MUN. DEP'T, 1.2, 2.3(d)(1) (1996).

206. *Id.* at 1.3(a); *Newsom v. Friedman*, 76 F.3d 813, 819 (7th Cir. 1996).

207. *Hess v. Cohen & Slamowitz, LLP*, 637 F.3d 117, 119 (2d Cir. 2011).

208. *Id.*

209. *See id.*

210. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 653-54 (7th Cir. 2014) (Sykes, J., concurring).

211. *See id.* at 638.

212. *See id.*

213. Henry M. Hart, Jr., *The Relations Between State and Federal Law*, 54 COLUM. L. REV. 489, 508 (1954).

rules for those who operate within the state court system, and do not wish to provide their debtors a cause of action under the FDCPA.

The two most notable Tenth Amendment cases are *New York v. United States*, and *Printz v. United States*. In *New York*, the Court declared unconstitutional a federal act that could force states to take title of low-level radioactive waste.²¹⁴ Justice O'Connor wrote the majority opinion and noted that the federal government could not "commandeer the legislative processes of the States" by forcing the states to enforce a given federal regulatory program.²¹⁵

In *Printz*, the federal statute at issue was one that attempted to compel certain law officers to perform background checks in concert with the sale of handguns.²¹⁶ Writing for the majority, and holding the act to be unconstitutional, Justice Scalia emphasized the concept of dual sovereignty.²¹⁷ While states had given up many of their rights to the federal government, "residual and inviolable sovereignty" remains.²¹⁸

While *New York* and *Printz* do differ from the issue at hand in that those federal laws expressly and directly attempted to make states and state actors comply with federal regulation, the *ratio decidendi* from these cases is very applicable to this issue.²¹⁹ This rule could certainly be viewed as an indirect attempt to commandeer the states' procedural law-making ability. If Congress was to enact procedural rules applicable to the states that were narrower than the states wished to write those laws, then state legislatures would be powerless to tweak the procedural laws of its state to fit the unique realities of that state. It also seems to me that one of the fundamental sovereign rights of a state is to create procedural law for actions arising under its laws and being heard in its courts. It has been argued, "Congress has no authority to regulate state court procedures in state law cases because 'procedural law' derives exclusively from state authority."²²⁰

It is well settled that federal district courts sitting in diversity jurisdiction will apply state substantive law and federal procedural law.²²¹ However, the Court has not yet specifically addressed to what extent Congress has

214. *New York v. United States*, 505 U.S. 144 (1992).

215. *Id.* at 161 (citing *Hodel v. Va. Surface Mining & Reclamation Assn.*, 452 U.S. 264, 288 (1981)).

216. *Printz v. United States*, 521 U.S. 898 (1997).

217. *Id.* at 918.

218. *Id.* at 919.

219. *See New York*, 505 U.S. at 161. *See also Printz*, 521 U.S. at 918-19.

220. Anthony J. Bellia, Jr., *Federal Regulation of State Court Procedures*, 110 YALE L.J. 947, 972 (2001).

221. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (a federal district court sitting in diversity jurisdiction will apply state substantive law); *Hanna v. Plumer*, 380 U.S. 460, 466-67 (1965) (federal district courts sitting in diversity will apply federal procedural law).

authority over state procedural law in state court cases.²²² State courts in adjudicating some federal claims are bound to follow federal procedural law when that procedure is deemed to be a fundamental aspect of the federal cause of action.²²³ This point illustrates that there are instances where procedural and substantive law are so closely entwined that the procedure used may likely affect the outcome of a case.²²⁴ Because of this relationship allowing the federal government to begin meddling with state court procedures in state law cases in this manner will ultimately lead to procedural and substantive irregularities.²²⁵

V. CONCLUSION

The Seventh Circuit majority in *Suesz II* certainly had a laudable goal in promulgating this rule as an attempt to help those who are already less fortunate. Their solution however, I am afraid has the potential of doing more harm than good. Although this rule, in and of itself may seem harmless, I would argue that to allow the federal government to start making its own procedural rules for state law actions in certain types of cases here and there would inevitably lead to a very confusing and troubling end.

222. Anthony J. Bellia, Jr., *Federal Regulation of State Court Procedures*, 110 YALE L.J. 947, 977-78 (2001).

223. *E.g.*, *Dice v. Akron, Canton & Youngstown R.R.* 342 U.S. 359, 361 (1952) (state court erred in finding plaintiff's release of Federal Employers' Liability Act claim valid by analyzing the release under state law).

224. Anthony J. Bellia, Jr., *Federal Regulation of State Court Procedures*, 110 YALE L.J. 947, 995 (2001).

225. *Id.*