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KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 22-2-19384-1 SEA

The Honorable Catherine Shaffer
Noted for Hearing: February 8, 2023
Without Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION; THE
WASHINGTON BUS; EL CENTRO DE
LA RAZA; KAELEENE ESCALANTE
MARTINEZ; BETHAN CANTRELL; and
DAISHA BRITT,

Plaintiffs,

v.

STEVE HOBBS, in his official capacity as
Washington State Secretary of State;
JULIE WISE, in her official capacity as
the Auditor/Director of Elections in King
County and a King County Canvassing
Board Member; SUSAN SLONECKER,
in her official capacity as a King County
Canvassing Board Member; and
STEPHANIE CIRKOVICH, in her official
capacity as a King County Canvassing
Board Member,

Defendants.

NO. 22-2-19384-1 SEA

DEFENDANT STEVEN HOBBS'
MOTION TO CHANGE VENUE

I. INTRODUCTION AND RELIEF REQUESTED

The claims against Defendant Secretary of State Steve Hobbs should be transferred to Thurston County Superior Court. Thurston County is the mandatory venue for these claims under RCW 4.12.020 because Secretary Hobbs is a public officer and the alleged acts of Secretary Hobbs took place in Thurston County. Venue is also mandatory in Thurston County under RCW 34.05.570 because Plaintiffs challenge the validity of rules adopted by Secretary Hobbs.

1 To the extent that the other parties do not consent to venue in Thurston County, the
2 remedy would be to sever the claims against Secretary Hobbs from the claims against King
3 County elections officials Julie Wise, Susan Slonecker, and Stephanie Cirkovich (collectively,
4 King County Defendants), such that Plaintiffs' claims against Secretary Hobbs proceed in
5 Thurston County Superior Court and Plaintiffs' claims against King County will continue to
6 proceed in King County Superior Court.

7 II. EVIDENCE RELIED UPON

8 This motion relies upon the declaration of William McGinty filed herewith, material in
9 the court file, and material of which the Court may take judicial notice.

10 III. FACTS

11 Plaintiffs brought suit against Secretary Hobbs and King County Defendants on
12 November 22, 2022. First Amended Complaint for Declaratory and Injunctive Relief (First Am.
13 Compl.), Dkt No. 10 ¶¶ 26–27. Plaintiffs challenge what they characterize as the “Signature
14 Matching Procedure” by which the signature on a ballot is compared to the signature on a voter’s
15 registration form to determine eligibility to vote. *E.g., id.* at 40 (seeking “[a] declaration that the
16 Signature Matching Procedure violates Sections 3, 12, and 19 of Article I of the Washington
17 Constitution and RCW 29A.04.206”). Plaintiffs allege that the Signature Matching Procedure
18 violates the Washington Constitution and Washington statute. *Id.* at ¶¶ 114–146. Plaintiffs ask
19 for a declaratory order that the Signature Matching Procedure is unlawful and an injunction
20 preventing its use statewide. *Id.* at 40.

21 Plaintiffs acknowledge that what they call the “Signature Matching Procedure” is the
22 combined effect of Washington statute, administrative rules promulgated by the Secretary of
23 State, and implementation decisions of local election officials. *Id.* ¶¶ 47–49; *see also, e.g.,* First
24 Am. Compl. ¶ 47 (citing RCW 29A.40.110(3); WAC 434-250-120(1)(c), (4); and
25 WAC 434-379-020); *see also* First Am. Compl. ¶¶ 50–57 (alleging generally that statewide
26

1 guidance about how to verify signatures leaves significant room for discretion to local election
2 officials).

3 Plaintiffs are correct that the system they challenge is in fact made up of at least three
4 layers of government decision-making. RCW 29A.40.110(3) requires that local elections
5 personnel “shall verify that the voter’s signature on the ballot declaration is the same as the
6 signature of that voter in the registration files of the county.”

7 The Secretary of State has promulgated rules regarding the signature verification process.
8 *See, e.g.*, WAC 434-379-020 (specifying standards for determining whether a signature on a
9 ballot is the same as the signature in the registration files); WAC 434-250-120 (“The signature
10 on the ballot declaration must be compared with the signature in the voter’s voter registration
11 file using the standards established in WAC 434-379-020.”); WAC 434-261-050 (prescribing
12 procedures for a voter to cure a missing or mismatched signature).

13 Local elections officials are then responsible for running elections and implementing the
14 statutory and regulatory law. *See, e.g.*, RCW 29A.04.216 (“The county auditor of each county
15 shall be ex officio the supervisor of all primaries and elections, general or special”);
16 RCW 29A.60.010 (providing that the county auditor is the “ex officio county supervisor of
17 elections” and that the county canvassing board is responsible for canvassing returns);
18 RCW 29A.60.165(2)(a) (“If the handwriting of the signature on a ballot declaration is not the
19 same as the handwriting of the signature on the registration file, the auditor shall notify the
20 voter”).

21 Plaintiffs bring both facial and as-applied challenges to the “Signature Matching
22 Procedure,” and argue that decision-making conducted at all three levels about how signatures
23 are compared to the registration file is unlawful. That is, Plaintiffs argue that the statute under
24 which signature matching is mandated is unconstitutional. *See, e.g.*, First Am. Compl. ¶ 47
25 (reflecting that RCW 29A.40.110(3) is one of challenged components of signature matching
26 process). Plaintiffs also argue that the rules the Secretary of State enacted are unlawful. *See, e.g.*,

1 *id.* at ¶¶ 101–105 (arguing that the signature cure procedure enacted by the Secretary of State in
2 rule is unduly burdensome). And, finally, Plaintiffs argue that the way county elections officials
3 have implemented the rules also violate Washington’s Constitution and statutes. *See, e.g.,*
4 *id.* at ¶ 133 (“County election officials implement the Signature Matching Procedure with widely
5 different results in rejection rates.”).

6 IV. ARGUMENT

7 Secretary Hobbs is entitled to venue in Thurston County under two wholly sufficient and
8 independent bases. First, RCW 4.12.020(2) makes the mandatory venue for this action the county
9 in which the cause arose. Secretary Hobbs is sued entirely for his official duties that he undertook
10 in Thurston County, and therefore, Plaintiffs’ cause of action—to the extent they have one—
11 arose there.

12 Second, the only connection Secretary Hobbs has to Plaintiffs’ Complaint is that his
13 office promulgated rules the validity of which Plaintiffs contest. Their cause of action therefore
14 sounds under RCW 34.05.570(2), permitting a person aggrieved to challenge agency rules. Such
15 a rule challenge must be brought in Thurston County. RCW 34.05.570(2)(b)(i).

16 A. Secretary Hobbs is a Public Official and Entitled to Venue in Thurston County

17 RCW 4.12.020(2) provides for mandatory venue where the cause of action arose in a suit
18 against a public official for an act done in virtue of the official’s office. Here, Plaintiffs sue
19 Secretary Hobbs exclusively for acts done in connection with his office in Thurston County, and
20 mandatory venue lies for their claims against him in Thurston County.

21 Lawsuits “[a]gainst a public officer, or person specially appointed to execute his or her
22 duties, for an act done by him or her in virtue of his or her office” “shall be tried in the county
23 where the cause, or some part thereof, arose[.]” RCW 4.12.020. Where a lawsuit challenges an
24 “official act” by a public officer, the cause of action “arose” in the county “where the act is
25 made[.]” not where the plaintiff may have felt the effect of the statewide policy.
26 *Johnson v. Inslee*, 198 Wn.2d 492, 497–98, 496 P.3d 1191 (2021) (holding that mandatory venue

1 for action challenging emergency proclamation issued by Governor Inslee was Thurston County
2 under RCW 4.12.020(2)). Where RCW 4.12.020(2) applies “venue in the specified county is
3 mandatory.” *Id.* at 496.

4 Here, Plaintiffs sue Secretary Hobbs for his official actions implementing the statutory
5 requirement that signatures on ballots be verified against the signature of the voter on the voter’s
6 registration form. *See, e.g.*, First Am. Compl. ¶¶ 47–49. These actions were in virtue of his office;
7 Plaintiffs expressly acknowledge that “Secretary Hobbs . . . acted under the color of State law at
8 all times relevant to this action.” *Id.* at ¶ 26. The Court may take judicial notice of the fact that
9 the Secretary of State’s office is in Olympia on the Capitol Campus. *See* Washington Secretary
10 of State, www.sos.wa.gov (last visited Jan. 24, 2023); *see also* ER 201(b). Each of the particular
11 rules Plaintiffs reference was adopted in Thurston County. E.g., Wash. St. Reg. 20-11-050
12 (reflecting that amendment to WAC 434-250-120 took place in Olympia); Wash. St.
13 Reg. 18-06-087 (same for WAC 434-379-020); Wash. St. Reg. 18-22-113 (same for
14 WAC 434-261-050). Because Plaintiffs sue Secretary Hobbs for acts undertaken in his official
15 duties, and because he took those acts in Olympia, mandatory venue for their claims against him
16 is Thurston County. *Johnson*, 198 Wn.2d at 497-98; RCW 4.12.020(2).

17 **B. Plaintiffs’ Claims Against Secretary Hobbs Arise Under the APA, Which Also**
18 **Requires Venue in Thurston County**

19 Plaintiffs’ challenge to the “Signature Matching Procedure” includes a challenge to the
20 administrative rules that the Secretary of State enacted to implement state law. This part of
21 Plaintiffs’ lawsuit is a rule challenge under RCW 34.05.570(2), which must be brought
22 exclusively under the Administrative Procedure Act (APA) and the venue must be in “the
23 superior court of Thurston county[.]” RCW 34.05.570(2)(b)(i).

24 The APA permits aggrieved persons to challenge agency rules. “The validity of any rule
25 may be determined upon petition for a declaratory judgment addressed to the superior court of
26 Thurston county, when it appears that the rule, or its threatened application, interferes with or

1 impairs or immediately threatens to interfere with or impair the legal rights or privileges of the
2 petitioner.” RCW 34.05.570(2)(b)(i). The APA is generally the only means available to
3 challenge agency action, including the validity of agency rules. RCW 34.05.510; *see also*
4 RCW 7.24.146 (“[The UDJA] does not apply to state agency action reviewable under [the
5 APA].”).

6 Like the public officer venue statute, the APA’s venue provision is mandatory.
7 *Kettle Range Conservation Grp. v. Wash. Dep’t of Nat. Res.*, 120 Wn. App. 434, 458, 85 P.3d
8 894 (2003) (“Under the APA, such a challenge to the validity of an administrative rule must be
9 brought as a petition for declaratory judgment in Thurston County Superior Court.”); *see also*
10 *D.W. Close Co., Inc. v. Wash. Dep’t of Labor & Indus.*, 143 Wn. App. 118, 133, 177 P.3d 143
11 (2008) (“Any challenge to administrative rules must be brought as a petition for declaratory
12 judgment in Thurston County Superior Court.”). While the statutory language uses the word
13 “may,” this is often used in the APA to indicate a mandatory procedure that a petitioner must
14 take advantage of to be entitled to their requested relief. *See Nw. Ecosystem All. v. Wash. Forest*
15 *Practices Bd.*, 149 Wn.2d 67, 77, 66 P.3d 614 (2003) (“It is significant to us that there are other
16 provisions in the APA where the word ‘may’ is used to convey that a procedure must be followed
17 if a person wants to achieve what is permitted.”).

18 Here, Plaintiffs allege that the Secretary of State’s rules which provide standards for
19 verifying signatures and that allow mismatched or missing signatures to be cured are
20 unconstitutional and also violate RCW 29A.04.206. First Am. Compl. ¶¶ 114–146. Plaintiffs
21 request a declaratory judgment and an injunction preventing Secretary Hobbs from enforcing
22 these rules and from county elections officials from following them. *Id.* at 40. Plaintiffs’
23 Complaint, therefore, seeks exactly the remedy permitted by the APA under RCW 34.05.570(2),
24 and in order to be entitled to that relief, Plaintiffs must follow the procedures of the APA.
25 RCW 34.05.510 (“This chapter establishes the exclusive means of . . . review of agency action”).
26 These procedures include a mandatory venue of Thurston County. RCW 34.05.570(2)(b)(i).

1 **C. If the Parties Do Not Consent to Transfer of the Claims Against the King County**
2 **Defendants, the Claims Against Secretary Hobbs Must Be Severed**

3 The King County Defendants have indicated that they do not consent to venue in
4 Thurston County. Declaration of William McGinty In Support of Defendant Steven Hobbs’
5 Motion to Change Venue. Under RCW 4.12.020, they may be entitled to venue in King County
6 for reasons similar to why Secretary Hobbs is entitled to venue in Thurston County. Accordingly,
7 Plaintiffs’ claims against the King County Defendants may have a mandatory venue of King
8 County, but the Plaintiffs’ claims against Secretary Hobbs certainly have a mandatory venue of
9 Thurston County. The straightforward solution to this problem is for Plaintiffs’ claims against
10 Secretary Hobbs to be severed. They must sue Secretary Hobbs in Thurston County.

11 Civil Rule 21 permits the Court to drop or add parties “at any stage of the [proceeding]
12 and on such terms as are just.” “Any claim against a party may be severed and proceeded with
13 separately.” *Id.*

14 Here, because RCW 4.12.020 and RCW 34.05.570(2) provides for mandatory venue of
15 Plaintiffs’ claims against Secretary Hobbs in Thurston County, their claims against Secretary
16 Hobbs must be transferred there. To accomplish that, if the King County Defendants have a right
17 to be sued in King County, the Plaintiffs’ claims against Secretary Hobbs should be severed
18 under CR 21, and then venue of those claims should be transferred to Thurston County Superior
19 Court.

20 **V. CONCLUSION**

21 Mandatory venue for the claims against Secretary Hobbs lies in Thurston County
22 Superior Court under RCW 4.12.020 and RCW 34.05.570. The claims against him must be
23 transferred there.
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1 DATED this 26th day of January 2023.

2 ROBERT W. FERGUSON
3 Attorney General

4 *s/ Karl D. Smith*

5 KARL D. SMITH, WSBA 41988
6 TERA M. HEINTZ, WSBA 54921
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8 *s/ William McGinty*

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18 *Attorneys for State Defendant Steve Hobbs*

19 I certify that this memorandum contains 2,040
20 words, in compliance with the Local Civil Rules.

1 **DECLARATION OF SERVICE**

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
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Counsel for Proposed Intervenor-Defendants

I declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 26th day of January 2023, at Olympia, Washington.

s/ William McGinty _____
WILLIAM MCGINTY
Assistant Attorney General

The Honorable Catherine Shaffer
Noted for Hearing: February 8, 2023
Without Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION; et al.,

NO. 22-2-19384-1 SEA

Plaintiffs,

[PROPOSED] ORDER GRANTING
DEFENDANT STEVE HOBBS'
MOTION TO CHANGE VENUE

v.

STEVE HOBBS, et al.,

Defendants.

THIS MATTER comes before the Court on a motion to change venue. The Court, having considered Defendant's motion and all other briefing filed in support or opposition, including supporting declarations and other papers, and being otherwise fully advised, hereby ORDERS that:

1. Venue of this matter is transferred to Thurston County Superior Court;
2. Plaintiffs shall make all necessary arrangements to transfer this matter to Thurston County Superior Court, including, but not limited to, transferring the court file.

DATED this ____ day of _____ 2023.

THE HONORABLE CATHERINE SHAFFER
King County Superior Court Judge

1 Presented by:
2 ROBERT W. FERGUSON
3 Attorney General
4 s/ William McGinty
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tyler@consovoymccarthy.com
Counsel for Proposed Intervenor-Defendants

I declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this day of January 2023, at Olympia, Washington.

/s/ William McGinty
WILLIAM MCGINTY, WSBA #41868
Assistant Attorney General