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The Honorable Catherine Shaffer
Noted for: February 8, 2023
Oral Argument Requested

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

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

RESPONSE TO DEFENDANT HOBBS'S
MOTION TO CHANGE VENUE

RESPONSE TO DEFENDANT HOBBS'S
MOTION TO CHANGE VENUE

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I. INTRODUCTION

Secretary Hobbs’s motion to change venue should be denied because it is based on a fundamental misconception about the nature of this lawsuit. This case is not a challenge to an “official act,” such as a governor’s proclamation about COVID-19, and it certainly does not contest agency rules under the APA. Rather, this lawsuit challenges the constitutionality of RCW 29A.40.110(3), the statute that requires signature verification in Washington, and Secretary Hobbs is named as a defendant because he is Washington’s Chief Election Officer and is statutorily responsible for signature verification. As a result, the authority Secretary Hobbs relies on—about official proclamations and APA challenges—is simply inapplicable and does not support his request to transfer venue to Thurston County.

Moreover, there is no question that venue lies in King County, as this case involves multiple King County-based defendants and will involve King County witnesses and evidence. The King County Defendants have not consented to a change of venue, and the severance advocated by Secretary Hobbs makes no sense. To sever this case would require the parties to litigate parallel, identical disputes, creating an enormous waste of judicial and party resources. Even worse, it would create the possibility of conflicting outcomes in the delicate area of election administration. Accordingly, the Court should deny Secretary Hobbs’s motion.

II. STATEMENT OF FACTS

This lawsuit challenges the *statutory* requirement that “[p]ersonnel shall verify that the voter’s signature on the ballot declaration is the same as the signature of that voter in the registration files of the county.” RCW 29A.40.110(3). *See* First Amended Complaint for Declaratory and Injunctive Relief (First Am. Compl.) at 40, ¶ 47, Dkt. # 10. The complaint discusses King County specifically at various points, *see* First Am. Compl. ¶¶ 4, 75–81, 97,

1 but the lawsuit challenges the constitutionality of this law on a statewide level, *see id.* at 40,
2 ¶ 7. Throughout the First Amended Complaint, Plaintiffs cite to a variety of sources in
3 describing how the Signature Matching Procedure is implemented in Washington, including
4 the Washington Administrative Code, *id.* ¶¶ 47–49, Washington State Patrol training
5 materials, *id.* ¶¶ 54–55, and news articles, *id.* ¶ 97. But Plaintiffs’ challenge is to the statute
6 itself as an unconstitutional burden on the fundamental right to vote.
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13 There are five individual plaintiffs, in addition to the three institutional plaintiffs: the
14 Vet Voice Foundation, the Washington Bus, and El Centro de la Raza. *See* First Am.
15 Compl. ¶¶ 9–25. Each of these individuals—Kaeleene Escalante Martinez, Bethan Cantrell,
16 Daisha Britt, Gabriel Berson, and Mari Matsumoto (collectively, the “Individual
17 Plaintiffs”)—had their ballot erroneously rejected at least once by officials following the
18 Signature Matching Procedure after attempting to cast a lawful vote in King County. *Id.* ¶¶
19 12–25.
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26 Ms. Escalante Martinez has had her timely, lawfully cast ballot rejected *three times*
27 in King County, including in the 2020 General Election despite completing and returning the
28 required cure paperwork to King County Elections. *Id.* ¶ 12. King County Elections
29 officials have rejected Ms. Britt’s timely, lawfully cast ballot on numerous occasions. *Id.*
30 ¶ 17. Ms. Cantrell and Dr. Berson had their lawfully cast ballots rejected in King County
31 after they attempted to vote in the 2020 General Election as well. *Id.* ¶¶ 16, 19.
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39 Ms. Matsumoto attempted to submit her timely, lawfully cast ballot in the 2022
40 General Election, received conflicting cure guidance from King County Elections officials
41 after it was rejected due to an alleged non-matching signature, and then, despite attempting
42 to comply with all of the conflicting guidance, had her ballot ultimately rejected and not
43 counted in the election. *Id.* ¶¶ 22–24.
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1 Three of the four Defendants, including all who made the decisions relevant to
2 rejecting the Individual Plaintiffs' specific ballots, are sued in their official capacity as King
3 County officials. *See id.* ¶ 27. Defendant Julie Wise is the Auditor/Director of Elections in
4 King County. *Id.* Susan Slonecker is a Supervising Attorney in the King County
5 Prosecuting Attorney's Office. *Id.* Stephanie Cirkovich is the Chief of Staff at the King
6 County Council. *Id.* All three King County Defendants are members of the King County
7 Canvassing Board, which has the authority to reject a ballot for a non-matching signature.
8 *Id.*; RCW 29A.60.010. The King County Canvassing Board rejected the Individual
9 Plaintiffs' ballots, along with the ballots of thousands of King County voters. First Am.
10 Compl. ¶ 27. The final Defendant, Secretary Hobbs, is named in his capacity as
11 Washington's Chief Election Officer. *See id.* ¶ 26; RCW 29A.04.230.
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23 III. STATEMENT OF ISSUES

24 Does either RCW 4.12.020 or RCW 34.05.570 mandate venue in Thurston County
25 Superior Court where, as here, the complaint challenges the statewide constitutionality of
26 Washington's signature verification requirement imposed by RCW 29A.40.110(3) and does
27 not challenge either an "official act" of the Secretary nor an agency rule pursuant to the
28 Administrative Procedures Act, and where venue in King County is indisputably proper
29 against the King County Defendants?
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37 IV. EVIDENCE RELIED UPON

38 This memorandum in opposition to the motion to change venue relies on material in
39 the court file, including the Plaintiffs' First Amended Complaint.
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V. AUTHORITY AND ARGUMENT

A. Secretary Hobbs’ motion misconceives the nature of this case and relies on inapt authority.

Secretary Hobbs’s motion is based on a fundamental misconception about this case and the relief sought. This lawsuit alleges that Washington’s statutory signature matching requirement, RCW 29A.40.110(3), unconstitutionally burdens the right to vote, and it seeks to have the statute permanently enjoined. As such, the authority pertaining to “official acts” of government officials and challenges to administrative rules under the Administrative Procedures Act are simply irrelevant. The “official act” at issue here (at the statewide level) is the adoption of the statute. The First Amended Complaint does not once reference the APA, and most assuredly does not assert a claim for an alleged violation of the APA.

1. RCW 4.12.020(2) does not apply because this case is not a challenge to an official act by Secretary Hobbs.

Secretary Hobbs’s first argument, that he is “entitled” to venue in Thurston County under RCW 4.12.020(2), Defendant Steven Hobbs’ Motion to Change Venue (Mot.) at 4, Dkt. # 37, fails at the very threshold because that statute is simply inapplicable here. As even a cursory examination of the First Amended Complaint reveals, Secretary Hobbs is a named defendant not based on rulemaking actions he may have undertaken in Olympia, *see* Mot. at 5, or based on some official proclamation, *cf. Johnson v. Inslee*, 198 Wn.2d 492, 496 P.3d 1191 (2021), but because he is the State’s Chief Election Officer. *See* First Am. Compl. ¶ 26. In this role, Secretary Hobbs “is responsible for” the Signature Matching Procedure that Plaintiffs now challenge, and his presence in this litigation allows the court to provide statewide injunctive relief. RCW 43.07.310; First Am. Compl. ¶ 26.

Secretary Hobbs rests his argument primarily on *Johnson*, but the reliance is rather decidedly misplaced. In *Johnson*, the plaintiff challenged Governor Inslee’s *proclamations*

1 requiring certain individuals to be fully vaccinated against COVID-19 in order to remain
2 employed. *Johnson*, 198 Wn.2d at 497. In contrast, Plaintiffs here challenge the *statutory*
3 requirement for signature matching under RCW 29A.40.110(3). Secretary Hobbs cites no
4 authority suggesting that a constitutional challenge to a Washington statute must be filed in
5 Thurston County because the legislature enacted the law in Olympia or because the lawsuit
6 names as a defendant a government official charged with implementing such statute. And
7 the pages of the Washington Reporter are replete with cases challenging a statute's
8 constitutionality that were properly filed in other counties.¹ Surely Secretary Hobbs is not
9 suggesting that every constitutional challenge to a Washington statute would need to be
10 heard in Thurston County merely because a statewide official plays some role in
11 administering it. Such a radical reimagining of the venue rules would find no support in
12 Washington law.

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Indeed, Secretary Hobbs's interpretation of *Johnson* itself and his advocacy of
severance flies in the face of the Court's reasoning. In *Johnson*, the Court noted that
keeping proceedings in the county where an official acted is necessary to prevent officials
from having to "decid[e] between conflicting orders of courts of different counties."
Johnson, 198 Wn.2d at 497. Yet Secretary Hobbs's solution—severance and parallel cases

¹ See, e.g., *Quinn v. State*, No. 100769-8 (Wash. 2022) (challenge to RCW 82.87.050(1) filed and heard in Douglas County Superior Court, presently before the Washington Supreme Court); *Kunath v. City of Seattle*, 10 Wn. App. 2d 205, 444 P.3d 1235 (2019) (challenge to RCW ch. 36.65 filed and heard by a King County judge); *Madison v. State*, 161 Wn.2d 85, 163 P.3d 757 (2007) (challenge to RCW 9.94A.637 filed and heard in King County Superior Court); *Nw. Motorcycle Ass'n v. State Interagency Comm. for Outdoor Recreation*, 127 Wn. App. 408, 110 P.3d 1196 (2005) (challenge to RCW 46.09.170 filed and heard in Kittitas County Superior Court); *Dean v. Lehman*, 143 Wn.2d 12, 18 P.3d 523 (2001) (challenge to RCW 72.09.480 filed and heard in King County Superior Court); *Ford Mot. Co. v. Barrett*, 115 Wn.2d 556, 800 P.2d 367 (1990) (challenge to RCW 19.118.100 filed and heard in King County Superior Court); *Chicago Bridge & Iron Co. v. State*, 98 Wn.2d 814, 659 P.2d 463 (1983) (challenge to RCW 82.04.220 filed and heard in Mason County).

1 in King and Thurston Counties—would put him at risk of facing “conflicting orders of
2 courts of different counties”—the very outcome the *Johnson* Court sought to avoid.
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5 Moreover, the plaintiff in *Johnson* sued only statewide officials and brought no
6 claims against any county officials. *Id.* at 493. He also did not allege any harm “unique to
7 him by virtue of being employed in that county, nor [did] he contend that his action . . .
8 ‘arose’ from anything particular to him or to Franklin County so as to justify a different
9 conclusion.” *Id.* at 497. These two points alone distinguish *Johnson*—Plaintiffs have sued
10 county officials, *see* First Am. Compl. ¶ 27, and allege numerous ballot rejections unique to
11 the Individual Plaintiffs’ relationship with King County specifically. *Id.* ¶ 12–25. Even
12 assuming that RCW 4.12.020 was applicable—it’s not—and that Secretary Hobbs’s role
13 here did take place in Thurston County, the statute clearly says that actions shall be tried “in
14 the county where the cause, *or some part thereof*, arose.”² RCW 4.12.020 (emphasis
15 added). Secretary Hobbs can hardly argue that at least some part of Plaintiffs’ cause did not
16 arise in King County.
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28 This case is properly in King County, and neither *Johnson* nor RCW 4.12.020
29 mandates otherwise.
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39 ² There is a far stronger argument that venue in King County is mandatory for the King
40 County Defendants under RCW 4.12.020. Even assuming Secretary Hobbs is correct about venue
41 being mandatory in Thurston County—and he is not—there are two mandatory applications of RCW
42 4.12.020 that are in conflict, and under such circumstances, Plaintiffs ought to be permitted to choose
43 between the appropriate venues. *See Ralph v. Weyerhaeuser Co.*, 187 Wn.2d 326, 338, 386 P.3d 721
44 (2016) (“[W]hen confronted with two equally applicable venue statutes, we have held that they may
45 be interpreted as ‘complementary,’ giving plaintiffs the option of which statute to proceed under.”);
46 *see also Marshall v. Mahaffey*, 974 S.W.2d 942, 947 (Tex. App. 1998) (where mandatory venue
47 provisions conflict, plaintiffs may choose between proper venues).

1 **2. Plaintiffs do not bring an APA rules challenge, so RCW 34.05.570(2)**
2 **does not apply.**

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4 Secretary Hobbs’s second argument, that a challenge to a regulation under the APA
5 must be brought in Thurston County, fails for a similarly simple reason: Plaintiffs do not
6 challenge the validity of the rules or agency action under the APA, as even a quick glance at
7 the First Amended Complaint reveals. Rather, they challenge the *constitutionality* of RCW
8 29A.40.110(3), the statute that requires verification of identity on mail in ballots by
9 signature. The Secretary’s argument, which is based on this fundamental misunderstanding
10 of the claim before the Court, necessarily fails as a result.

11 Although Plaintiffs discuss administrative rules implementing the statute, it is to
12 exemplify and explain the overall signature matching procedure, not to separately challenge
13 the regulations under RCW 34.05.570. If the Court declares the statute unconstitutional, the
14 regulations fall with the statute, but that assuredly does not mean that Plaintiffs are somehow
15 silently suing under the APA—a statute never even cited in the First Amended Complaint,
16 much less relied upon as a cause of action. To the contrary, Plaintiffs bring no claim under
17 the APA. Consequently, Secretary Hobbs’s argument about the required venue for APA
18 challenges is inapplicable to this constitutional challenge to RCW 29A.40.110(3).

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33 **B. Severance is impractical and unnecessary, and this case should stay in King**
34 **County.**

35 Even if Secretary Hobbs’ arguments for his preferred venue were somehow
36 supported by Washington law as applied to the claims in this lawsuit (and they are not), his
37 proposal to sever the claims here should be rejected out of hand. Secretary Hobbs describes
38 severing this case as the “straightforward solution,” Mot. at 7, but it is clearly anything but.
39 Severance would require duplicative litigation, forcing the parties and the judicial system to
40 expend unnecessarily time and money. Witnesses, who will likely overlap substantially,
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1 would need to take the time to testify in two cases instead of one. It would be a glaring
2 example of judicial inefficiency for two judges in two different courts to hear what will
3 likely amount to the same claims, supported by the same or similar evidence. And, worst of
4 all, it would raise the possibility of inconsistent decisions, raising the potential of
5 considerable confusion in the delicate area of election administration.
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10 King County is a proper venue for *all* claims against *all* Defendants. All Individual
11 Plaintiffs and three of four defendants are located in King County, just like much of the
12 evidence and witnesses. The Individual Plaintiffs voted their ballots in King County, and
13 King County officials rejected them there. Washington law already permits courts to
14 consider “the convenience of witnesses [and] the ends of justice” when evaluating the
15 appropriate venue. RCW 4.12.030. Both these important goals are served by litigating this
16 case in King County without severance.
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25 VI. CONCLUSION

26 For the reasons discussed above, this case can and should proceed in King County
27 Superior Court, and severance of this case would be inappropriate. Plaintiffs respectfully
28 submit that the Court should deny Secretary Hobbs’s motion.
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Dated: February 2, 2023

I certify that this motion/memorandum contains 2397 words, in compliance with the Local Civil Rules.

s/ Kevin J. Hamilton

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CERTIFICATE OF SERVICE

On February 2, 2023, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

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

EXECUTED at Seattle, Washington, on February 2, 2023.

/s/ Hannah E.M. Parman
Hannah Parman

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The Honorable Catherine Shaffer

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

VET VOICE FOUNDATION, THE
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BETHAN CANTRELL, DAISHA BRITT,
GABRIEL BERSON, and MARI MATSUMOTO,

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
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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

[PROPOSED] ORDER
DENYING DEFENDANT
HOBBS' MOTION TO
CHANGE VENUE

1 The Court, having considered Defendant Secretary of State Steve Hobbs’s Motion to
2
3 Change Venue, the papers filed in support of and in opposition to the motion, and being
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5 fully advised, now, therefore, ORDERS as follows:

6 Secretary Hobbs’s Motion is DENIED.
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12 DATED this __ day of _____, 2023.
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20 _____
21 The Honorable Catherine Shaffer
22 King County Superior Court Judge
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Dated: February 2, 2023

Presented by:

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CERTIFICATE OF SERVICE

On February 2, 2023, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

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

EXECUTED at Seattle, Washington, on February 2, 2023.

s/ Hannah E.M. Parman
Hannah Parman