The Honorable Catherine Shaffer
Noted for Hearing: February 21, 2023
Without Oral Argument

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

VET VOICE FOUNDATION; et al., Plaintiffs, v. STEVE HOBBS, et al., Defendants.	NO. 22-2-19384-1 SEA DEFENDANT STEVE HOBBS' AMENDED REPLY IN SUPPORT OF MOTION TO CHANGE VENUE

I. INTRODUCTION

Plaintiffs attempt to re-write their amended complaint in an effort to sue Secretary Hobbs in the wrong venue. In their First Amended Complaint (FAC), Plaintiffs clearly seek to invalidate regulations governing the signature matching process. Mandatory venue for this challenge to the Secretary of State's administrative rules is in Thurston County. Unless Plaintiffs amend their complaint to remove the challenge to the regulations, this Court should transfer all of Plaintiffs' claims against Secretary Hobbs to Thurston County.

II. ARGUMENT

A. Plaintiffs Unambiguously Challenge the Validity of Agency Rules

Plaintiffs' contention that their complaint "does not challenge . . . an agency rule," Am. Resp. at 4, is simply wrong. In challenging the "Signature Matching Procedure," Plaintiffs are challenging regulations governing the process of implementing the statutory signature

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verification requirement. Plaintiffs seek "[a] declaration that the Signature Matching Procedure violates . . . the Washington Constitution and RCW 29A.04.206." FAC at 40. If Plaintiffs intended to challenge only the statutory signature verification requirement, they could easily have used "RCW 29A.40.110(3)" instead of "Signature Matching Procedure." But Plaintiffs did not do so. Throughout their complaint, Plaintiffs make clear that they are challenging the "Signature Matching Procedure," which they describe as the combination of RCW 29A.40.110(3), WAC 434-250-120(1)(c), and WAC 434-379-020. *Id*. at 16-17 (¶¶ 47-49).

In addition to Plaintiffs' own description of "Signature Matching Procedure," the very term itself makes clear that the complaint challenges more than the constitutionality of RCW 29A.40.110(3). The statute provides the *requirement* to verify signatures, but it does not specify the *procedure*. RCW 29A.40.110(3) ("Personnel 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."). The procedure for matching signatures is set out in detail in WAC 434-250-120(1)(c) and WAC 434-379-020. By challenging the "Signature Matching Procedure," the complaint necessarily challenges the regulations.

Further, Plaintiffs' claim that the signature verification process violates RCW 29A.04.206 leaves no doubt that they are challenging regulations in addition to the statute. FAC at 39. RCW 29A.40.110 cannot be invalid on the basis that it allegedly conflicts with another statute. Instead, courts harmonize statutes. *See King County v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 560, 14 P.3d 133 (2000). One act of the Legislature does not take precedence over another.

The scope of Plaintiffs' challenge matters. If Plaintiffs challenge only the constitutionality of RCW 29A.40.110 and this Court holds that the statute is facially constitutional, the case is at an end; Plaintiffs' complaint must be dismissed. But if Plaintiffs also challenge the regulations, then even if the statute is upheld, Plaintiffs may (through a proper APA challenge) still seek to invalidate the regulations setting forth the procedure for verifying

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signatures. To be sure, the Secretary would welcome an amendment of Plaintiffs' complaint to challenge only the constitutionality of RCW 29A.40.110(3). But Plaintiffs should not be permitted to recharacterize their complaint solely for the purpose of avoiding a mandatory venue statute.

B. A Challenge to the Validity of Agency Rules May Only Be Brought in Thurston County

The Administrative Procedure Act, ch. 34.05 RCW, is "the exclusive means of judicial review of agency action." RCW 34.05.510. Where the challenged action is an agency rule, RCW 34.05.570 is clear: the challenge must be "addressed to the superior court of Thurston county." Plaintiffs do not dispute this in their response. They instead rely exclusively on the erroneous argument that they "do not challenge the validity of the rules." Am. Resp. at 7. Because Plaintiffs wrongly characterize their complaint and do not dispute that mandatory venue for an APA rule challenge is in Thurston County, RCW 34.05.570 requires that venue for Plaintiffs' rule challenges be in Thurston County.

C. RCW 4.12.020(2) Requires Plaintiffs' Claims Against Secretary Hobbs Be Litigated in Thurston County

Under Plaintiffs' curious theory, Secretary Hobbs is simultaneously "'responsible for'" the entirety of the "Signature Matching Procedure" and also has not undertaken any "official act" for purposes of RCW 4.12.020(2). Am. Resp. at 5. That makes no sense, and it is based on a fundamental misunderstanding of the elections process in Washington.

In reality, as currently drafted, Plaintiffs' complaint is based on the Secretary's official act of promulgating the challenged WAC 434-250-120(1)(c) and WAC 434-379-020, as discussed above.

To the extent that Plaintiffs rely on the Secretary's responsibility for Washington elections under RCW 43.07.310, *see* Am. Resp. at 5, all of the Secretary's official acts under that statute occurred in Thurston County. The reference to "verification of signatures" in RCW 43.07.310(1) is not relevant, as that subsection is limited to the context of "state initiative,

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referendum, and recall petitions." While RCW 43.07.310(4) provides that the Secretary is responsible for "the administration, canvassing, and certification of the presidential primary, state primaries, and state general election," the Legislature provided a more specific allocation of responsibility in chapter 29A.60 RCW. Specifically, county canvassing boards and county personnel are responsible for carrying out the signature verification process. *E.g.*, RCW 29A.60.010 ("The returns [must be] canvassed by the county canvassing board."); *see also* WAC 434-250-120(1)(c) (requiring that the ballot-declaration signature "has been verified by the county of origin"). The Secretary's canvassing responsibilities, which occur in Thurston County, arise after counties have completed the signature verification process. *See* RCW 29A.60.230. While the Secretary issues official guidance (referred to as "clearinghouses") on a variety of election topics, that guidance originates in the Secretary's office in Thurston County. In short, all of the "official acts" that the Secretary performs that have any bearing on the signature verification process occur in Thurston County.

Plaintiffs' suggestion that RCW 4.12.020 is inapplicable because they do not challenge *any* official acts by Secretary Hobbs has little to recommend it. If Secretary Hobbs has not undertaken any act, there is no basis for his presence as a defendant. If he has undertaken a relevant act, Plaintiffs concede it was in his official capacity and do not dispute that it occurred in Thurston County.

Plaintiffs' argument that constitutional challenges to statutes do not automatically have to be brought in Thurston County is a red herring. That is not the Secretary's argument. This is not a case where a plaintiff has sued the State to challenge the validity of a statute, nor is it even a situation in which a plaintiff challenges the constitutionality of a statute incidentally to other relief. Plaintiffs here brought an action against a "public officer" (the Secretary) "for an act done by him" (related to signature matching procedures) "in virtue of his office" (which Plaintiffs effectively concede, as this is an official capacity action). RCW 4.12.020. Because the claims

against the Secretary satisfy each of the requirements of RCW 4.12.020, venue for those claims is mandatory in Thurston County.

Plaintiffs' attempt to distinguish the Supreme Court's decision in *Johnson v. Inslee*, 198 Wn.2d 492, 496-97, 496 P.3d 1191 (2021), is unavailing. Plaintiffs' contention implicates the precise concerns of "conflicting orders of courts in different counties" that existed in *Johnson*. *Id.* at 497 (quoting *Clay v. Hoysradt*, 8 Kan. 74,80 (1871)). Under Plaintiffs' theory, other groups could bring identical claims against the Secretary in each county in the State and, so long as they also brought claims against the county canvassing board, the Secretary "could be haled into superior courts throughout the state to defend similar suits challenging a single act having statewide effect." *Id.* Further, Plaintiffs' claims that the Secretary's regulations, guidance, and other acts affected them in King County are no different than the *Johnson* plaintiff's claim that he would be reassigned at his job in Franklin County. Plaintiffs fail to identify any material distinction from *Johnson* in this regard.

Nor does it matter that Plaintiffs have also brought claims against county-level officials. Plaintiffs' claims against the King County Defendants may have arisen in King County, because that is where the King County Defendants took their official actions. But any claims Plaintiffs have against *Secretary Hobbs* arose in Olympia, because that is where Secretary Hobbs took all of his official actions concerning signature verification. *See Johnson*, 198 Wn.2d at 496-97. Plaintiffs' argument that they can sue Secretary Hobbs outside of Thurston County merely because they have claims against separate defendants that arose in King County makes no sense. If that were the case, RCW 4.12.020 could be avoided by mere artifice of pleading.

For a similar reason, RCW 4.12.020(2) does not create "complementary" mandatory venue provisions that plaintiffs can simply choose between when they sue public officers who took their official actions in separate counties. In *Ralph v. Weyerhaeuser Company*, 187 Wn.2d 326, 341, 386 P.3d 721 (2016), there were two relevant venue statutes, RCW 4.12.020(3) and RCW 4.12.010(1), and each was equally applicable to all defendants.

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Here, RCW 4.12.020(2) does *not* apply equally to Secretary Hobbs and the King County Defendants. As to Secretary Hobbs, it mandates venue in Thurston County; as to King County Defendants, it mandates venue in King County.

D. Plaintiffs Have Not Moved To Amend Their Complaint

Plaintiffs alternatively ask this Court for either "an order allowing an amendment," Am. Resp. at 1 n.1. or "leave to file a motion for leave to amend the Complaint to clarify the claim before the Court," *id*. at 9. If this Court denies the motion to change venue, Plaintiffs should be required to amend their complaint to match their position in this briefing. But it would not be appropriate to enter an order permitting amendment at this time because Plaintiffs have not attached a proposed amended complaint to their response as required by Civil Rule 15(a). Without the opportunity to see the specific proposed amendments, Defendants cannot take a position on whether the specific amendment is permissible. And Plaintiffs do not require "leave to file a motion for leave to amend." Am. Resp. at 9.

Unless and until Plaintiffs file—and the Court grants—such a motion, the operative complaint is the First Amended Complaint and, as set out in detail above, that Complaint sets out a challenge not only to the requirement to compare signatures but to the procedures that the Secretary has promulgated for doing so. In the event the Court disagrees, and grants leave for Plaintiffs to amend, such leave should be limited to amendments specifying that Plaintiffs' challenge is purely a facial challenge to RCW 29A.40.110(3).

III. CONCLUSION

For the reasons stated above, proper venue of this matter is Thurston County Superior Court, and this Court should so rule.

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DATED this 16th day of February 2023.

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I certify that this memorandum contains 1,744 words, in compliance with the Local Civil Rules.

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DECLARATION OF SERVICE

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

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

DATED this 16th day of February 2023, at Olympia, Washington.

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