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CLERK OF WISCONSIN
COURT OF APPEALS

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV**

PRIORITIES USA; WISCONSIN
ALLIANCE FOR RETIRED AMERICANS;
WILLIAMS FRANKS, JR.,

Plaintiffs-Appellants,

Appeal No. 2024AP164

v.

THE WISCONSIN ELECTIONS
COMMISSION,

Defendant-Respondent,

On Appeal from the Circuit Court for
Dane County, No. 2023CV1900,
The Honorable Ann Peacock,
Presiding

THE WISCONSIN STATE
LEGISLATURE,

Intervenor-Respondent.

RESPONSE IN OPPOSITION TO MOTION TO CHANGE VENUE

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pursuant to SCR 10.03(4)(b)

Attorneys for Appellants

If the Supreme Court grants the pending bypass petition, the Wisconsin Elections Commission's motion to change venue will be moot. Regardless, this appeal is properly venued in District IV under Wis. Stat. § 752.21(1). The Court should therefore deny the Commission's motion.

ARGUMENT

Under section 752.21(1), “a judgment or order appealed to the court of appeals shall be heard in the court of appeals district which contains the court from which the judgment or order is appealed.” Wis. Stat. § 752.21(1). The proceedings below were heard by the Dane County Circuit Court, which lies in District IV of the Court of Appeals. *See* Compl. ¶¶ 20–21, *Priorities USA v. Wis. Elections Comm'n*, Case No. 2023CV001900 (Dane Cnty. Cir. Ct. July 20, 2023). Appellate venue therefore is properly laid in District IV under this provision.

The Commission argues that venue should instead be governed by section 752.21(2), a narrow exception applicable only to “an action venued in a county designated by the plaintiff to the action as provided under s. 801.50(3)(a).” In appeals that are subject to that narrow exception, the appellant gets to designate a court of appeals district, but they must choose one *other than* the district within which the trial court is located. If section 752.21(2) governed this appeal, then District IV would be an improper venue.

But section 752.21(2) does not govern this appeal, because this appeal was not venued in the circuit court under section 801.50(3)(a). That provision applies to many actions “in which the sole defendant is” a state body like the Commission.

Wis. Stat. § 801.50(3)(a). But it explicitly does not apply to “actions relating to the validity or invalid[ity] of a rule or guidance document.” *Id.* § 801.50(3)(b). Those actions instead “shall be venued as provided in s. 227.40(1).” *Id.* And section 227.40(1), in turn, provides for venue where the party challenging the rule or guidance document “resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose.”

This action was properly venued in the circuit court under section 227.40(1), as an action relating to the validity or invalidity of guidance documents. The Complaint is directly framed as a challenge to the Commission’s Uniform Instructions for Wisconsin Absentee Voters (Form EL-128) and the Election Administration Manual. *See, e.g.*, Compl. ¶¶ 24–28, 35–36, 40, 51–53, 57. And it seeks a declaratory judgment that those guidance documents are unlawful. *Id.* at 28. It was therefore properly venued in Dane County under section 227.40(1), because that is where Plaintiff William Franks Jr. resides and where the challenged guidance was prepared and issued. *Id.* ¶ 21. And the Commission’s argument that neither the notice of appeal nor the appellate docketing statement explicitly described the issues as challenges to guidance documents, Mot. at 4 n.1, is beside the point. The applicability of the appellate venue–shifting provision turns on the *circuit court* venue under section 801.50. The relevant claims are those asserted in the Complaint, which identified section 801.50(3)(b) as the basis for venue. Compl. ¶¶ 20–21. And

whatever the legal issues raised on appeal may be, the relief Plaintiffs seek in this case is a declaratory judgment that multiple guidance documents are invalid.

Contrary to the Commission's argument, the fact that Appellants *also* challenge the constitutionality of the underlying statutes on which the guidance documents are premised makes no difference. Section 801.50(3)(b) broadly exempts all "actions *relating to* the validity or invalid[ity] of a rule or guidance document" from the appellate venue-shifting regime. Wis. Stat. § 801.50(3)(b). It is not limited to actions *exclusively* relating to the validity or invalidity of guidance documents. And "relating to" is a broad standard. As the Supreme Court has explained, "relating" is "the gerund form of 'relate', which is defined as 'to show or establish logical or causal connection between.'" *State v. Mulhern*, 2022 WI 42, ¶ 34, 402 Wis. 2d 64, 975 N.W.2d 209. "Relating to" has "an 'expansive sweep' and [is] 'conspicuous for its breadth.'" *State v. Wisconsin Cent. Transp. Corp.*, 200 Wis. 2d 450, 457, 546 N.W.2d 206, 210 (Ct. App. 1996), *aff'd*, 209 Wis. 2d 278, 562 N.W.2d 152 (1997) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383–84 (1992)). And the Commission cites no authority supporting its argument that section 801.503(b) looks only to the gravamen of the complaint.

The Supreme Court's recent decision in *State ex rel. Kormanik v. Brash*, 2022 WI 67, 404 Wis. 2d 568, 980 N.W.2d 948, confirms this. There, the plaintiff filed an action seeking injunctive and declaratory relief with respect to both agency guidance and the underlying statutes. *Id.* ¶ 4. After the circuit court granted a temporary injunction, opposing parties argued that the appeal should be venued in

the district they chose pursuant to section 752.21(2) because “[the] complaint was not truly a challenge to the validity of a guidance document, but instead was one seeking a declaratory judgment regarding various election statutes.” *Id.* ¶ 9. The Supreme Court rejected this argument, holding that “Kormanik’s lawsuit clearly ‘relat[ed] to the validity [or invalidity] of a rule or guidance document’ within the meaning of Wis. Stat. § 801.50(3)(b).” *Id.* ¶ 21. The Supreme Court also dispensed with the argument that the lawsuit exceeded the bounds of section 801.50(3)(b) because it sought both injunctive and declaratory relief, holding that “[b]ecause Kormanik’s claim for injunctive relief was completely dependent upon a favorable decision on her claim for declaratory relief, her action is quintessentially one for declaratory relief.” *Id.* And, as the Court recognized, the allegations in the complaint determine where an action is venued and whether the appellate venue-shifting provision applies. *Id.* ¶¶ 2, 8–9, 15.

The same principles apply here. Appellants’ action in the circuit court “relat[es] to the validity or [invalidity] of a rule or guidance document,” Wis. Stat. § 801.50(3)(b), and therefore was not venued “as provided under s. 801.50(3)(a),” Wis. Stat. § 752.21(2), because the complaint challenges Commission guidance as invalid on the basis of constitutional infirmity. And just as in *Kormanik*, it makes no difference that Appellants *also* make statutory arguments and seek relief with respect to statutes. The fact that the action relates to the validity of a guidance document means that it was properly venued in the Dane County Circuit Court under

sections 227.40(1) and 801.50(3)(b). It is therefore properly venued in District IV under section 752.21(1).

CONCLUSION

The Court should deny the Motion to Change Venue. If, however, the Court agrees with the Commission that venue is improper in District IV, Appellants designate District I instead.

Dated: March 4, 2024.

Respectfully submitted,

Electronically signed by Diane M. Welsh

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CERTIFICATIONS

I hereby certify that I electronically filed this response in compliance with Wisconsin Statutes Sections 809.14(1), 809.801(6), and 809.81.

Dated: March 4, 2024.

Respectfully submitted,
Electronically signed by Diane M. Welsh

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