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Governor Andy Beshear
700 Capitol Avenue, Ste. 100
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Please VETO House Bill 804.

House Bill 804 is in practice and principle no different than Senate Bill 126 from last session that was unequivocally struck down as unconstitutional by the Kentucky Supreme Court in *Arkk Properties, LLC v. Cameron*, 681. S.W.3d 133 (Ky. 2023).

In *Arkk*, the Supreme Court was clear: “[a] circuit court with jurisdiction over a case is vested with ‘inherent’ authority to administer justice, including whether a case should be transferred to another venue, or if judicial recusal is warranted.” *Id.* at 141.

Currently, KRS 452.005 provides generally that venue for any civil action that challenges the constitutionality of a Kentucky statute which includes a claim for declaratory relief or injunctive relief against a state official or the General Assembly shall be filed in the office of the Circuit Court clerk in the county where the plaintiff resides if the plaintiff is a resident of Kentucky. KRS 452.005(2)(a). If the plaintiff is not a resident of Kentucky, the complaint shall be filed in Franklin Circuit Court. KRS 452.005(2)(b).

As written, House Bill 804 seeks to change the venue for such claims by amending KRS 452.010 and KRS 542.030 to mandate that the Circuit Court grant an application for a change of venue upon motion by any party to that action. House Bill 804, Section I, subsection (3) (“A party to an action meeting the definition in subsection (1) of Section 5 of this Act shall have a change of venue upon application); HB 804, Section II, subsection 2 (“If the court finds that the action meets the definition in subsection (1) of Section 5 of this Act, the court shall grant the petition and order the transfer of the action pursuant to Section 3 of this Act”).

House Bill 804 is simply a repeat of SB 126’s unconstitutional violation of the separation of powers doctrine, but with different wording. The use of different words does not change the unconstitutional nature of this bill.



The holding of the Kentucky Supreme Court in *Arkk* is instructive: “statutes dealing with venue must comport with constitutional requirements, like all other statutes, and must respect the separation of powers doctrine. Senate Bill 126’s robotic transfer process violates this doctrine by usurping the circuit court’s role in determining whether...change of venue [is] necessitated...” *Id.* at 142. While HB 804 used new language, it still mandated an unconstitutional robotic process that “divests the circuit court[s] of [their] inherent power to administer justice in a case...” *Id.* 141

Also, similar to SB 126, HB 804 exercises impermissible control over the circuit court clerks, who by CR 79.05 are custodians of the original record and are the actors that will be directed to transfer the record. While HB 804 does not contain a specific directive to the circuit court clerks, as SB 126 did, the result of the mandated transfer of venue created by HB 804 leads to the same result which impedes on the judicial branch’s exclusive power to govern the practice and procedure for the Court of Justice, including the circuit court clerks. See, CR 79.05(1)(“[N]o original record shall be removed from the office of the clerk unless by a court order.”); *Arkk*, *supra.* at 142 (“The Supreme Court also has plenary power over the circuit court clerks...”); (“[Kentucky Supreme] Court possesses the exclusive power to prescribe rules governing practice and procedure for the Court of Justice, including the circuit courts.”) *Id.*; (“This directive contradicts CR 79.05 and encroaches on the judicial branch’s constitutional authority to adopt rules of practice and procedure for the Court of Justice.”) *Id.* at 143.

In light of the foregoing, we strongly believe that if HB 804 is enacted it will be held unconstitutional by the Kentucky Supreme Court as violating the separation of powers doctrine. To avoid unnecessary and costly litigation, we urge you to VETO House Bill 804.

Sincerely,

Kate Miller
Advocacy Director
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