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Supreme Court of Kentucky

No. 2023-SC-0196

AARK PROPERTIES, LLC, *et al.*

Petitioners

v.

On Writ from
Franklin Circuit Court, No. 23-CI-00282

DANIEL CAMERON, in his official
Capacity as Attorney General of the
Commonwealth of Kentucky, *et al.*

Respondents

**BRIEF OF AMICI CURIAE
SPEAKER OF THE HOUSE DAVID OSBORNE
AND SENATE PRESIDENT ROBERT STIVERS**

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CERTIFICATE OF SERVICE

In accordance with RAP 30(B), I certify that a copy of this Brief of *Amici Curiae* Speaker of the House David W. Osborne and Senate President Robert Stivers was served on July 28, 2023 by U.S. mail on Victor B. Maddox, Matthew F. Kuhn, Heather L. Becker, Alexander Y. Magera, and Michael R. Wajda, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601; J. Guthrie True and Richard M. Guarnieri, True Guarnieri Ayer, LLP, 124 Clinton Street, Frankfort, Kentucky 40601; R. Kenyon Meyer, Dinsmore & Shohl LLP, 101 S. Fifth Street, Suite 2500, Louisville, Kentucky 40202; M. Evan Buckley, Dinsmore & Shohl LLP, 100 West Main Street, Suite 900, Lexington, Kentucky 40507; Heather Gatnarek, Corey M. Shapiro, American Civil Liberties Union of Kentucky Foundation, 325 W. Main Street, Suite 2210, Louisville, Kentucky 40202; Julie A. Murray, American Civil Liberties Union Foundation, Inc., 915 15th Street NW, Washington, D.C. 20005; Matthew R. Segal, American Civil Liberties Union Foundation, Inc., One Center Plaza, Suite 850, Boston, Massachusetts 02108; The Honorable Phillip J. Shepherd, Circuit Judge, Franklin Circuit Court, 222 St. Clair Street, Frankfort, Kentucky 40601; Kelly Stephens, Clerk, Supreme Court of Kentucky, 700 Capital Avenue, Room 235, Frankfort, Kentucky 40601-3415; and Kathryn Marshall, Clerk, Franklin Circuit Court, 222 St. Clair Street, Frankfort, Kentucky 40601.

/s/ David E. Fleenor

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STATEMENT OF PURPOSE AND ISSUES PRESENTED

David Osborne, in his official capacity as Speaker of the Kentucky House of Representatives (“Speaker Osborne”), and Robert Stivers, in his official capacity as President of the Kentucky Senate (“President Stivers”), submit this *Amici Curiae* Brief to defend the validity of Senate Bill 126 (“SB 126”) and the legislative power vested in the General Assembly by Section 29 and Section 231 of the Kentucky Constitution. The power of the General Assembly to enact legislation governing venue in legal actions is well-established and extremely important. SB 126 is a valid exercise of that legislative power.

Speaker Osborne and President Stivers fully support the arguments of the Respondent Attorney General Daniel Cameron (“General Cameron”) set forth in his brief for the validity of SB 126. General Cameron’s brief fully addresses the arguments raised by the Petitioners and demonstrates that SB 126 is a valid and constitutional exercise of the General Assembly’s legislative power. This *Amici Curiae* Brief of Speaker Osborne and President Stivers further demonstrates that the General Assembly has the legislative power to enact legislation governing venue, that the General Assembly has exercised that legislative power for one hundred and sixty-nine (169) years, and that SB 126 is a valid exercise of that legislative power.

ARGUMENT

The Kentucky General Assembly enacted SB 126 during its 2023 Regular Session. The bill contains an emergency clause making it effective on March 29, 2023. SB 126 amended KRS 452.005 governing venue for civil actions that challenge the constitutionality of a Kentucky statute, executive order, administrative regulation, or order of any cabinet, program cabinet, or department established under KRS Chapter 12.

Petitioners challenge the validity of SB 126. They argue that SB 126 establishes procedures regarding the transfer of venue in cases in the Commonwealth which they claim is a judicial power vested exclusively in the Court of Justice by Section 109 of Kentucky Constitution. Petitioners' argument is without merit.

Section 29 of the Kentucky Constitution vests legislative power in the General Assembly of the Commonwealth of Kentucky. This legislative power includes the power to enact laws governing venue.

The General Assembly has enacted legislation governing venue since at least 1854. In 1854, the General Assembly enacted the Code of Practice in Civil and Criminal Cases prepared by M.C. Johnson, James Harlan, and J. W. Stevenson, commonly referred to as Johnson's Code. Title V of Johnson's Code is entitled "The County in which an Action may be Brought." and contains Sections 93 through 110 establishing rules relating to venue in various cases. Effective January 1, 1877, the General Assembly replaced Johnson's Code with the Civil and Criminal Codes of Practice of Kentucky, commonly referred to as Carroll's Code named after John Carroll who became the code's chief annotator. Title V of Carroll's Code is entitled "The County in which an Action must or may be Brought." and contains Sections 62 through 82 establishing rules relating to venue in various cases. Effective July 1, 1953, the Statute Review Commission transferred the venue provisions of Carroll's Code to KRS Chapter 452.

From 1854 through the present spanning one hundred and sixty-nine (169) years, legislation governing venue has existed. During that time no court has ruled that the General Assembly does not have the legislative power to enact legislation governing venue. Petitioners acknowledge in their brief that ". . . the power to establish laws setting venue

of cases is a legislative power, *Davis v. Wingate*, 437 S.W.3d 720, 725 (Ky. 2014), *Copass v. Monroe Cnty. Med. Found., Inc.*, 900 S.W.2d 617, 619 (Ky. App. 1995).” Petitioner’s Brief at p. 8. Petitioners argue that SB 126 is somehow different from other venue legislation in that it establishes procedures regarding the transfer of venue which they contend is a judicial power vested in the Supreme Court. This is a distinction that has no legal relevance. The transfer of venue necessarily involves some action on the part of the courts. General Cameron thoroughly addresses this argument in his brief.

The amendments to KRS 452.005 set forth in SB 126 reflect the General Assembly’s intent to disperse constitutional litigation throughout all the judicial circuits in the Commonwealth. The General Assembly never intended to create one judicial circuit as a “specialty” court that adjudicates most, if not all, of the cases involving constitutional challenges. The judges elected in every judicial circuit are qualified to consider and decide constitutional questions. SB 126 is a valid exercise of the General Assembly’s long-established legislative power governing venue in the Commonwealth.

CONCLUSION

Speaker Osborne and President Stivers respectfully submit that the Petitioners’ petition for a supervisory writ should be denied. If the Court considers the validity and constitutionality of SB 126, the Court should uphold SB 126 as a permissible exercise of the General Assembly’s legislative power to establish venue.

Respectfully Submitted,

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WORD-COUNT CERTIFICATE

Pursuant to RAP 34(B)(4) and RAP 15, the undersigned certifies that this brief complies with the word limit of 5,250 words set forth in RAP 34(B)(4), because, excluding the parts of the document exempted by RAP 15(D) and 31(G)(5), this brief contains 801 words as set forth in the word-count of the word-processing system used to prepare this brief.

/s/ David E. Fleenor

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