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Mr. Chairman, honorable Members of the House Judiciary Committee, Rep. Flannery, my name is Audrey Ernstberger, I am a staff attorney and lobbyist for the Kentucky Resources Council. The Council, as many of you know, is a nonprofit Kentucky organization providing legal and technical assistance without charge to citizens and community groups on a range of environmental and energy related issues.

I am here to speak in opposition to the bill, which selectively alters the venue rules for constitutional challenges to statutes, regulations, and agency orders.

Section 1(1) retains the requirement that for any civil action triable to a jury in circuit court a change of venue may be requested when it appears that because of undue influence of an adversary or the odious nature of a case, a fair and impartial trial is not possible in that county.

But, Section 2(1) makes an exception for challenges to the constitutionality of laws, regulations, and agency orders, providing for automatic change of venue outside of that judicial district on request.

There is absolutely no justification for a categorical and arbitrary distinction between constitutional and all other civil actions with respect to venue. The bill contains many of the same fundamental flaws as did last year's Senate Bill 126, which was squarely rejected by the Kentucky Supreme Court in the case of *Arkk Properties v. Cameron*- HB 804 grants unchecked power to a litigant to remove a judge from a case under the guise of an "application for a change of venue," thereby circumventing the well-established judicial recusal process; it divests the circuit court of its inherent jurisdiction and authority to decide *when and if* a case should be transferred to another venue; it intrudes on the province of the Judiciary in contravention of the separation of powers in our state Constitution; and it allows for forum shopping by a litigant without any demonstration that the case cannot be heard in the initial forum in which it was filed. The bill will likely suffer the same fate as SB 126 for these reasons.

Under current law, as amended in 2022, the venue for constitutional challenges will be in the county in which the plaintiff resides, or for nonresidents, Franklin County. While before that time, under general venue rules, Franklin Circuit Court was the venue for most constitutional challenges due to where the cause of action arose and residence of the defendant, the 2022 law changed that under the auspices of being more accommodating to the injured plaintiff. This effort would undercut that justification by subjecting the

plaintiff to a relocation of their challenge on motion by any party, with no justification or basis.

Section 6 of the bill contains an Emergency Clause that presents the justification for the bill and the purported necessity for immediate implementation- according to that Section, it is to “safeguard against the perception that judicial decisions or verdicts could be affected by undue influence of a party of the odium that attends a cause of action of defense,” and “because of the circumstance or nature of a case that a party cannot have a fair or impartial trial in a particular county.”

Leaving aside the fact that there is no categorical evidence, historic or current, that the trial of the constitutional issues before the Franklin Circuit Court, or any other circuit court, has been anything other than fair and impartial, or that there has been any undue influence, that would justify imposition of a separate venue change rule mandating transfer on demand without justification, the bill mandates that venue be changed to outside the judicial circuit on request without demonstration of any bias whatsoever.

It singles out cases involving constitutional challenges, while still requiring for all other civil cases that there be a showing of undue influence, odium, or the inability to obtain a fair trial.

There are two other related constitutional concerns regarding the bill. The first is that it denies equal protection of the law to the plaintiffs, who on request by another party can be forced to pursue an action in an inconvenient forum, with no showing that the court in which the action was filed cannot fairly adjudicate the challenge.

And, even after the *Calloway* decision narrowing the scope of challenges under Section 59 of the Kentucky Constitution, the bill is prohibited special legislation selectively creating a new set of venue rules without rational basis and affecting a small number of courts and judges.

For these reasons, KRC requests that you reject HB804.