IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RONNIE MAURICE STEWART, et al., Plaintiffs, v. **ALEX M. AZAR II, et al.** Defendants.	Civil Action No. 1:18-cv-152 (JEB)

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO TRANSFER CASE TO THE EASTERN DISTRICT OF KENTUCKY

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INTRODUCTION

This dispute, at bottom, is about the operation of Kentucky HEALTH, the Commonwealth of Kentucky's program to administer its Medicaid program. Because the interests of Kentucky and its residents, including the thousands of Kentucky Medicaid recipients who are putative class members and who will be affected by Kentucky HEALTH, outweigh Plaintiffs' counsel's choice of forum in the District of Columbia, this Court should transfer this case to Eastern District of Kentucky—a forum of the state in which all individual Plaintiffs and proposed class members reside; the forum in which Kentucky HEALTH was designed, developed, and will be administered; and the forum that the factors relevant to transfer pursuant to 28 U.S.C. § 1404(a) clearly favor.

In their opposition to Defendants' motion to transfer, *see* ECF No. 15 (hereinafter, "Pls.' Opp."), Plaintiffs do not dispute any of the following[1]:

- That venue is proper in the Eastern District of Kentucky because this action could have been brought in that district. *See* ECF No. 6, Defs.' Mem. in Supp. of Mot. to Transfer 8–9 (hereinafter, "Defs.' Mem.").

- That Plaintiffs' sole interest in this matter arises solely from their residency in the Commonwealth and their enrollment in Kentucky's State Medicaid program. (Defs.' Mem. 13).

- That the approval of Kentucky HEALTH affects the terms and conditions of Medicaid for Kentucky residents exclusively. (Defs.' Mem. 1, 19–20).

- That the Secretary's approval of the waiver application was a product of yearlong discussions and negotiations between the Centers for Medicare & Medicaid Services ("CMS")—which is headquartered in Baltimore, Maryland—and Kentucky state officials in Frankfort, Kentucky, who worked closely with CMS to develop the special terms and conditions of the approval. (Defs.' Mem. 10–11).

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[1] *See Hopkins v. Women's Div., Bd. of Global Ministries*, 238 F. Supp. 2d 174, 178 (D.D.C. 2002) ("It is well understood in this Circuit that when a plaintiff files an opposition to a motion . . . addressing only certain arguments raised by the defendant, a court may treat those arguments that the plaintiff failed to address as conceded.").

- That, because the Secretary's Section 1115 waiver authority was designed to allow for state experimentation and local input, the Commonwealth's role in designing and testing its Section 1115 proposals is inextricably tied with the project's approval by officials in Washington, D.C. (Defs.' Mem. 11–12).

- That the Eastern District of Kentucky would be the more convenient forum for both the individually-named Plaintiffs and the putative state-wide class consisting of Kentucky Medicaid enrollees. (Defs.' Mem. 15–16).

No court has held connections like these insufficient for transfer, and *every other* APA suit brought by a Medicaid enrollee challenging a Section 1115 demonstration project has been decided in a forum of the state in which the project was designed and will be implemented. Under these circumstances, Kentucky is not merely some disconnected "forum over 500 miles away," Pls.' Opp. 1, as Plaintiffs appear to suggest, and Plaintiffs cannot credibly describe Defendants' request to transfer this case to a forum in Plaintiffs' home state as a "blatant attempt at forum-shopping." *Id.* As explained below, the only connection of this case to the District of Columbia—that is, that high-level officials based in Washington, D.C., were involved in the administrative decision-making at issue—does not justify overriding Kentucky's stronger interest in adjudicating this case.

ARGUMENT

I. THIS LOCALIZED CONTROVERSY SHOULD BE DECIDED IN KENTUCKY.

A. This Case Presents a Primarily Local Controversy.

Defendants do not contend that Kentucky residents have an *exclusive* interest in the resolution of this case, as Plaintiffs characterize Defendants' argument, *see* Pls.' Opp. 11–12. Rather, Defendants argued that this suit involves matters that are of great importance in the Commonwealth of Kentucky, and because it will impact residents of Kentucky most directly, the controversy is local in nature. *See* Defs.' Mem. 17–21. "[I]n cases which

touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home." *Adams v. Bell*, 711 F.2d 161, 167 (D.C. Cir. 1983); *see also Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 70 (D.D.C. 2003) (stating that this rationale applies "to controversies requiring judicial review of an administrative decision"). Here, the concrete effects of the federal approval of this state-initiated demonstration project fall exclusively upon the Commonwealth of Kentucky, and the Commonwealth's local interest in this case outweighs any national interest.

Plaintiffs nonetheless argue that the challenged actions are not localized "either in terms of interest or effect," because "the new waiver framework applies nationwide" and approval of Kentucky waiver "establish[es] a template for states across the country." Pls.' Opp. 3. But this assertion is not only unsupported but contradicted by the Complaint, which shows that the implications of a decision resolving this dispute will be felt most acutely in Kentucky, where local Medicaid enrollees directly will be affected. Plaintiffs allege harm to "Kentuckians across the state—housekeepers and custodians, ministers and morticians, car repairmen, retired workers, students, church administrators, bank tellers, caregivers, and musicians—who need a range of health services" in Kentucky. Compl. ¶ 8, ECF No. 1. The Complaint focuses exclusively on the harm felt by Kentucky residents, and all of the specific injuries alleged by Plaintiffs relate to their eligibility for benefits under Kentucky's state Medicaid program. *See* Compl. ¶¶ 166–330; Defs.' Mem. 19–20. Indeed, it is Plaintiffs' eligibility for Medicaid benefits in Kentucky that is relevant to the dispute; if Plaintiffs are entitled to any benefits, those benefits would be afforded to

Plaintiffs in Kentucky. Plaintiffs also seek class certification under Rule 23(b)(2) on behalf of a "statewide proposed class" of "*all residents of Kentucky* who are enrolled in the Kentucky Medicaid program on or after January 12, 2018." Compl. ¶ 33 (emphasis added). Cases like this one should be decided where the people "whose rights and interests are in fact most vitally affected by the suit," *Adams*, 711 F.2d at 167 n.34—here, the citizens of the Commonwealth—are located. Indeed, courts in this district routinely transfer actions like this one that challenge agency actions whose specific effects are felt most directly in the state of the transferee forum.[2]

While Plaintiffs contend that their suit presents a national controversy because it challenges a policy announced in Defendants' letter to all state Medicaid directors, Pls.' Opp. 12–13, Plaintiffs are unable to identify any allegation in the Complaint that addresses specific effects occurring outside of Kentucky. *Cf. Starnes v. McGuire*, 512 F.2d 918, 928 (D.C. Cir. 1974) (disclaiming any "blanket rule that 'national policy' cases should be brought here"). Other than rote references to "nationwide impact," the "interest in policing

[2] *See Pres. Soc. of Charleston v. U.S. Army Corps of Engineers*, 893 F. Supp. 2d 49, 57 (D.D.C. 2012) (noting that "it is the citizens of Charleston who will most clearly feel the effects of the [challenged] project"); *Airport Working Grp. of Orange Cnty, Inc. v. Dep't of Def.*, 226 F. Supp. 2d 227, 232 (D.D.C. 2002) (challenged decision "affects only the local citizenry" in Orange County); *Bergmann v. U.S. Dep't of Transp.*, 710 F. Supp. 2d 65, 74 (D.D.C. 2010) (transferring the case after noting that "there can be no doubt that the projects at issue in this case will directly affect the lives of Michigan residents" and concluding that "the outcome of this case will be felt most directly in Michigan"); *Pac. Mar. Ass'n v. N.L.R.B.*, 905 F. Supp. 2d 55, 61–62 (D.D.C. 2012) (granting transfer where "the local population [of Oregon] face[d] specific injury of a particularly local nature either as a result of, or upon enjoinment of, [the defendant's] challenged action" (internal citation and quotation marks omitted)); *W. Watersheds Project v. Pool*, 942 F. Supp. 2d 93, 102–03 (D.D.C. 2013) (stating that "a court's analysis of the local interest factor depends on whether the decision will directly affect citizens of the transferee district); *id.* ([T]he interests of justice are promoted when a localized controversy is resolved in the region it impacts.").

the actions of high-ranking officials," and "nationwide nature of this controversy," (factors which, if valid, would justify venue in the District of Columbia for almost any APA suit challenging any agency action), Plaintiffs identify no way in which their claims for relief are independent of the Secretary's approval of Kentucky HEALTH. Significantly, Plaintiffs do not dispute (and appear to expressly concede) that their standing to bring this action depends on their enrollment in Kentucky HEALTH, *see* Defs.' Mem. 16 n.5; Pls.' Opp. 21, 22, and they do not dispute that their only alleged injuries arising from that letter arise from the asserted effect that letter had on the Secretary's approval of the Kentucky application, Defs.' Mem. 20 n.7.

Plaintiffs' arguments that the Commonwealth's compelling local interests are outweighed by national interests miss the mark. The fact that high-level officials based in Washington, D.C., were involved in the federal government's decision-making, *see* Pls.' Opp. 12, does not overcome the overriding local interests in this case. *See M & N Plastics, Inc. v. Sebelius*, 997 F. Supp. 2d 19, 24 (D.D.C. 2013) (finding an "insubstantial factual nexus" to the District of Columbia where "the only connection to this forum relied upon by the plaintiffs is the fact that the contraceptive mandate is a federal action, ostensibly originating in Washington, D.C."). Nor do the fact that Plaintiffs' Complaint asserts a constitutional claim, Pls.' Opp. 13, or raises issues under the Affordable Care Act, Pls.' Opp. 11, weigh against transfer. *See M & N Plastics, Inc.*, 997 F. Supp. 2d at 24 (transferring action asserting multiple constitutional challenges to the ACA's contraceptive-coverage requirement from the District of Columbia because "the effects of the contraceptive mandate on the plaintiffs will be felt in Michigan"). Further, there is no support for Plaintiffs' contention that the approval of Kentucky HEALTH sets any

precedent relevant to other waiver applications, *see* Pls.' Opp. 13. By virtue of the individualized determinations made by the Secretary under Section 1115, the impacts of this case challenging the approval of Kentucky HEALTH will be direct and unique on Kentucky residents.

It is therefore unsurprising that *every other* APA suit brought by a Medicaid enrollee challenging a Section 1115 demonstration project has been decided in a forum of the state in which the project was designed and implemented. Defs.' Mem. 12 n.4. Plaintiffs attempt to distinguish those cases by arguing that the plaintiffs there "all brought claims against *state* officials located in the states where the plaintiffs sued." Pls.' Opp. 11 (emphasis in original). This reasoning is flawed. To begin, the plaintiffs in the other Section 1115 cases also named as defendants federal officials based in Washington, D.C., and, like Plaintiffs here, asserted APA or constitutional challenges based on the Secretary's exercise of his Section 1115 authority. More to the point, the fact that Plaintiffs here strategically chose not to name state officials as defendants does not affect the analysis of whether their claims have a connection to the transferee forum. Plaintiffs may be correct in noting that they "have the ability to choose *who* they sue," *id.*, but the D.C. Circuit has made clear that this kind of an exercise in litigation strategy cannot allow parties to escape a more appropriate forum. *Cf. Pres. Soc'y of Charles v. U.S. Army Corps of Eng'rs*, 893 F. Supp. 2d 49 (D.D.C. 2012) ("Courts in this circuit are instructed to consider motions to transfer venue favorably, given '[t]he danger that a plaintiff might manufacture venue in the District of Columbia . . . by naming high government officials as defendants . . . .") (quoting *Cameron v. Thornburgh*, 983 F. 2d 253, 256 (D.C. Cir. 1993)).

Further, the fact that one Section 1115 case brought by a pharmaceutical trade group, *Pharm. Research & Mrfs. of Am. v. United States*, 135 F. Supp. 2d 1 (D.D.C. 2001), *rev'd*, 51 F.3d 219 (D.C. Cir. 2001), was decided here does not counsel against transfer. In stark contrast to the plaintiffs in that action, who had no ties to the local forum, Plaintiffs here not only reside in Kentucky, but they bring this case on behalf of a proposed class of Medicaid enrollees all residing in Kentucky. And although Plaintiffs appear to suggest that the state defendants' decision to intervene in that action somehow warrants denying transfer of this action, *see* Pls.' Opp. 11, the intervention by the state defendants in that case only underscores the strong state interests in Section 1115 suits challenging the approval of state-initiated demonstration projects.

Plaintiffs devote a portion of their brief to an effort to litigate the merits of a separate action that Kentucky state officials recently filed concerning the validity of the Kentucky HEALTH program. Pls.' Opp. 26 (discussing *Bevin ex rel. Kentucky, et al. v. Stewart, et al.*, No. 3:18-cv-00008 (E.D. Ky. (filed Feb. 19, 2018)). The merits of that lawsuit are properly left to be resolved in that action; the federal agencies and officers that are the defendants here are not parties in that action. This Court's inquiry under section 1404(a), however, remains the same even after the filing of that declaratory judgment action, and the interests of the Commonwealth of Kentucky should hold substantial weight in this Court's analysis. Whatever else might be said about the other pending action, it demonstrates the Commonwealth's strong interest in the outcome of this case and in having this case litigated in Kentucky. *See, e.g.*, *Bevin ex rel. Kentucky*, No. 3:18-cv-00008, ECF No. 1, Compl. ¶ 1 ("[T]he Commonwealth of Kentucky developed Kentucky HEALTH, is currently implementing it, and will be the one enforcing it[.]"); *id.* ¶ 2 (noting "the

Commonwealth's unique and compelling interests in enforcing Kentucky HEALTH"); *id.* ¶ 35 ("In developing Kentucky HEALTH, the Commonwealth clearly had a robust public comment process, which included three public hearings and an extended comment period, to ensure that every Kentuckian who wanted to provide input was fully heard."); *id.* ¶ 64 ("Governor Bevin, Secretary Brinkman, and Commissioner Miller have expended significant time and effort creating Kentucky HEALTH, and they intend to implement it in short order").[3] Indeed, Plaintiffs do not attempt to dispute Kentucky's "unique and compelling" interests in the outcome of this suit that Plaintiffs decided to bring in the District of Columbia.

B. Defendants' Seek Transfer to the Division and District with the Strongest Connection to this Controversy.

Defendants have legitimate reasons for preferring the Eastern District of Kentucky. As explained in Defendants' opening brief, all individually-named Plaintiffs reside in Kentucky; the proposed class on whose behalf Plaintiffs bring this action is defined with respect to its residence in Kentucky; many of the events leading to the Secretary's approval of Kentucky HEALTH occurred in Kentucky; the outcome of this case will be felt most directly in Kentucky; and Congress's policy in favor of state experimentation and participation in the waiver approval process under Section 1115 would best be served if judicial review of the State's application and Secretary's approval were to occur in a forum within Kentucky—that is, the state where the proposal was designed and modified based on local input, and where those affected by the waiver reside. Defendants' choice,

[3] On March 5, 2018, the Commonwealth of Kentucky filed with this Court an amicus curiae brief in support of Defendants' motion to transfer this action, *see* ECF No. 25, more fully describing its interests in this litigation.

therefore, promotes the interests of justice and weighs in favor of transfer. *See Bergmann v. U.S. Dep't of Transp.*, 710 F. Supp. 2d 65, 74 (D.D.C. 2010).

Contrary to Plaintiffs' assertion, Defendants never "admitted" that the relevant decision-making took place primarily in the District of Columbia. *See* Pls.' Opp. 9. Quite the opposite, Defendants showed—and Plaintiffs do not dispute—that the process leading up to the Secretary's approval occurred in substantial part in Kentucky, and that the statutory scheme for Section 1115 approvals explicitly recognizes the State's role in the decision-making process. Defs.' Mem. 10–12. *See, e.g.*, *Gulf Restoration Network v. Jewell*, 87 F. Supp. 3d 303, 306 (D.D.C. 2015) ("The process that led to the selection and approval of the Project took place over a three-and-half-year period and involved multiple federal and state actors, as well as multiple public comment periods."). But *even if* Plaintiffs were correct that the agency actions at issue occurred solely in the District of Columbia, that fact would not support transfer here, where Plaintiffs fail to allege any other ties to this forum. *See M & N Plastics, Inc.*, 997 F. Supp. 2d at 24 (transferring APA case challenging ACA's contraceptive-coverage provision to the Plaintiffs' home state where "[t]he only event at issue . . . to have happened in this District [wa]s the issuance of the contraceptive mandate itself"); *W. Watersheds Project v. Pool*, 942 F. Supp. 2d 93, 102–03 (D.D.C. 2013) ("[T]he mere fact that a case concerns the application of a federal statute by a federal agency does not provide a sufficient nexus to the District of Columbia to weigh against transfer." (quoting *Pres. Soc. of Charleston*, 893 F. Supp. 2d at 55)).

Further, Plaintiffs argue that "forum-shopping" is evidenced by the fact that Defendants requested transfer to the Frankfort docket of the Central Division. But Defendant's request was not divorced from the claims at issue here, as Plaintiffs suggest;

Defendants' request for transfer to the Central Division adheres to the text of section 1404(a), which permits parties to seek transfer to "any other district *or division* where it might have been brought," 28 U.S.C. § 1404(a) (emphasis added), and is consistent with that court's Local Rule 3.2(a)(3)(A), which provides that a case should be assigned to "the jury division in which a substantial part of the events or omissions giving rise to the claim occurred." The Complaint itself is replete with allegations concerning events that occurred in Frankfort. For example, "Kentucky Governor Matt Bevin submitted the application to the Secretary requesting [the] waiver . . . to implement the Kentucky HEALTH project," Compl. ¶ 84, from the state capitol in Frankfort. "As part of the waiver's development, [the State] had a robust public comment process, which included three public hearings, and an extended comment period to ensure every Kentuckian that wanted to be heard could be included." Compl., Ex. B, Application, Letter from Governor Matthew G. Bevin, at 2. What is more, "[t]he Kentucky Cabinet for Health and Family Services, Department for Medicaid Services ('DMS') administers the [Kentucky HEALTH] program at the state level." Compl. ¶ 78. That state agency has its headquarters in Frankfort.

II. PLAINTIFFS' CHOICE OF THE DISTRICT OF COLUMBIA IS ENTITLED TO MINIMAL DEFERENCE.

Plaintiffs' arguments in opposition to Defendant's motion are grounded on the mistaken premise that Plaintiffs' choice of the District of Columbia is a "paramount consideration" in the transfer analysis, Pls.' Opp. 16, and is "entitled to significant deference." Pls.' Opp. 18. For at least three reasons, there is no basis in law or logic to give deference to Plaintiffs' decision to bring this case in the District of Columbia.

First, Plaintiffs do not address long-standing authority—cited in Defendants' opening brief, *see* Defs.' Mem. 12–13—that while a plaintiff's choice of forum would

ordinarily be entitled to some deference, that choice is conferred less deference when a plaintiff's choice of forum is not the plaintiff's home forum. Here, Plaintiffs are residents of Kentucky, they allege no ties to the District of Columbia, and they do not dispute that their "sole interest in this matter arises solely from their residency in the Commonwealth and their enrollment in Kentucky's State Medicaid program." Defs.' Mem. 13. Thus, under well-established principles recognized by this Court, Plaintiffs are not entitled to the substantial deference given to litigants in their "home forum," *Bergmann*, 710 F. Supp. at 65 (citations omitted)—*especially* given that Defendants seek transfer to a forum of Plaintiffs' home state. *See Citizen Advocates for Responsible Expansion, Inc. v*. Dole, 561 F. Supp. 1238, 1239–40 (D.D.C. 1996) (stating that Defendants' "burden is substantially diminished where, as here, transfer is sought to the forum where plaintiffs reside").

Second, Plaintiffs' choice deserves little weight because they seek class certification on behalf of a "statewide proposed class" of "*all residents of Kentucky* who are enrolled in the Kentucky Medicaid program on or after January 12, 2018." Compl. ¶ 33 (emphasis added). In evaluating requests to transfer a putative class action suit, courts have made clear that the residence of the proposed class members, rather than the plaintiffs' choice of forum, is the key consideration. Defs.' Mem. 12–13. Plaintiffs attempt to avoid this authority by arguing that those cases are limited to instances where the putative class plaintiffs "reside throughout the country." Pls.' Opp. 17–18. But nothing in those cases supports such a strained reading. The principle applied by the courts in those cases is merely an extension of the well-established principle that a plaintiff's choice is entitled to little weight when the plaintiffs have not chosen their home forum; the cases stand for the proposition that courts should take account of the convenience of putative class members

rather than automatically defer to the Plaintiffs' choice. In any event, Plaintiffs make no attempt to respond to (and they thus concede) the argument that the interests of justice warrant transfer because a judgment entered by this Court could bind thousands of individuals residing in Kentucky if Plaintiffs' proposed class is certified under Rule 23(b)(2). Defs.' Mem. 14–15. Nor do they address the principle that suits should be resolved in the forum where the people live "whose rights and interests are in fact *most vitally* affected by the suit." *Adams*, 711 F.2d at 167 (emphasis added); *Trout Unlimited*, 944 F. Supp. at 20.

Unable to show any ties between Plaintiffs, the putative class members, and this District, Plaintiffs instead argue that their choice of forum is entitled to deference because "the nexus between the District of Columbia and the dispute at issue in this case is undeniable." Pls.' Opp. 17 (internal quotation marks omitted). This argument appears to rest on Plaintiffs' mistaken belief that "all of the challenged decisions were made by federal officials in the national (not regional) office." Pls.' Opp. 1. In reality, Plaintiffs assert claims against CMS, which is headquartered in Baltimore, Maryland—not Washington, D.C., as Plaintiffs appear to believe. Further, as shown by Plaintiffs' own Complaint and exhibits, the vast majority of the day-to-day interactions between the Commonwealth and CMS staff during the approval process occurred outside of the District of Columbia. For example, CMS's letter accompanying the Kentucky HEALTH approval package was sent on letterhead for CMS headquarters in Baltimore. *See* Compl., Ex. C, Letter from Brian Neale, CMS Deputy Administrator, to Adam Meier, Deputy Chief of Staff, Office of Governor Bevin ("I appreciate the spirit of partnership we have shared over the course of the past year."). The project officer assigned to the Kentucky HEALTH demonstration is

located in Baltimore. *See* Compl., Ex. C, Letter from Demetrios L. Kouzoukas, Principal Deputy Administrator, Center for Medicaid and CHIP Services, to Stephen P. Miller, Commissioner, Cabinet for Health and Family Services, at 9. The approval package states that "all official communications regarding program matters" should also be sent to a regional administrator located in the Atlanta regional office. *Id.*

III. CONSIDERATIONS OF CONVENIENCE AND JUDICIAL ECONOMY WEIGH IN FAVOR OF TRANSFER.

Plaintiffs are unable to refute Defendants' showing that convenience considerations weigh in favor of transfer. Defs.' Mem. 15–17. Plaintiffs do not dispute that the Eastern District of Kentucky would serve as a more convenient forum for the individually-named Plaintiffs, all sixteen of whom allege that they reside in the Commonwealth of Kentucky, Compl. ¶¶ 12–26, or the proposed class members, each of whom is alleged to be an "adult resident of Kentucky who is enrolled in the Kentucky Medicaid program and will be subject to the requirements of the Kentucky HEALTH waiver." Compl. ¶ 34(d). Plaintiffs instead argue that the District of Columbia is the forum more convenient for *the government*. Pls.' Opp. 19. However, "the location of defendants and their counsel is not a strong consideration when defendants move for transfer." *W. Watersheds Project v. Pool*, 942 F. Supp. 2d 93, 100 (D.D.C. 2013). And more to the point, "[w]hile it is certainly true that the defendants are all present in this District, it is also true that they are present in the Eastern District of [Kentucky] and every other district in the country. The defendants are all either federal agencies, which operate across the United States, or the Secretaries [or other high-level officials] of those agencies in their official capacities, who also operate across the United States." *M & N Plastics, Inc.*, 997 F. Supp. 2d at 24.

Also unavailing is Plaintiffs' contention that the physical location of the sources of proof in this case makes the District of Columbia a more convenient forum. Pls.' Opp. 20. The documentary evidence as to which judicial review is limited in this case—that is, the administrative record—will be available in electronic form no matter whether this case proceeds in this Court or in the Eastern District of Kentucky.

Finally, considerations of judicial economy tilt in favor of transfer or are, at worst, neutral. Defs.' Mem. 21–22. First, although Plaintiffs concede that their Complaint cites state law, Pls.' Opp. 24, they attempt to minimize the relevance of that citation, and they argue that the Eastern District of Kentucky is no more familiar than this District with state laws and state administrative procedures that may be relevant to the review of Plaintiffs' claims.[4] *Id.* This argument cannot be squared with *Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13 (D.D.C. 1996), cited in Defendants' opening brief, Defs.' Mem. 22, and Plaintiffs make no attempt to distinguish that case. There, the plaintiffs brought an APA suit asserting that an easement granted by the U.S. Forest Service violated federal statutes and was inconsistent with federal regulations and a previous Forest Plan issued by the agency. *Id.* at 15. The court found that "[t]he entitlement of [the plaintiff] to the water and the terms and conditions under which its shareholders use the water are creations of

[4] Plaintiffs stretch even further by invoking this Court's adjudication of "a complicated challenge to agency action concerning the waiver authority at issue here." Pls.' Opp. 23 (citing *Cooper Hosp./Univ. Med. Ctr. v. Burwell*, 179 F. Supp. 3d 31, 41 (D.D.C. 2016), *aff'd*, 688 F. App'x 11 (D.C. Cir. 2017). But that case concerned the calculation of Medicare disproportionate share hospital payments, not the validity of a particular state's Medicaid demonstration project. In any event, the fact that this Court has decided cases addressing the Secretary's Section 1115 authority (albeit, in entirely separate contexts) does not weigh in favor of transfer because "all federal courts should have the requisite familiarity with *federal* law." *M & N Plastics, Inc.*, 997 F. Supp. 2d at 25 (emphasis added); *Oceana v. Pritzker*, 58 F. Supp. 3d 2, 7 (D.D.C. 2013) (noting that "the transferee federal court is competent to decide federal issues correctly").

Colorado law." *Id.* at 19. Further, although the plaintiffs' challenges involved only federal statutes and regulations, the court noted that "Colorado law concerning issues of the local Forest Service and/or water rights may also prove necessary to the resolution of this case." *Id.* Based in part on these conclusions, the Court held that the interests of justice favored transfer.

Like the claims at issue in *Trout Unlimited*, Plaintiffs' claims asserting violations of federal law are based on entitlements under state law and may require the court to evaluate state laws or administrative procedures. Indeed, Plaintiffs admit that their entitlement to the Medicaid coverage they seek, including the terms and conditions under which they are eligible for Medicaid, are creations of Kentucky law. Further, Plaintiffs do not dispute Defendants' argument that "the Secretary's approval was based in part on 'state assurances' about Kentucky HEALTH's implementation under state law and addresses the impact on state administrative procedures." Defs.' Mem. 22. Thus, the interests of justice are best served by having this case decided by a federal court in Kentucky, the state whose laws may be implicated by the interests at stake. *Trout Unlimited*, 944 F. Supp. at 19.

Second, Plaintiffs correctly note that based on the 2017 data, the median time interval for deciding a case is 1.5 months longer in the Eastern District of Kentucky than it is in the District of Columbia. However, neither the relative time intervals nor the relative number of cases per judgeship suggest that the Eastern District of Kentucky is far more congested than this District or that a delay is likely. The point remains that there is no appreciable difference in the median time from filing to disposition in civil cases between the Eastern District of Kentucky and the District of Columbia, notwithstanding the greater number of cases per judgeship in the District of Columbia. Plaintiffs' assertion that transfer

itself would create further delay in the resolution of this case is unsupported and at best speculative; there is no reason to suppose that this case could not be resolved in the Eastern District of Kentucky as quickly as it could be resolved in the District of Columbia, especially given that this case is at its earliest stages.[5] This is particularly the case given that Defendants are willing to accede to Plaintiffs' request to a schedule for briefing dispositive motions that would allow this case to be presented, either to this Court or to the transferee court, in advance of the July 1, 2018, effective dates of the Kentucky HEALTH provisions that Plaintiffs challenge. This factor is neutral, and, standing alone, does not weigh against transfer.

CONCLUSION

Because the interests of justice warrant transfer, Defendants respectfully request that the Court grant Defendants' motion to transfer this case to the U.S. District Court for the Eastern District of Kentucky.

[5] Plaintiffs rely on *Tuttle v. Jewell*, 952 F. Supp. 2d 203 (D.D.C. 2013), for the proposition that the time lost in effectuating a transfer means that the transferee court would be slower in deciding the case. Pls.' Opp. 25. But the court in *Tuttle* found this factor to be neutral, based in part on its conclusion that a transferee court's median time interval for resolving cases should be entitled to little weight in the analysis. *See* 952 F. Supp. 2d at 209 ("Case disposition statistics may not always tell the whole story."); *see also United States v. H & R Block, Inc.*, 789 F. Supp. 2d 74, 84 (D.D.C. 2011) (noting that the published statistics provide "only a rough measure of the relative congestion of the dockets in the two districts," and given no "substantial differences in disposition times between the districts," finding "it appropriate to treat the relative congestion of the dockets in the two districts as a neutral factors in the transfer analysis").

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Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

ETHAN P. DAVIS
Deputy Assistant Attorney General

JOEL McELVAIN
Assistant Branch Director
Federal Programs Branch

/s/ Deepthy Kishore
DEEPTHY KISHORE (IL Bar # 6306338)
BRADLEY H. COHEN
Trial Attorneys
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
(202) 616–4448 (telephone)

Counsel for Defendants