

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’ NOTICE REGARDING THEIR
MOTION TO TRANSFER**

Contrary to the Government’s recent suggestions, *see* ECF No. 34 (Notice on Transfer Mot.), Kentucky’s intervention in this suit does not change the factors this Court considers in deciding the Government’s pending motion to transfer, much less alter the proper result. Those factors weigh decisively against transfer, and this Court should deny the Government’s motion.

Kentucky’s recent intervention and its prior amicus brief in support of transfer add nothing to this Court’s analysis. *See* ECF Nos. 25 (Ky. Amicus Br.), 30 (Mot. to Intervene). In moving for transfer, the Government made several representations about Kentucky’s interests and convenience. ECF No. 6 at 15-21 (Mot. to Transfer). Kentucky has parroted those representations in its own filings, *see* Ky. Amicus Br.; Mot. to Intervene, but they are no more persuasive now than they were then. Kentucky’s asserted stake in this suit does not trump or in any way diminish the nation’s compelling interest in policing the actions of high-ranking officials in the Executive Branch, especially where those actions jeopardize the ability of millions of low-income Americans to access healthcare. *See* ECF No. 15 at 11-16 (Opp’n to Mot. to Transfer). And where national interests are at stake, the plaintiff’s chosen forum is entitled to great weight. Moreover, arguments

about Kentucky’s convenience ring hollow; the Commonwealth and its Governor frequently litigate in this forum and even voluntarily inject themselves into litigation here.¹

Courts in this district have repeatedly denied transfer motions notwithstanding intervention by a party who favors transfer. *See, e.g., Sierra Club v. Van Antwerp*, 523 F. Supp. 2d 5, 13-14 (D.D.C. 2007) (granting motion to intervene but denying motion to transfer); *The Wilderness Soc. v. Babbitt*, 104 F. Supp. 2d 10, 15 (D.D.C. 2000) (same, and noting with respect to the convenience factor that the intervenors “litigated in the District of Columbia before with some frequency”). The Government entirely mischaracterizes *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 71 (D.D.C. 2003), by suggesting that the court granted transfer in that case *because* the intervening parties resided in the proposed transferee district. Notice on Transfer Mot. at 2. In fact, the court found “a strong local interest” justifying transfer because the case challenged decisions made entirely in Florida about land and natural resources located exclusively within Florida.² *Flowers*, 276 F. Supp. 2d at 71; *see also Oceana, Inc. v. Pritzker*, 58 F. Supp. 3d 2, 11 (D.D.C. 2013) (explaining the unique local interest analysis that applies to such cases because “land and resources are of particular interest to the state in which they are found”). At no point in its local interest analysis did the *Flowers* court even reference intervention, and it certainly did not give intervention dispositive weight, as the Government suggests. 276 F. Supp. 2d at 70-71.

¹ *See, e.g., Alabama v. PHH Mortg. Corp.*, No. 1:18-CV-00009 (D.D.C. filed Jan. 3, 2018) (ongoing action filed by Kentucky as plaintiff); *Ohio v. U.S. Dep’t of Interior*, No. 1:17-CV-00108 (D.D.C. 2017) (recently resolved action filed by Kentucky as plaintiff); *see also* Amicus Br. of States, *Garza v. Harban*, No. 1:17-CV-02122 (D.D.C. Jan. 8, 2018), ECF No. 102 (filed by Kentucky and Governor Bevin); Proposed Amicus Br. of States, *Newdow v. Roberts*, No. 1:08-CV-02248 (D.D.C. Jan. 8, 2009), ECF No. 21-2 (filed by Kentucky).

² Moreover, in considering both the private and public factors, the *Flowers* court relied on the fact that the decision-making process took place in Florida and the administrative record was located there. 276 F. Supp. 2d at 68-69, 71 (“[T]he decision-making process up to and including the final record of decision took place not in Washington but in Florida.”). Those factors weigh against transfer in this case.

In short, this coordinated effort by the Government and the Commonwealth of Kentucky to maneuver this nationally important case into the courtroom of their choice must fail. For all the reasons set forth in Plaintiffs' Memorandum in Opposition to Defendants' Motion to Transfer Case to the Eastern District of Kentucky, Plaintiffs respectfully request that the Court enter an order denying with prejudice the Government's motion.

Dated: April 6, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2018, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send an electronic notice to the authorized CM/ECF filers listed below:

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