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15 **UNITED STATES DISTRICT COURT**  
16 **DISTRICT OF ARIZONA**

17  
18 State of Arizona,

19  
20 Plaintiff,

21 v.

22 Janet Yellen, in her official capacity  
23 as Secretary of the Treasury, *et al.*,

24  
25 Defendants.  
26  
27  
28

Case No. 2:21-cv-00514-DJH

Related case: 2:22-cv-00112-SPL

**DEFENDANTS' REPLY IN  
FURTHER SUPPORT OF THEIR  
MOTION TO TRANSFER**

1 Defendants previously moved for an order transferring *Ducey v. Yellen*,  
2 2:22-cv-00112, to the Honorable Diane J. Humetewa under Local Rule 42.1 be-  
3 cause it is related to *Arizona v. Yellen*, 2:21-cv-00514-DJH. In that motion, Defend-  
4 ants explained that both cases involve substantially the same parties, arise from  
5 the American Rescue Plan Act (“Rescue Plan” or “Act”), call for a determination  
6 of similar legal issues, and would advance judicial economy if they were related.  
7 Defs.’ Mot. at 1–3, ECF No. 68. In response, Plaintiff resorts to ad hominem at-  
8 tacks, claiming that Defendants’ routine procedural motion somehow “is illus-  
9 trative of Defendants’ willingness to outright ignore plain language of ARPA and  
10 now the local procedural rules of this Court.” Pl.’s Opp’n at 1, 10, ECF No. 69.

11 Stripped of its rhetoric and aspersions, Plaintiff’s opposition to transfer is  
12 little more than an attempt to prematurely argue the underlying legal issues of  
13 this case. Defendants are happy to argue those legal issues at the appropriate  
14 time and are confident they should prevail before either Judge Humetewa or  
15 Judge Logan. But the issue in this motion is simply whether it is more efficient  
16 for Judge Humetewa – who has already handled one case arising out of the Res-  
17 cue Plan and is familiar with its contours and enforcement regime – to handle  
18 *Ducey v. Yellen*. Under Local Rule 42.1, the answer is yes.

19 **I. RULE 42.1 APPLIES BECAUSE BOTH *DUCEY V. YELLEN* AND *ARIZONA V. YELLEN***  
20 **ARE “PENDING” CASES.**

21 Invectives aside, Plaintiff’s first argument regarding transfer is that Local  
22 Rule 42.1 does not apply because that rule “limits transfers to when ‘two or more  
23 cases are *pending* before different Judges,’” and *Arizona v. Yellen* is not “pending”  
24 because it is now on appeal. Pl.’s Oppn at 1 (quoting LRCiv 42.1(a)). Plaintiff  
25 cites nothing for that interpretation of “pending,” which is unsurprising because  
26 courts have long held that “pending” cases include those on appeal. *See Eik-*  
27 *enberry v. Callahan*, 653 F.2d 632, 635 (D.C. Cir. 1981) (“The ordinary meaning of  
28 ‘pending’ includes cases pending on appeal.”); *Carrera v. First Am. Home Buyers*

1 *Prot. Co.*, 2012 WL 13012698, at \*3 (C.D. Cal. Jan. 24, 2012) (collecting cases for the  
2 proposition that a case is “pending” for purposes of the first-to-file rule even  
3 when pending on appeal). So *Arizona v. Yellen* is still “pending” under Local  
4 Rule 42.1 and *Ducey v. Yellen* may be straightforwardly transferred to Judge Hu-  
5 metewa.

## 6 **II. THE RULE 42.1 FACTORS FAVOR TRANSFER.**

7 As for the Rule 42.1 factors, Plaintiff attempts to obfuscate the relevant in-  
8 quiry with unnecessary rhetoric and premature argument of the underlying legal  
9 merits. But, when analyzed properly, all of the Rule 42.1 factors favor transfer.

### 10 **A. *Ducey v. Yellen* and *Arizona v. Yellen* involve functionally identical** 11 **parties, easily meeting the test for “substantially similar” parties.**

12 As to whether both *Ducey v. Yellen* and *Arizona v. Yellen* “involve substan-  
13 tially the same parties,” the answer is almost axiomatic. LRCiv 42.1(a). As De-  
14 fendants previously explained, the defendants in both cases – the Secretary of the  
15 Treasury, the Acting Inspector General of the Treasury Department, and the  
16 Treasury Department itself – are identical. Defs.’ Mot. at 2. Plaintiff does not  
17 address this point at all, instead arguing that the *plaintiffs* in the two cases – the  
18 State of Arizona and the Governor of Arizona – supposedly have different inter-  
19 ests. Pl.’s Opp’n at 5–6. Of course, even if that were true, the fact that three of  
20 the four parties are the same across both cases would easily satisfy this factor;  
21 the Rule speaks only of “*substantially* the same parties,” not totally overlapping  
22 parties. LRCiv 42.1(a) (emphasis added).

23 Regardless, it makes no sense to say that the State of Arizona and the Gov-  
24 ernor of Arizona, suing in his official capacity, represent different interests: both  
25 are representing the sovereign interests of the State in how they spend Con-  
26  
27  
28

1 gress’s appropriated Rescue Plan funds. “[F]or all intents and purposes the gov-  
2 ernor’s presence in the lawsuit means that the state is a party as well.”<sup>1</sup> *Lac Courte*  
3 *Oreilles Band of Lake Superior Chippewa Indians of Wis. v. United States*, 2002 WL  
4 32350046, at \*1 (W.D. Wis. Nov. 20, 2002). That’s why courts treat state officials  
5 as equivalent to the State when sued in their official capacities. *Hafer v. Melo*, 502  
6 U.S. 21, 25 (1991). And that’s why this District finds “substantially similar par-  
7 ties” for purposes of Rule 42.1 where there are different named parties that all  
8 function as representatives of the same sovereign. *See Grand Canyon Skywalk*  
9 *Dev., LLC v. Sa Nyu Wa, Inc.*, 2012 WL 6101901, at \*3 (D. Ariz. Nov. 21, 2012)  
10 (finding substantially the same parties, despite an additional twelve Tribal Coun-  
11 cil defendants in one case, because “the pleadings largely treat the council mem-  
12 bers as surrogates for the Tribe or Tribal Council”). If the State of Arizona (rather  
13 the Governor) brought this same case to vindicate its (mis)use of federal funds,  
14 would anyone contend that the Governor’s official interests were not represented  
15 by the State? Surely not. After all, Plaintiff’s lawsuit revolves around funds that  
16 Congress appropriated “to make payments to each of the 50 States,” not each of  
17 the 50 gubernatorial offices. 42 U.S.C. § 802(b)(3)(A) (emphasis added). So both  
18 *Arizona v. Yellen* and *Ducey v. Yellen* have “substantially similar,” if not function-  
19 ally identical, parties.

20 **B. *Ducey v. Yellen* and *Arizona v. Yellen* arise from substantially the**  
21 **same event and involve substantially the same questions of law.**

22 As Defendants previously explained, both cases stem from the Rescue Plan  
23 and involve similar legal issues, so they both “arise from substantially the same  
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26 <sup>1</sup> For the same reason, Plaintiff cannot distinguish *Arizona v. Yellen* on the  
27 grounds that “the State of Arizona’s interests as a whole were being represented  
28 due to the fact that state sovereignty was at the forefront of that case.” Pl.’s Opp’n  
at 6. Not only does this misunderstand official-capacity suits, but Judge Hu-  
metewa properly rejected the idea that Arizona’s sovereign rights were injured.  
*Arizona v. Yellen*, 2021 WL 3089103, at \*4 (D. Ariz. July 22, 2021).

1 transaction or event” and “call for determination of substantially the same ques-  
2 tions of law.” LRCiv 42.1(a).

3 Most prominently, “there was no administrative action by Treasury” — *i.e.*,  
4 the statutory-enforcement mechanism of recoupment — against the State in either  
5 *Arizona v. Yellen* or *Ducey v. Yellen*. See Pl.’s Opp’n at 8–9; 42 U.S.C. § 802(e) (spec-  
6 ifying recoupment as the remedy for any misused funds, regardless of the reason  
7 for misuse). So there are substantially similar jurisdictional questions in both  
8 cases: whether the plaintiff can advance a pre-enforcement challenge to the Res-  
9 cue Plan, or a regulation promulgated under the Rescue Plan, when Treasury has  
10 not yet initiated a recoupment action. Defendants would submit there is no ju-  
11 risdiction here because, like *Arizona v. Yellen*, recoupment is far from certain. See  
12 *Arizona v. Yellen*, 2021 WL 3089103, at \*5 (D. Ariz. July 22, 2021) (analyzing  
13 whether Arizona has demonstrated a substantial likelihood of enforcement). In-  
14 deed, Treasury’s January 2022 letter to Arizona explained that the agency is  
15 “committed to working with recipients to take advantage of the many eligible  
16 uses and great flexibility available” for Rescue Plan funds, and it “may” pursue  
17 recoupment in the future or withhold future money if Arizona does not remedi-  
18 ate its misuse of Rescue Plan funds. Compl. Ex. 6 at 2, ECF No. 1-7. Presumably,  
19 Plaintiffs would disagree about the Court’s jurisdiction. See Pl.’s Opp’n at 8. But  
20 the only relevant issue on this transfer motion is whether the jurisdictional issues  
21 between *Arizona v. Yellen* and *Ducey v. Yellen* “call for determination of substan-  
22 tially the same questions of law.” LRCiv 42.1(a). They do.

23 Given that both cases arise from the same event — that is, passage of the  
24 Rescue Plan — it is no surprise that other legal determinations are substantially  
25 similar. Both cases center around the interpretation of the permissible and im-  
26 permissible uses of federal funds under 42 U.S.C. § 802(c) and Treasury’s regu-  
27 lations promulgated thereunder. See 42 U.S.C. § 802(e). Both cases also implicate  
28

1 the Spending Clause, including the purported requirement that funding condi-  
2 tions should be unambiguous. *Compare* Arizona Compl. ¶¶ 51–61, ECF No. 67-2  
3 *with* Ducey Compl. ¶¶ 94–99, ECF No. 67-2. Judge Humetewa has already  
4 delved into that area of law and examined the relevant cases on that issue. *See*  
5 *Arizona v. Yellen*, 2021 WL 3089103, at \*3–4.

6 To be sure, the legal claims are not identical across both cases. *See* Pl.’s  
7 Opp’n at 6–7. But that is hardly fatal to Defendants’ transfer motion, as Rule 42.1  
8 asks only whether there are “substantially the same questions of law.” Between  
9 the threshold jurisdictional questions – which should resolve this case – and the  
10 legal landscape of the claims in both cases, that factor is satisfied.

11 **C. There would be a substantial duplication of labor, and a possibility**  
12 **of inconsistent rulings, if *Ducey v. Yellen* and *Arizona v. Yellen* are**  
13 **heard by different judges.**

14 Finally, Defendants’ motion should be granted to further judicial economy  
15 by avoiding duplication of labor and possible inconsistent rulings. Judge Hu-  
16 metewa is already familiar with the Rescue Plan’s permissible and impermissible  
17 uses, Treasury’s authority to promulgate regulations and seek recoupment un-  
18 der that statutory regime, and the relevant legal frameworks surrounding both  
19 the jurisdictional and merits issues here. *See Arizona v. Yellen*, 2021 WL 3089103,  
20 at \*2–6. Plaintiff attempts to downplay Judge Humetewa’s expertise, urging that  
21 “[b]ecause *Arizona v. Yellen* was dismissed in its early stages on standing  
22 grounds, the Court in that case did not address the merits of the State’s Spending  
23 Clause or Tenth Amendment claims or interpret ARPA’s text.” Pl.’s Opp’n at 9.

24 Plaintiff is wrong. After receiving extensive briefing and argument on both  
25 jurisdiction and the merits, Judge Humetewa proceeded to final judgment. *Ari-*  
26 *zona v. Yellen*, 2021 WL 3089103, at \*1; Fed. R. Civ. P. 65(a)(2). And although the  
27 Court properly found that *Arizona* lacked standing, Judge Humetewa reached  
28 that conclusion only after thoroughly examining the Rescue Plan’s text and the

1 relevant Spending Clause precedents, including an extensive analysis of cases  
2 like *Pennhurst*, *Arlington Central*, *NFIB v. Sebelius*, and *Mayweathers*. See *Arizona*  
3 *v. Yellen*, 2021 WL 3089103, at \*4–6. That is all work Judge Logan may need to  
4 duplicate if *Ducey v. Yellen* is not transferred to Judge Humetewa. See *Garcia v.*  
5 *Salvation Army*, 2015 WL 5646640, at \*2 (D. Ariz. Sept. 25, 2015) (granting motion  
6 to transfer where the judge “ha[d] developed familiarity with the issues involved  
7 in the cases”). And having a different judge decide *Ducey v. Yellen* raises the  
8 specter of inconsistent rulings between the two cases, which also weighs in favor  
9 of transfer. See *Caron v. Caesars Ent. Corp.*, 2020 WL 1323105, at \*2 (D. Ariz. Mar.  
10 20, 2020) (granting motion to transfer where “transfer and consolidation will  
11 avoid the potential of inconsistent outcomes”).

12 Plaintiff does not meaningfully engage with those points and fails to ad-  
13 dress Defendants’ cited cases, instead resting on his argument that a transfer will  
14 not advance judicial economy because *Arizona v. Yellen* is on appeal. Pl.’s Opp’n  
15 at 9. There is little question that having two cases at the same stage of litigation  
16 may avoid *more* duplication of labor. But that says nothing about whether a sub-  
17 stantial duplication of labor would be avoided by having the same judge decide  
18 two cases with functionally identical parties and substantially overlapping legal  
19 issues, despite differing stages of litigation. And it would. See *Garcia*, 2015 WL  
20 5646640, at \*2 (granting motion to transfer where the judge “ha[d] developed fa-  
21 miliarity with the issues involved in the cases,” even though the second case was  
22 filed nine months after the first). Plaintiff’s cited cases are not to the contrary, as  
23 each of them involved cases at different stages of litigation that did not meet the  
24 other Rule 42.1 factors for a transfer. See *Cagle v. Ryan*, 2018 WL 2688775, at \*2  
25 (D. Ariz. June 5, 2018) (finding none of the transfer factors met, including because  
26 “only one of the several present case Defendants” was in both cases); *City of Phoe-*  
27 *enix v. First State Ins. Co.*, 2016 WL 4591906, at \*20 (D. Ariz. Sept. 2, 2016) (detailing  
28 the “substantial differences” between the two cases); *Robert Kubicek Architects &*

1 *Assocs., Inc. v. Bosley*, 2012 WL 6554396, at \*8 (D. Ariz. Dec. 14, 2012) (explaining,  
2 without analyzing the transfer factors, that “whether and to what extent [plain-  
3 tiff] will have any claims against [other defendants] suitable for consolidation  
4 with this case depends on outcomes yet to be determined”). Because it would be  
5 a substantial duplication of labor for Judge Logan to decide *Ducey v. Yellen*, it  
6 should be transferred to Judge Humetewa.

7  
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Respectfully submitted,

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