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' MEMORANDUM IN OPPOSITION TO DEFENDANTS'
MOTION TO TRANSFER CASE TO THE EASTERN DISTRICT OF KENTUCKY

TABLE OF CONTENTS

TABLE OF AUTHORITIES*

CASES

CONSTITUTIONAL PROVISIONS AND STATUTES

OTHER AUTHORITIES

INTRODUCTION

The Complaint challenges decisions made by high-ranking Executive Branch officials in Washington, D.C. that jeopardize the ability of millions of low-income Americans to access healthcare. Those decisions announced a new national policy endorsing punitive work requirements on Medicaid recipients and approved the first state request to impose those requirements along with other unlawful conditions on the Medicaid program—all in an effort to "fundamentally transform Medicaid," the cornerstone of the social safety net. These efforts by the Executive Branch to "restructure" the Medicaid statute, bypass congressional restrictions, and overturn a half-century of settled administrative practice threaten irreparable harm to the health and welfare of the poorest and most vulnerable in our country. The Complaint challenges those Executive Branch actions under the Administrative Procedure Act and the Constitution's Take Care Clause.

Given the national consequences of these decisions and given that all of the challenged decisions were made by federal officials in the national (not regional) office, the Plaintiffs brought suit at the seat of the federal government in Washington, D.C. The Plaintiffs reside in Kentucky, which is the first state in the union granted permission under the federal government's new national policy to impose work requirements—and a host of other unlawful conditions—on Medicaid enrollees. The Plaintiffs were entitled to choose their forum, and their choice makes eminent sense. They challenge nationally important decisions made in the Capital by high-ranking Executive Branch officials, and the injunctive and declaratory relief they seek will set nationwide precedent and have nationwide impact.

Although the District of Columbia is the most logical and convenient forum for resolving this lawsuit, the Government seeks discretionary transfer to a forum over 500 miles away. The Government's motion is a blatant attempt at forum-shopping. The Government seeks transfer not

only to a particular state or district, but to a specific docket within a particular division of that district, which has only a single district court judge.

The transfer request is in any event meritless. The Government spends page after page describing the efforts of Kentucky Governor Matt Bevin to develop, take comment on, and refine Kentucky's waiver application. But Plaintiffs are not challenging the actions of Kentucky or Governor Bevin, who after all were free to seek whatever waiver they wanted. Instead, Plaintiffs are challenging the actions of federal officials who analyzed, took comment on, and ultimately unlawfully approved that waiver, all as part of an express effort (as set forth in the Complaint) by the President and officials at the Department of Health and Human Services located in Washington to "restructure" and "fundamentally transform" Medicaid.

Moreover, the Government all but ignores that Plaintiffs challenge not only the grant of the Kentucky waiver, but also CMS's creation of a new framework that governs waiver approvals nationwide. The Government's principal response, set forth in a single footnote, is to suggest that it will prevail on the merits because that new CMS framework is supposedly not final agency action. But that contention is strongly contested, and we are aware of no case suggesting that the Court should decide the merits of one of Plaintiffs' claims before deciding whether to grant a motion to transfer—especially where, as here, the Government has not even formally moved for such a ruling. There is no plausible contention (and the Government does not suggest) that the challenge to the framework is mere pretext to avoid a transfer, and the Government cannot simply wish away a substantial portion of Plaintiffs' Complaint. At core, then, the Government simply seeks to transfer a different case than the one Plaintiffs have actually brought.

Indeed, none of the factors relevant to this Court's analysis under 28 U.S.C. § 1404(a)—except the Government's apparent desire to litigate this action in a *less* convenient forum—support

transfer to the Eastern District of Kentucky or permit the Government to meet its heavy burden to disturb the Plaintiffs' chosen forum. *First*, the Government cannot show that the challenged actions are "localized" either in terms of interest or effect—the new waiver framework applies nationwide, and the Government cannot seriously contest that the Secretary's approval of the Kentucky waiver application was intended to establish a template for states across the country. *Second*, the Government cannot establish that the challenged actions "arose elsewhere," given settled precedent holding that claims challenging federal agency action arise where the decisionmaking process took place—here, the District of Columbia. *Third*, the Government ignores the deference afforded to Plaintiffs' chosen forum in light of its substantial nexus with the challenged actions. *Fourth*, the Government cannot draw arguments from caselaw about the intersection between discretionary transfer and class claims, as that caselaw applies only where the plaintiffs reside in multiple states.

The Government's arguments fare no better with respect to the convenience factors this Court must weigh as part of its analysis. Several of those factors, including the "ease of access to sources of proof" and the "convenience of the witnesses," cannot support a request to transfer in the context of a challenge to agency action, which the Court resolves on the basis of the administrative record. Furthermore, the Government cannot show that the proposed transferee district is more convenient, has special experience with the factual or legal bases of this lawsuit, or carries a lighter caseload. To the contrary, that district is less convenient and more congested. Whereas this Court has previously adjudicated a complex challenge to agency action involving the precise waiver provision at issue here, the Government has not pointed to any factually or legally related case on the Eastern District of Kentucky's docket. Kentucky's transparent attempt to support the Government's motion by filing a bizarre mirror-image lawsuit this week in the Eastern

District of Kentucky does the opposite—it makes the Defendants' forum-shopping even more conspicuous. In short, there is no basis for transfer.

BACKGROUND

I. Statutory And Regulatory Framework.

Title XIX of the Social Security Act establishes Medicaid, a cooperative federal-state medical assistance program. *See* 42 U.S.C. §§ 1396 to 1396w-5. Medicaid's stated purpose is to enable each state, as far as practicable, to provide "medical assistance" to individuals "whose income and resources are insufficient to meet the costs of necessary medical services," and to provide "rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care." *Id*. § 1396-1. Each state has elected to participate in Medicaid and thereby agreed to the program's extensive requirements. *See* ECF No. 1 ("Compl.") ¶¶ 37-68. Those requirements address, among other subjects, the costs and penalties that states can impose on Medicaid beneficiaries. *Id*. ¶¶ 60-68. They also obligate states to provide certain types of coverage to individuals who have been determined eligible for Medicaid services, including, as most directly relevant to this action, retroactive coverage, *id*. ¶ 56, and coverage of necessary transportation to and from services, *id*. ¶ 59.

The Social Security Act grants the Secretary of the U.S. Department of Health and Human Services ("the Secretary") limited authority to waive a state's compliance with Medicaid requirements under special circumstances. *See* 42 U.S.C. § 1315. This waiver authority applies only to certain Medicaid Act provisions and, even then, permits waiver only to the extent and for the period necessary to enable the state to carry out an experimental, pilot, or demonstration project

that is likely to promote the objectives of the Medicaid Act. *Id.* § 1315(a).[1] Before approving such a project, the Secretary must comply with specified procedural steps, including a public notice and comment period. *Id.* § 1315(d); 42 C.F.R. §§ 431.400-431.416.

On August 24, 2016, Kentucky Governor Matt Bevin submitted an application to the Secretary requesting a waiver of various Medicaid Act requirements, pursuant to 42 U.S.C. § 1315, to implement the Kentucky HEALTH project. Compl. ¶ 84. The application stated that the purpose of the project, rather than promoting the objectives of Medicaid, was to "comprehensively transform [it]." *Id.* ¶ 85. According to Kentucky, the project would cause more than 95,000 adults to lose Medicaid coverage. *Id.* ¶ 88. The "cornerstone" of the project proposed by Kentucky is a new and unprecedented work requirement as a condition of eligibility for Medicaid services. *Id.* ¶¶ 105-107. Enrollees who are subject to the requirement and do not meet it will lose their Medicaid coverage. *Id.* ¶¶ 108-109.

II. Repudiation Of Established Agency Stances.

Until earlier this year, the U.S. Department of Health and Human Services ("HHS") had never approved a Medicaid waiver application containing a mandatory work requirement and premiums on very low-income people. To the contrary, consistent agency guidance uniformly rejected such requirements as antithetical to the objectives of Medicaid. *Id.* ¶¶ 6, 148. The current Administration broke from that settled precedent when, on January 11, 2018, the Centers for Medicare and Medicaid Services ("CMS") issued a letter to State Medicaid Directors announcing its intention to approve state waiver applications that impose work requirements on Medicaid beneficiaries. *Id.* ¶ 157. Although the letter purports to provide "guidance," CMS acknowledged

[1] Plaintiffs do not agree with the Government's statement that Section 1115 of the Social Security Act provides the Secretary with two separate grants of authority. However, that is a merits-based argument that need not be addressed for purposes of deciding the pending motion to transfer.

both that the letter "announc[es] a new policy" to allow states to apply "work and community engagement" requirements to certain Medicaid recipients, and that this stance "is a shift from prior agency policy." *Id*. ¶¶ 157-159. CMS did not publish the letter in the Federal Register or provide for notice and comment before issuing it. *Id*. ¶ 160.

The letter's unprecedented policy shift drew criticism from several groups, including national organizations and members of Congress. These groups condemned CMS's failure to address "the wealth of literature regarding the negative health consequences of work requirements," and urged CMS to provide a meaningful opportunity for public discussion. *Id*. ¶¶ 161-162. CMS ignored this request.

A. *Ultra Vires* Approval Of Waiver Application For Kentucky HEALTH.

The very next day, January 12, 2018, HHS granted the Kentucky HEALTH application. *Id*. ¶ 163. HHS asserted that its approval of the application, and the imposition of work requirements on recipients of Medicaid in Kentucky, aligned with CMS's novel policy announced the day before. *Id*. ¶ 7. The approval enables Kentucky to: impose work and premium requirements; punish Medicaid beneficiaries who are unable to meet those and other administrative requirements by prohibiting them from obtaining Medicaid coverage; eliminate critical Medicaid services for Kentuckians enrolled in the program; exclude retroactive coverage for necessary health services received in the three months prior to the date of application; and impose cost sharing on beneficiaries if they need to seek care in an emergency department and their condition is determined not to require urgent medical attention. *Id*. ¶¶ 166-169. The Secretary lacked authority to authorize these provisions of Kentucky HEALTH. *Id*. ¶¶ 346-390. The Secretary's actions are *ultra vires*, part of a coordinated scheme to "fundamentally transform Medicaid" through unlawful agency action. *Id*. ¶ 399. The issuance of the new policy and the subsequent Kentucky approval under that policy are part of the Administration's effort to dismantle the

Affordable Care Act, which, according to the Administration, includes Medicaid expansion as one of its "major, fundamental flaws." *Id*. ¶¶ 150-156.

B. Proceedings In This Court.

The Plaintiffs in this action are sixteen residents of Kentucky currently enrolled in Medicaid. On January 24, 2018, they filed suit in the District of Columbia against HHS, its Secretary, CMS, its Administrator, and two of its officers (collectively, "Defendants" or "the Government"). *See* Compl. The suit does not name any Kentucky agencies or officials as defendants, and it does not challenge Kentucky's waiver application. Instead, the suit challenges actions by the Defendants related to that application and alleges violations of the Administrative Procedure Act, 5 U.S.C. § 706(2), and the Take Care Clause of the U.S. Constitution, art. II, § 3, cl. 5. None of these claims could be pursued against state officials. Plaintiffs request relief invalidating the decisions of federal officials that alter the requirements of the Medicaid program. Compl., Prayer for Relief at 76-77. They do so on behalf of themselves and a statewide class that includes all residents of Kentucky enrolled in the Kentucky Medicaid program on or after January 12, 2018. *Id*. ¶ 33. Since this action was filed, it has attracted significant media attention from news outlets across the country, including the national news media. *See* Part I.B, *infra*.

After the action was assigned to this Court, the Government filed a motion seeking discretionary transfer from the District of Columbia to the Eastern District of Kentucky. The Government asks this Court to transfer the action to a specific docket within a particular division of that district. ECF No. 6 ("Defs.' Mem.") at 2 n.2.

STANDARD OF REVIEW

"It is almost a truism that a plaintiff's choice of a forum will rarely be disturbed." *Oceana v. Bureau of Ocean Energy Mgmt. (Oceana)*, 962 F. Supp. 2d 70, 78 (D.D.C. 2013) (quoting *Gross v. Owen*, 221 F.2d 94, 95 (D.C. Cir. 1955)). For that reason, 28 U.S.C. § 1404(a) permits a district

court to transfer a case only in limited circumstances: "where maintenance of the action in the plaintiff's choice of forum will make litigation oppressively expensive, inconvenient, difficult or harassing to defend." *Oceana*, 962 F. Supp. 2d at 73 (quoting *Starnes v. McGuire*, 512 F.2d 918, 927 (D.C. Cir. 1974) (en banc)). If the plaintiff does not consent to the transfer, the district court must find "that the plaintiff[] originally could have brought the action in the proposed transferee district" and "that considerations of convenience and the interest of justice weigh in favor of transfer to that district." *Nat'l Ass'n of Home Builders v. U.S. EPA*, 675 F. Supp. 2d 173, 176 (D.D.C. 2009).

The moving party bears the burden of establishing that transfer of venue is proper. *Id.* "Absent such circumstances, transfer in derogation of properly laid venue is unwarranted." *Oceana*, 962 F. Supp. 2d at 73 (quoting *Starnes*, 512 F.2d at 925-26). The plaintiff has no burden "to prove that the interests of justice favor keeping the case in this Court"; rather, the moving party must prove that the interests of justice favor transfer to another district. *Forest Cty. Potawatomi Cmty. v. United States*, 169 F. Supp. 3d 114, 119 (D.D.C. 2016).

Several factors determine whether the moving party can demonstrate that the transfer promotes convenience and justice. The "private-interest factors" are "(1) the plaintiff's choice of forum; (2) the defendant's choice of forum; (3) whether the claim arose elsewhere; (4) the convenience of the parties; (5) the convenience of the witnesses; and (6) the ease of access to sources of proof." *Oceana, Inc. v. Pritzker (Pritzker)*, 58 F. Supp. 3d 2, 4 (D.D.C. 2013). Public interest factors are also relevant in the court's analysis, including: "(1) the transferee's familiarity with the governing laws; (2) the relative congestion of the calendars of the transferor and transferee courts; and (3) the local interest in having local controversies decided at home." *Id*. at 4-5.

ARGUMENT

I. This Suit Challenges Nationally Important Policy Decisions Made In The Capital By High-Ranking Executive Branch Officials.

This suit challenges two agency actions undertaken by high-ranking Executive Branch officials in the District of Columbia. Plaintiffs assert that the Defendants have overstepped their authority by attempting to "fundamentally transform" Medicaid through unlawful agency action, thereby violating the APA and the U.S. Constitution. The Government, in calling the suit "a profoundly local controversy," distorts the scope and ignores the significance of the challenged actions, which have far-reaching consequences not only for Kentucky but also for the nation. Defs.' Mem. at 17. That is why those actions have prompted rebuke from scores of national healthcare and public interest organizations and garnered significant attention in the national press. The fact that all claims in this action arose here, the national interest in the subject of this litigation, and the deference owed to Plaintiffs' selection of this forum all disfavor transfer.

A. Plaintiffs' Claims Arose In This District.

Plaintiffs chose to sue in the district where their claims arose. As the Government acknowledges, "plaintiffs . . . seek[] declaratory and injunctive relief pertaining to the Secretary's approval of the Kentucky HEALTH application and CMS's issuance of the letter to State Medicaid Directors." Defs.' Mem. at 6. The Government admits that those decisions took place in this district. *See id.* at 1 ("[C]ertain aspects of the administrative decision at issue took place at agency headquarters in Washington, D.C."). In short, because "the decisionmaking process . . . occurred primarily within the District of Columbia and the decisionmakers [a]re located in the District of Columbia, this factor weigh[s] against transfer." *Home Builders*, 675 F. Supp. 2d at 179 (citing *Akiachak Native Cmty. v. Dep't of Interior*, 502 F. Supp. 2d 64, 68 (D.D.C. 2007)).

In an effort to downplay the undeniable connection between the decisionmaking process and this forum, the Government nonetheless claims that certain events *preceding* the federal decisions at issue occurred in the Eastern District of Kentucky—namely, Kentucky's creation and submission of its waiver application. Defs.' Mem. at 10-11. It argues that "transfer is warranted because 'material events that constitute the factual predicate for the plaintiff's claims occurred' in the Eastern District of Kentucky." Defs.' Mem. at 10 (quoting *Kafack v. Primerica Life Ins. Co.*, 934 F. Supp. 3, 6 (D.D.C. 1996)). But the Government selectively misquotes the *Kafack* decision, which found transfer appropriate because "*all* of the material events" occurred in the proposed transferee district and because the claims had zero nexus to the District of Columbia. 934 F. Supp. at 6-7 (emphasis added). That is manifestly not the case here. The Complaint's recitation of factual background regarding the waiver application at issue, including actions in Kentucky that *generated* that application, does not alter the thrust of the Complaint: an APA and constitutional challenge to federal actions by federal officials, brought solely against those officials.

Moreover, there is simply no authority for the Government's implicit (and strange) argument that claims challenging federal agency action on a state application arise where the state created the application, and not where the federal government adjudicated it. That argument runs counter to the well-established rule that the site of the *decisionmaking* drives the inquiry into where APA claims arise. *See Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 25 (D.D.C. 2002) (describing the critical inquiry as whether "the decisionmaking process, by and large, has . . . been substantially focused in this forum"); *accord Pres. Soc. of Charleston v. U.S. Army Corps of Eng'rs*, 893 F. Supp. 2d 49, 54 (D.D.C. 2012) (granting the motion to transfer because all of the decisionmakers responsible for the challenged agency action were located in the proposed transferee district).

Where other plaintiffs have brought challenges relating to Medicaid waivers does not change this analysis. *See* Defs.' Mem. at 12 n.4 (collecting cases). At the outset, the choice that *other* plaintiffs may make in selecting their venue has no impact on Plaintiffs' ability to do so in the current suit—if anything, this diversity is entirely consistent with the entitlement of plaintiffs to choose where they sue. Moreover, plaintiffs also have the ability to choose *who* they sue. Unlike here, the plaintiffs in those cases all brought claims against *state* officials located in the states where the plaintiffs sued, or, in one case, a regional federal official based in the forum where the plaintiffs filed suit.[2] Those cases are not instructive here, where Plaintiffs sued only federal officials and components of HHS, a resident in this district, for their actions here.

The Government also acknowledges a similar challenge that was brought in this forum. Defs.' Mem. at 12 n.4 (citing *Pharm. Research & Mfrs. of Am. v. United States*, 135 F. Supp. 2d 1, 3 (D.D.C.), *rev'd*, 251 F.3d 219 (D.C. Cir. 2001)). That action—like this one—named only federal defendants. Although state defendants intervened in that action, the case remained in the District of Columbia. *Id*.

B. The Interest In This Action Is National.

This case is part of a national debate about the wisdom of the Affordable Care Act, Medicaid expansion, and the Administration's purported goal to "fundamentally transform" Medicaid through administrative, not legislative, action. The Government therefore misses the mark by training its arguments on whether Kentucky has an interest in the outcome of this suit.

[2] *See Wood v. Betlach*, 922 F. Supp. 2d 836 (D. Ariz. 2013); *Cal. Med. Ass'n v. Douglas*, 848 F. Supp. 2d 1117 (C.D. Cal. 2012), *rev'd in part sub nom. Managed Pharmacy Care v. Sebelius*, 716 F.3d 1235 (9th Cir. 2013); *C.K. v. Shalala*, 883 F. Supp. 991 (D.N.J. 1995), *aff'd*, 92 F.3d 171 (3d Cir. 1996); *Aguayo v. Richardson*, 352 F. Supp. 462 (S.D.N.Y. 1972), *modified*, 473 F.2d 1090 (2d Cir. 1973); *Christ the King Manor, Inc. v. Burwell*, 163 F. Supp. 3d 123 (M.D. Pa.), *aff'd*, 673 F. App'x 164 (3d Cir. 2016) (*see* Compl. ¶ 5, *Christ the King Manor, Inc. v. Burwell*, No. 1:14-cv-01809-JEJ (M.D. Pa. 2014), ECF No. 1).

Defs.' Mem. at 17-19. Surely it does. But Kentucky's interest is not exclusive. Here, the nation has a compelling interest in policing the actions of high-ranking officials in the Executive Branch, particularly when those actions advance a coordinated scheme to usurp the power of the Legislative Branch over "the cornerstone of the social safety net." Compl. ¶ 1. Indeed, the mere existence of local interests—even strong ones—"is not dispositive in the transfer analysis." *Home Builders*, 675 F. Supp. 2d at 178. The "local interests" factor instead examines whether the suit presents "questions of national policy or national significance." *Oceana*, 962 F. Supp. 2d at 77. Such questions "are quite appropriately resolved here [in the District of Columbia] (or, at least, no more appropriately resolved elsewhere)." *Id.* Disputes regarding "national policy decision[s]" belong in this forum, and involvement by cabinet-level officials "highlights the significance of this issue to the entire nation." *See The Wilderness Soc. v. Babbitt*, 104 F. Supp. 2d 10, 13-14 (D.D.C. 2000). Plaintiffs' suit—challenging national policy decisions by cabinet-level officials—belongs here in D.C.

The Government's argument to the contrary is based on a tortured reading of the Complaint. *See* Defs.' Mem. at 19 ("Plaintiffs do not challenge the 'formulation of national policy on an issue of national significance.'" (quoting *Pritzker*, 58 F. Supp. 3d at 6)). In fact, the Complaint alleges that Defendants have "overturn[ed] a half century of administrative practice" related to Medicaid, thereby "threatening irreparable harm to the health and welfare of the poorest and most vulnerable in our country." Compl. ¶ 1. As set out in the Complaint, Defendants have radically altered federal law in two distinct ways. *First*, Defendants have "announced a new approach to Medicaid waivers" that "[r]evers[es] decades of agency guidance" and declares "CMS's intention to, for the first time, approve waiver applications containing work requirements." *Id.* ¶ 6; *see also id.* ¶¶ 148-161, 339-345. The Government only acknowledges

Plaintiffs' claims relating to this "guidance" document in a footnote. *See* Defs.' Mem. at 20 n.7. The Government's arguments regarding Plaintiffs' standing and the lack of final agency action are substantive issues that go to this Court's jurisdiction and class certification; they are non-sequiturs when it comes to the Government's transfer motion. *Second*, by approving Kentucky HEALTH, Defendants have signaled their endorsement of limitations and penalties that the federal government has never before accepted in the Medicaid context. This decision sets the precedent for the Government to grant cookie-cutter waivers in other states; it has already done so in Indiana, and eight other states have waiver applications currently pending.[3] Compl. ¶¶ 166-171, 346-390.

These actions may affect the ability of more than 75 million low-income Americans to access healthcare. *Id*. ¶ 2. They also implicate important questions under the U.S. Constitution. *Id*. ¶¶ 391-408. Constitutional issues—especially those respecting the separation of powers between the co-equal branches of government—necessarily raise issues of national importance. *See, e.g.*, *Mistretta v. United States*, 488 U.S. 361, 380 (1989) (explaining that "the separation of governmental powers into three coordinate Branches is essential to the preservation of liberty"). Indeed, every citizen has an interest in ensuring that the Executive Branch fulfills its constitutional mandate to "take Care that the Law be faithfully executed." U.S. Const., art. II, § 3, cl. 5. In short, the Complaint challenges national decisions with significant effects throughout the United States.

It is therefore unsurprising that the subject of this litigation has garnered substantial national attention. Over 150 public interest organizations have publicly criticized the Secretary's decision to endorse work requirements, underscoring their "significant" and "harmful" effects for

[3] *See* MaryBeth Musumeci et al., Kaiser Family Foundation, *Medicaid and Work Requirements: New Guidance, State Waiver Details and Key Issues* (Jan. 16, 2018), https://www.kff.org/medicaid/issue-brief/medicaid-and-work-requirements-new-guidance-state-waiver-details-and-key-issues/.

millions of Americans.[4] Their ranks include preeminent national non-profit organizations like the American Civil Liberties Union, the American Psychological Association, The Legal Aid Society, the NAACP, the National Employment Law Center, the National Organization for Women, and the Sargent Shriver National Center on Poverty Law. The "considerable concern" expressed by these organizations is powerful evidence of the nationwide importance of this suit and the relief it seeks. *Oceana*, 962 F. Supp. 2d at 76. So are headlines in *The New York Times*, *The Washington Post*, *The Wall Street Journal*, and other major media outlets reporting on the events at issue here.[5]

In an attempt to make this seem like a local controversy, the Government points out that "numerous comments submitted for and against the Secretary's approval of the Kentucky HEALTH project were submitted by the citizens of the Commonwealth." Defs.' Mem. at 19. That fact is unsurprising given the clear interests of Kentuckians in the Secretary's decision. It does not show that Kentucky's interests are exclusive. In fact, multiple national organizations provided input on the Kentucky HEALTH project during and after the comment phases, including the American College of Obstetrics and Gynecology, AARP, American Diabetes Association, Cystic

[4] *See* Letter from ADAP Advocacy Association et al. to Alex M. Azar, Secretary, U.S. Department of Health and Human Services (Feb. 15, 2018), https://lac.org/wp-content/uploads/2018/02/february-2018-Medicaid-work-requirements-letter-to-Sec-Azar.pdf. The letter highlights in particular the disparate impact of this decision on Americans with substance use disorders, mental health disorders, and conviction or arrest records.

[5] *See* Abby Goodnough, *To Get Medicaid in Kentucky, Many Will Have to Work. Advocates for the Poor Say They Will Sue.*, N.Y. Times (Jan. 12, 2018), https://www.nytimes.com/2018/01/12/health/kentucky-medicaid-work.html; Amy Goldstein, *Opponents of Medicaid Work Requirement File Lawsuit to Try to Stop Kentucky Plan*, Wash. Post (Jan. 24, 2018), https://www.washingtonpost.com/national/health-science/opponents-of-medicaid-work-requirement-file-lawsuit-to-try-to-stop-kentucky-plan/2018/01/24/e61d5bac-008c-11e8-bb03-722769454f82_story.html?utm_term=.5be5f63b4993; Stephanie Armour, *Trump Administration Faces Lawsuit Over Kentucky Medicaid Work Requirements*, Wall St. J. (Jan. 24, 2018), https://www.wsj.com/articles/trump-administration-faces-lawsuit-over-kentucky-medicaid-work-requirements-1516820768.

Fibrosis Foundation, HIV Association, National Alliance for Mental Illness, National Health Care for the Homeless, National Multiple Sclerosis Society, National Women's Law Center, SEIU, UAW, and the National Health Law Program, which represents Plaintiffs in this action.[6] Moreover, in focusing on comments submitted for and against the Kentucky HEALTH project, the Government glosses over its failure to call for comments before announcing its policy change with respect to work requirements. Given the robust opposition to that announcement after it was made, there can be no doubt that scores of national organizations would have submitted formal comments opposing the new policy if the Government had granted them that opportunity.

The nationwide nature of this controversy stands in stark contrast to "local controversies" that this court and other courts in this district have transferred elsewhere—cases challenging the addition of pilings to a boat pier in Charleston, South Carolina, *Preservation Society*, 893 F. Supp. 2d at 54, the issuance of mining permits in the Florida Everglades, *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 71 (D.D.C. 2003), the use of an abandoned airbase in California, *Airport Working Group of Orange County, Inc. v. United States Department of Defense*, 226 F. Supp. 2d 227, 232 (D.D.C. 2002), the operation of a dam and reservoir in Colorado, *Trout Unlimited v. United States Department of Agriculture*, 944 F. Supp. 13, 20 (D.D.C. 1996), and the construction of two segments of highway in Fort Worth, Texas, *Citizen Advocates for Responsible Expansion, Inc. (I-Care) v. Dole*, 561 F. Supp. 1238, 1239-40 (D.D.C. 1983), among others.

Courts in this district recognize that such cases, which involve water rights, environmental regulation, local wildlife, or land located entirely within the proposed transferee district,

[6] *See* Public Comments, Kentucky HEALTH, List of Responses, https://public.medicaid.gov/connect.ti/public.comments/questionnaireVotes?qid=1888067; *see also* Public Comments, Kentucky HEALTH—Proposed Modifications to Application, List of Responses, https://public.medicaid.gov/connect.ti/public.comments/questionnaireVotes?qid=1891139 (last visited Feb. 21, 2018).

"necessarily 'implicate[] considerable local economic, political, and environmental interests'" and therefore require special attention to those factors. *Home Builders*, 675 F. Supp. 2d at 177-78 (quoting *Shawnee Tribe*, 298 F. Supp. 2d at 26); *see also Trout Unlimited*, 944 F. Supp. at 19-20. That is because, as this Court has explained, "land and resources are of particular interest to the state in which they are found." *Pritzker*, 58 F. Supp. 3d at 11. The Government's reliance on these distinguishable cases is inapt, as this Court has recognized. *Compare id.* at 10-11 (distinguishing *Preservation Society*, *Sierra Club v. Flowers*, and *Trout Unlimited*, among others), *with* Defs' Mem. at 20-21 (citing *Preservation Society*, *Sierra Club v. Flowers*, *Trout Unlimited*, and *Airport Working Group*).

Unlike in those cases, "[i]t is simply not true that this district has no meaningful connection to or interest in the controversy. Instead, the District's interest in this case is typical of cases involving federal regulations promulgated in the Capital—cases in which courts have refused to authorize transfer." *Pritzker*, 58 F. Supp. 3d at 5-6 (collecting cases). This case has "'national implications,'" and it "cannot be considered the type of purely 'localized controversy' that would warrant transfer to the local district court." *Forest Cty. Potawatomi Cmty.*, 169 F. Supp. 3d at 118 (citation omitted).

C. Plaintiffs' Choice Of Forum Is Entitled To Deference.

"A plaintiff's choice of forum is a 'paramount consideration in any determination of a transfer request.'" *Douglas v. Chariots for Hire*, 918 F. Supp. 2d 24, 31 (D.D.C. 2013) (quoting *Thayer/Patricof Educ. Funding, LLC v. Pryor Res.*, 196 F. Supp. 2d 21, 31 (D.D.C. 2002)). "The degree of deference afforded to" plaintiffs' choice of forum "depends upon the nexus between the plaintiffs' chosen forum" and the dispute at issue. *Babbitt*, 104 F. Supp. 2d at 13. In this case, that choice commands deference. For the reasons discussed above, *see* Part I.A-B, *supra*, there is

a clear connection between this controversy and the chosen forum: all the claims relate to decisions that were made here, by high-ranking government officials located here, and therefore arise here.

Plaintiffs were not required to bring this action in Kentucky, and their decision to file suit at the seat of Government does not eliminate deference to their choice. *See Tuttle v. Jewell*, 952 F. Supp. 2d 203, 208 (D.D.C. 2013) (denying transfer motion even though the sole plaintiff did not reside in this forum). Because the "nexus" between the District of Columbia and the dispute at issue in this case is undeniable, Plaintiffs' choice of forum is entitled to substantial deference even though Plaintiffs do not reside here. *See Babbitt*, 104 F. Supp. 2d at 12-13.

Plaintiffs' class claims do not change this result. *See, e.g.*, *Animal Sci. v. Chinook Grp., Ltd. (In re Vitamins Antitrust Litig.)*, 263 F. Supp. 2d 67, 68-72 (D.D.C. 2003) (denying a motion to transfer notwithstanding class action allegations). In its argument to the contrary, the Government misconstrues precedent about the relevance of class action allegations to the 28 U.S.C. § 1404(a) analysis. Defs.' Mem. at 12-15.

The precedent that the Government invokes involves named plaintiffs who seek to represent a *nationwide* or *multi-state* class of individuals where many of those individuals reside in a different forum from the named plaintiffs' chosen forum. In those circumstances, some courts have held that the chosen forum is entitled to less deference than it normally commands. *See, e.g.*, *Brown v. SunTrust Banks*, 66 F. Supp. 3d 81, 85 (D.D.C. 2014) ("[I]n a class action where plaintiffs purport to represent class members who live throughout the country, plaintiffs' choice of forum receives less weight."); *Berenson v. Nat'l Fin. Servs., LLC*, 319 F. Supp. 2d 1, 3 (D.D.C. 2004) (same). Each of the cases cited by the Government arises in this context. *See Warrick v. Gen. Elec. Co. (In re Warrick)*, 70 F.3d 736, 741 & n.7 (2d Cir. 1995) (acknowledging less deference to the plaintiff's choice of forum where the putative class members reside in multiple states); *Job*

Haines Home for the Aged v. Young, 936 F. Supp. 223, 228 (D.N.J. 1996) (same, and noting that a "multitude of states could have interests in seeing their citizens' complaints justly addressed," rendering the "residence of the class representative . . . mere happenstance"); *Donnelly v. Klosters Rederi A/S*, 515 F. Supp. 5, 6-7 (E.D. Pa. 1981) (same). That precedent does not apply here because Plaintiffs do not "propose to represent a class of potential plaintiffs who reside throughout the country." *Berenson*, 319 F. Supp. 2d at 3. Nor do any of the cases cited by the Government suggest that a class case brought in the forum where the defendants reside is improper or entitled to any type of reduced deference.

Even if *less* deference were appropriate, the plaintiffs' choice of forum is nonetheless entitled to significant deference. In *In re Warrick*, for example, the Second Circuit held that, although "the plaintiff's choice of forum [wa]s a less significant consideration in a (here, putative) class action than in an individual action," 70 F.3d at 741 n.7, that choice was nonetheless "entitled to substantial consideration," *id*. at 741 (quotation marks omitted). On that basis, the Second Circuit issued a writ of mandamus directing the court in the plaintiff's chosen forum to unwind the transfer it had granted pursuant to 28 U.S.C. § 1404(a). *Id*. at 740-41. Similarly, the *Job Haines Home for the Aged* and *Donnelly* courts held that the class action allegations in those cases merely reduced, and did not remove, the "significant weight" or "great weight" otherwise assigned to the chosen forum. *Job Haines Home for the Aged*, 936 F. Supp. at 227-28; *Donnelly*, 515 F. Supp. at 6. As another court within this district has explained, "a lesser burden and less deference does not mandate a blanket transfer at the request of Defendants." *In re Vitamins Antitrust Litig.*, 263 F. Supp. 2d at 69. Even where deference to the chosen forum is reduced, the burden remains with the movant to demonstrate that the enumerated factors favor transfer. The Government cannot satisfy that burden.

II. This Court Is The Superior Forum For Resolving Plaintiffs' Suit.

Each of the convenience and judicial economy factors relevant to this Court's analysis weigh against transfer. The Government therefore cannot show that the Eastern District of Kentucky is the more convenient and economical forum.

A. There Is No Forum More Convenient For The Government Than This One.

Plaintiffs have not selected a forum that is "oppressively expensive, inconvenient, difficult or harassing to defend." *Oceana*, 962 F. Supp. 2d at 73 (quoting *Starnes*, 512 F.2d at 927). They have instead selected the Defendants' "home forum," a courthouse located literally across the National Mall from agency headquarters. Plaintiffs' selection precludes any claim of inconvenience by the Government. *See Pritzker*, 58 F. Supp. 3d at 6-7 ("The Government cannot reasonably claim to be inconvenienced by litigating in this district," particularly "because this is an APA case, [and] it is unlikely that the parties or the lawyers for either side will have to appear in court often."). The Government routinely litigates similar challenges here without seeking transfer to a more distant venue where the out-of-state plaintiffs reside. *See, e.g.*, *Del., Dep't of Health & Soc. Servs. v. U.S. Dep't of Health & Human Servs.*, 272 F. Supp. 3d 103 (D.D.C. 2017) (litigating merits of challenge to agency action in this forum, without moving for transfer, where Delaware state agency brought action here); *Ark. Dep't of Human Servs. v. Sebelius*, 818 F. Supp. 2d 107 (D.D.C. 2011) (same with respect to Arkansas state agency). Plaintiffs, for their part, plainly "do not consider the District of Columbia to be an inconvenient forum or else they would not have sued here." *Babbitt*, 104 F. Supp. 2d at 15. The "convenience of the parties" therefore cannot support transfer.

B. The Necessary Sources Of Proof Are Located Here.

In challenges to agency action like this one, "the ease of access to sources of proof" and "the convenience of [the] witnesses" do not favor transfer. *See Pritzker*, 58 F. Supp. 3d at 7; *Pueblo v. Nat'l Indian Gaming Comm'n*, 731 F. Supp. 2d 36, 42 (D.D.C. 2010).

As the Government admits, "the merits [of the APA claim] will be limited to the administrative record and there will be no discovery or trial." Defs.' Mem. at 16-17 (emphasis and citation omitted); *see also Zemeka v. Holder*, 963 F. Supp. 2d 22, 24 (D.D.C. 2013) (explaining that "review by this Court under the APA is generally limited to the administrative record that was before the agency when it reached its decision," subject only to narrow exceptions).[7] Because "the administrative record is the only 'source of proof' that will be seen by the Court, it is appropriate to consider its location." *Babbitt*, 104 F. Supp. 2d at 15-16. Notably, the Government has not claimed that the record is located in Kentucky. Plainly, the administrative record pertinent to decisions "granted by officials at agency headquarters in Washington, D.C." is housed in the District of Columbia. Defs.' Mem. at 21. The primary (if not exclusive) source of proof is therefore more accessible here than in the Eastern District of Kentucky.

Witnesses are unnecessary, so "the convenience of the witnesses" cannot support transfer. This factor comes into play only where witness testimony is anticipated by the parties and "only to the extent that the witnesses may actually be unavailable for trial in one of the fora." *Trout Unlimited*, 944 F. Supp. at 16 (citing 15 Charles A. Wright et al., *Federal Practice and Procedure* § 3851, at 420-22 (2d ed. 1986)). The Government concedes that witness testimony has no role in resolving the merits of this action. Defs.' Mem. at 16-17. It therefore cannot rely on this factor,

[7] To the extent Plaintiffs seek discovery on their constitutional claim, that discovery will take place in this district, where the federal decisions at issue in this suit occurred.

or the ease of access to other sources of proof, to support the transfer motion. *See Pritzker*, 58 F. Supp. 3d at 7 ("To the extent that [these two] factors are relevant, . . . they are unhelpful to Defendants.").

In an effort to escape this conclusion, the Government posits that discovery on non-merits issues may become necessary. Defs.' Mem. at 17. As an initial matter, courts in this district have held that, even where "it is possible" that preliminary issues will require the court to take evidence, considerations regarding "the ease of access to sources of proof" and "the convenience of the witnesses" do not support transfer. *See Babbitt*, 104 F. Supp. 2d at 15 (finding that the convenience of the witnesses "does not favor transfer" even where "upon a motion for a preliminary injunction or temporary restraining order this Court may allow witnesses to testify"). At any rate, the Government's suggestions of discovery into standing and class issues are speculative. *See* Defs.' Mem. at 16 n.5. The Government has not identified a single reason to doubt that the challenged actions affect each of the named Plaintiffs or that the named Plaintiffs are adequate representatives for the proposed class. The fact that the Government *may* mount a standing challenge in the future—a right the Government reserves in every case it defends—adds nothing to the transfer analysis.

Mere conjecture about hypothetical yet unspecified defects in standing and class representation does not justify departure from this district's well-established application of the "private-interest factors" to suits challenging agency action. *See Pritzker*, 58 F. Supp. 3d at 7-8 (rejecting "merely speculative" arguments for disturbing the chosen forum). That is especially so because the Complaint is replete with examples of the "concrete and imminent injury-in-fact" that each named Plaintiff will suffer as a result of the challenged actions. Compl. ¶¶ 172-338; *see Belmont Abbey Coll. v. Sebelius*, 878 F. Supp. 2d 25, 33 (D.D.C. 2012) (citing *Lujan v. Defenders*

of Wildlife, 504 U.S. 555, 560 (1992)). Indeed, courts across the country have permitted benefits recipients to challenge the Secretary's exercise of the waiver authority where it operates to reduce or eliminate their benefits, without questioning the standing of the recipients to do so. *See, e.g.*, *Wood v. Betlach*, 922 F. Supp. 2d 836 (D. Ariz. 2013) (adjudicating the merits of an APA challenge to the Secretary's exercise of waiver authority to permit increased copayments); *Knapp v. Armstrong*, No. 1:11-CV-00307-BLW, 2012 WL 640890 (D. Idaho Feb. 26, 2012) (adjudicating the merits of an APA challenge to the Secretary's exercise of waiver authority to permit selective contracting); *G. v. Hawaii*, 676 F. Supp. 2d 1006 (D. Haw. 2009) (adjudicating the merits of an APA challenge to the Secretary's exercise of waiver authority to limit freedom of choice); *C.K. v. Shalala*, 883 F. Supp. 991 (D.N.J. 1995) (adjudicating the merits of an APA challenge to the Secretary's exercise of waiver authority to permit benefits caps), *aff'd*, 92 F.3d 171 (3d Cir. 1996).

To the extent discovery into the standing of the named Plaintiffs becomes necessary and is appropriate, it will not require unavailable witnesses or inaccessible proof. Any such discovery will only appropriately target information that the named Plaintiffs—who have elected to litigate in this forum—possess. It might involve, for example, declarations from the named Plaintiffs about how the agency actions harm them, or about their eligibility and need for Medicaid benefits. Any discovery will not require information from absent class members, as the standing inquiry in class action cases looks only at the standing of the named Plaintiffs. *See* 1 William R. Rubenstein et al., *Newberg on Class Actions* § 2.1 (5th ed. 2011). For these reasons, the strained arguments advanced by the Government with respect to the "ease of access to sources of proof" and "witnesses' convenience" factors lack purchase. These two factors "do nothing to help Defendants meet their burden of showing that transfer is warranted in this case." *Forest Cty. Potawatomi Cmty.*, 169 F. Supp. 3d at 117 n.3.

C. The Proposed Transferee District Lacks Special Experience With The Factual And Legal Bases For This Suit And Carries A Heavier Caseload.

The Government presents no affirmative case that "the transferee's familiarity with the governing laws" justifies transfer. Defs.' Mem. at 21-22. "[A]ll federal courts are presumed to be equally familiar with the law governing federal statutory claims," *Miller v. Insulation Contractors, Inc.*, 608 F. Supp. 2d 97, 103 (D.D.C. 2009), so this factor cannot help the Government in its bid for another forum. In fact, in *Tuttle v. Jewell*, a court in this district found that this factor actually weighs *against* transfer in light of the frequency with which courts in this district litigate APA claims relative to other federal district courts. 952 F. Supp. 2d at 208 (highlighting the disproportionate amount of APA litigation in this district as relevant to the transfer analysis).

The Eastern District of Kentucky has no special experience with the facts and law at issue in this suit. The Government asserts that "the Eastern District of Kentucky is already thoroughly familiar with the events at issue and with state laws and administrative procedures relevant to this dispute." Defs.' Mem. at 21. That assertion is unsupported. *First*, the Government provides no basis for its assumption that the proposed transferee district has any familiarity whatsoever with the recent events at issue in this case. Notably, the Government has provided no evidence that the proposed transferee district was already litigating similar challenges to the agency actions at issue, or that the transferee district has previously litigated related challenges. *See Forest Cty. Potawatomi Cmty.*, 169 F. Supp. 3d at 119. By contrast, *this* Court has previously adjudicated a complicated challenge to agency action concerning the waiver authority at issue here. *See 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); *see also Pritzker*, 58 F. Supp. 3d at 7-8 (finding that such circumstances weigh against transfer (citing *Greater New Orleans Fair Hous. Action Ctr. v. HUD*, 723 F. Supp. 2d 14, 27 (D.D.C. 2010))). This Court has experience adjudicating constitutional challenges to agency

action as well. *E.g.*, *Cooper Hosp.*, 179 F. Supp. 3d at 46-51; *Brodie v. U.S. Dep't of Health & Human Servs.*, 796 F. Supp. 2d 145, 156-57 (D.D.C. 2011).

Second, the Government mischaracterizes the Complaint's allegations in claiming that they require analysis of Kentucky law. Defs.' Mem. at 21-22. The Complaint contains over 400 allegations yet only a single reference to Kentucky law: Paragraph 137 points out a Kentucky regulation that requires reporting of changes that affect eligibility within ten days. That regulation is not challenged; rather, the claim is that the lock-out provision of Kentucky HEALTH approved by the Secretary goes further and "impos[es] an additional six-month lockout penalty on enrollees who do not meet the existing administrative requirement." Compl. ¶ 137 (citing 907 Ky. Admin. Regs. 20:010). Thus, the Kentucky regulation has no bearing on the questions that Plaintiffs ask the Court to resolve with respect to the lockout provision—*i.e.*, whether "[t]he Secretary's decision to approve Kentucky HEALTH's imposition of lockout penalties exceeded his Section 1115 waiver authority; otherwise violated the Medicaid Act; was arbitrary and capricious and an abuse of discretion; and ran counter to the evidence in the record." *Id*. ¶ 371. "There is therefore no advantage to having a federal court thoroughly familiar and experienced in the state law of [Kentucky] adjudicate this suit." *Babbitt*, 104 F. Supp. 2d at 16 (internal quotation marks omitted).

Transferring this case to the Eastern District of Kentucky's docket would add to that district's caseload, which is nearly fifty percent greater than the caseload in this district. *See* Defs.' Mem. at 22 n.9 (acknowledging that the number of pending cases per judgeship in the Government's desired forum is 382, compared to 263 in Plaintiffs' chosen forum). Where, as here, there is no evidence "that this court's docket is substantially more congested[,] . . . this factor does not support transfer." *Home Builders*, 675 F. Supp. 2d at 178. The Government tries to neutralize these figures by claiming that the median time interval between filing and disposition of civil

actions in the Eastern District of Kentucky is 8.6 months, compared to 9.2 months in this District, for the 12-month period ending September 30, 2017. Defs.' Mem. at 23 n.10. However, the Government cites figures for the wrong year for D.C.—the Government's source demonstrates that for the relevant 12-month period, the average disposition time in this District was *7.1* months—a month-and-a-half *faster* than the Eastern District of Kentucky—and down from the 9.2 figure the Government cites from 2012.[8] In short, the Eastern District of Kentucky is not only more congested, it is slower. What is more, a decision in the Eastern District of Kentucky would be even slower still, "due to the time that would be lost in effectuating the transfer." *Tuttle*, 952 F. Supp. 2d at 209.

Transfer to the Eastern District of Kentucky does not serve judicial economy or the interests of justice; it serves the strategic interests of Defendants, a factor that 28 U.S.C. § 1404(a) does not countenance. When Plaintiffs brought suit in this District, the case was randomly assigned to this Court pursuant to this District's Local Rules. *See* Local Civ. R. 40.3 (random assignment); *see also id*. 40.1 (assignment system); *id.* 40.2 (classification system). This District has fourteen district judges, and nine senior judges. After the case was assigned to this Court, the Government filed its transfer motion, seeking to transfer the case "to the Frankfort Docket of the Central Division of the Eastern District" of Kentucky. Defs.' Mem. at 2 n.2. That docket has exactly one district judge (and no senior judges). The Eastern District of Kentucky's Case Assignment Order is clear: "Frankfort civil cases . . . are assigned to Judge Gregory F. Van Tatenhove." United States District Court, Eastern District of Kentucky, General Order No. 17-1, Case Assignment and Recusal Order (Apr. 24, 2017), http://www.kyed.uscourts.gov/kyed_GOs/

[8] *See* Administrative Office of the U.S. Courts, *Federal Court Management Statistics–Profiles* (Sept. 30, 2017), http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile 0930.2017.pdf.

gen17-1.pdf. Plaintiffs had no choice in their district court judge; however, the Government now seeks to transfer this case to the judge of its choice. "The plausible possibility that the defendants are using Section 1404(a) as a means of forum shopping weighs against granting the defendants' motion." *Greater Yellowstone Coal. v. Bosworth*, 180 F. Supp. 2d 124, 130 (D.D.C. 2001).

In an obvious effort to bolster the Government's motion, earlier this week the Commonwealth of Kentucky and its officials filed a bizarre and manufactured lawsuit against the Plaintiffs in this action seeking a declaration regarding the lawfulness of the federal government actions at issue here. *See* Ex. A, Complaint, *Kentucky v. Stewart*, Case No. 3:18-cv-00008-GFVT (E.D. Ky. Feb. 19, 2018), ECF No. 1. Kentucky brought that lawsuit on the same docket of the same division in the same district where the Government has moved to transfer this suit—meaning it has been assigned to the same district court judge that the Government seeks through its transfer motion. Yet Kentucky has not intervened in the suit pending in *this* Court to protect the "unique and compelling interests" it now claims in the outcome of this litigation, notwithstanding its apparent belief that it has standing as to the claims at issue. *Id.* ¶ 2. In any event, this Court need not concern itself with this sideshow. The Kentucky action is not only disgraceful as an attempt to bully the Commonwealth's poorest citizens, individual Medicaid recipients, but also suffers from multiple fatal flaws, ranging from the Commonwealth's lack of standing and lack of a cause of action against the Plaintiffs (who are the defendants in the Kentucky action) to its attempt to circumvent the first-to-file rule. At most, this Court should recognize Kentucky's lawsuit for what it is—a transparent and political attempt to harass the individual Plaintiffs in this action and muddy the waters surrounding this suit about federal Executive branch actions regarding issues of national importance.

In sum, eight of nine factors—all but the Government's choice of forum to which little deference should be given here—weigh against granting the motion to transfer. The fact that the Government desires transfer of this case to a more distant, more congested, slower forum where neither the Defendants nor the administrative record can be found does not trump the factors that favor allowing this suit to remain in Plaintiffs' chosen forum. *See Forest Cty. Potawatomi Cmty.*, 169 F. Supp. 3d at 118 ("[D]efendant's choice of forum is not ordinarily entitled to deference." (internal quotation marks omitted)); *Tuttle*, 952 F. Supp. 2d at 208 (holding that the defendant's "choice of forum does not weigh heavily in the analysis" even where the chosen forum is not the plaintiffs' home forum). Those factors are greater in both number and importance, and "the totality of the considerations in this case counsels against granting the Government's Motion." *Pritzker*, 58 F. Supp. 3d at 5 (denying transfer motion where four factors weighed in favor of transfer, four were neutral, and only the Government's choice of forum weighed against transfer).

CONCLUSION

For the reasons above, Plaintiffs respectfully request that the Court enter an order denying with prejudice the Government's motion to transfer this case to the United States District Court for the Eastern District of Kentucky. However, if this Court disagrees, Plaintiffs respectfully request dismissal of this case without prejudice, to allow Plaintiffs to bring suit in Kentucky.

Dated: February 23, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 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 filer listed below:

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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION
CASE NO. _____

COMMONWEALTH OF KENTUCKY, *ex rel*. MATTHEW G. BEVIN, GOVERNOR,	)
SCOTT W. BRINKMAN, in his official capacity as Acting Secretary of the CABINET FOR HEALTH AND FAMILY SERVICES,	)
STEPHEN P. MILLER, in his official capacity as Commissioner of the DEPARTMENT FOR MEDICAID SERVICES,	)
Plaintiffs	)
v.	)
RONNIE MAURICE STEWART, GLASSIE MAE KASEY, LAKIN BRANHAM, SHANNA BALLINGER, DAVE KOBERSMITH, WILLIAM BENNETT, SHAWNA NICOLE McCOMAS, ALEXA HATCHER, MICHAEL WOODS, SARA WOODS, KIMBERLY WITHERS, KATELYN ALLEN, AMANDA SPEARS, DAVID ROODE, SHEILA MARLENE PENNEY, and QUENTON RADFORD	)
Defendants.	)

COMPLAINT

The Commonwealth of Kentucky, *ex rel.* Matthew G. Bevin, Governor; Scott W. Brinkman, in his official capacity as the Acting Secretary of the Cabinet for Health and Family Services; and Stephen P. Miller, in his official capacity as the Commissioner of the

Department for Medicaid Services (together, the "Plaintiffs"), for their Complaint, state as follows:

INTRODUCTION

1. Sixteen individuals, all of whom are Kentucky residents, have brought a putative class-action lawsuit in the United States District Court for the District of Columbia (the "D.C. Action"), claiming that the Commonwealth of Kentucky's Section 1115 Medicaid waiver, known as Kentucky HEALTH, violates the Social Security Act, the Administrative Procedure Act, and the United States Constitution. Although the Commonwealth of Kentucky developed Kentucky HEALTH, is currently implementing it, and will be the one enforcing it, those sixteen individuals opted *not* to sue the Commonwealth or any of its agencies or officials in the D.C. Action.

2. The Commonwealth's voice obviously must be heard on this issue. Because of the Commonwealth's unique and compelling interests in enforcing Kentucky HEALTH, Governor Bevin, Secretary Brinkman, and Commissioner Miller bring this lawsuit against the same named parties who instituted the D.C. Action seeking a judicial declaration—*this time in Kentucky and with the Commonwealth as a party*—that Kentucky HEALTH is consistent with the Social Security Act, the Administrative Procedure Act, and the United States Constitution.

JURISDICTION & VENUE

3. The Court has subject-matter jurisdiction over this matter under 28 U.S.C. § 1331 as it arises under the Constitution and laws of the United States. This declaratory judgment action is further authorized by 28 U.S.C. §§ 2201 and 2202.

4. The Court has personal jurisdiction over the Defendants because all of them reside in Kentucky.

5. Venue is appropriate in this judicial district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this action, namely the thousands of hours that the Commonwealth and its agencies spent developing Kentucky HEALTH, occurred in Frankfort, Kentucky. In addition, the implementation of Kentucky HEALTH is currently occurring in Frankfort, Kentucky. Venue also is appropriate under 28 U.S.C. § 1391(b)(1).

6. Under Local Rule 3.2(a)(2)(A), the Frankfort Division of the Eastern District of Kentucky is the appropriate division for this action because a substantial part of the events giving rise to this action occurred in Frankfort, Kentucky, where Kentucky HEALTH was developed and is being implemented.

PARTIES

7. Matthew G. Bevin, who brings this action in his official capacity on behalf of the Commonwealth of Kentucky, is the Governor of Kentucky. Governor Bevin's office is located in Franklin County, Kentucky, at 700 Capital Avenue, Suite 100, Frankfort, Kentucky 40601.

8. Scott W. Brinkman, who brings this action in his official capacity, is the Acting Secretary of the Cabinet for Health and Family Services. The Cabinet for Health and Family Services is the executive branch administrative agency that oversees Kentucky's Medicaid program. Secretary Brinkman's office is located in Franklin County, Kentucky, at 275 East Main Street, Frankfort, Kentucky 40621.

9. Stephen P. Miller, who brings this action in his official capacity, is the Commissioner of the Department for Medicaid Services within the Cabinet for Health and Family Services. The Department for Medicaid Services administers Kentucky's Medicaid program, including the ongoing implementation of Kentucky HEALTH. Commissioner Miller's office is located in Franklin County, Kentucky, at 275 East Main Street, Frankfort, Kentucky 40621.

10. Ronnie Maurice Stewart is one of the named plaintiffs in the D.C. Action. Although Mr. Stewart has brought suit in Washington, D.C., he resides at 1700 Jennifer Road, Apartment 25, Lexington, Kentucky 40505.

11. Glassie Mae Kasey is one of the named plaintiffs in the D.C. Action. Although Ms. Kasey has brought suit in Washington, D.C., she resides at 5414 Robinwood Road, Louisville, Kentucky 40218.

12. Lakin Branham is one of the named plaintiffs in the D.C. Action. Although Ms. Branham has brought suit in Washington, D.C., she resides at 29 Tie Yard Drive, Dwale, Kentucky 41621.

13. Shanna Ballinger is one of the named plaintiffs in the D.C. Action. Although Ms. Ballinger has brought suit in Washington D.C., she resides at 1451 West Lincoln Trail Boulevard, Apartment 127, Radcliff, Kentucky 40160.

14. Dave Kobersmith is one of the named plaintiffs in the D.C. Action. Although Mr. Kobersmith has brought suit in Washington, D.C., he resides at 105 Leslie Drive, Berea, Kentucky 40403.

15. William Bennett is one of the named plaintiffs in the D.C. Action. Although Mr. Bennett has brought suit in Washington, D.C., he resides at 425 Race Street, Lexington, Kentucky 40508.

16. Shawna Nicole McComas is one of the named plaintiffs in the D.C. Action. Although Ms. McComas has brought suit in Washington, D.C., she resides at 1053 Winburn Drive, Apartment 23, Lexington, Kentucky 40511.

17. Alexa Hatcher is one of the named plaintiffs in the D.C. Action. Although Ms. Hatcher has brought suit in Washington, D.C., she resides at 1875 Bill Dedmon Road, Bowling Green, Kentucky 42101.

18. Michael Woods is one of the named plaintiffs in the D.C. Action. Although Mr. Woods has brought suit in Washington, D.C., he resides at 11692 Main Street, Apartment 2, Martin, Kentucky 41649.

19. Sara Woods is one of the named plaintiffs in the D.C. Action. Although Ms. Woods has brought suit in Washington, D.C., she resides at 11692 Main Street, Apartment 2, Martin, Kentucky 41649.

20. Kimberly Withers is one of the named plaintiffs in the D.C. Action. Although Ms. Withers has brought suit in Washington, D.C., she resides at 2220 Devonport Drive, Apartment I38, Lexington, Kentucky 40504.

21. Katelyn Allen is one of the named plaintiffs in the D.C. Action. Although Ms. Allen has brought suit in Washington, D.C., she resides at 12 West Adams Lane, Lot 26, Salyersville, Kentucky 41465.

22. Amanda Spears is one of the named plaintiffs in the D.C. Action. Although Ms. Spears has brought suit in Washington, D.C., she resides at 1070 Jackson Road, Park Hill, Kentucky 41011.

23. David Roode is one of the named plaintiffs in the D.C. Action. Although Mr. Roode has brought suit in Washington, D.C., he resides at 331 Montclair Avenue, Ludlow, Kentucky 41016.

24. Sheila Marlene Penney is one of the named plaintiffs in the D.C. Action. Although Ms. Penney has brought suit in Washington, D.C., she resides at 5410 West Catherine Street, Apartment A, Louisville, Kentucky 40203.

25. Quenton Radford is one of the named plaintiffs in the D.C. Action. Although Mr. Radford has brought suit in Washington, D.C., he resides at 2501 Montgomery Avenue, Ashland, Kentucky 41101.

BACKGROUND

26. Medicaid is an optional, collaborative program between the federal government and the states. This program, authorized by Title XIX of the Social Security Act, is designed to financially assist states in providing health care to specified low-income persons.

27. The Commonwealth of Kentucky, like all other states, has chosen to participate in Medicaid.

28. In 2010, Congress passed, and President Obama signed, the Patient Protection and Affordable Care Act ("Obamacare"), as amended by the Health Care and Education Reconciliation Act of 2010. As relevant here, Obamacare amended the

Medicaid Act to enable states, if they so choose, to expand their Medicaid coverage to include individuals who previously did not qualify for Medicaid (the "Medicaid expansion").

29. In 2014, at the unilateral direction of then-Governor Steve Beshear, the Commonwealth of Kentucky began participating in the Medicaid expansion. Generally speaking, this meant that Kentucky expanded Medicaid eligibility to able-bodied adults with incomes below 138 percent of the federal poverty level.

30. Under our system of federalism, the states have traditionally been viewed as laboratories of democracy, where innovative ideas can be tested on a smaller scale and, if successful, can be adopted more broadly.

31. In recognition of that end, Section 1115 of the Social Security Act provides the Secretary of the Department of Health and Human Services (the "HHS Secretary") with broad authority to waive Medicaid requirements.

32. More specifically, the HHS Secretary can waive Medicaid requirements for a state "[i]n the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of . . . [Medicaid]." 42 U.S.C. § 1315(a)(1). Such a waiver is commonly referred to as a Section 1115 waiver.

33. The HHS Secretary, under his waiver authority, also may treat the state's costs of the experimental, pilot, or demonstration project that otherwise would not be reimbursable Medicaid expenditures as "expenditures under the State plan" that therefore are subject to federal reimbursement. 42 U.S.C. § 1315(a)(2).

Governor Bevin's Kentucky HEALTH Proposal

34. Governor Bevin publicly announced Kentucky's proposed Section 1115 waiver application, known as Kentucky Helping to Engage and Achieve Long Term Health ("Kentucky HEALTH"), on June 22, 2016. The same day, public notice was provided for a 30-day public comment period. In response to the volume of comments that were submitted on the final day of the comment period, the Commonwealth extended the comment period until August 14, 2016. This extension allowed all of the comments, even those that were made after the initial deadline, to be incorporated and allowed any individual who was unable to comment previously the opportunity to do so.

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. All told, the Commonwealth received nearly 1,350 comments, the most compelling of which were addressed in Kentucky HEALTH.

36. On August 24, 2016, Governor Bevin submitted Kentucky's proposed Section 1115 waiver to the HHS Secretary. A copy of Kentucky's August 2016 waiver application, which is fully incorporated herein, is attached as Exhibit A.

37. The Centers for Medicare and Medicaid Services ("CMS") at the Department for Health and Human Services ("HHS") provided a public comment period on the initial Kentucky HEALTH submission, which received over 1,800 comments.

38. On July 3, 2017, the Commonwealth modified its initial Kentucky HEALTH application. A copy of this modified proposal, which is fully incorporated herein, is attached as Exhibit B.

39. Both the Commonwealth and CMS solicited and received comments from the public on the Commonwealth's revised Kentucky HEALTH submission.

40. After receipt of the revised waiver application, CMS conducted a careful, comprehensive review of the revised proposal and spent many months negotiating the Special Terms and Conditions that govern the implementation, operation, and evaluation of Kentucky HEALTH.

Kentucky HEALTH's Approval

41. On January 12, 2018, CMS notified the Commonwealth that Kentucky HEALTH was approved. A copy of this approval, which is fully incorporated herein, is attached as Exhibit C.

42. The same day, Governor Bevin issued an executive order regarding expanded Medicaid and Kentucky HEALTH, which is attached as Exhibit D and is fully incorporated herein. This executive order states that Kentucky HEALTH seeks "to modify [the Commonwealth's] Medicaid expansion program in order to empower and incentivize individuals to improve their health outcomes, ameliorate their socioeconomic standing, and gain employer sponsored coverage or other commercial health insurance coverage while simultaneously ensuring the program's long-term fiscal sustainability."

43. Governor Bevin's executive order also explains the absolute necessity of Kentucky HEALTH: "[T]he Commonwealth will not be able to afford to continue to

operate its Medicaid expansion program as currently designed in the event any one or more of the components of Kentucky's Section 1115 Waiver and the accompanying Special Terms and Conditions are prevented by judicial action from being implemented within the demonstration period set forth in the Special Terms and Conditions."

44. Governor Bevin thus directed that if any aspect of Kentucky HEALTH is permanently enjoined by a court of competent jurisdiction, with all appeals being exhausted, the applicable state officials "are hereby directed to take the necessary actions to terminate Kentucky's Medicaid expansion . . . ."

45. Because Kentucky adopted expanded Medicaid by unilateral executive action rather than legislative action, Kentucky's Medicaid expansion can likewise be undone by Governor Bevin's executive order.

46. In approving Kentucky HEALTH, CMS "examined whether the demonstration was likely to assist in improving health outcomes; whether it would address behavioral and social factors that influence health outcomes; whether it would incentivize beneficiaries to engage in their own health care and achieve better health outcomes; and whether it would familiarize beneficiaries with a benefit design that is typical of what they may encounter in the commercial market and thereby facilitate smoother beneficiary transition to commercial coverage."

47. Based upon its review of Kentucky HEALTH, CMS determined that the program "is likely to promote Medicaid objectives, and that the waivers and expenditure authorities sought are necessary and appropriate to carry out the demonstration."

48. More specifically, CMS concluded that Kentucky HEALTH "is likely to assist in improving health outcomes," "is likely to strengthen engagement by beneficiaries in their personal health care plan," is likely to "provide incentives for responsible decision-making," and "will remove potential obstacles to a successful beneficiary transition to commercial coverage."

49. Kentucky HEALTH contains numerous innovative provisions, all of which are likely to promote the objectives of Medicaid.

50. Kentucky HEALTH includes community-engagement requirements for Medicaid eligibility, with exemptions for various groups, including former foster care youth, pregnant women, primary caregivers of a dependent (one per household), beneficiaries considered medically frail, beneficiaries diagnosed with an acute medical condition that would prevent them from complying with the requirements, and full-time students.

51. Under Kentucky HEALTH's community-engagement requirements, to be eligible for Medicaid, non-exempt beneficiaries must complete 80 hours per month of community-engagement activities, such as employment, education, job skills training, and community service.

52. In approving this aspect of Kentucky HEALTH, CMS concluded that it "is designed to encourage beneficiaries to obtain employment and/or undertake other community engagement activities that research has shown to be correlated with improved health and wellness." CMS continued: "In addition to promoting improved health outcomes for Kentucky HEALTH beneficiaries by encouraging and supporting

employment and other community engagement activities, the demonstration may also promote individual independence and reduce reliance on public assistance by creating incentives for individuals to obtain and maintain coverage through private, employer-sponsored insurance."

53. Kentucky HEALTH also requires non-exempt enrollees to pay very modest premiums. In this respect, Kentucky HEALTH works similarly to insurance products sold on the commercial market—where enrollees pay premiums. With respect to the premium requirement, CMS concluded that "[i]n order to ensure continuity of care, which is important for improving health outcomes, Kentucky HEALTH seeks to provide beneficiaries the tools to successfully utilize commercial market health insurance, thereby removing potential obstacles to a successful transition from Medicaid to commercial coverage."

54. Kentucky HEALTH also provides for rewards deductions for enrollees who use emergency rooms for non-emergency conditions, which is intended to dissuade this behavior. This is accomplished by deducting specified amounts from an enrollee's *My Rewards* account, a rewards account that Kentucky HEALTH uses to incentivize healthy behavior.

55. Kentucky HEALTH also requires non-exempt enrollees to participate in the redetermination process for Medicaid eligibility. A failure to participate in the redetermination process results in Medicaid non-eligibility for a specified period. CMS determined that the redetermination requirement "is likely to support the objectives of Medicaid to the extent that it prepares individuals for a smooth transition to commercial

health insurance coverage and ensures that resources are preserved for individuals who meet eligibility requirements."

56. Kentucky HEALTH also provides for non-retroactive Medicaid coverage for non-exempt enrollees. That is to say, Medicaid coverage begins at the time of enrollment and is not retroactive to a past date. CMS explained that "the approval of the waiver of retroactive eligibility encourages beneficiaries to obtain and maintain health coverage, even when healthy. This is intended to increase continuity of care by reducing gaps in coverage when beneficiaries churn on and off Medicaid or sign up for Medicaid only when sick."

57. Kentucky HEALTH also limits the use under Medicaid of non-emergency medical transportation for non-exempt enrollees. In seeking a waiver of this Medicaid requirement, the Commonwealth explained that it is "consistent with the goal of offering a commercial market experience."

Litigation About Kentucky HEALTH Ensues

58. On January 24, 2018, sixteen Kentucky residents, who are the Defendants in this action, filed a putative class-action lawsuit against the Secretary of HHS, the Administrator of CMS, the Principal Deputy Administrator of CMS, the Director of the Center for Medicaid and CHIP Services, HHS, and CMS (the "D.C. Defendants").

59. The lawsuit was not filed in Kentucky, but instead in the United States District Court for the District of Columbia, Case No. 1:18-cv-00152 (the aforementioned D.C. Action).

60. The lawsuit alleges that Kentucky HEALTH violates the Social Security Act, the Administrative Procedure Act, and the United States Constitution. A copy of the complaint in the D.C. Action is attached as Exhibit E.

61. On February 9, 2018, the D.C. Defendants moved to transfer the case to the United States District Court for the Eastern District of Kentucky primarily 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." The D.C. Defendants further noted that "nearly every other case for the past fifty years challenging a state-initiated Section 1115 demonstration project was originally filed in the state in which the project was to be implemented." A copy of the D.C. Defendants' motion to transfer is attached as Exhibit F.

62. Even though Kentucky HEALTH was created in Kentucky and will be administered in Kentucky by Kentucky agencies and officials to benefit Kentucky Medicaid recipients, the named plaintiffs who brought the D.C. Action on behalf of a putative class of Kentucky Medicaid recipients chose not to sue the Commonwealth of Kentucky or any of its agencies or officials.

63. Governor Bevin, Secretary Brinkman, and Commissioner Miller, however, have a substantial controversy with, and legal interests that are adverse to, the named Kentucky residents who brought the D.C. Action, who are the Defendants here. In particular, those Kentucky residents, who allege that they will be affected by Kentucky HEALTH, have asked a court to declare Kentucky HEALTH null and void and enjoin it

as a violation of the Social Security Act, the Administrative Procedure Act, and the United States Constitution. And they have asked the court to grant this relief without the Commonwealth as a party.

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.

65. Furthermore, if the named Kentucky residents who brought the D.C. Action are ultimately successful in permanently enjoining any part of Kentucky HEALTH in a court of competent jurisdiction, Governor Bevin has directed that the Commonwealth will withdraw entirely from participating in the Medicaid expansion.

66. The substantial controversy between Governor Bevin, Secretary Brinkman, and Commissioner Miller and the named Kentucky residents who brought the D.C. Action, who are the Defendants in this action, is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

COUNT I

67. The Plaintiffs incorporate by reference Paragraphs 1 through 66 of this Complaint.

68. The named Kentucky residents who brought the D.C. Action have alleged that Kentucky HEALTH violates the Social Security Act and the Administrative Procedure Act.

69. An actual case or controversy exists between the named Kentucky residents who brought the D.C. Action, who are the Defendants in this action, and the Plaintiffs

regarding whether Kentucky HEALTH violates the Social Security Act and the Administrative Procedure Act.

70. The Plaintiffs seek a declaration that Kentucky HEALTH does not violate the Social Security Act and the Administrative Procedure Act and is within the scope of the HHS Secretary's Section 1115 waiver authority.

71. The Plaintiffs seek a declaration that Kentucky HEALTH, as a whole, is within the HHS Secretary's Section 1115 waiver authority.

72. The Plaintiffs seek a declaration that Kentucky HEALTH's community-engagement requirements are within the scope of the HHS Secretary's Section 1115 waiver authority.

73. The Plaintiffs seek a declaration that Kentucky HEALTH's premium requirements are within the scope of the HHS Secretary's Section 1115 waiver authority.

74. The Plaintiffs seek a declaration that Kentucky HEALTH's reward deductions for non-emergency use of the emergency room are within the scope of the HHS Secretary's Section 1115 waiver authority.

75. The Plaintiffs seek a declaration that Kentucky HEALTH's redetermination requirements are within the scope of the HHS Secretary's Section 1115 waiver authority.

76. The Plaintiffs seek a declaration that Kentucky HEALTH's non-retroactive coverage provisions are within the scope of the HHS Secretary's Section 1115 waiver authority.

77. The Plaintiffs seek a declaration that Kentucky HEALTH's provisions regarding non-emergency medical transportation are within the scope of the HHS Secretary's Section 1115 waiver authority.

COUNT II

78. The Plaintiffs incorporate by reference Paragraphs 1 through 77 of this Complaint.

79. The named Kentucky residents who brought the D.C. Action have alleged that the approval of Kentucky HEALTH otherwise violates the Medicaid Act, was arbitrary and capricious and an abuse of discretion, and ran counter to the evidence in the record.

80. An actual case or controversy exists between the named Kentucky residents who brought the D.C. Action, who are the Defendants in this action, and the Plaintiffs about whether the approval of Kentucky HEALTH otherwise violates the Medicaid Act, was arbitrary and capricious and an abuse of discretion, and ran counter to the evidence in the record.

81. The Plaintiffs seek a declaration that the HHS Secretary's approval of Kentucky HEALTH otherwise complied with the Medicaid Act, was not arbitrary or capricious, was not an abuse of discretion, and was supported by the evidence in the record.

COUNT III

82. The Plaintiffs incorporate by reference herein Paragraphs 1 through 81 of this Complaint.

83. The named Kentucky residents who brought the D.C. Action have alleged that the approval of Kentucky HEALTH violates the Take Care Clause of the United States Constitution.

84. An actual case or controversy exists between the named Kentucky residents who brought the D.C. Action, who are the Defendants in this action, and the Plaintiffs about whether a claim that the Take Care Clause of the United States Constitution has been violated is justiciable and, in the alternative, whether the approval of Kentucky HEALTH violates the Take Care Clause.

85. The Plaintiffs seek a declaration that any claim by the Defendants under the Take Care Clause of the United States Constitution is not justiciable and, in the alternative, a declaration that the HHS Secretary's approval of Kentucky HEALTH does not violate the Take Care Clause.

DEMAND FOR RELIEF

WHEREFORE, the Plaintiffs demand as follows:

1) A declaration that the HHS Secretary's approval of Kentucky HEALTH, and all of its contested provisions, does not violate the Social Security Act or the Administrative Procedure Act;

2) A declaration that the HHS Secretary's approval of Kentucky HEALTH, and all of its contested provisions, was within the HHS Secretary's Section 1115 waiver authority;

3) A declaration that the HHS Secretary's approval of Kentucky HEALTH, and all of its contested provisions, does not otherwise violate the Medicaid Act, was not

arbitrary or capricious, was not an abuse of discretion, and was supported by the evidence in the record;

4) A declaration that any claim by the Defendants under the Take Care Clause of the United States Constitution is not justiciable and, in the alternative, a declaration that the HHS Secretary's approval of Kentucky HEALTH does not violate the Take Care Clause; and

5) Any and all other relief to which the Plaintiffs may be entitled.

Respectfully Submitted,

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Counsel for the Plaintiffs

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.	)	
	)	

[PROPOSED] ORDER DENYING DEFENDANTS' MOTION TO TRANSFER CASE TO THE EASTERN DISTRICT OF KENTUCKY

This matter is before the Court on Defendants' motion to transfer this case to the United States District Court for the Eastern District of Kentucky. ECF No. 6. Having reviewed the motion, Plaintiffs' opposition thereto, and Defendants' reply, the Court hereby DENIES with prejudice Defendants' motion.

SO ORDERED this _____ day of _____, 2018.

_____
HON. JAMES E. BOASBERG
UNITED STATES DISTRICT JUDGE