

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division**

ELIM ROMANIAN PENTECOSTAL)	
CHURCH, LOGOS BAPTIST)	
MINISTRIES,)	
)	
Plaintiff,)	Case No. <u>1:20-cv-02782</u>
)	
v.)	
)	
JAY ROBERT PRITZKER, in his)	
official capacity as Governor of the)	
State of Illinois,)	
)	
Defendant.)	

**PLAINTIFFS’ RESPONSE IN OPPOSITION TO
MOTION TO TRANSFER VENUE AND REASSIGN CASE**

Pursuant to L.R. 7.1, Plaintiffs ELIM ROMANIAN PENTECOSTAL CHURCH and LOGOS BAPTIST MINISTRIES (“Churches” or “Plaintiffs”), by and through the undersigned counsel, hereby file this Response in Opposition to Defendant’s Motion to Transfer and Reassign Case, (Dkt. 17, “Reassignment Motion”). For the following reasons, Defendants’ Motion should be denied.

LEGAL ARGUMENT

I. THE GOVERNOR’S REASSIGNMENT MOTION IS UNWARRANTED AND IGNORES THE 50-YEAR TRADITION OF THIS COURT’S RANDOM ASSIGNMENT SYSTEM DESIGNED TO FOSTER JUDICIAL INTEGRITY.

A. The Instant Litigation Is Not Related Factually Or Legally To *Cassell*.

Defendant Governor Pritzker has submitted a motion to reassign the instant litigation to Judge Lee, currently presiding over *Cassell v. Snyder*, No. 3:20-cv-50153, 2020 WL 2112374 (N.D. Ill. May 3, 2020). (Dkt. 17, Reassignment Motion at 1). In support, the Governor asserts that

there are common issues of law and fact and that judicial economy would best be served by relating the instant litigation and *Cassell*. (*Id.*). **Neither is true**, and a finding of relatedness in the instant litigation is unwarranted. The parties in the two lawsuits are not the same. (*Compare* (dkt. 1, Verified Complaint at 1, naming Governor Pritzker as the sole defendant), *with* (No. 3:20-cv-50153, dkt. 1, at 1 (naming Governor Pritzker and local law enforcement officials with different enforcement capacities)). The jurisdictions in which Plaintiffs' churches are situated are not the same as the plaintiffs in *Cassell*, and the enforcement actions or threatened actions from local law enforcement would arise from separate jurisdictions. (*Compare* (dkt. 1, Verified Complaint at 8, ¶¶19-20), *with* (No. 3:20-cv-50153, dkt. 1, at 5, ¶¶13-14)). This factual distinction is critical concerning the injunctive relief the different parties are seeking in these unrelated matters. The legal theories, while having overlap, are not identical and are much more extensive in the instant litigation than in *Cassell*. (*Compare* (dkt. 1, Verified Complaint at 21-40), *with* (No. 3:20-cv-50153, dkt. 1, at 19-29)). Finally, the relief Plaintiffs seek in this action and any potential compromise they might be willing to accept is not in common with that of the *Cassell* plaintiffs. Thus, the two cases that the Governor seeks to have related do not have exclusively common questions of fact or law, and judicial economy is not served by granting the relief requested in the Governor's Reassignment Motion. This case should proceed as all other cases in this Court, via the random assignment and the emergency scheduling that has already been determined by the Honorable Judge Gettleman.

B. This Court's Local Rules Dictate Random Assignment As The Hallmark Of Fairness And Should Be Followed In This Matter.

This Court's Local Rules plainly indicate that random assignment of judges is the hallmark of judicial fairness and the appearance of impartiality. L.R. 40.1, Cmt. Indeed, "[t]his Court has used a random assignment system for more than 50 years." *Id.* An "important goal" of random

assignment is that “no one should be able to manipulate the assignment system in order to determine in advance which judge will get a case.” *Id.* “The fundamental rationale of random assignment is ‘to ensure greater confidence in the integrity of the judicial process’ by ‘guaranteeing fair and equal distribution of cases to all judges, avoiding public perception or appearance of favoritism in assignments and reducing opportunities for judge-shopping.’” *United States v. Volvo Const. Equip. AB*, 922 F. Supp. 2d 67, 68 (D.D.C. 2013) (quoting *Tripp v. Executive Office of President*, 196 F.R.D. 201, 202 (D.D.C. 2000)).

C. Similar Legal Issues Is Not Sufficient To Warrant Relation Or Reassignment.

“The word ‘related’ as used in the rules requires a factually or transactionally related matter. **Similar legal issues alone will generally not support assignment to the same judge.**” *Ukrainian Nat’l Ass’n of Jewish Former Prisoners of Concentration Camps & Ghettos v. United States*, 205 F.R.D. 102, 103 (E.D.N.Y. 2001) (emphasis added). *See also ESS Tech., Inc. v. PC-Tel, Inc.*, No. C-99-20292 RMW, 2001 WL 1891713, *3 (E.D. Cal. Nov. 28, 2001) (denying motion to relate cases where only substantive argument was that the two cases “share substantially the same question of law”). “[T]he fact that cases involve a similar starting point is insufficient for relating them,” *United States v. Pescatore*, No. 05-CR-128, 2006 WL 47451, *7 (E.D.N.Y. Jan. 5, 2006), and it is beyond cavil that cases that “do not concern the same issues of fact or law” should not be related. *McKersie v. IU Int’l Corp.*, 1987 WL 18551, *2 (N.D. Ill. Oct. 13, 1987). *See supra* Section I.A.

D. Similar Factual Issues When Parties Are Different Does Not Warrant Relation Or Reassignment.

The same holds true when factual distinctions are present and the parties are not identical. *See, e.g., Am. Direct Marketing, Inc. v. Azad Int’l, Inc.*, 783 F. Supp. 84, 87 (E.D.N.Y. 1992) (denying request to relate and consolidate cases where only one party was the same and the “factual

issues raised are different”); *United States v. Schwamborn*, No. 06 CR 328 SJF, 2006 WL 3337512, *3 (E.D.N.Y. Oct. 26, 2006) (denying motion to relate because multiple cases involving the same defendant is insufficient to warrant abandoning random assignment); *Dale v. Executive Office of the President*, 121 F. Supp. 2d 35, 37 (D.D.C. 2000) (noting that two cases are properly deemed unrelated because “any common issues of fact are minimal and completely insufficient to overcome the presumption of random assignment”); *Autumn Journey Hospice, Inc. v. Sebelius*, 753 F. Supp. 2d 135, 140 (D.D.C. 2010) (noting that minimal factual similarities warrants a finding that two cases are not related and that random assignment should prevail); *Keepseagle v. Glickman*, 194 F.R.D. 1, 3 (D.D.C. 2000) (refusing to relate cases even where the plaintiffs in the two cases “claim they were injured by the same policies of the defendant”); *Westchester Fire Ins. Co. v. Treesdale, Inc.*, No. 05-1523, 2006 WL 1050518 (W.D. Pa. Apr. 19, 2006) (cases should not be related where they involve different organizations and different facts); *Boyd v. Farrin*, No. 12-1893(PLF), 2012 WL 6106415, *1 (D.D.C. Dec. 10, 2012) (cases “do[] not qualify as related” if they do “not involve common issues of fact”).

E. Even In Similar COVID-19 Litigation, A Challenge By Different Plaintiffs To The Same Executive Orders In The Same District Has Been Held Not To Warrant Relation Or Reassignment.

In fact, even in similar COVID-19 litigation where multiple plaintiffs challenged the Commonwealth of Kentucky’s executive orders, federal courts have found that relating two similar cases and reassigning to a different judge is **not** in the interest of justice, where – as here – the parties are different and the challenges involve different action by different government officials. See *Maryville Baptist Church, Inc. v. Beshear*, No. 3:20-cv-278-DJH, 2020 WL 1909616, *1 (W.D. Ky. Apr. 18, 2020).

F. The Governor Is Not Entitled To “Judge Shop.”

Moreover, the fact that the Governor received a favorable initial adjudication from a judge to which he seeks to relate a case does not justify a finding of relatedness or an overcoming of the 50-year-old principle in this Court of random assignment. In fact, it directly contradicts the purpose of the rule as disfavoring judge shopping. *See, e.g., Badger v. Advance Stores Co., Inc.*, No. 16-1872, 2017 WL 782925, *2 (W.D. Pa. Mar. 1, 2017) (noting that the related case rule “**does not entitle a party to have a case heard before a particular judge . . .** The purpose of the rule is not to encourage ‘judge shopping.’” (emphasis added)). Indeed, permitting the Governor to select his jurist would diminish the goal of perceived fairness. It would, in essence, “allow [the Governor] too much discretion to choose their judge, needlessly giving rise to concerns about judge-shopping, and risk undermining public confidence in the judicial system.” *Rite-Aid Corp. v. Am. Exp. Travel Related Servs. Co., Inc.*, No. CV 08-2315(JG)(JO), 2008 WL 3155063, *3 (E.D.N.Y. Aug. 4, 2008).

II. THE GOVERNOR’S MOTION TO TRANSFER VENUE SHOULD BE DENIED.

The Governor claims that transfer is appropriate under 28 U.S.C. §1404. (Dkt. 17, Reassignment Motion, at 4). **Such is not the law.** “For the convenience of the parties and witnesses, in the interest of justice, a district may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. §1404(a). The Governor fundamentally misconstrues the relevant statute concerning the propriety of transferring the instant litigation. The Governor’s suggestion that Plaintiffs merely concede to a different venue is improper and unwarranted as a matter of law. Indeed, “transfer [to another division] is inappropriate if it merely transforms an inconvenience for one party into an inconvenience for the other party.” *Hanley v. Omarc, Inc.*, 6 F. Supp. 2d 770, 776 (N.D. Ill. 1998); *see a 1014, Iso Law Bulletin Pub. Co v. LRP*

Pub., Inc., 992 F. Supp. 1014, 1019 (N.D. Ill. 1998) (same). Here, it certainly does so. This Court's own rules mandated Plaintiffs to bring this action in this Eastern Division, as they are situated in Cook County. (Dkt. 1, Verified Complaint, ¶¶19-20). That is the most convenient forum in which Plaintiffs may bring their claims, and Plaintiffs are entitled to a presumption that their chosen forum is appropriate. *See, e.g., Macedo v. Boeing Co.*, 93 F.2d 683, 688 (7th Cir. 1982); *First Nat'l Bank v. El Camino Res., Ltd.*, 447 F. Supp. 2d 902, 912 (N.D. Ill. 2006) ("a plaintiff's choice of forum is given substantial weight when, as here, it is the plaintiff's home forum"). The Governor's contrary suggestion should be rejected.

CONCLUSION

Because the parties in the instant-litigation and those in *Cassell* are different, because the legal theories are not entirely the same (and, indeed, they are much more extensive in the instant litigation), and because permitting the Governor to relate a matter in this regard would undermine the purposes of the rule requiring random assignment, the Governor's Reassignment Motion should be denied.

Respectfully submitted,

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*Pro hac vice applications pending

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 9h day of May, 2020, I caused a true and correct copy of the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

/s/ Daniel J. Schmid
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