

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC CHARITIES
WEST MICHIGAN,

Plaintiff,

2:19-CV-11661-DPH-DRG

v.

Hon. Denise Page Hood

Hon. David R. Grand

MICHIGAN DEPARTMENT
OF HEALTH AND HUMAN
SERVICES; ROBERT GORDON, in
his official capacity as Director
of the Michigan Department of
Health and Human Services;
MICHIGAN CHILDREN'S
SERVICES AGENCY; JENNIFER
WRAYNO, in her official capacity as
Acting Executive Director of
Michigan Children's Services Agency;
DANA NESSEL, in her official
capacity as Attorney General of
Michigan.

**PLAINTIFF CATHOLIC
CHARITIES WEST
MICHIGAN'S REPLY IN
SUPPORT OF MOTION TO
CHANGE VENUE**

Defendants.

_____ /

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**PLAINTIFF CATHOLIC CHARITIES WEST MICHIGAN'S
REPLY IN SUPPORT OF MOTION TO CHANGE VENUE**

INTRODUCTION

Defendants do not dispute that Catholic Charities filed this case in Grand Rapids or that the U.S. District Court for the Western District of Michigan is the most convenient forum for the parties and witnesses. Yet they removed this case to Detroit based on a random state court judge assignment and the hope that their preferred federal judge will eventually be assigned to the case. (*See* ECF No. 16 at 22, 26.) A proper application of the federal removal statute, however, does not depend on blind chance. Nor do courts keep cases in inconvenient forums because one party previously litigated a different case with different parties before a different judge. Because the Western District is the correct venue for federal removal—and, in fact, the more convenient forum—this Court should grant the motion to change venue.

ARGUMENT

I. The Western District is the correct removal venue under 28 U.S.C. § 1441(a) because the case was pending in Grand Rapids.

The parties agree that there can be only one proper removal venue and that the analysis is governed by 28 U.S.C. § 1441(a), which states that removal must be to the “district and division embracing the place where such action is pending.” The question, then, is whether a case filed in the Michigan Court of Claims is “pending” in the district and division where the plaintiff filed the lawsuit or where the assigned judge has his or her chambers. Because the fairer and far more

predictable answer is that the case is “pending” where the plaintiff initiated its lawsuit against the State, this Court should transfer the case to the Western District.

Under Michigan law, a plaintiff may file a lawsuit with the Court of Claims “in *any* court of appeals district.” Mich. Comp. Laws § 600.6410(2) (emphasis added). Catholic Charities naturally chose to file this lawsuit in court of appeals district 3 (Grand Rapids), the district in which it has its headquarters. Defendants nevertheless maintain that this selection should have no bearing on federal removal, asserting that the proper venue for removal purposes should instead be determined by where the randomly assigned state court judge happens to have his or her chambers. (*See* ECF No. 16 at 22–23.) But that is not a reasonable application of § 1441(a). That would make the federal removal venue for a Court of Claims plaintiff who files suit in his local state district depend on (and change with) the vagaries of the random case assignment process, and where the state judges then in office happen to maintain their chambers. Currently, because no Michigan Court of Claims judges have chambers in Grand Rapids, the effect of the strange (and opportunistic) rule proposed by the State is that *every* removal of a Court of Claims case filed in Grand Rapids must be to a place other than Grand Rapids. This is not a fair or sensible reading of § 1441(a).

Nor is it a legally supported one. Defendants have not identified a *single* case where the proper venue for federal removal purposes turned entirely on a random state judge assignment. In fact, Defendants have not even identified a case in which the State of Michigan (or any party seeking removal) has argued for that reading of § 1441(a). The argument should be rejected. The state statute that Defendants rely on merely addresses matters of judicial administration. *See Mich. Comp. Laws* § 600.6413 (stating that the Court of Claims will “sit” in the court of appeals district “where a court of appeals judge serving as a judge of the court of claims sits, unless otherwise determined by the chief judge of the court of claims”). It does nothing but specify where a hearing, if any, will be held (none has been held). It does not determine where specific cases are “pending” for purposes of 28 U.S.C. § 1441(a).

II. Transfer is also warranted under 28 U.S.C. § 1404(a) because Catholic Charities filed suit in its home forum and the Western District is the more convenient venue.

Transfer is also warranted under 28 U.S.C. § 1404(a), which allows transfer “[f]or the convenience of parties and witnesses” and “in the interest of justice.”

A. Catholic Charities filed this case in Grand Rapids, not Detroit.

Although Defendants acknowledge that Catholic Charities filed this case in Grand Rapids and that a plaintiff’s choice of forum is entitled to substantial deference, they oddly assert that Catholic

Charities' choice of forum actually weighs in favor of litigating this case *in Detroit*. (ECF No. 16 at 24–25.) According to Defendants, Catholic Charities “chose” to file its “federal and state claims” in the Michigan Court of Claims instead of federal court, thereby subjecting itself to the random judge assignment process that Defendants now claim justified removing the case to the Eastern District. (ECF No. 16 at 24–25.) The argument is without merit.

As explained in its opening brief, Catholic Charities did not “choose” the Court of Claims over federal court. The Court of Claims was the *only* court—state or federal—that could adjudicate all of Catholic Charities' state and federal claims. (See ECF No. 9 at 25–26.) What Catholic Charities did choose, however, was to file its lawsuit in the Michigan district where its headquarters are located—the Court of Appeals District 3 (Grand Rapids). It is that choice that is entitled to deference. *See Jones v. IPX Int'l. Equatorial Guinea, S.A.*, 920 F.3d 1085, 1094 (6th Cir. 2019) (“Courts presume that plaintiffs choose convenient forums, so a plaintiff's choice of forum is given deference.”)

B. Defendants concede that the Western District would be more convenient for the parties and witnesses.

Defendants also concede that the Western District is the most convenient forum for the parties and witnesses. (See ECF No. 16 at 28). Notably, this is “the most important factor in transfer analysis.” *Rinks v. Hocking*, No. 1:10-cv-1102, 2011 WL 691242, at *3 (W.D. Mich. 2011).

Even so, Defendants argue that this Court should give “little weight” to the convenience of the parties and witnesses because Catholic Charities “did not request a change in venue” immediately after Judge Cynthia Stephens was assigned to the case. (*Id.* at 18, 28.) But Catholic Charities could make no such request while the case was pending in the Court of Claims. As noted, that court had *exclusive* jurisdiction over this lawsuit until Defendants removed the case and waived their Eleventh Amendment immunity. (See ECF No. 9 at 25–26.) Defendants’ argument thus appears to be that the case should remain in the Eastern District—to the detriment of the plaintiff and witnesses—because Catholic Charities did not seek to have Judge Stephens disqualified. Again, they provide no support for their argument. If accepted, Defendants’ argument would instruct future plaintiffs to file baseless disqualification motions whenever they are assigned a Court of Claims judge who happens to have his or her chambers in a federal district and division that is not their own.

C. That Defendants settled a different case with different parties before a different judge is no reason to deny transfer to a more convenient forum.

Finally, Defendants contend that the case should proceed in an inconvenient forum because they settled *Dumont v. Lyon* in the Eastern District. (ECF No. 16 at 26.) But settling a different case with different parties before a different judge is no reason to deny transfer to a more

convenient forum in *this case*. Indeed, Catholic Charities had absolutely no involvement in the *Dumont* litigation. *Pedreira v. Sunrise Children’s Services*, 802 F.3d 865 (6th Cir. 2015), cited by Defendants (ECF No. 16 at 27), is utterly irrelevant. The *Pedreira* decision did not even mention venue, let alone involve a transfer analysis. Instead, it addressed the unrelated question of whether an organization had standing to challenge a consent decree entered in a case in which it was a party and that “single[d] out” the organization “by name for special monitoring.” *Id.* at 872.

Simply put, Defendants cannot rely on their settlement of a different case to deny Catholic Charities its choice of forum and to deny a convenient venue for the parties and witnesses—all of whom reside in the Western District.¹ *Cf. Martin v. Wilks*, 490 U.S. 755, 762 (1989) (“A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.”).

¹ Contrary to Defendants’ assertion, Catholic Charities does not request relief that is inconsistent with the *Dumont* settlement agreement. (See ECF No. 16 at 11.) That agreement expressly states that its terms are not binding to the extent they are “prohibited by law or court order.” (ECF No. 1-2 at 181.) Thus, if Catholic Charities were to obtain a favorable ruling on the merits here, the *Dumont* settlement agreement simply would not apply in that circumstance.

CONCLUSION

For the foregoing reasons, and the reasons set forth in Catholic Charities' opening brief, this Court should grant the motion to change venue and transfer the case to the Western District.

Dated: July 9, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2019, I caused the foregoing to be filed with the Clerk of the Court using the ECF system, which will provide electronic copies to counsel of record.

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