

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

PLANNED PARENTHOOD OF	)	
GREATER NEW YORK <i>et al.</i>	)	
	)	
Plaintiffs,	)	
v.	)	Civil Action No. 25-cv-2453
	)	
U.S. DEPARTMENT OF HEALTH AND	)	
HUMAN SERVICES <i>et al.</i>	)	
	)	
Defendants.	)	
	)	

**PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO TRANSFER UNDER
LOCAL RULE 40.5(c)**

Transferring this case will not serve the purposes of judicial economy that animate the related case rule. This case challenges a distinct agency action from the prior proceedings that were presented to Judge Kelley in Case No. 1:25-cv-01334 (the “Application Requirement Case”). By contrast, Plaintiffs here challenge a Policy Notice that imposes a much broader set of requirements on Teen Pregnancy Prevention (“TPP”) program recipients writ large. Indeed, this Court has now considered full briefing and held a hearing on Plaintiffs’ Motion for TRO, which detailed the nuances of the newly challenged Policy Notice and its impact on Plaintiffs’ TPP projects.

Defendants’ motion to transfer this case is meritless. This case was correctly randomly assigned. Persuasive authority from this Court—*Wilderness Society v. Bernhardt*, No. 20-cv-1176, 2020 WL 2849635 (D.D.C. June 2, 2020) (Howell, C.J.)—makes clear that the “related case” exception under Local Civil Rule 40.5(a)(4) is narrow, strictly applied, and has no application here.

“As a general rule, new cases are randomly assigned.” *Id.* at *1. That rule exists to “ensure[] greater public confidence in the integrity of the judicial process,” “guarantee[] fair and equal distribution of cases to all judges,” “avoid[] public perception or appearance of favoritism in

assignments,” and “reduce[] opportunities for judge-shopping.” *Id.* (quoting *Tripp v. Exec. Office of President*, 196 F.R.D. 201, 202 (D.D.C. 2000)). For this reason, “scrupulous adherence to Local Rule 40.5 is important ‘to avoid any appearance of judge-shopping or favoritism in assignments and to assure the public that cases were assigned on an impartial and neutral basis.’” *Id.* (quoting *Trump v. Comm. on Ways & Means*, 391 F. Supp. 3d 93, 97 (D.D.C. 2019)); *see also Dakota Rural Action v. U.S. Dep’t of Agric.*, No. 18-cv-2852, 2019 WL 1440134, at *1 (D.D.C. Apr. 1, 2019) (“[R]andom assignment of cases is essential to the public’s confidence in an impartial judiciary.”).

Thus, “[t]he party requesting the related-case designation bears the burden of showing that the cases are related under Local Civil Rule 40.5.” *Wilderness Soc’y*, 2020 WL 2849635, at *2. This burden is “heavy,” as “[d]eviating from th[e] foundational principle” of random assignment “is appropriate only if the relationship between the . . . cases is certain.” *Id.* (quoting *Dakota Rural Action v. Dep’t of Agric.*, 2019 WL 1440134, at *1 (D.D.C. Apr. 1, 2019)). Deviating from random assignment is “rare” and the exception is “narrow.” *Klayman v. Porter*, No. 20-cv-3109, 2021 WL 1668067, at *1–2 (D.D.C. Apr. 28, 2021).

That burden is not satisfied here.

Different Subject Matter. This case does not relate to the same subject matter as Case No. 1:25-cv-01334. “[M]ere similarity between certain claims does not mean that the case as a whole involves the ‘same subject matter.’” *Washington All. of Tech. Workers v. DHS*, No. 16-cv-1170, 2016 WL 11184186, at *2 (D.D.C. June 24, 2016). That is particularly true where the two cases challenge different agency actions—actions that create their own independent substantive obligations, involve their own administrative records, and suffer from their own potential procedural infirmities. *Id.* (“Defendants fail to address the very basic fact that plaintiff has challenged two different DHS rules.”). This Court has found cases to involve different subject

matter where they “involve different actions,” *Wilderness Soc’y*, 2020 WL 2849635, at *3, or “focus on different events, involve different times periods, and turn on distinct legal theories,” *Klayman*, 2021 WL 1668067, at *2-3.

At a high level of generality both Case No. 1:25-cv-01334 and this one concern HHS’s administration of the TPP Program. But the agency actions at issue are fundamentally distinct:

- Case No. 1:25-cv-01334 challenged HHS’s *March 2025 guidance*, which imposed requirements only on Plaintiffs’ pending continuation applications. That case was voluntarily dismissed after HHS granted Plaintiffs’ applications.
- This case, by contrast, challenges a new final agency action—the *July 1, 2025 OASH Policy Notice* (the “Policy Notice”)—which imposes new and broader set of requirements and threats of enforcement that were not at issue in No. 1:25-cv-01334. The Policy Notice applies to TPP program grant recipients writ large, including those who are already approved for continuation funding.

Different Parties. This case does not involve all of the same parties as Case No. 1:25-cv-01334. “[T]he phrase ‘the same parties’ means ‘identical parties.’” *Wilderness Soc’y*, 2020 WL 2849635, at *2 (quoting *Jud. Watch, Inc. v. Rossotti*, No. 02-cv-928, 2002 WL 31100839, at *1 (D.D.C. Aug. 2, 2002)); *Dale v. Exec. Off. of President*, 121 F. Supp. 2d 35, 37 (D.D.C. 2000) (“[T]he court has adopted a strict position that ... ‘the same parties’ means identical parties, not parties in interest.” (quoting *Thomas v. National Football League Players Ass’n*, 1992 WL 43121, *1 (D.D.C.1992))); *see also* *Jud. Watch, Inc.*, 2002 WL 31100839, at *1 (deeming a case not related because “[t]he parties here are not identical”). The mere presence of “overlapping parties is not among the bases for a related-case designation.” *Klayman*, 2021 WL 1668067, at *2 (quoting

Trump v. Comm. on Ways & Means, U.S. House of Representatives, 391 F. Supp. 3d 93, 97 (D.D.C. 2019)).

The Plaintiffs in this case are: (1) Planned Parenthood of Greater New York; (2) Planned Parenthood California Central Coast; and (3) Planned Parenthood of the Heartland, Inc.

The Plaintiffs in No. 1:25-cv-01334 were: (1) Planned Parenthood of Greater New York; (2) Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana and Kentucky; (3) Planned Parenthood of the Heartland, Inc.; (4) Planned Parenthood California Central Coast; (5) and Planned Parenthood Mar Monte.

The parties here are thus not identical to those in the earlier case. Rule 40.5(a)(4) requires strict identity—not mere similarity—and that requirement is not met.

* * *

Even if the requirements of Rule 40.5(a)(4) were met—which they are not—reassignment would be unwarranted. This Court has already invested time considering the record and ruling on Plaintiffs' emergency motion. Courts in this District routinely decline to transfer a case under Rule 40.5 once the assigned judge has done substantive work. *See 249 Missouri Ave. Cmty. Dev. LLC v. PHH Mortg. Corp.*, No. 22-cv-2678, 2023 WL 5133202, at *2 n.3 (D.D.C. Aug. 9, 2023) (“Because the Court had already invested time into the case, it will not transfer the case to the prior judge to avoid unnecessary duplication of effort.”).

Defendants may prefer to litigate this case in front of Judge Kelly, but a related case “is not whatever a [party] wishes it to be.” *Corsi v. Mueller*, No. 18-cv-2885, 2019 WL 11322508, at *1 (D.D.C. Jan. 3, 2019). This case was correctly randomly assigned, and Defendants have not met the “heavy” burden required to disturb that assignment. Their motion should be denied.

Dated: August 12, 2025

Respectfully submitted,

By: /s/ Andrew T. Tutt
Drew A. Harker (DC Bar # 412527)
Andrew T. Tutt (DC Bar # 1026916)
Bonnie Devany (*pro hac vice*)*
Daniel Yablon (DC Bar # 90022490)
John V. Hoover (DC Bar # 90006181)
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
(202) 942-5000
drew.harker@arnoldporter.com
andrew.tutt@arnoldporter.com
bonnie.devany@arnoldporter.com
daniel.yablon@arnoldporter.com
jack.hoover@arnoldporter.com

Emily Nestler (DC Bar # 973886)
PLANNED PARENTHOOD FEDERATION OF
AMERICA
1100 Vermont Avenue NW
Washington, DC 20005
(202) 973-4800
emily.nestler@ppfa.org

Valentina De Fex (*pro hac vice*)
Melissa Shube (DC Bar # 241034)
PLANNED PARENTHOOD FEDERATION OF
AMERICA
123 William Street, 9th Floor
New York, NY 10038
Phone: (212) 261-4696
valentina.defex@ppfa.org
melissa.shube@ppfa.org

* *Admitted only in Texas; practicing in D.C. pursuant to D.C. Ct. of Appeals R. 49(c)(8), under supervision of D.C. Bar Members.*