

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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CHARLES GRESHAM, et al.,)	
	Plaintiffs,)	
)	
v.)	No. 1:18-cv-01900-JEB
)	
ALEX M. AZAR, et al.)	
	Defendants.)	
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**DEFENDANTS’ OBJECTION
TO RELATED-CASE DESIGNATION**

Pursuant to Local Civil Rule 40.5(b)(2), defendants hereby object to plaintiffs’ related-case designation.

Plaintiffs assert that their lawsuit is related to *Stewart v. Azar*, No. 18-00152-JEB (D.D.C.), because the cases involve “common issues of fact” and “gro[w] out of the same event or transaction.” ECF No. 1-12. But plaintiffs have not met their burden to show that the cases are related under Local Civil Rule 40.5. *See Judicial Watch, Inc. v. Rossotti*, 2002 WL 31100839 at *1 (D.D.C. Aug. 2, 2002) (citation omitted).

First, this case and *Stewart* do not grow out of the same event or transaction. In this action, plaintiffs challenge the Secretary’s March 5, 2018 approval of a demonstration project developed by Arkansas that, among other things, requires certain individuals to meet community-engagement requirements to receive Medicaid. In contrast, the plaintiffs in *Stewart* challenge the Secretary’s January 12, 2018 approval of a demonstration project developed by Kentucky that incorporates a separate set of community-engagement requirements and several other features that are specific to

that demonstration project. The two cases involve two separate approvals of two distinct projects in two different States. The approval of Arkansas's demonstration project thus is not the "same event or transaction" as the approval of Kentucky's demonstration project.

The fact that the plaintiffs in both cases also purport to challenge the Centers for Medicare and Medicaid Services' January 11, 2018 State Medicaid Director guidance letter is immaterial. The gravamen of both complaints—and the only agency action that gives rise to plaintiffs' alleged injuries—is the approval of the respective demonstration projects. *See, e.g., Lucas v. Barreto*, No. 04-1262, 2005 WL 607923, at *3 (D.D.C. Mar. 16, 2005) ("The 'hook' tying this case to Civ. No. 03-2617 may well be the Agency's 2002 Performance Review Process, but this hook links at most one claim from 04-1262 ... to one claim in 03-2617 It can hardly be said that the cases, on the whole, 'grow out of the same event or transaction.'").

Second, the cases do not share common issues of fact. Indeed, neither case involves issues of fact at all, as each presents a challenge to a different agency action under the Administrative Procedure Act (APA). *See James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1096 (D.C. Cir. 1996) (district courts reviewing agency action under APA's arbitrary-and-capricious standard operate as appellate courts resolving legal questions). Therefore, in each case, the court will be resolving only legal questions, on the basis of different administrative records. Even if the legal questions raised by the two cases are similar, Local Civil Rule 40.5 does not permit cases to be designated as related based on common issues of law, presumably because this would create a sweeping exception to the "general rule requiring random assignment of cases"—a rule designed to "guarante[e] fair and equal distribution of cases to all judges, avoi[d] public perception or appearance of favoritism in assignments, and reduc[e] opportunities for judge-shopping." *Tripp v. Exec. Office of the Pres.*, 196 F.R.D. 201, 202 (D.D.C.2000) (three-judge panel).

Because this case is not related to *Stewart* under Local Civil Rule 40.5, defendants respectfully request that the Court vacate the related-case designation and transfer this action to the Calendar and Case Management Committee for random reassignment in accordance with Local Civil Rule 40.5(c)(1).

Dated: August 28, 2018

Respectfully submitted,

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