UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

The Wilderness Society, *et al.*, Plaintiffs, v. Donald J. Trump, *et al.*, Defendants.	Civil Action No. 1:17-cv-02587 (TSC)
Grand Staircase Escalante Partners, *et al.*, Plaintiffs, v. Donald J. Trump, *et al.*, Defendants.	Civil Action No. 1:17-cv-02591 (TSC) **CONSOLIDATED CASES**

OPPOSITION OF PLAINTIFFS
THE WILDERNESS SOCIETY, ET AL.,
TO DEFENDANTS' MOTION TO TRANSFER

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
INTRODUCTION 1
BACKGROUND 2
I. The Antiquities Act 2
II. Defendants' review and dismantling of national monuments 3
A. President Trump's new "policy" on national monuments 3
B. President Trump's proclamations 4
ARGUMENT 6
I. Legal standard 6
II. The public-interest factors favor venue in the District of Columbia 8
A. This case about the President's power to dismantle national monuments concern a national, not localized, controversy 8
B. This forum is familiar with the governing law and substantially less congested than the District of Utah 14
III. The private-interest factors favor venue in this forum 15
A. Plaintiffs' choice is entitled to substantial deference because the parties and claims have significant ties to the District 15
1. Plaintiffs' ties to the District of Columbia 15
2. Involvement of District of Columbia officials 17
B. Defendants' forum choice cannot overcome the substantial deference owed to Plaintiffs' choice 18
C. The claims arose in the District of Columbia 18
D. This forum is more convenient for all the parties 19
E. Defendants agree the final private-interest factors do not help them meet their heavy burden of justifying transfer 20
CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Airport Working Grp. of Orange Cty., Inc. v. U.S. Dep't of Def.,
226 F. Supp. 2d 227 (D.D.C. 2002) 16

Akiachak Native Cmty. v. Dep't of Interior,
502 F. Supp. 2d 64 (D.D.C. 2007). 19

Alaska v. United States,
545 U.S. 75 (2005) 2

Alaska Wilderness League v. Jewell,
99 F. Supp. 3d 112 (D.D.C. 2015) 11, 17

Concerned Rosebud Area Citizens v. Babbitt,
34 F. Supp. 2d 775 (D.D.C. 1999) 14, 20

Ctr. for Biological Diversity v. Tidwell,
No. 16-cv-1049 (D.D.C. Feb. 14, 2017)..... 13

**Defs. of Wildlife v. Salazar*,
No. 12-cv-1833, 2013 WL 12316872 (D.D.C. Apr. 11, 2013)..... 10, 18, 20

**Forest Cty. Potawatomi Cmty. v. United States*,
169 F. Supp. 3d 114 (D.D.C. 2016) 8, 9, 18, 20

Fund for Animals v. Norton,
352 F. Supp. 2d 1 (D.D.C. 2005) 13

**Greater Yellowstone Coal. v. Bosworth*,
180 F. Supp. 2d 124 (D.D.C. 2001) 6, 11, 15, 16, 18, 20

**Greater Yellowstone Coal. v. Kempthorne*,
No. 07-cv-2111, 2008 WL 1862298 (D.D.C. Apr. 24, 2008)..... 11, 12, 13, 17, 20

Gulf Restoration Network v. Jewell,
87 F. Supp. 3d 303 (D.D.C. 2015) 18

Louis v. Hagel,
177 F. Supp. 3d 401 (D.D.C. 2016) 7

Mtn. States Legal Found. v. Bush,
306 F.3d 1132 (D.C. Cir. 2002)..... 14

Nat'l Ass'n of Home Builders v. EPA,
675 F. Supp. 2d 173 (D.D.C. 2009) 10, 11, 18, 19

Nat'l Wildlife Fed'n v. Harvey,
437 F. Supp. 2d 42 (D.D.C. 2006) 12

**Oceana v. Bureau of Ocean Energy Mgmt.*,
962 F. Supp. 2d 70 (D.D.C. 2013) 6, 13

**Oceana, Inc. v. Pritzker*,
58 F. Supp. 3d 2 (D.D.C. 2013) 13, 14, 16, 20

Otay Mesa Prop. L.P. v. U.S. Dep't of Interior,
584 F. Supp. 2d 122 (D.D.C. 2008). 10

Pres. Soc'y of Charleston v. U.S. Army Corps of Eng'rs,
893 F. Supp. 2d 49 (D.D.C. 2012) 12, 16

Renchard v. Prince William Marine Sales, Inc.,
28 F. Supp. 3d 1 (D.D.C. 2014) 15, 18

Sierra Club v. Flowers,
276 F. Supp. 2d 62 (D.D.C. 2003) 12

**Sierra Club v. Van Antwerp*,
523 F. Supp. 2d 5 (D.D.C. 2007) 6, 10, 16

Sioux Tribe of Indians v. United States,
316 U.S. 317 (1942) 8

Stand Up for Cal.! v. U.S. Dep't of the Interior,
919 F. Supp. 2d 51 (D.D.C. 2013) 6, 9

SUWA v. Lewis,
845 F. Supp. 2d 231 (D.D.C. 2012) 12

SUWA v. Norton,
315 F. Supp. 2d 82 (D.D.C. 2004) 12

SUWA v. Norton,
No. 01-cv-2518, 2002 WL 32617198 (D.D.C. June 28, 2002) 12

Thayer/Patricof Educ. Funding, L.L.C. v. Pryor Res., Inc.,
196 F. Supp. 2d 21 (D.D.C. 2002) 6, 7

*_The Wilderness Soc'y v. Babbitt_,
104 F. Supp. 2d 10 D.D.C. 2000) 1, 11, 12, 15, 16, 19

Trout Unlimited v. U.S. Dep't of Agric.,
944 F. Supp. 13 (D.D.C. 1996) 12

Tulare Cty. v. Bush,
306 F.3d 1138 (D.C. Cir. 2002) 14

W. Watersheds Project v. Jewell,
69 F. Supp. 3d 41 (D.D.C. 2014) 11, 15, 17

W. Watersheds Project v. Pool,
942 F. Supp. 2d 93 (D.D.C. 2013) 11, 14, 15, 17

W. Watersheds Project v. Tidwell,
No. 17-cv-1063, 2017 WL 5900076 (D.D.C. Nov. 20, 2017) 11

Constitutional Provisions

U.S. Const. art. IV, § 3, cl. 2. 2

Statutes

28 U.S.C. § 1404(a) 6

54 U.S.C. § 320301(a), (b) 2, 8

Other Authorities

Pres. Proc. No. 9682 (Dec. 4, 2017), _reprinted in_ 82 Fed. Reg. 58,089 5

Pres. Proc. No. 9681 (Dec. 4, 2017), _reprinted in_ 82 Fed. Reg. 58,081 5

Exec. Order No. 13,792 (Apr. 26, 2017), _reprinted in_ 82 Fed. Reg. 20,429 3

Pres. Proc. No. 9423, 81 Fed. Reg. 22,505 (2016) 3

Pres. Proc. No. 7395, 66 Fed. Reg. 7,347 (2001) 3

Pres. Proc. No. 1713, 43 Stat. 1968 (1924) 3

Pres. Proc. No. 794, 35 Stat. 2175 (1908) 3

Pres. Proc. No. 793, 35 Stat. 2174 (1908) 3

82 Fed. Reg. 22,016 (May 11, 2017) 3

Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 Ga. L. Rev. 473 (2003) 8

INTRODUCTION

Plaintiffs ask the Court to decide a question of first impression: whether the President of the United States acted without statutory and constitutional authority when he purported to dismantle the Grand Staircase-Escalante National Monument, which was designated under the Antiquities Act of 1906. Defendants seek to transfer this case away from the Plaintiffs' chosen forum to the District of Utah, but they have identified no case (and Plaintiffs are aware of none) transferring claims against the President away from this District. In fact, this Court consistently denies transfer motions where plaintiffs sue D.C.-based federal officials who were personally and substantially involved in the challenged decisions, even if those decisions have effects on land located elsewhere. The cases on which Defendants rely, in contrast, lacked meaningful involvement by *any* D.C.-based federal official, much less the President.

Defendants acknowledge, as they must, that the instant case has a meaningful connection to the District of Columbia. Plaintiffs raise statutory and separation-of-powers claims against the President, who based his unlawful decision on the recommendations of the Secretary of the Interior. Six of the Plaintiffs are headquartered or maintain offices in this District. Plaintiffs' decision to litigate their claims here is therefore entitled to "substantial deference." *The Wilderness Soc'y v. Babbitt*, 104 F. Supp. 2d 10, 15 (D.D.C. 2000). Defendants come nowhere close to carrying their heavy burden of justifying transfer out of this Court.

BACKGROUND

I. The Antiquities Act

The Property Clause of the U.S. Constitution gives Congress the exclusive "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. art. IV, § 3, cl. 2. Toward the end of the nineteenth century, Congress began using its Property Clause power to protect certain naturally and historically significant public lands by designating them as national parks for all future Americans to enjoy. The legislative process to establish national parks was slow, however, and these lands remained vulnerable to development, looting, and homesteading in the meantime.

In 1906, therefore, Congress delegated a portion of its Property Clause power to the President by passing the Antiquities Act, which authorizes the President to designate "national monuments" to protect "objects of historic or scientific interest" and surrounding federal lands. 54 U.S.C. § 320301(a), (b). As the Supreme Court observed, "[a]n essential purpose of monuments created pursuant to the Antiquities Act . . . is to conserve . . . the natural and historic objects . . . in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." *Alaska v. United States*, 545 U.S. 75, 103 (2005) (quotation marks omitted). In the 112 years since its enactment, the Antiquities Act has provided lasting protection for important icons of our nation's cultural, natural, and historical heritage. In total, Presidents have designated 157 national monuments in 32 states,

4 territories, 2 oceans, and this District. *See* Compl. ¶ 65 (Dec. 4, 2017) (ECF No. 1). These monuments tell a story as rich, varied, and complex as the nation itself.[1]

II. Defendants' review and dismantling of national monuments

A. President Trump's new "policy" on national monuments

President Trump has taken a sharply different approach to national monuments from his predecessors. Shortly after taking office, he issued an executive order setting forth a new national monument "[p]olicy." Exec. Order No. 13,792, § 1 (Apr. 26, 2017), *reprinted in* 82 Fed. Reg. 20,429 (May 1, 2017). President Trump's order expressed concern that monument designations may, among other things, "create barriers to achieving energy independence." *Id.* § 1. The President therefore called on Secretary of the Interior Ryan Zinke to "review" certain national monuments designated or expanded since 1996 and to recommend actions based on "the policy set forth in . . . this order." *Id.* § 2(a), (d).

In May 2017, the Department of the Interior released a list of twenty-seven national monuments across the nation that Secretary Zinke intended to review. 82 Fed. Reg. 22,016 (May 11, 2017). Bears Ears and Grand Staircase-Escalante National Monuments were both on the list. *Id.* at 22,017. The Department of the Interior received roughly 2.8 million public comments relating to Zinke's

[1] *See, e.g.*, Pres. Proc. No. 793, 35 Stat. 2174 (1908) (Muir Woods National Monument in California); Pres. Proc. No. 794, 35 Stat. 2175 (1908) (Grand Canyon National Monument in Arizona); Pres. Proc. No. 1713, 43 Stat. 1968 (1924) (Statue of Liberty in New York); Pres. Proc. No. 7395, 66 Fed. Reg. 7,347 (2001) (Minidoka Internment National Monument in Idaho); Pres. Proc. No. 9423, 81 Fed. Reg. 22,505 (2016) (Belmont-Paul Women's Equality National Monument in D.C.).

monuments review, and Secretary Zinke acknowledged those comments were "overwhelmingly in favor of maintaining existing monuments." Ryan K. Zinke, Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act at 3 (2017), at https://on.doi.gov/2AuoJXd. Nonetheless, Secretary Zinke's report—submitted to the President on August 24, 2017—recommended that the President diminish Bears Ears and Grand Staircase-Escalante, and rescind or reduce protections for several other monuments throughout the country. *Id.* at 10-18; *see also* Compl. ¶ 97.

On October 27, 2017, President Trump met with Secretary Zinke at the White House, where the President reportedly decided to approve the Secretary's recommendations regarding Bears Ears and Grand Staircase-Escalante. *See* White House Press Briefing (Oct. 27, 2017), at http://bit.ly/2Ex83OS; Juliet Eilperin, *Trump Says He Will Shrink Bears Ears National Monument*, Wash. Post (Oct. 27, 2017), at http://wapo.st/2DUu6Se; Michael Finnegan, *Remarkable Dinosaur Discoveries Under Threat with Trump Plan to Shrink National Monument in Utah, Scientists Say*, L.A. Times (Oct. 27, 2017), at https://tinyurl.com/yc3whdaw. That same day, the White House announced that President Trump would travel to Utah in December. *See* White House Press Briefing (Oct. 27, 2017), at http://bit.ly/2Ex83OS.

B. President Trump's proclamations

On December 4, 2017, President Trump traveled to Salt Lake City for about three hours. During a brief ceremony, he signed two proclamations purporting to

dismantle the Bears Ears and Grand Staircase-Escalante National Monuments. After signing the proclamations, President Trump promptly flew back to the White House. *See* Office of the Press Sec'y, Press Schedule for Monday, December 4, 2017, at http://bit.ly/2DVt4pm.

Together, these two proclamations attempt to rescind national monument protections for more than two million acres of federal public lands with incomparable archaeological, paleontological, cultural, and natural significance. *See* Pres. Proc. No. 9681 (Dec. 4, 2017), *reprinted in* 82 Fed. Reg. 58,081 (eliminating roughly 85% of Bears Ears); Pres. Proc. No. 9682 (Dec. 4, 2017), *reprinted in* 82 Fed. Reg. 58,089 (eliminating roughly half of Grand Staircase-Escalante). Both proclamations state that, as of February 2, 2018, the lands carved out of the monuments "shall be open" to mining activity and leasing for coal, oil, and gas development. 82 Fed. Reg. at 58,085; 82 Fed. Reg. at 58,093.

President Trump's dismantling of the Bears Ears and Grand Staircase-Escalante National Monuments drew nationwide attention.[2] By the end of the week, five complaints were filed in this Court challenging the proclamations. Meanwhile, President Trump continues to review Secretary Zinke's recommendations for other national monuments elsewhere in the country.

[2] *See Grand Staircase Escalante Partners* Plfs.' Opp. Br. at note 12, No. 17-cv-02591 (ECF No. 22) (collecting national press coverage).

ARGUMENT

I. Legal standard

Under 28 U.S.C. § 1404(a), a district court may transfer a case to another venue "[f]or the convenience of parties and witnesses, in the interest of justice." When venue is proper in this forum, as Defendants agree it is here, transfer "must be justified by particular circumstances that render the forum inappropriate by reference to considerations specified in the statute." *Stand Up for Cal.! v. U.S. Dep't of the Interior*, 919 F. Supp. 2d 51, 63 (D.D.C. 2013) (quoting *In re DRC, Inc.*, 358 F. App'x 193, 194 (D.C. Cir. 2009)). "Absent such circumstances, transfer in derogation of properly laid venue is unwarranted." *Oceana v. Bureau of Ocean Energy Mgmt.* ("*BOEM*"), 962 F. Supp. 2d 70, 73 (D.D.C. 2013) (quoting *Starnes v. McGuire*, 512 F.2d 918, 925-26 (D.C. Cir. 1974) (en banc)).

Defendants bear the burden of establishing that transfer is warranted. *Greater Yellowstone Coal. v. Bosworth*, 180 F. Supp. 2d 124, 127 (D.D.C. 2001). That burden is a "heavy" one. *Thayer/Patricof Educ. Funding, L.L.C. v. Pryor Res., Inc.*, 196 F. Supp. 2d 21, 31 (D.D.C. 2002) (quotation marks omitted). "[A] court may not transfer a case from a plaintiff's chosen forum simply because another forum, in the court's view, may be superior to that chosen by the plaintiff." *Sierra Club v. Van Antwerp*, 523 F. Supp. 2d 5, 11 (D.D.C. 2007) (quotation marks omitted). Rather, the "main purpose of section 1404(a)" is to allow transfer where litigation in the original forum would be "oppressively expensive, inconvenient, difficult or harassing to defend." *BOEM*, 962 F. Supp. 2d at 73 (quoting *Starnes*, 512 F.2d at 927).

The Court considers several public- and private-interest factors when evaluating a motion to transfer. The public-interest factors include: (1) the courts' familiarity with the governing laws; (2) the courts' relative congestion; and (3) the local interest in deciding local controversies at home. *Louis v. Hagel*, 177 F. Supp. 3d 401, 408 (D.D.C. 2016). The private-interest factors include: (1) the plaintiffs' choice of forum; (2) the defendants' choice of forum; (3) where the claim arose; (4) the convenience of the parties; (5) the convenience of the witnesses; and (6) the ease of access to sources of proof. *Id*. at 406.

Here, both the public- and private-interest factors favor keeping this nationally significant case about presidential power in the District of Columbia. Contrary to Defendants' main contention, this is no purely "localized" controversy. Defs.' Mem. in Supp. of Mot. to Transfer at 7 (ECF No. 18) (hereinafter Mot.). Rather, this case raises issues of national—not just local—significance about the limits of presidential power. Moreover, Plaintiffs have significant ties to this District—six Plaintiffs in this case have headquarters or maintain offices here—so their choice of venue is entitled to substantial deference. Plaintiffs' claims also have significant ties to this District, as the decision they challenge was made by the President himself, based on the recommendations of the Secretary of the Interior. This District is convenient to all the parties—indeed, it is the home district of every named Defendant—and it is less congested than the District of Utah. Thus, as explained below, Defendants have not met their "heavy burden" to justify transfer. *Thayer*, 196 F. Supp. 2d at 37.

II. The public-interest factors favor venue in the District of Columbia

A. This case about the President's power to dismantle national monuments concerns a national, not localized, controversy

This case turns on whether the President of the United States acted without statutory and constitutional authority when he purported to dismantle national monuments designated under the Antiquities Act. Because the Property Clause assigns power over public lands exclusively to Congress, the President can exercise such power only if Congress has delegated it to him. *See Sioux Tribe of Indians v. United States*, 316 U.S. 317, 326 (1942). In passing the Antiquities Act, Congress authorized the President to "*declare* . . . national monuments" and to "*reserve* parcels of land." 54 U.S.C. § 320301(a), (b) (emphases added). The Act did not authorize the President to rescind or reduce national monuments, as President Trump now purports to do. *See* Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 Ga. L. Rev. 473, 552-66 (2003) (explaining that Congress delegated one-way authority). Therefore, Plaintiffs allege, President Trump has acted without statutory authority and intruded on Congress's exclusive power under the Property Clause of the U.S. Constitution. *See* Compl. ¶¶ 143-64.

This case—involving a *national* monument of significant scientific, historic, and cultural importance—concerns a controversy with "national implications" and raises significant statutory and separation-of-powers questions "regarding the scope of [the President's] authority." *Forest Cty. Potawatomi Cmty. v. United States*, 169 F. Supp. 3d 114, 118 (D.D.C. 2016) (quoting *Stand Up*, 919 F. Supp. 2d at 64). Defendants themselves have acknowledged as much. *See* Defs.' Mot. for Extension

at 3 (ECF No. 19) (requesting more time to respond to the complaint because it "raises novel legal issues" regarding "the scope of the President's authority under the Antiquities Act"). This case is therefore "not a land dispute," even though it may "implicate the use of land" in a particular district. *Stand Up*, 919 F. Supp. 2d at 64-65. Rather, this case is a dispute about the limits of presidential power that has effects well beyond the land in question. That dispute is appropriately decided in this District. Tellingly, Defendants fail to identify a single case transferring claims against the President away from this forum. Mot. at 7-12.

Moreover, although the challenged proclamation has effects in Utah, the "issues in this case" are matters of first impression that may resolve whether the President can revoke or modify national monuments located "in dozens of states." *Potawatomi Cmty.*, 169 F. Supp. 3d at 118. Indeed, President Trump is still actively considering Secretary Zinke's recommendations to eliminate protections for several other national monuments throughout the country. Where Plaintiffs chose to bring in this District "a case [that] involves such 'national implications,' the case cannot be considered the type of purely 'localized controversy' that would warrant transfer to the local district court." *Potawatomi Cmty.*, 169 F. Supp. 3d at 118 (quoting *Stand Up*, 919 F. Supp. 2d at 64).

Defendants attempt to downplay the national significance of this case, characterizing it as a mere "localized controversy" because the land at issue is in Utah and the effects of resulting management changes will primarily be felt there. Mot. at 7. Defendants even suggest that this local interest is "dispositive" of the

transfer analysis here. *Id*. Their position is flatly contradicted by this Court's case-law. In fact, as the Court has observed, the "presence of a local interest, in the form of property located within the proposed transferee district, is *not* dispositive in the transfer analysis." *Nat'l Ass'n of Home Builders v. EPA*, 675 F. Supp. 2d 173, 178 (D.D.C. 2009) (emphasis added); *see also Van Antwerp*, 523 F. Supp. 2d at 13.

In contrast to Defendants' overly narrow focus on the location of the monument, this Court considers a "wide variety of factors" to determine whether a controversy is local in nature, including "whether the issue involved federal constitutional issues rather than local property laws or statutes;" "whether the controversy has some national significance; and whether there was personal involvement by a District of Columbia official." *Otay Mesa Prop. L.P. v. U.S. Dep't of Interior*, 584 F. Supp. 2d 122, 126 (D.D.C. 2008). Here, Plaintiffs raise constitutional challenges to a decision by the President, made with the substantial involvement of the Secretary of the Interior, regarding nationally significant conservation lands. Thus, even if the President's decision "affects" federal public lands in Utah, the "remaining factors implicate a strong national interest in the controversy," and this overall public-interest factor "weighs against transfer." *Defs. of Wildlife v. Salazar*, No. 12-cv-1833, 2013 WL 12316872, at *4 (D.D.C. Apr. 11, 2013).

Indeed, this Court consistently denies transfer motions in land and wildlife cases where D.C. officials were "personally involved" in the challenged decision and the issue had some "national significance." *Id.* at *4; *see also, e.g.*, *Greater Yellowstone Coal. v. Kempthorne*, No. 07-cv-2111, 2008 WL 1862298, at *7 (D.D.C.

Apr. 24, 2008) (denying transfer based on "the involvement of multiple Washington-based officials" and "the national scope of the environmental issues"); *Bosworth*, 180 F. Supp. 2d at 128-29 (denying transfer where "federal government officials in the District of Columbia were involved in the decision" and the case had "some national significance"); *Wilderness Soc'y*, 104 F. Supp. 2d at 13-14 (denying transfer where Interior Secretary's "heavy involvement" in challenged decision "highlights the significance of the issue to the entire nation"); *Home Builders*, 675 F. Supp. 2d at 178 (denying transfer where "involvement of officials outside of Arizona indicates that the validity of the determination carries significance beyond Arizona").

In contrast, the government actions at issue in the cases on which Defendants rely, *see* Mot. at 7-10, lacked any meaningful involvement by *any* D.C. officials, much less the President himself. And none concerned constitutional questions. Not only are Defendants' cases inapposite, but they also demonstrate that the substantial involvement of D.C.-based officials is centrally relevant to evaluating the District's ties to a controversy.[3]

[3] *See W. Watersheds Project v. Tidwell*, No. 17-cv-1063, 2017 WL 5900076, at *6 (D.D.C. Nov. 20, 2017) (noting "the absence of any allegation that the challenged decision was made *with the involvement* of any D.C.-based Forest Service officials"); *Alaska Wilderness League v. Jewell*, 99 F. Supp. 3d 112, 119 (D.D.C. 2015) ("[M]aterial decisions in this case came *not* from the Department of the Interior in Washington, D.C., but from the Fish and Wildlife Service's regional office in Alaska."); *W. Watersheds Project v. Jewell ("Jewell")*, 69 F. Supp. 3d 41, 44 (D.D.C. 2014) ("[T]he District of Columbia has no meaningful ties to the controversy . . . ."); *W. Watersheds Project v. Pool ("Pool")*, 942 F. Supp. 2d 93, 99 (D.D.C. 2013) ("Plaintiffs allege no specific involvement or meaningful role by any BLM, NPS, or DOI personnel in Washington"); *Pres. Soc'y of Charleston v. U.S. Army Corps of Eng'rs*, 893 F. Supp. 2d 49, 59 (D.D.C. 2012) ("The controversy . . . involves a decision made by local actors in South Carolina . . . ."); *SUWA v. Lewis*, 845 F. Supp.

In addition to raising nationally significant legal questions, this case involves lands that Defendants acknowledge are of "national importance" and have attracted "national attention." Mot. at 10, 11. Secretary Zinke's monuments review sparked nearly three million public comments from at least 49 of 50 states, and President Trump's decision drew widespread national media coverage. *See Grand Staircase Escalante Partners* Plfs.' Opp. Br. at notes 10 and 12, No. 17-cv-02591 (ECF No. 22) (collecting sources); *see also Wilderness Soc'y*, 104 F. Supp. 2d at 17 (citing public comments and national press coverage as evidence of case's national significance); *Kempthorne*, 2008 WL 1862298, at *6 (the fact that public comments "came from every state" showed that the decision involved a "matter of great national importance"). Nearly a dozen national environmental organizations, five federally recognized tribes with members in multiple states, and two other plaintiff groups have challenged President Trump's proclamations in court. *See Wilderness Soc'y*, 104 F. Supp. 2d at 17 (noting that "commitment of five national environmental groups to th[e] lawsuit" demonstrated national significance); *BOEM*, 962 F. Supp.

2d 231, 235 (D.D.C. 2012) ("[T]he BLM's Washington, D.C. office did not play a substantial role [in the challenged decision]"); *Nat'l Wildlife Fed'n v. Harvey*, 437 F. Supp. 2d 42, 50 (D.D.C. 2006) ("Plaintiffs have not shown that District of Columbia officials were personally involved in th[e] decisions."); *SUWA v. Norton*, 315 F. Supp. 2d 82, 87 (D.D.C. 2004) ("[T]he actual lease decisions . . . were made by officials in BLM's Utah office."); *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 68 (D.D.C. 2003) ("There was no Washington-level involvement in any part of the decision-making process." (alteration omitted)); *SUWA v. Norton*, No. 01-cv-2518, 2002 WL 32617198, at *3 (D.D.C. June 28, 2002) ("The administrative decision . . . was made without assistance from the BLM Washington, D.C. office."); *Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13, 18 (D.D.C. 1996) ("The decision-making process . . . occurred in Colorado, not in Washington, D.C. . . . .").

2d at 77 (similar); Order, ECF No. 19, *Ctr. for Biological Diversity v. Tidwell*, No. 16-cv-1049 (D.D.C. Feb. 14, 2017) (Chutkan, J.) (denying transfer where "the case was brought by national nonprofit organizations and has both nationwide and local concerns").

As these indicia make clear, ensuring lasting protections for the "scenery, natural objects and wildlife" of these two national monuments is "of great national importance." *Kempthorne*, 2008 WL 1862298, at *6; *see Grand Staircase Escalante Partners* Plfs.' Opp. Br. at Section I(A)(1)(b), No. 17-cv-02591 (ECF No. 22) (describing national importance of Grand Staircase-Escalante); *see also Utah Diné Bikéyah* Plfs.' Opp. Br. at Section I(A), No. 17-cv-02605 (ECF No. 27) (describing national importance of Bears Ears).

Plaintiffs do not deny that the people of Utah have an interest in the outcome of these cases. But as this Court has explained, that is not the dispositive question. *See Oceana, Inc. v. Pritzker*, 58 F. Supp. 3d 2, 9 (D.D.C. 2013) (denying transfer even though "the citizens of [Massachusetts] will be profoundly affected by the outcome of this case"); *see also Fund for Animals v. Norton*, 352 F. Supp. 2d 1, 2 (D.D.C. 2005) (denying transfer despite strong local interest in Wyoming). Rather, "the Court must determine whether [the cases present] a 'question of national policy or national significance.'" *Pritzker*, 58 F. Supp. 3d at 9 (alteration omitted) (quoting *BOEM*, 962 F. Supp. 2d at 77). If they do—as they do here—the Court's case-law makes clear that the cases are "quite appropriately resolved here," or "at least, no

more appropriately resolved elsewhere." *Pritzker*, 58 F. Supp. 3d at 9 (quoting *BOEM*, 962 F. Supp. 2d at 77). This factor thus weighs strongly against transfer.

B. This forum is familiar with the governing law and substantially less congested than the District of Utah

Defendants concede that the transferee forum's familiarity with the governing law does not support transfer. Mot. at 12. "[T]he issue in this case is solely whether [officials in] the federal government complied with federal law." *Concerned Rosebud Area Citizens v. Babbitt*, 34 F. Supp. 2d 775, 776 (D.D.C. 1999). That issue is "routinely and properly answered in this District and Circuit." *Id.*; *cf. Tulare Cty. v. Bush*, 306 F.3d 1138 (D.C. Cir. 2002) (resolving Antiquities Act challenge); *Mtn. States Legal Found. v. Bush*, 306 F.3d 1132 (D.C. Cir. 2002) (same).

The remaining public interest factor—the relative congestion of the courts—"weighs in favor of keeping the case in plaintiffs' chosen forum." *Pool*, 942 F. Supp. 2d at 101. Defendants acknowledge that "the District of Utah is more congested than this District." Mot. at 13. In the twelve-month period ending September 30, 2017, the District of Utah had 486 cases pending per judge, versus 263 in the District of Columbia. *See* Admin. Office of U.S. Courts, *U.S. District Courts: National Judicial Caseload Profile* (2017), at http://bit.ly/2GFaZJU. The resulting large number of filings per judgeship in the District of Utah has contributed to what the Judicial Conference deems a "judicial emergency." U.S. Courts, *Judicial Emergencies* (last accessed Feb. 1, 2018), at http://bit.ly/2DTz2Tw. A few years ago, this Court found an even smaller "difference in raw numbers" between the two forums' caseloads to be "substantial," thus weighing against transfer. *Pool*, 942 F.

Supp. 2d at 102 n.3. Although this factor, on its own, may not be dispositive, Mot. at 13, it is clearly important where, as here, it is one of multiple factors "in favor of maintaining venue in this district." *Jewell*, 69 F. Supp. 3d at 44. "Because the District of Utah has [over 200] more pending cases per judgeship than the District of Columbia, . . . this factor weighs against transfer." *Pool*, 942 F. Supp. 2d at 102.

III. The private-interest factors favor venue in this forum

A. Plaintiffs' choice is entitled to substantial deference because the parties and claims have significant ties to the District

"In most cases, 'a plaintiff's choice of forum is . . . a paramount consideration that is entitled to great deference in the transfer inquiry.'" *Renchard v. Prince William Marine Sales, Inc.*, 28 F. Supp. 3d 1, 11 (D.D.C. 2014) (alteration in original). That deference is lessened only if the chosen forum has "no meaningful relationship to the plaintiff's claims or to the parties." *Id.* (alteration and quotation marks omitted). In other words, so long as the parties or claims have some "meaningful ties" to this District, the Court "must afford substantial deference to the plaintiffs' choice of forum." *Bosworth*, 180 F. Supp. 2d at 128; *see also Wilderness Soc'y*, 104 F. Supp. 2d at 15. Here, given Plaintiffs' ties to the forum and the substantial personal involvement of District of Columbia officials in the challenged decisions, Plaintiffs' choice of venue is entitled to substantial deference.

1. Plaintiffs' ties to the District of Columbia

Plaintiffs have significant ties to this forum: six Plaintiffs in the instant case are either headquartered in the District of Columbia or maintain offices here. *See* Compl. ¶ 16 ("Plaintiffs The Wilderness Society and Defenders of Wildlife reside in

this District and the Southern Utah Wilderness Alliance, Natural Resources Defense Council, Center for Biological Diversity, and Sierra Club maintain offices in the District."). Because districts "are presumed to have an interest in suits involving their residents," Plaintiffs here—given their strong ties to the District—are "entitled to a strong presumption in favor of the[ir] chosen forum." *Pritzker*, 58 F. Supp. 3d at 5, *see also, e.g.*, *Wilderness Soc'y*, 104 F. Supp. 2d at 14-15 (finding plaintiffs' forum choice was "entitled to substantial deference" where "[f]our of the [eight] plaintiffs are headquartered in Washington, D.C. and two others have offices here"); *Bosworth*, 180 F. Supp. 2d at 129 (deference where two of the five plaintiffs had offices in the District); *Van Antwerp*, 523 F. Supp. 2d at 11 ("afford[ing] great deference" where "at least one" plaintiff had its headquarters in the District).

Defendants try to avoid the deference owed to Plaintiffs' choice by observing that one Plaintiff out of ten is based in Utah, and others have members there or are "located in [other] Western states." Mot. at 14. But these observations do not undercut Plaintiffs' many ties to this forum. In fact, even the single Utah-based Plaintiff also maintains a D.C. office and has members who reside in this District. *See* Compl. ¶ 29. The cases on which Defendants rely involved instances where "*all* of the plaintiffs" were based *solely* in the transferee district and their claims "lack[ed] . . . any meaningful ties to this jurisdiction." *Airport Working Grp. of Orange Cty., Inc. v. U.S. Dep't of Def.*, 226 F. Supp. 2d 227, 230 (D.D.C. 2002); *see also Pres. Soc'y of Charleston*, 893 F. Supp. 2d at 54 ("Plaintiffs are based in

Charleston [and their claim] has no meaningful nexus with the District of Columbia."). That is plainly not the case here. Not only do Plaintiffs themselves have "significant ties" to this forum, but, as explained below, their claims have a significant nexus to the District of Columbia as well.

2. Involvement of District of Columbia officials

As described above, Plaintiffs challenge decisions by the President, made with the substantial personal involvement of the Secretary of the Interior. This Court has repeatedly found a strong nexus to the District of Columbia where Plaintiffs challenge a decision that entails "significant involvement on the part of high-level Executive Branch officials, up to and including those in the White House." *Kempthorne*, 2008 WL 1862298, at *5; *see also supra* at 7-13.

Defendants concede, as they must, that President Trump's decision "has a connection to the District of Columbia." Mot. at 15. This concession distinguishes the instant case from those on which Defendants principally rely.[4] They nonetheless try to downplay that connection by observing that the President "announced and signed the Proclamation[s] in Utah." *Id*. Nonsense. This District's "factual connection to the dispute cannot be doubted" where high-level, D.C.-based officials are "directly and personally involved in announcing the [decision] . . . at a press conference," even if that press conference is held elsewhere. *Gulf Restoration*

[4] *See, e.g.*, *Alaska Wilderness League*, 99 F. Supp. 3d at 119 ("None of this has any direct connection to the District of Columbia . . . ."); *Jewell*, 69 F. Supp. at 44 ("[T]he District of Columbia has no meaningful ties to the controversy . . . ."); *Pool*, 942 F. Supp. 2d at 97 (same).

Network v. Jewell, 87 F. Supp. 3d 303, 312 (D.D.C. 2015) (quotation marks and alteration omitted). The President cannot erase this forum's ties to the controversy merely by taking a three-hour trip to another district for a signing ceremony.

B. Defendants' forum choice cannot overcome the substantial deference owed to Plaintiffs' choice

The second private-interest factor, a defendant's choice of forum, is "not ordinarily entitled to deference." *Potawatomi Cmty.*, 169 F. Supp. 3d at 118 (quotation marks omitted). Defendants nevertheless contend that the Court should give their choice some weight, citing *Gulf Restoration Network*. Mot. at 16. But critically, the plaintiff in *Gulf Restoration Network* lacked any ties to the District of Columbia, and the Court found only that the defendant's forum choice "to some degree counterbalance[d] the *diminished deference* owed to Plaintiff's choice of forum" in those circumstances. 87 F. Supp. 3d at 313 (emphasis added). Because Plaintiffs here have significant ties to this District, *see supra* at 15-17, their choice is entitled to "substantial"—not diminished—deference. *See Renchard*, 28 F. Supp. 3d at 12; *Bosworth*, 180 F. Supp. 2d at 128. Defendants' preference for a different forum therefore "does not overcome the substantial deference afforded to plaintiffs' choice of the District of Columbia." *Defs. of Wildlife*, 2013 WL 12316872, at *3.

C. The claims arose in the District of Columbia

The third factor favors retaining jurisdiction in this forum because "courts generally focus on where the decision-making process occurred to determine where the claims arose." *Home Builders*, 675 F. Supp. 2d at 179. Here, the relevant "decision-making process"—President Trump's executive order directing the

national monuments review, Secretary Zinke's development and transmittal of his recommendations to the President, and President Trump's decision to adopt Secretary Zinke's recommendations—"took place in this district." *Akiachak Native Cmty. v. Dep't of Interior*, 502 F. Supp. 2d 64, 68 (D.D.C. 2007).

Defendants "do not dispute" that their decision-making process "occurred in the District of Columbia." Mot. at 17. President Trump's three-hour trip to Salt Lake City to sign his already-drafted proclamations does not change that fact. *See supra* at 17-18. President Trump plainly decided to adopt Secretary Zinke's recommendations on Bears Ears and Grand Staircase well before he flew to Salt Lake City. Similarly, that "Secretary [Zinke] travelled to Utah" during his monument review, *see* Mot. at 17, does not change the fact that he made his recommendations to the President in this District. Indeed, if anything, Secretary Zinke's trip weighs *against* transfer, for it demonstrates the substantial involvement of a high-ranking D.C. official in making the challenged decision. *See Wilderness Soc'y*, 104 F. Supp. 2d at 14 (finding that Interior Secretary's "six-day visit" to Alaska "highlights the [national] significance of this issue"). Because Plaintiffs' "claims arose primarily in the District of Columbia," this factor "weighs against transfer." *Home Builders*, 675 F. Supp. 2d at 179.

D. This forum is more convenient for all the parties

The fourth factor also favors keeping these cases in the District of Columbia because this forum is convenient for all the parties. Every one of the Defendants works and resides in this District. Defendants thus "cannot reasonably claim to be inconvenienced by litigating in this district. After all, this is [their] home forum."

Pritzker, 58 F. Supp. 3d at 7. Defendants nonetheless curiously suggest that "Utah will be a more convenient forum for this litigation" because several Plaintiffs and their counsel are "located in Western states." Mot. at 14-15. But Plaintiffs "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. Further, Defendants and their counsel, none of whom are based in Utah, would also have to travel if the case were litigated there. *See Defs. of Wildlife*, 2013 WL 12316872, at *4. Plainly, the convenience of the parties does not justify transferring the case out of this District.

E. Defendants agree the final private-interest factors do not help them meet their heavy burden of justifying transfer

Finally, where, as here, "live testimony is unlikely, the Court need not consider the fifth and sixth [private-interest] factors." *Kempthorne*, 2008 WL 1862298, at *4. The convenience of witnesses and ease of access to sources of proof are largely irrelevant because, as Defendants acknowledge, Mot. at 17-18, this case "in all likelihood [will] be decided on motions for summary judgment and will not require a trial." *Bosworth*, 180 F. Supp. 2d at 128 n.3. Thus, even if these factors are neutral, they "do nothing to help Defendants meet their burden of showing that transfer is warranted in this case." *Potawatomi Cmty.*, 169 F. Supp. 3d at 117 n.3.

CONCLUSION

For the foregoing reasons, Defendants' motion to transfer should be denied.

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Respectfully submitted,

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