

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

FOREST COUNTY POTAWATOMI
COMMUNITY, *a federally-recognized
Indian Tribe,*

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et
al.,

Defendants.

CASE NO. 15-105 CKK

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANTS'
MOTION TO TRANSFER VENUE**

ORAL ARGUMENT REQUESTED

Judge Colleen Kollar-Kotelly

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Plaintiff Forest County Potawatomi Community (“FCPC” or “Tribe”) opposes the Motion to Transfer Venue (doc. 19) filed by Defendants United States of America, United States Department of the Interior, Secretary of the Interior Sally Jewell, and Assistant Secretary - Indian Affairs Kevin Washburn (collectively referred to as the “Federal Defendants”). Federal Defendants seek to transfer venue in this case to the United States District Court for the Eastern District of Wisconsin (the “Eastern District”). Federal Defendants have failed to meet their burden to establish that FCPC’s choice of venue is inappropriate. FCPC respectfully submits that its interests are best served by having this matter litigated in this Court.

I. OVERVIEW

This is a lawsuit under the Administrative Procedures Act, 5 U.S.C. §§ 701-706 (“APA”) challenging the decision of the Federal Defendants’ to disapprove of an amendment to a gaming compact between FCPC and the State of Wisconsin (the “2014 Compact Amendment”) under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et. seq, (“IGRA”). FCPC contends that the Federal Defendants disapproved the 2014 Compact Amendment for reasons other than the limited grounds allowed under 25 U.S.C. § 2710(d)(8)(B) for such a disapproval. The merits of FCPC’s allegations will be based on the Administrative Record of the Federal Defendants’ consideration of the 2014 Compact Amendment, which occurred entirely in Washington, D.C. No relevant agency action occurred at the regional office of the Bureau of Indian Affairs in Minneapolis, MN or in the Eastern District. The Administrative Record has yet to be produced by the Federal Defendants in this litigation. Federal Defendants memorialized the basis for its decision in a letter dated January 29, 2015 to FCPC Chairman, Hon. Harold Frank (“Disapproval Letter”)(doc.1-2).

The Motion to Transfer Venue requires this Court to determine whether the Federal Defendants have met their burden to establish the special circumstances required for this Court to reject FCPC's choice of venue. The Federal Defendants argue the relevant venue factors are neutral, except for the local interests factor, when they are not. FCPC also disputes the Federal Defendants' assertion that "the Eastern District of Wisconsin has experience with the issues at the center of this action, especially tribal efforts to obtain off-reservation gaming in both Milwaukee and Kenosha, Wisconsin." The Eastern District has no such experience and, in any event, this case will not require the Court to decide whether any off-reservation casino should or should not be approved. Rather, the Court will only determine whether the Federal Defendants' properly disapproved the 2014 Compact Amendment between FCPC and the State of Wisconsin. Because this litigation is anticipated to involve motions to supplement and or expand the Administrative Record of agency action in Washington, D.C., the convenience of the forum to the officials likely subject to deposition or related discovery is also a significant factor. Because all of the officials and their records are in Washington, D.C., this factor weighs heavily against transfer of venue. Finally, Federal Defendants fail to establish that the "local interests" factor overcomes the presumption that the case should remain in this Court. The cases cited by the Federal Defendants are inapposite. Furthermore, this case involves significant questions of national importance. For these reasons, Federal Defendants' Motion to Transfer Venue should be denied.

II. ARGUMENT

It is well-established that a plaintiff's choice of forum should generally control and "should rarely [be] disturb[ed]." *Brown v. Sun Trust Banks*, --- F.Supp.3d ----, 2014 WL 4352560 (D.D.C. 2014); *Airline Pilots Ass'n v. Eastern Airlines*, 672 F. Supp. 525, 526 (D.D.C. 1987); *Paradyne Corp. v. Dept. of Justice*, 647 F. Supp. 1228, 1231 (D.D.C. 1986). While 28 U.S.C. § 1404(a) provides that a federal court may transfer a civil action "[f]or the convenience of parties and witnesses, in the interest of justice," the moving party must support a motion to transfer by demonstrating that considerations of convenience and the interest of justice weigh in favor of doing so. *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 65 (D.D.C. 2003). Indeed, the movant "'bears a heavy burden' in order to establish that the plaintiff's choice of forum is inappropriate." *Southern Utah Wilderness Alliance v. Norton*, 315 F. Supp. 2d 82, 86 (D.D.C. 2004) (citing *Pain v. United Tech. Corp.*, 637 F.2d 775, 784 (D.C.Cir.1980)); *National Shopman Pension Fund v. Stamford Iron and Steel Works*, 999 F.Supp.3d 229 (D.D.C. 2013) ("faces uphill battle"). The broad "interest of justice" requirement of Section 1404(a) establishes an "individualized, case-by-case consideration of convenience and fairness." *Stand Up for California! v. United States Dept. of Interior*, 919 F.Supp.2d 51, 63 (D.D.C. 2013) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). Transfer of venue is particularly appropriate where a case with common issues and parties is already pending in the proposed venue.¹ See, *Coady v. Ashcroft & Gerel*, 223 F.3d 1, 10 (1st Cir. 2000) (case transferred from District of Massachusetts to D.C. District Court because of litigation pending in D.C. District). But that is not the case

¹ Such pending litigation of great commonality in the proposed venue is a main factor or the main factor in all of the cases cited by Federal Defendants, as discussed in greater detail in Section II(C)(1), below.

here. No related cases are pending in the Eastern District.²

Federal Defendants argue that little or no deference should be granted to FCPC's choice of venue (doc. 19-2 at 12-13). However, this Court has recently ruled that although less deference is warranted where the Plaintiff does not reside in the selected venue, the moving party's choice of venue is entitled to no deference at all. The moving party still bears the burden of establishing that convenience and the interests of justice weigh in favor of the transfer. *Associated Producers Ltd. V. Vanderbilt University*, ____ F.Supp.2d ____, 2015 WL 7335213 at *8 (Dec. 23 D.D.C. 2014); *Foote v. Chu*, 858 F.Supp.2d 116 (D.D.C. 2012) (Record is not robust as to why Dept. of Energy employment discrimination practices in New Mexico differ from such practices nationally, therefore local interests factor did not overcome deference to Plaintiff's choice of venue); *Ravulapalli v. Napolitano*, 773 F.Supp.2d 41,56 (D.D.C. 2011) ("Plaintiffs' claims focus primarily on the policies issued from USCIS headquarters that apply to all USCIS field offices," thus the fact that the decision was made in the proposed venue does not meet the burden of establishing local interests); *Ingram v. Eli Lilly & Co.*, 251 F.Supp.2d 1 (D.D.C. 2003) ("In addition, there is nothing uniquely local about DES litigation as the product was marketed and dispensed throughout the nation").

FCPC does not dispute Federal Defendants' recitation of 28 U.S.C. § 1404 and the case law listing the factors to be considered in deciding a motion to transfer venue. However, Federal Defendants incorrectly contend that all factors are neutral except for the local interests factor.

² In contrast, the Tribe has litigation pending in this District Court *Forest County Potawatomi*

A. FCPC Disputes the Factual Assertion that “the Eastern District of Wisconsin has Experience with the Issues at the Center of this Action, Especially Tribal Efforts to Obtain Off-Reservation Gaming in Both Milwaukee and Kenosha, Wisconsin.”

Federal Defendants contend that “the Eastern District of Wisconsin has experience with the issues at the center of this action, especially tribal efforts to obtain off-reservation gaming in both Milwaukee and Kenosha, Wisconsin.” (doc. 19-1 at 1.). This is incorrect. First, the Court will not rule in this case on any “tribal effort to obtain off reservation gaming.” In any event, the prior actions regarding such tribal efforts cited by the Federal Defendants occurred here in the District of Columbia, and not in the Eastern District. Except for the litigation filed by the Menominee Indian Tribe of Wisconsin (“Menominee”), discussed below, all of the events cited by the Federal Defendants [the 1987 two-part determination under IGRA that led to FCPC opening a facility in Milwaukee (doc. 19-1 at 1 and 2), the 2003 Compact Amendment to which officials at Interior objected (doc. 19-1 at 2 and 3), the revised 2005 Compact Amendment which Interior allowed to go into effect as “deemed approved,” (doc. 19-1 at 2 and 3), and the 2014 Compact Amendment (doc. 19-1 at 4 through 6)] were decisions made by federal officials located in the District of Columbia. None of these actions were the subject of litigation in the Eastern District.

The Federal Defendants note (doc. 19-1 at 3 and 4) that they were sued in 2008 and again in 2009, in the Eastern District by Menominee for the Department of the Interior’s inaction and ultimately the denial of the Menominee’s application to have certain lands taken into trust for a casino (the “Menominee lawsuits”). Federal Defendants’ own recitation of the posture of those two cases reveals that no decision on the merits was ever issued in that litigation. A review of the Docket Sheets³ of the two lawsuits confirms that no decision was made on the merits. These

³ Docket Sheets for *Menominee Indian Tribe v. Dept. of the Interior*, No. 1:09-cv-496-WCG

cases have been closed for nearly four years. Further, the Menominee lawsuits had no bearing on the Governor of Wisconsin's decision not to approve the Menominee casino project. Menominee's casino project has failed and the application is no longer active. The instant litigation is not an action challenging the Menominee casino project. It is not an action challenging compliance with the National Environmental Policy Act, 42 U.S.C. §§ 4301 et. seq., and it is not an action challenging a decision by the Secretary of Interior to take land into trust. These actions might involve local interest, but they are not at issue in this lawsuit. Rather, this is an action challenging whether the Federal Defendants' disapproval of the 2014 Compact Amendment complied with the limited grounds allowed under 25 U.S.C. §2710(d)(8)(B) for such a disapproval.

Federal Defendants provide no evidence to support the assertion that the Eastern District has "expertise" on any particular subject matter that this Court does not. See, *Wyandotte Nation v. Salazar*, 825 F. Supp. 2d 261, 267 (D. D. C. 2011) ("federal courts are presumed to be equally familiar with the law governing federal statutory claims"). In any event, the Menominee lawsuits did not involve the FCPC and State of Wisconsin Compact or the application of 25 U.S.C. §2710(d)(8). Further, FCPC was not a party to that litigation, and again the federal officials involved in that litigation are located here, in the District of Columbia.

(E.D. Wis.) and *Menominee Indian Tribe v. Dept. of the Interior*, No. 1:08-cv-00950-WCG (E.D. Wis.) are attached as Exhibit A and Exhibit B, respectively.

B. Convenience of the Forum to the Parties is a Critical Factor to be Considered; Unlike the Typical APA Case, this Litigation is Anticipated to Require Supplementing and/or Expanding the Administrative Record.

The convenience of the parties and witnesses has been described as “the most critical factor” to examine when deciding a motion to transfer. *Taylor v. Shinseki*, 13 F.Supp.3d 81, 90 (D.D.C. 2014); *Pyrocap Int’l Corp. v. Ford Motor Co.*, 259 F.Supp.2d 92, 97 (D.D.C. 2003); *Chung v. Chrysler Corp.*, 903 F.Supp. 160, 164 (D.D.C. 1995). The Federal Defendants argue that because this case is an APA case, which will be based on this Court’s review of the Administrative Record, convenience of the forum to the parties is not a factor (doc.19-1 at 12, n.2), but this is not a typical or routine APA case. The Federal Defendants have yet to produce the Administrative Record in this litigation and the Tribe anticipates that the Federal Defendants will initially produce an Administrative Record that falls far short of including those documents required for this APA lawsuit. This lawsuit challenges the facts and analysis set out in the Disapproval Letter, which draws from, characterizes and distinguishes numerous actions of the Federal Defendants involving numerous other tribes. FCPC was not a party to the vast majority of the administration actions cited in the Disapproval Letter. The Tribe’s anticipation that there will be a dispute over the completeness of the Administrative Record is bolstered by the Tribe’s ongoing litigation seeking Interior’s compliance with FCPC’s requests under the Freedom of Information Act, (“FOIA”), 5 U.S.C. § 552 et seq., related to the Secretary of the Interior’s reconsideration of Menominee’s request to acquire land in Kenosha, Wisconsin, into trust for gaming purposes under Section 5 of the Indian Reorganization Act (“IRA”), 25 U.S.C. § 465, and a request for a Secretarial Determination under IGRA. *Forest County Potawatomi Community v. Jewell*, Case 1:14-cv-02201 (BAH)(D.D.C) the (“FOIA litigation”). The irony is not lost on the Tribe that the Disapproval Letter at issue in this lawsuit makes express reference

to the Secretary of Interior's record regarding the very same decisions at issue in the FOIA litigation, but FCPC has yet to have access to that record in either lawsuit.

The Administrative Record must include "all materials 'compiled' by the agency that were 'before the agency at the time the decision was made.'" *Calloway v. Harvey*, 590 F. Supp. 2d 29, 36 (D.D.C. 2008) (quoting *James Madison Ltd. v. Ludwig*, 82 F.3d 1085, 1095 (D.C. Cir. 1996)). Because the analysis in the Disapproval Letter is so far reaching, FCPC anticipates that it will seek to supplement and expand the Administrative Record. The motions to expand and supplement will turn on whether the Federal Defendants knew or should have known certain information that should be included in the Administrative Record. A court will supplement the administrative record with extra-record documents or evidence in certain circumstances. See, *Esch v. Yeutter*, 876 F.2d 976, 991 (D.C. Cir. 1989); *USA Group Loan Services Inc. v. Riley*, 82 F.3d 708, 715 (7th Cir. 1996); *Animal Defense Council v. Hodel*, 840 F.2d 1432, 1436 (9th Cir. 1988). *Pension Benefit Guaranty Corp. v. LTV Steel Corp.*, 119 F.R.D. 339, 341 (S.D.N.Y. 1988). A district court may consider evidence outside the administrative record where: 1) the material is necessary to explain the agency's action; 2) the agency relied upon materials not already included in the record; 3) supplementation is necessary to explain complex or technical material; or 4) the agency acted in bad faith. See, *Animal Defense Council v. Hodel*, 840 F.2d 1432, 1436–37 (9th Cir. 1988); *Miami Nation of Indians v. Babbitt*, 55 F. Supp. 2d 921, 923–24 (N.D. Ind. 1999).

All of the officials that would be involved in supplementing and/or expanding the Administrative Record are located in the District of Columbia. All of the officials that would be subject to depositions or other discovery are located here. None of the federal officials involved in the documents FCPC will contend should be included in the Administrative Record are

located in Wisconsin. Accordingly, this Court is far more convenient to the parties than the Eastern District. This not being a typical APA case, the convenience of witnesses factor, the most critical factor in deliberation of a motion to transfer venue, weighs heavily in favor of the Tribe.

C. Federal Defendants Fail to Establish that the “Local Interests” Factor Overcomes the Presumption that the Case Remains in this Court.

The Federal Defendants correctly note that local interests is one of many factors the Court considers in deciding a motion to transfer venue. However, the cases the Federal Defendants cite for the proposition that the local interests factor mandates a transfer of venue are inapposite. Each of the cases is distinguishable by the presence of other compelling factors that are not present here. Also, the Federal Defendant’s self-serving conclusion that the issues here are local is simply wrong. This case involves questions of national importance and the Federal Defendants fail to demonstrate that the legal questions at issue in this lawsuit turn on some fact or law that is unique to Wisconsin or are related to any case pending in the Eastern District.

1. The cases cited by the Federal Defendants are inapposite.

Federal Defendants rely primarily on cases brought by Indian Tribes that filed an action in this District Court. All of them appropriately identify local interests as a factor to be considered per 28 U.S.C. § 1404(a). None of them, however, match the circumstances here, where the Federal Defendants allege that all factors are neutral, with the exception of local interests. Most all of the cited cases involved litigation pending in the proposed venue with great commonality as to issues or parties. All of them had significant factors, not present here, that supported the transfer of venue.

Pueblo v. National Indian Gaming Commission

In *Pueblo v. National Indian Gaming Commission*, 731 F. Supp.2d 36 (D.D.C. 2010), the key factor was the Pueblo's existing lawsuit pending in the proposed venue involving many of the same issues germane to an on-going fifteen year old dispute pending in United States District Court for the Western District of Texas:

Most importantly, the Court finds that transfer is in the interest of justice in that it will avoid the duplication of judicial resources and possible inconsistent results. Several issues in this case overlap with or are related to issues in the ongoing proceedings in the Western District of Texas.

731 F.Supp.2d at 41. In contrast, there is no related litigation pending in the Eastern District.

Shawnee Tribe v. United States

Shawnee Tribe v. United States, 298 F. Supp. 2d 21 (D.D.C. 2002) is similarly distinguishable. The Shawnee Tribe challenged the alleged imminent transfer of a closed Army ammunitions plant. *Id.* at 22. The Court found it appropriate to send the case to the United States District Court for the District of Kansas, the same venue where pending litigation "involves central questions regarding the future of the SFAAP property". *Id.* at 27. Moreover, the federal officials involved were located at GSA Field offices in Texas and Washington State, rather than GSA's main office in D.C. *Id.* at 26. In contrast, there is no related litigation in the Eastern District, and all of the federal officials involved in the denial of the 2014 Compact Amendment are located in the District of Columbia.

Towns of Ledyard, N. Stonington & Preston, Conn. v. United States

Towns of Ledyard, N. Stonington & Preston, Conn. v. United States, No. 95-0880, 1995 WL 908244 (D.D.C. May 31, 1995)(doc. 19-2 "Exhibit A")⁴ is distinguishable because of

⁴ Note one on unpublished opinions: Federal Defendants' Exhibits A, B, C, D and E (docs. 19-2 through 19-6) are all unpublished opinions that pre-date the January 1, 2007 date allowed by Circuit Rule 32.1.

pending litigation in the proposed venue:

The Court finds, however, that the interest of justice overwhelmingly favors transfer of this case to Connecticut. The action here and that in Connecticut seek review of the same administrative decision and present similar claims and demands for relief. If this case were transferred to Connecticut, the cases could be consolidated, thus saving expense to the public and avoiding the duplicative use of judicial resources

Id. at *2. In contrast, there is no pending litigation in the Eastern District.

Apache Tribe of the Mescalero Reservation v. Reno

Apache Tribe of the Mescalero Reservation v. Reno, No. 96-cv-115 slip op. at 5 (D.D.C. Feb. 5, 1996)(doc. 19-2 “Exhibit B”)⁵ is distinguishable because it involved pending litigation in the proposed venue:

[A]n action is currently pending in New Mexico which involves the same issues of law as this action; the fundamental issue being the legality of casino gambling in New Mexico and the concomitant ability of ten Indian tribes to conduct gambling operations in that state. The action in New Mexico involves the same defendants as those in this case. In addition, the two actions present similar factual backgrounds, claims and requests for relief

(doc. 19-2 at 6). Also, the issues of state law were at the heart of the litigation (“[f]inally, the resolution of this dispute will involve, to a large extent, the interpretation of the law of New Mexico”) (doc. 19-2 at 6). In contrast, there is no pending litigation in the Eastern District and

⁵ Note two on unpublished opinions: Exhibits B, C, D and E (docs. 19-3 through 19-6) to Federal Defendants Memorandum in Support (doc. 19-2) are Orders that are not available on Westlaw or Lexis, and can only be found through PACER if the case number is otherwise known to the parties. Perhaps, Federal Defendants have access to an electronic database of cases in which the United States is involved that is not generally available to the public or to legal counsel for FCPC. Federal Defendants should be required to aver to this Court that they have presented an exhaustive list of Orders in that database in litigation involving motions to transfer venue in cases involving Indian Tribes where the United States or an agency of the United States is a party, or alternatively, to make all such orders available to opposing counsel, including those Orders where transfer of venue was denied. Otherwise, Federal Defendants have the unfair circumstance of citing to this Court, those Orders they believe support their motion, while not providing this Court with those Orders that do not benefit their argument.

there are no questions of Wisconsin state law at issue in this case.

Cheyenne-Arapaho Tribe of Okla. v. Reno

Cheyenne-Arapaho Tribe of Okla. v. Reno, No. 98-65, slip. op. (D.D.C. Sept. 9, 2003) is distinguishable because of related litigation in the proposed venue (doc.19-4 at 4), and because the case is not an APA case but one involving witnesses, the majority of which reside in Oklahoma (doc. 19-4 at 3 and 4). In contrast, there is no related litigation in the Eastern District and, as discussed above, all of the potential witnesses in motions to expand and/or supplement the Administrative Records are located in the District of Columbia.

Santee Sioux Tribe v. National Indian Gaming Commission

Santee Sioux Tribe v. National Indian Gaming Commission No. 99-528, at 8 (D.D.C. Apr. 19, 1999) is distinguishable because of pending litigation in the proposed venue “where extensive court and appellate proceedings relating to this Casino have already taken place, and where contempt proceedings are ongoing” (doc. 19-5 at 1 and 9). In contrast, there is no pending litigation in the Eastern District.

Lac Courtes Oreilles Band of Lake Superior Chippewa Indians of Wis. v. United States

Lac Courtes Oreilles Band of Lake Superior Chippewa Indians of Wis. v. United States, No. 01-1042 (D.D.C. Aug. 16, 2002) is distinguishable because the parties had previously filed suit in the proposed venue over the same subject, and although they had reached a settlement agreement, it specifically provided that “the court retained jurisdiction over the enforcement of the settlement” (doc. 19-6 at 2). In contrast, as discussed in greater detail above, the Menominee lawsuits were dismissed without any ruling on the merits, did not provide for continuing jurisdiction, and did not involve FCPC or the disapproval of a gaming compact.

Federal Defendants cite two cases not involving Indian gaming as additional support.

National Wildlife Federation v. Harvey, 437 F. Supp. 2d 42 (D.D.C. 2006)⁶ is similarly distinguishable. The case was transferred to the United States District Court for the Southern District of Florida because the Corp of Engineers' actions occurred in Florida and elsewhere, and not in the District of Columbia. *Id.* at 47. In contrast, all the actions of federal officials in this litigation occurred in the District of Columbia. *National Wildlife Federation* did involve litigation pending in the Southern District, but the Court did not find the pending litigation compellingly similar or sufficient to warrant a change in venue. *Id.* at 49.

Lastly, Federal Defendants' reliance on *Citizens Advocates for Responsible Expansion, Inc. v. Dole*, 561 F.Supp. 1238 (D.D.C. 1983) is also misplaced. The Court reasoned that the Plaintiff Citizen Group's only connection to the District of Columbia was a headquarters there for an advocacy that was strictly local to Texas, therefore, "the connection between plaintiffs, the controversy and the chosen forum is attenuated." 561 F.Supp. at 1239. The case was brought under NEPA challenging approval of portions of an interstate freeway to be built in Texas. *Id.* In contrast, FCPC's connection with this Circuit is historical, systemic and appropriate. FCPC is a federally-recognized Indian Tribe with a government-to-government relationship with the United States, wherein the named defendants are those chiefly responsible for exercising the federal governments trust responsibility to the Tribe. The Tribe frequently and routinely travels to the District of Columbia to meet with appropriate officials within the Administration, as well as its legislative delegation. The Tribe has officials and agents who reside in or near the District of Columbia, so that they may stay informed and inform the Tribe of developments impacting its

⁶ Federal Defendants note that the Court in *National Wildlife Federation* cites *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 509, 67 S.Ct. 839 (1947) for the preference to have disputes heard locally. That was a *forum non conveniens* case that is inapplicable and has been superseded by statute on other grounds, 28 U.S.C. 1404, as recognized in *American Dredging C. v. Miller*, 520 U.S. 4423, 449.n.2, 114 S.Ct. 981 (1994).

interests. The District of Columbia is the most common meeting place amongst tribal governmental officials from FCPC and the many other federally-recognized Indian tribes who also frequently and routinely travel to the District of Columbia. Regarding the instant litigation, all germane decisions at issue are decisions made by federal officials located here. Legal counsel to the Federal Defendants are located here. As to FCPC's legal counsel, two are located here and one is located in Arizona, whose practice frequently and routinely brings him to the District of Columbia. To equate FCPC's connection to the District of Columbia with that of a Texas citizen group's office in the District of Columbia has no merit. When a plaintiff brings suit in this Court and shows that the connection of the suit to the District of Columbia is not attenuated, his choice of forum is entitled to substantial weight. *Wilderness Soc'y v. Babbitt*, 104 F. Supp. 10, 18 (D.D.C. 2000). See also, *Tuttle v. Jewell*, 952 F.Supp.2d 203, 208 (D.D.C. 2013).

2. This case involves significant questions of national importance .

When an issue is national in its importance, the local interests factor loses its relevance. See, *Stand Up for California*, 919 F.Supp. at 63 (denying federal government's motion to transfer the case challenging Interior's decision to allow certain land to be taken into trust for operation of a gaming facility by the North Fork Rancheria - "The instant case, however, is not a purely 'localized controversy,'""); *TOMAC v. Norton*, 193 F.Supp.2d 182 (D.D.C. 2002) (denying federal government's motion to transfer the case challenging Interior's decision to allow certain land to be taken into trust for operation of a gaming facility by the Pokagon Band of Potawatomi). See also, *Initiative and Referendum Institute v. United States Postal Service*, 154 F.Supp.2d 10 (D.D.C. 2001); *Greater Yellowstone Coalition v. Bosworth*, 180 F.Supp.2d 124, 129 (D.D.C. 2001) ("Unlike the plaintiffs' claim in *Trout Unlimited*,⁷ however, this case does not

⁷ *Trout Unlimited v. Dept. of Agriculture*, 944 F. Supp. 13 (D.D.C. 1996)

involve any issues of *state law* and has some national significance”) (emphasis in original). *Wilderness Society v. Babbitt*, 104.F.Supp.2d 10, 17-18 (D.D.C. 2000) (“the plaintiffs' choice of forum and the national significance of this controversy require that the defendants' motion to transfer venue be denied”).

This is an APA case. The final agency action at issue is the Federal Defendant’s disapproval of the 2014 Compact Amendment. IGRA provides that the Secretary may only disapprove a Compact or Compact Amendment if it violates a provision of IGRA, any other provision of federal law unrelated to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians. 25 U.S.C. § 2710(d)(8)(B). In the scheme Congress established, there is no room in that analysis for local interests or concerns. The Disapproval Letter (doc. 1-2) speaks only of national policies and questions not unique to Wisconsin. Although the Disapproval Letter speaks of the impact on Menominee, the reasoning is certainly national and far-reaching in scope. This case will determine whether a State may agree in a gaming compact that, in exchange for the tribe continuing to make payments to the State from its gaming operation, the State will limit the expansion of new off-reservation casinos in the State. The Federal Defendants contend that such agreements violate IGRA. This brings into question the facts and circumstances under which Interior has approved or disapproved many compacts and compact amendments in dozens of states.

On the other side of the same coin, the Federal Defendants fail to provide any analysis to support its contention that this case is only local in nature. None of the rationale set forth in the Disapproval Letter is based on questions of Wisconsin law or provide a different standard for Wisconsin Tribes than for other tribes throughout the country. See, *Tuttle v. Jewell*, 952 F.Supp.2d at 208 (rejecting the moving party’s alleged local interests factor, the Court reasoned

“the specifics of the land located in California are irrelevant”).

III. CONCLUSION

The question to be resolved by this Court on the Motion to Transfer Venue is whether Federal Defendants have met their burden to establish the special circumstances required for this Court to reject FCPC’s choice of forum. Federal Defendants frame the discussion to suggest that all factors are neutral except for the local interests factor, when they are not. FCPC disputes the factual assertion that “the Eastern District of Wisconsin has experience with the issues at the center of this action, especially tribal efforts to obtain off-reservation gaming in both Milwaukee and Kenosha, Wisconsin.” The Eastern District has no such experience. Because the litigation will likely involve motions to supplement and or expand the Administrative Record, the convenience of the forum to the officials in Washington, D.C. likely subject to deposition or related discovery is a significant factor, which weighs heavily against transfer of venue. Accordingly, Federal Defendants fail to establish that the “local interests” factor overcomes the presumption that the case remains in this Court. The cases cited by the Federal Defendants are inapposite. Furthermore, this case involves significant questions of national importance. For these reasons, as more fully set forth above and in the supporting materials, Federal Defendants’ Motion to Change Venue should be denied.

WHEREFORE, Plaintiff asks that Federal Defendants’ motion to change venue be denied.

DATED this 4th day of June, 2015.

/s/ Scott Crowell

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CERTIFICATE OF SERVICE

In accordance with LCvR 5.3, I certify that on June 4, 2015, I caused a true and correct copy of the PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER VENUE, EXHIBITS and PROPOSED ORDER to be served on all parties whom are registered as CM/ECF participants.

/s/ Scott Crowell
SCOTT CROWELL