

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

JOSEPH LEE GIBSON, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	Civil Action No. 04-190 (GK)
v.)	
)	
BOY SCOUTS OF AMERICA, <u>et al.</u> ,)	
)	
Defendants.)	
)	

MEMORANDUM OPINION

Plaintiffs, Joseph Lee Gibson and P. David Richardson, bring this suit against Defendants, the Boy Scouts of America ("BSA"), John Does 1-7,¹ the National Capital Area Council ("NCAC"), and Richard Roes 1-7.² They claim that Defendants arbitrarily expelled Gibson from membership in the adult leadership of the Boy Scouts "without any notice to [him] of the reasons for the expulsion, without any opportunity to appear at a hearing or other proceeding and without providing [him] any opportunity to review the

¹ Defendants John Does 1-7 are officials, employees, or volunteer or paid agents of BSA who participated in the actions and matters alleged in the Complaint, or acquiesced in such actions or matters. Plaintiffs "do not intend to join, and hereby decline to join as a defendant, any John Doe who is a citizen of the Commonwealth of Virginia." Am. Compl., ¶ 8.

² Defendants Richard Roes 1-7 are officials, employees, or volunteer or paid agents of NCAC who participated in the actions and matters alleged in the Complaint. Plaintiffs "do not intend to join, and hereby decline to join as a defendant, any Richard Roe who is a citizen of the Commonwealth of Virginia." Am. Compl., ¶ 9.

documentary or written evidence, if any, against him." Am. Compl., ¶ 2.

This matter is before the Court on Defendants' Motion for Change of Venue. Upon consideration of the Motion and Opposition, and the entire record herein, and for the reasons stated below, Defendants' Motion is **granted**.

I. BACKGROUND

From 1996 until February 7, 2003, Gibson was a registered adult-volunteer member of the Boy Scouts. From October 1, 1998 until February 7, 2003, he served as the Scoutmaster of Troop 869 in Virginia. Richardson is the parent of a Scout in Troop 869. Both Gibson and Richardson live in Virginia.

The BSA has its principal place of business in Texas. The NCAC, chartered by the BSA to facilitate the Boy Scout program in the District of Columbia, Maryland, and Virginia, has its principal place of business in Maryland.

Gibson claims that, "[o]n February 7, 2003, without prior notice of the nature of the charges against him and without notice that Defendant NCAC was even considering charges against him, [he] received a registered letter from NCAC, informing him that his membership in the Scouting movement had already been revoked. NCAC's letter was devoid of any reason for or explanation of its expulsion of [him]." Pls.' Opp'n, at 3-4. Gibson appealed the NCAC's decision to the BSA, "first through its Northeast Region

office, and then through its national headquarters in Texas." Id., at 4. By letter dated December 23, 2003, BSA informed Plaintiffs of its decision to ratify NCAC's action. Plaintiffs claim that "Defendant BSA's letter did not provide any explanation for its actions." Id., at 5.

On February 9, 2004, Plaintiffs filed the instant action. On May 20, 2004, Defendants filed the instant Motion for Change of Venue.

II. ANALYSIS

Defendants argue that this action should be transferred to the Eastern District of Virginia under 28 U.S.C. § 1404(a) because Plaintiffs reside in Virginia, the underlying events occurred in Virginia, the BSA and NCAC "have substantial contacts and engage in activities in [] Virginia and were so engaged during the alleged events or omissions pled by Plaintiff[s]," and "[m]ost if not all of the parties and witnesses who will be called into Court on this cause reside or conduct business or activities in [] Virginia." Defs.' Mot., at 2.

Section 1404(a) provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." It vests "discretion in the district court[] to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and

fairness.” Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 27 (1988) (internal citation omitted). As the moving party, Defendants bear the burden of establishing that the transfer of this action to another federal district is proper. See Shenandoah Assoc. Ltd. P’ship v. Tirana, 182 F.Supp.2d 14, 25 (D.D.C. 2001).

Accordingly, Defendants must make two showings to justify transfer. First, they must establish that this action could have been brought in Virginia. Second, they must demonstrate that considerations of convenience and the interest of justice weigh in favor of transfer to that court. Although Plaintiffs’ choice of forum is given substantial deference, this deference is “greatly diminished when the activities have little, if any, connection with the chosen forum,” especially when Plaintiffs, as here, are not a resident of the forum chosen. Armco Steel Co. v. CSX Corp., 790 F.Supp. 311, 323 (D.D.C. 1991) (internal citation omitted). See Greater Yellowstone Coalition v. Bosworth, 180 F.Supp.2d 124, 128 (D.D.C. 2001) (same).

As to the first factor, Defendants must establish that this action could have been brought in Virginia. Pursuant to 28 U.S.C. § 1391(a), venue is proper in a “judicial district where any defendant resides ... [or] in which a substantial part of the events or omissions giving rise to the claim occurred ... [or] a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no

district in which the action may otherwise be brought." Since most of the "events or omissions giving rise to the claim occurred" in Virginia, this action could have properly been brought in that jurisdiction.

As to the second factor, Defendants must demonstrate that considerations of convenience and the interest of justice weigh in favor of transfer to the Eastern District of Virginia. In ruling on a § 1404(a) motion, however, courts have also considered "various other factors, including the private interests of the parties and the public interests of the court," as additional considerations "protected by the language of Section 1404(a)." Trout Unlimited v. United States Dep't of Agriculture, 944 F.Supp. 13, 16 (D.D.C. 1996) (internal citation omitted). The private interest considerations include

- (1) the plaintiff's choice of forum, unless the balance of convenience is strongly in favor of the defendants;
- (2) the defendants' choice of forum;
- (3) whether the claim arose elsewhere;
- (4) the convenience of the parties;
- (5) the convenience of the witnesses of the plaintiff and defendant, but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and
- (6) the ease of access to sources of proof.

Id. (internal citations omitted). The public interest considerations include "(1) the transferee's familiarity with the governing laws; (2) the relative congestion of the calendars of the potential transferor and transferee courts; and (3) the local interest in deciding local controversies at home." Id.

Virginia is the more appropriate forum for the litigation of this action because most of the private interest factors favor the transfer of this matter to that jurisdiction. It is the location where Plaintiffs' claims arose; where Plaintiffs reside and where Defendants desire to have this matter transferred; and presumably where at least some of the evidence is located. Since there is no contention that the witnesses will not be as available in Virginia as they would be in the District of Columbia, the convenience of witnesses is of no significance.

The public interest factors also weigh in favor of transfer to the Eastern District of Virginia. First, with regard to the transferee's familiarity with the governing laws, the public interest is "best served by having a case decided by the federal court in the state whose laws govern the interests at stake." Trout Unlimited, 944 F.Supp., at 19. See Schmid Labs, Inc. v. Hartford Accident & Indem. Co., 654 F.Supp. 734, 737 n.11 (D.D.C. 1986) (there is a "benefit [to] having a local court construe its own law"). Resolving this case is virtually certain to involve interpretation of Virginia law. See Trout Unlimited, 944 F.Supp., at 19 ("Under the District of Columbia's choice of law rules, the law governing the plaintiff's claims is the law of the state with the most significant relationship to the matters at issue."). The Eastern District of Virginia is "surely more familiar" than this Court with the application of Virginia law. Armco Steel Co., 790

F.Supp., at 324. Second, the relative congestion of the transferor and transferee courts does not enter the analysis because there is no reason to believe that the transferee court is more or less congested than this Court. Moreover, the parties have not addressed this issue. Third, this case involves a controversy local to Virginia and is a case in which Virginia residents have a greater interest than do the residents of the District of Columbia. Plaintiffs reside in Virginia and the underlying events occurred in Virginia. Accordingly, the public-interest factors the Court may consider favor the transfer of this action to the Eastern District of Virginia.

In an attempt to convince the Court that this action should remain in this District, Plaintiffs argue that Defendants have failed to meet their burden of establishing the need for transfer. Specifically, they assert that "Defendants have not shown that the balance of convenience to the witnesses tips in any way in favor of transferring." Pls.' Opp'n, at 6. This argument is unconvincing namely because there is no contention that the witnesses will not be available in this district. The convenience of the witnesses is, therefore, of no significance in the instant action. Moreover, Defendants' "burden in a motion to transfer decreases when [Plaintiffs'] choice of forum has no meaningful nexus to the controversy and the parties." Greater Yellowstone Coalition, 180 F.Supp.2d at 128 (internal citation omitted).

Accordingly, for all the foregoing reasons, this action must be transferred to the Eastern District of Virginia.

III. CONCLUSION

For the foregoing reasons, Defendants' Motion for Change of Venue is **granted**.

An Order will issue with this opinion.

August 9, 2004

/s/
GLADYS KESSLER
U.S. DISTRICT JUDGE