IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PUBLIC INTEREST LEGAL FOUNDATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 4:18-cv-00981
	)	
ANN HARRIS BENNETT, in her official capacity as voter registrar for Harris County, Texas,	)	
	)	
Defendant.	)	

PLAINTIFF PUBLIC INTEREST LEGAL FOUNDATION'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO STAY OR ABSTAIN (DOC. 49)

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Plaintiff Public Interest Legal Foundation (the "Foundation"), by and through counsel, hereby responds to Defendant VR Bennett's Motion to Stay or Abstain (Doc. 49).[1]

SUMMARY OF THE ARGUMENT

VR Bennett's Motion was filed without first conferring with the Foundation's counsel, in violation of Local Rule 7.1(D), and no certificate of compliance was included with her motion, Civil Procedures of Judge Andrew S. Hanen 7(C). VR Bennett's Motion should be struck for non-compliance, pursuant to Local Rule 11.4.

Even if considered, VR Bennett's Motion should be denied. Not only is her Motion fundamentally flawed, it comes far too late to be taken seriously. Motions to dismiss have been decided, discovery is effectively complete, and the Foundation's motion for summary judgment is fully briefed and awaiting a decision. Federal elections have also taken place since this action was filed more than one year ago. Simply put, VR Bennett's Motion is another transparent attempt to delay, stall, and avoid having to produce the public records requested over *sixteen months ago* pursuant to the National Voter Registration Act ("NVRA"). 52 U.S.C. § 20507(i).

VR Bennett is wrong on the facts and the law. The Foundation never requested records pursuant to Texas law. The Foundation's one and only request was made solely pursuant to the records inspection provision of federal law, the NVRA, which confers a private right of action in federal court, 52 U.S.C. § 20510. VR Bennett intentionally ignored the federal basis for the Foundation's request and processed it under state law, effectively manufacturing the state court case that now forms the basis of her Motion. Because no request pursuant to the Texas Public

[1] VR Bennett styles her Motion as a request to stay *or* abstain, but does not address or support with authority her request for a stay. That request does not conform to the motion practice requirements of the local rules and should not be considered by this Court. LR 7.1(B) ("Opposed motions shall . . . [i]nclude or be accompanied by authority[.]").

Information Act ("TPIA") ever existed, the District Court in Travis County lacks jurisdiction to adjudicate VR Bennett's petition, eliminating the foundation of her abstention request.

VR Bennett invokes four different abstention doctrines—apparently hoping that one will stick. She fails to offer enough support for any doctrine. The foundational concern of all abstention doctrines—interference with state proceedings—is not present here. In this Court, the Foundation has sued VR Bennett to enforce the federal inspection rights of the NVRA. In state court, VR Bennett has sued the Texas Attorney General to seek review of an advisory opinion confined to state open records law. Whatever this Court's decision regarding the scope of the NVRA, it will not interfere with the adjudication of VR Bennett's state law dispute. Whatever the decision of the court in Travis County, it will not affect this proceeding because the NVRA preempts inconsistent state laws. That much alone should end the inquiry.

Even if this Court were to proceed to address each doctrine raised by VR Bennett, it will find abstention neither required nor appropriate. For these reasons, and others articulated below, VR Bennett's motion should be denied.

STANDARD OF REVIEW

"[F]ederal courts have a 'virtually unflagging obligation . . . to exercise the jurisdiction given them.'" *Aransas Project v. Shaw*, 775 F.3d 641, 649 (5th Cir. 2014) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). "[A]bstention is the exception, not the rule." *La. Debating & Literary Ass'n v. City of New Orleans*, 42 F.3d 1483, 1491 (5th Cir. 1995) (citation omitted). In this area, any "exercise of discretion must fit 'within the narrow and specific limits prescribed by the particular abstention doctrine involved.'" *Webb v. B.C. Rogers Poultry, Inc.*, 174 F.3d 697, 701 (5th Cir. 1999) (citation omitted). "A court necessarily abuses its discretion when it abstains outside of the doctrine's strictures." *Id.*

ARGUMENT

VR Bennett's Motion should be denied for four reasons: 1) her Motion was filed in violation of the requirement that she meet and confer with opposing counsel prior to filing; (2) the state court lacks jurisdiction to hear the petition on which the Motion is based; 3) the resolution of this action will not interfere with VR Bennett's state court dispute; and, (4) *none* of the four abstention doctrines she tries to invoke applies to this case.

I. VR Bennett's Motion Should Be Struck for Failure to Comply with the Local Rule's Meet and Confer Requirements.

Procedurally, the Motion to Stay or Abstain is not properly before this Court because VR Bennett failed to meet and confer with the Foundation prior to filing and did not include a certificate of conference with the motion. *See* Local Rule ("LR") 7.1(D) (opposed motions must "contain averment that . . . [t]he movement has conferred with the respondent"); Procedures of Magistrate Judge Frances H. Stacy 4(a) ("All motions must follow the written motion practice outlined in the Local Rules."); Civil Procedures of Judge Andrew S. Hanen 7(C) ("All opposed motions shall include a specific and meaningful Certificate of Conference."). The Foundation requests that VR Bennett's Motion be struck. LR 11.4 ("A paper that does not conform to the local or federal rules or that is otherwise objectionable may be struck on the motion of a party or by the Court.").

II. The 459th District Court in Travis County Lacks Jurisdiction to Hear the Petition on Which the Request for Abstention Is Based.

VR Bennett claims jurisdiction in state court based on the allegation that the Foundation made a "December 1, 2017 request for records from the Texas State Attorney General" pursuant to the TPIA, Tex. Gov't Code § 552.001 *et seq*. (Doc. 49 at 16.) Indeed, her petition's jurisdictional statement invokes the court's authority to "determine the validity of open records decisions *issued pursuant to the TPIA*." Exhibit 1 at 2 (emphasis added). In other words, the court's jurisdiction depends on the existence of an underlying records request made pursuant to state law. Yet no such request exists.

The Foundation did not make a request pursuant to the TPIA to the Attorney General, VR Bennett, or anyone else. The basis for the Foundation's records request is and has always been the NVRA, 52 U.S.C. § 20507(i). (Doc. 21-1.) After VR Bennett sought to clarify the contours of the Foundation's request (Doc. 21-2), the Foundation repeated the federal-law basis for its request, (Doc. 21-3). VR Bennett ignored the federal-law basis for the Foundation's request and processed it under state law, thereby instigating the dispute with the Attorney General, Tex. Gov't Code § 552.301, and ultimately, the state court case that now forms the basis of her request for abstention, Tex. Gov't Code § 552.324.

Without an underlying TPIA request, there is no controversy for the 459th District Court to resolve, and the court lacks jurisdiction. *Roach v. Ingram*, 557 S.W.3d 203, 221-22 (Tex. App. 2018) ("Subject matter jurisdiction requires . . . a live controversy between the parties," rather than "merely a theoretical dispute.") (internal citations omitted). Because the state court lacks jurisdiction to adjudicate VR Bennett's petition, the foundation for VR Bennett's Motion does not exist, and it should be accordingly denied.[2]

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[2] The Texas Government Code allows state district courts to "dismiss a suit challenging a decision of the attorney general" if the attorney general represents to the court that the requestor has "voluntarily withdrawn the request or has abandoned the request." Tex. Gov't Code § 552.327. If dismissal is warranted when the request no longer exists, it is also warranted when the request never existed in the first place.

III. No Form of Abstention Is Required or Appropriate Because this Action Cannot Interfere with VR Bennett's State Court Proceeding.

Even if VR Bennett's state court petition is validly before the court in Travis County, abstention is still not required or even appropriate because the foundational premise of all abstention doctrines—interference with state proceedings—is missing. The reason is obvious: this Court is not being asked to declare the state proceedings unconstitutional, enjoin their progress, or otherwise disrupt or dictate their course. In fact, the opposite is true—VR Bennett is attempting to use state law—the TPIA—to delay and disrupt the Foundation's federal right to inspect records that will shed light on her voter registration practices as Congress intended.

VR Bennett's state court petition "arises under the Texas Public Information Act" and "seeks relief from a decision of the Attorney General which requires the release of information" *pursuant to that state Act*. Exhibit 1 at 1. The Foundation's federal action arises exclusively under the NVRA—a federal law. The Foundation seeks relief from VR Bennett's refusal to permit access to records that *the NVRA* entitles the Foundation to inspect and photocopy. The Foundation's federal action does not seek any relief or any determination under state law. In fact, conflicting state law is preempted by the NVRA. *E.g., ACORN v. Edgar*, 880 F. Supp. 1215, 1222 (N.D. Ill. 1995). Whatever the decision of this Court regarding the scope of the NVRA, it will not, and even cannot, prevent the 459th District Court in Travis County from adjudicating VR Bennett's state-law dispute with the Attorney General about the contours of the TPIA. *See e.g., M.D. v. Perry*, 799 F. Supp. 2d 712, 719 (S.D. Tex. 2011) (finding *Younger* abstention inapplicable where the "relief sought is directed against executive branch officials . . . not the judiciary."). Accordingly, there is no evidence of interference with any state judicial proceedings. *See, e.g., Becker-Jiba Water Supply Corp. v. City of Kaufman*, Civil Action No. 3:03-CV-0168-D, 2003 U.S. Dist. LEXIS 10334, at *29-30 (N.D. Tex. June 18, 2003) (finding no interference where state court case was an “action to adjudicate the respective rights” of the parties, “as opposed to . . . an enforcement action to compel [one party] to comply with state law.”).

VR Bennett does not even address how this action could potentially interfere with her dispute with the Attorney General. Even assuming the state court matter validly exists, it makes no difference that the two proceedings might involve disclosure of similar records (Doc. 49 at 9), because “[a]bstention is not in order simply because a pending state-court proceeding involves the same subject matter,” *Sprint Communs., Inc. v. Jacobs*, 571 U.S. 69, 72 (2013) (citation omitted). Interference, not similarity, is the crux of abstention. VR Bennett has identified no such interference and her Motion should be summarily denied.

IV. No Form of Abstention Is Required or Appropriate Because None of the Cited Doctrines are Applicable to this Case.

A. *Younger* Abstention Does Not Apply.

“In *Younger v. Harris*, 401 U.S. 37 (1971), the Supreme Court held that principles of comity and federalism require federal courts to avoid interference with ongoing state proceedings if the state court provides an adequate forum to present federal constitutional challenges.” *Booth v. Galveston Cnty.*, 352 F. Supp. 3d 718, 732 (S.D. Tex. 2018). “Circumstances fitting within the *Younger* doctrine, [the Supreme Court] ha[s] stressed, are ‘exceptional’; they include . . . ‘state criminal prosecutions,’ ‘civil enforcement proceedings,’ and ‘civil proceedings involving certain orders that are uniquely in furtherance of the state courts’ ability to perform their judicial functions.” *Sprint Communs., Inc.*, 571 U.S. at 73 (citations omitted). The Supreme Court has described the last of these categories as proceedings “that implicate a State’s interest in enforcing the orders and judgments of its courts,” *id*. at 72-73, such as the enforcement of a civil contempt order, *Juidice v. Vail*, 430 U.S. 327, 336 (1977), and the requirement for the posting of bond pending appeal, *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 13 (1987). "*Younger* extends to the three 'exceptional circumstances' . . . but no further." *Sprint Communs., Inc.*, 571 U.S. at 82.

VR Bennett's Motion is outside these narrow and exceptional circumstances. Indeed, the state court case is not an enforcement proceeding against the Foundation or anything like it. Rather, it is a review of the Attorney General's opinion exclusively concerning Texas open records law. In addition to the lack of interference, this fact alone disqualifies the request. *Id*. *See also New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 368 (1989) ("[I]t has never been suggested that *Younger* requires abstention in deference to a state judicial proceeding reviewing legislative or executive action.").

Even if the Court were to proceed to the so-called *Middlesex* factors,[3] VR Bennett's claim would still fail. *Middlesex Cnty. Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). Those factors are: "(1) the dispute should involve an 'ongoing state judicial proceeding;' (2) the state must have an important interest in regulating the subject matter of the claim; and (3) there should be an 'adequate opportunity in the state proceedings to raise constitutional challenges.'" *Wightman v. Tex. Supreme Ct.*, 84 F.3d 188, 189 (5th Cir. 1996) (quoting *Middlesex*).

As explained above, the state court case is not a "proceeding" within the meaning of *Younger*. But even if it were, it was not "ongoing" when the Foundation filed this action. The Foundation filed its federal cause of action under the NVRA in this Court at 10:59am on March 29, 2018. *See* Exhibit 2, Time Stamped Document from U.S. District Court for the Southern

[3] *See Becker-Jiba Water Supply Corp.*, 2003 U.S. Dist. LEXIS 10334, at *29 (explaining that *Middlesex* factors are considered only after "interference" is established).

District of Texas. Hours later, at 4:18pm, Bennett filed her action in state court. *See* Exhibit 1, File-Stamped Copy of VR Bennett's Original Petition filed in Travis County District Court.

"When determining whether there is an ongoing state proceeding in the case, the Court looks only to whether there was an ongoing proceeding at the time the federal complaint was filed." *Machetta v. Millard*, No. 4:17-CV-00571, 2018 U.S. Dist. LEXIS 35820, at *9 (S.D. Tex. Mar. 5, 2018) (citing *Pennzoil Co.*, 481 U.S. at 17-18); *see also Rickhoff v. Willing*, 457 F. App'x 355, 359 (5th Cir. 2012); Doc. 49 at 8 (acknowledging that "the point of reference is the date suit was filed"). "As no state proceeding was pending at the time Plaintiff filed this case, the *Younger* abstention doctrine does not apply." *McCullough v. Herron*, No. H-17-83, 2018 U.S. Dist. LEXIS 115332, at *10-11 (S.D. Tex. June 7, 2018).[4]

In reality, there are no "proceedings" even taking place in state court. No activity has occurred in over *one year*.[5] *See* Exhibit 3, Docket Sheet in *Bennett v. Paxton*, Cause no. D-1-GN-18-001583 (459th District, Travis County March 29, 2018). VR Bennett has done nothing to

[4] VR Bennett's place in line might explain be why she makes the novel argument that the relevant date is when the Foundation was "awarded jurisdiction" a few weeks ago. (Doc. 49 at 8.) In support of this unique proposition, VR Bennet cites just one out-of-district case, *Verges v. Daugherty Systems*, 3-97-CV-2947-R, 1998 U.S. Dist. LEXIS 13781 (N.D. Tex. Aug. 27, 1998). However, *Verges* does not say anything about *Younger* abstention. Rather, *Verges* refers to the "first to file" rule implicated when two closely related cases are filed in federal court. *Id*. at *5.

[5] VR Bennett's petition may therefore be dismissed for want of prosecution. *See* Tex. R. Civ. P. 165a and Tex. R. Jud. Admin. 6.1(a)(2) (setting a time standard of 12 months for civil nonjury cases); *In re Conner*, 458 S.W.3d 532, 534 (Tex. 2015) ("It has long been the case that 'a delay of an unreasonable duration . . . if not sufficiently explained, will raise a conclusive presumption of abandonment of the plaintiff's suit.') (citations omitted); *see also* Travis County Local Rule 8.1(c) (court may dismiss for want of prosecution *sua sponte* "any other case designated by the Court").

prosecute her case other than file the initiating petition on March 29, 2018.[6] Her state case is merely a placeholder that is being used to further stall the production of public records.

Meanwhile, "proceedings of substance on the merits have taken place in the federal court," *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 238 (1984), all without the mere mention of abstention from VR Bennett. To abstain this late in the day would result in such a waste of resources that it would frustrate the Court's interest in judicial economy, with no justification. *See Spivey v. Barry*, 665 F.2d 1222, 1229 (D.C. Cir. 1981) ("We do not believe that a decision to abstain at this late date would serve the purposes that animate the abstention principle . . . .").

Generally speaking, the State has no interest—important or otherwise—in establishing an exclusive forum to adjudicate the scope of the NVRA. Indeed, the NVRA requires parties to file their claims in federal "district courts." 52 U.S.C. § 20510. Even with respect to state law matters, this case does not present state interests of importance. In his Original Answer, the Attorney General asks the court in Travis County to order the records disclosed under state law:

> Defendant Ken Paxton, Attorney General of Texas, respectfully asks the Court, upon final hearing of this lawsuit, to enter a final judgment declaring the information at issue *to be subject to disclosure* and orders that Plaintiff Ann Harris Bennett take nothing by reason of her suit and that all costs of litigation, including court costs, be adjudged against Plaintiff.

See Exhibit 4, Texas Attorney General's Rule 92 Answer to Petition (emphasis added.) It is reasonable to conclude that the State does not think there is an important state interest in keeping the small set of implicated records confidential under state law.

Last, the state proceedings do not "afford an adequate opportunity to raise constitutional challenges," *Wightman*, 84 F.3d at 189, for three reasons. First, there are no constitutional

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[6] The docket can be viewed by entering the case number information at the website of the Travis County District Clerk. https://www.traviscountytx.gov/district-clerk/online-case-information.

challenges implicated in this action so none could be raised. Second, contrary to VR Bennett's assertion (Doc. 49 at 1), the Foundation's motion to intervene has not been granted and thus it likely cannot raise any challenges, constitutional or otherwise.[7] Third, VR Bennett's state court petition does not present any constitutional, or even federal, issues. Her petition is narrowly confined to a pure issue of state law: Did the Attorney General properly conclude that certain records are subject to disclosure under the TPIA? *See* Exhibit 1. It would thus make no difference and no sense to raise issues of constitutional law in that forum. The court in Travis County will not consider *any* aspect of federal law, including the NVRA. This Court has and will. Matters of federal law are thus properly raised and adjudicated here. Because none of the *Younger* prongs are satisfied, the doctrine does not apply.

B. *Pullman* Abstention Does Not Apply.

Aside from the lack of interference, *supra* Section III, *Pullman* abstention does not apply for the basic reason that this action does not present a federal constitutional challenge. The Foundation is not challenging state law, but is seeking only to enforce the inspection rights of the NVRA. *Pullman* abstention is therefore not applicable. *Becker-Jiba Water Supply Corp.*, 2003 U.S. Dist. LEXIS 10334, at *19-20 ("There is no federal constitutional issue in this case. Becker is not attempting to challenge the constitutionality of a state statute but is seeking a declaration of its rights under [federal law] and corresponding injunctive relief to enforce its rights."); *see also Chisom v. Jindal*, 890 F. Supp. 2d 696, 721-22 (E.D. La. 2012) ("A federal district court properly exercises *Pullman* abstention only in the face of a federal constitutional challenge to a state action, i.e., an unsettled issue of state law, filed in federal court.").

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[7] On April 11, 2018, the Foundation moved to intervene as a matter of right pursuant to Tex. Gov't Code § 552.325(a).

Minute Man of America v. Coastal Restaurants, 391 F. Supp. 197 (N.D. Tex. 1975), is also instructive in this regard. There, plaintiff and defendant were both using the trademark "Minute Man" in connection with their food operations in Texas. The defendant's mark was registered in 1961 under Texas law, and plaintiff's mark was registered in 1969 under federal law. The defendant brought an infringement action in state court and plaintiff brought an infringement action in federal court. The court reviewed the claims and denied the motion to abstain, reasoning as follows:

> The *Pullman* Doctrine calls for abstention when a state statute is being questioned as invalid under the Federal Constitution. The courts have deferred ruling in this situation apparently hoping that the state courts would so interpret the state statute so that it would not be unconstitutional. The present case presents no claim of federal invalidity of a state statute. It only calls for an interpretation of a federal statute, and the jurisdiction of this Court arises under federal law. Actually, no question of state law is presented. Again when abstention has been ordered in the usual case, it is because a question of state law could be controlling. It really cannot be controlling in this case because there simply is no question of state law presented.

Id. at 199. The same is true here. There cannot be a controlling state law issue when there is not a question of state law presented to this Court.

The mere fact that the United States Constitution divides control of elections between the States and the federal government does not create a constitutional challenge for purposes of *Pullman*, as VR Bennett seems to suggest. (Doc. 49 at 12.) That balance is not an issue in this case and the constitutional validity of the NVRA was settled long ago. *ACORN*, 880 F. Supp. 1215 at 1222.

Nor does the NVRA's preemptive effect on state law rise to the level of a constitutional issue for purposes of *Pullman*. As explained in *Becker-Jiba Water Supply Corp.*, "[t]hat the Constitution of the United States overrides a right conferred by contrary state law does not make preemption an *issue* in this case; it is, instead, a controlling legal principle." 2003 U.S. Dist.

LEXIS 10334, at *20; *see also United Services Auto. Ass'n. v. Muir*, 792 F.2d 356, 364 (3d Cir. 1986) ("[W]e hold that preemption claims under the Supremacy Clause are not substantial federal constitutional issues for which *Pullman* abstention might be appropriate."); *Fleet Bank, N.A. v. Burke*, 160 F.3d 883, 890 (2d Cir. 1998) ("[P]reemption claims, though implicating the Supremacy Clause, have been recognized as presenting a constitutional issue of a lesser magnitude than suits challenging the authority of state officials on the ground that their actions will violate the substantive limitations of the Constitution.").

The absence of a federal constitutional challenge is fatal to VR Bennett's reliance on *Pullman*.

C. *Burford* Abstention Does Not Apply.

Aside from the lack of interference, VR Bennett's reliance on *Burford* fails for three reasons: (1) there is no "timely and adequate state-court review" available for the Foundation's NVRA claim; (2) there is no "complex state administrative process" involved; and, (3) the relevant factors tip decidedly against abstention.

As VR Bennett explains in her Motion, the *Burford* abstention doctrine requires the availability of "timely and adequate state-court review." (Doc. 49 at 14 (quoting *St. Paul Ins. Co. v. Trejo*, 39 F.3d 585, 588 (5th Cir. 1994).) *Burford* abstention is "not appropriate when 'timely and adequate state-court review' is not available." *Ill. Cent. R.R. Co. v. Guy*, 682 F.3d 381, 392 (5th Cir. 2012). For reasons already explained, no state-court review of the Foundation's NVRA claim is available. The NVRA requires all actions to enforce its provisions to be filed in federal "district court." 52 U.S.C. § 20510(a) and (b)(2). Furthermore, VR Bennett's state court case is confined to a single issue of state law. The court would have no occasion and no reason to consider the NVRA.

VR Bennett also acknowledges that "'*Burford* is concerned with protecting complex state administrative processes from undue federal interference.'" (Doc. 49 at 14 (quoting *New Orleans Pub. Serv., Inc.*, 491 U.S. at 362).) The TPIA is not a complex administrative scheme; it is a series of statutes. Even if it were necessary to consider state law, this Court is fully capable of doing so. *See Am. Express Travel Related Servs. Co. v. Sidamon-Eristoff*, 755 F. Supp. 2d 556, 572 (D.N.J. 2010) ("*Burford* abstention has no application when the Court is called upon to interpret an uncomplicated state statute.").

VR Bennett takes issue with very little in the Texas Attorney General's advisory opinion. She complains that "[t]he decision did not directly respond to [Bennett's] assertion that the use of such information to create the requested information would be a violation of section 62.113(c)." Exhibit 1 at 5. VR Bennett adds that she is concerned about a general confidentiality statute that applies to all government offices who handle information on the population, Tex. Gov't Code § 552.101. *Id*. The remainder of VR Bennett's state court petition asserts that the Attorney General did not acknowledge a conflict between his advice and Section 62.113. This hardly constitutes a complex scheme or administrative process that would rise to invoking the *Burford* doctrine.

Although those deficiencies end the inquiry, the Foundation addresses the relevant factors:

> (1) whether the cause of action arises under federal or state law; (2) whether the case requires inquiry into unsettled issues of state law or into local facts; (3) the importance of the state interest involved; (4) the state's need for a coherent policy in that area; and (5) the presence of a special state forum for judicial review.

Moore v. State Farm Fire & Cas. Co., 556 F.3d 264, 272 (5th Cir. 2009) (citation omitted).

Here, the action pending before this Court arises solely under federal law, the NVRA, and VR Bennett's failure to abide by it. The Foundation does not allege any unsettled issues of state law or local facts that must be decided in conjunction with the NVRA issue. The third and fourth prongs are equally unavailing in this analysis. Indeed, the Attorney General apparently does not believe the confidentiality of the implicated records is an interest of importance.

As to the fifth prong, while there is a mandated forum in which a governmental body must file suit to withhold public information from a requestor, Tex. Gov't Code § 552.324, this fact is irrelevant because the Foundation was not a requester under the TPIA and does not assert any claims under the TPIA here. Regardless, VR Bennett has already asserted in the instant case that Section 62.113 prohibited her from producing the records that the Foundation requested under the NVRA. (*See* Doc. 23 at 3.) She has thus already utilized a second forum to raise this issue, negating the concern that there is only one "special forum" that can hear her argument. The *Burford* doctrine does not apply.

D. *Colorado River* Abstention Does Not Apply

"For the *Colorado River* abstention doctrine to apply, the state and federal lawsuit must be parallel." *Rowley v. Wilson*, 200 Fed. App'x 274, 275 (5th Cir. 2006). In other words, "the suits must have the same parties and the same issues." *Id.* It is not sufficient that some of the parties and issues are the same and others are not. *Id.* "[I]f the two cases are not parallel, the doctrine does not apply." *TruServ Corp. v. Flegles, Inc.*, 419 F.3d 584, 591 (7th Cir. 2005). Finally, "'[a]ny doubt regarding the parallel nature of the [state court] suit should be resolved in favor of exercising jurisdiction.'" *Davis v. Matagorda Cnty*., No. 3:18-CV-00188, 2019 U.S. Dist. LEXIS 33459, at *26 (S.D. Tex. Mar. 4, 2019) (quoting *TruServ Corp.*)

Here, the Foundation filed its federal action under the NVRA against a single defendant in her capacity as the Voter Registrar for Harris County, Texas. The Foundation brings one Count alleging a violation of Section 8 of the NVRA, 52 U.S.C. § 20507(i), which requires local election officials to provide for public inspection of voter list maintenance records. There are no state law violations alleged.

In contrast, VR Bennett filed her state court action in Travis County against the state's Attorney General, seeking relief from a specific advisory opinion regarding application of the TPIA. *See* Exhibit 1. Her petition does not cite or even reference a single federal law or federal case, and the Foundation is not a party to the state court action. Because the parties and issues are not the same, the state and federal cases are not "parallel" and the doctrine does not apply.

CONCLUSION

VR Bennett has delayed this action long enough. For the foregoing reasons, her latest attempt to shield her records from public scrutiny should be denied.

Dated: April 23, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2019, I electronically filed the foregoing using the Court's ECF system, which will serve notice on all parties.

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