UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

COURTHOUSE NEWS SERVICE,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 2:18cv391
	)	
GEORGE SCHAEFFER, et al.,	)	
	)	
Defendants.	)	

OPINION & ORDER

These matters come before the Court on two motions filed by the Defendants. The first motion is a Motion to Dismiss brought under Rules 12(b)(3), 12(b)(7), and 21 of the Federal Rules of Civil Procedure. Doc. 21. The second motion is a Motion for Abstention, which asks this Court to abstain from exercising its jurisdiction in this matter. Doc. 35. On March 13, 2019, the Court held a hearing on both motions. At that hearing, the Court **DENIED** each motion from the bench. Doc. 46. The Court now **ISSUES** this Opinion and Order to further explain its rulings.

BACKGROUND

Courthouse News Service ("Plaintiff"), is a California corporation that specializes in reporting news about ongoing civil litigation. Doc. 1 ("Compl.") ¶ 7. Defendant George E. Shaeffer is the Clerk for the Circuit Court for the City of Norfolk, Virginia, ("Defendant Schaeffer" or "the Norfolk Clerk") and Defendant Jacqueline C. Smith ("Defendant Smith" or "the Prince William Clerk") is the Clerk for the Circuit Court for Prince William County, Virginia (collectively "Defendants" or "the Clerks").

Plaintiff contends that Defendants employ common "policies and practices . . . of withholding complaints from the press and the public until after administrative processing" and

that such a delay violates Plaintiff's rights under the First Amendment of freedom of the press. Compl. ¶¶ 42, 45. Plaintiff alleges that only sixteen percent (16%) of civil complaints filed in Norfolk Circuit Court are made available on the same day that they are filed, with fifty percent (50%) being delayed three (3) days or longer. Id. ₱ 3. Plaintiff goes on to allege that only twenty-seven percent (27%) of complaints filed in Prince William County Circuit Court are made available on the same day that they are filed, with forty percent (40%) being delayed three (3) days or longer. Id. These delays, argues Plaintiff, deprive the media and public of First Amendment rights to contemporaneous access to civil filings.

PROCEDURAL HISTORY

On July 19, 2018, Plaintiff filed the Complaint seeking preliminary and permanent injunctive relief from Defendants' practices.[1] Compl. Defendants have not filed their Answer.

Defendants filed their Motion to Dismiss on August 24, 2018, asserting that Plaintiff failed to join a necessary party and that Defendant Smith is improperly joined to the action ("Motion to Dismiss"). Doc. 21. By agreed order, Plaintiff opposed the Motion to Dismiss on September 13, 2018, and Defendants replied on September 26, 2018. Docs. 27, 29. As is custom in this District, the parties continued to conduct discovery while the Motion to Dismiss was pending.

This Court entered the Rule 16(b) Scheduling Order on November 27, 2019, setting trail on June 18, 2019. Doc. 32 at 1.

On January 31, 2019, Defendants filed a Motion for Abstention. Doc. 35. In that motion, Defendants ask this Court to abstain from exercising its jurisdiction. Id. On February 7, 2019, this Court entered an Agreed Order extending the deadline for Plaintiff to file its Opposition. Doc.

[1] Plaintiff also filed a Motion for Preliminary Injunction but later withdrew the motion. Doc. 26.

42. On February 21, 2019, Plaintiff filed its Opposition to the Motion for Abstention. Doc. 43. Defendants filed a Reply to Plaintiff's Opposition on February 27, 2019. Doc. 45.

The Court held a hearing on March 13, 2019, to consider both motions. Doc. 46. The Court ruled from the bench, **DENYING** each motion. Id.

I. MOTION TO DISMISS FOR FAILING TO JOIN A NECESSARY PARTY

The first issue before the Court is whether the Complaint should be dismissed for failing to join a necessary party, namely the Office of the Executive Secretary of the Supreme Court of Virginia ("OES").

A. LEGAL STANDARD

When resolving a Motion to Dismiss under Rule 12(b)(7), Courts look to Rule 19 to determine whether a party is necessary and/or indispensable. Under Federal Rule of Civil Procedure 19(a), a party is "necessary" in two situations. First, a party is said to be "necessary" when "the court cannot accord complete relief among the existing parties" in that person's absence. Fed. R. Civ. P. 19(a)(2)(A). Second, a party may also be "necessary" where "that [party] claims an interest relating to the subject of the action" and is so situated that disposing of the matter without that party may "impair or impede the party's ability to protect the interest" or "leave an existing party subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." Id. at R. 19(a)(1)(B). If a party is necessary but joining that party would deprive the Court of subject matter jurisdiction, then the Court must further inquire as to whether that party's involvement is "indispensable" to the action. See Fed. R. Civ. P. 19(b). Dismissal of an action is required only if a non-joined party is both "necessary" and "indispensable." Home Buyers Warranty Corp. v. Hanna, 750 F.3d 427, 433 (4th Cir. 2014). Otherwise, "if a person has not been joined as required, the court must order that the person be

made a party." Fed. R. Civ. P. 19(a)(2). The burden of proof regarding whether a party should be joined to an action rests on the party raising the defense. Am. Gen. Life & Accident Ins. Co. v. Wood, 429 F.3d 83, 92 (4th Cir. 2005).

B. DISCUSSION

Both Plaintiff and Defendant agree that OES is not an indispensable party; therefore, the sole issue for the Court to resolve is whether the OES is a necessary party and should be joined to the lawsuit under rule 19(a). See Doc. 22 at 9; Doc. 27 at 17.[2]

Defendants claim that the OES is a necessary party, because the OES serves as the "administrator" of the e-filing case management system that Defendants utilize "to manage and maintain court records, including newly-filed civil complaints." Doc. 22 at 4. Defendants contend that OES's role as "administrator" impacts the delay to Plaintiff's access to civil complaints in two ways. Defendants first allege that cases "must be input into OES's e-filing system before they are available for viewing by the general public at a public access terminal" and second, Defendants indicate that "complaints that are electronically filed are input directly into OES's system by the filer" and that such complaints do not become visible until after the payment is processed by a third-party vendor controlled by OES. Doc. 22 at 8. Therefore, Defendants contend that to the extent that delays in access to new filings are caused by the e-filing system, the Court cannot accord complete relief without the OES as any injunction regarding the speed at which Defendants must provide access to newly-filed complaints necessarily involves the OES. Id. at 9. Defendants also contend that failing to join OES will "impair or impede" OES's ability

[2] Plaintiff indicates that it would join Karl Hade in his official capacity as Executive Secretary of OES. Doc. 27 at 17 n.6. Plaintiff contends that this action would not deprive the Court of subject matter jurisdiction as the Eleventh Amendment does not deprive a federal court of jurisdiction to enjoin a state officer from future action. Id; see Gray v. Laws, 51 F.3d 426, 430 n.1 (4th Cir. 1995) ("A state and its officers are not entitled to Eleventh Amendment protection . . . where a plaintiff seeks only prospective, injunctive relief."). Nevertheless, Plaintiff maintains that it is not required to join Hade or OES.

to protect its substantial interest in the subject matter of the lawsuit because OES may have separate interests as their "spheres of responsibility differ." Doc. 22 at 9.

Plaintiff argues that the OES is not implicated by any relief that Plaintiff requests and that complete relief can be afforded without the OES. Regarding Defendants' first contention – that cases "must be input into OES's e-filing system before they are available for viewing by the general public at a public access terminal" – Plaintiff agrees that, while this is true, the Clerk's office is not otherwise inhibited from providing access to paper complaints before they are scanned or processed to be viewed at the public access terminal, an action which is at the heart of the Complaint. Doc. 27 at 13. Plaintiff contends that they are not seeking any modification to the OES systems, but "Defendants' recent change in practice whereby access to newly filed civil complaints has been moved to after processing" which has allegedly caused delays in Plaintiff's access to newly-filed complaints. Id.

Regarding Defendants' second contention – that the fees of individuals who directly file online must be processed by a third-party vendor before the complaints are visible – Plaintiff cites language from Defendants declarations, in which they each state that:

> Once a new complaint is e-filed by a litigant, it appears virtually immediately on a screen at the desk of a deputy clerk in the civil division of my office. The civil division deputy clerk performs a cursory review to ensure the filing is acceptable and the filing fee is correct. The deputy clerk then "accepts" the new filing and enters our office code to ensure the filing fee is routed to our account by OES's payment processing vendor. Upon acceptance of the electronically filed complaint, it is available for viewing on the public access terminals located in the Clerk's office within minutes.

Doc. 27 at 14 (citing Doc. 20-1 ("Shaefer Decl.") ¶ 21; Doc. 20-2 ("Smith Decl.") ¶ 22)); see also Shaefer Decl. ¶ 22 ("e-filed complaints are docketed virtually immediately once the filer's credit card payment and new filing is accepted."). Additionally, Plaintiff cites language from the Virginia Judiciary E-Filing User's Guide, which indicates that:

> After the user has clicked on the Submit button, he or she will be transferred to the secure third-party credit card processing site. This site will allow the user to pre-authorize (e.g., create a hold for) the amount of the fees from his or her credit card. All major credit cards are accepted.
>
> NOTES:
>
> No money will be taken from a user's account at this stage. In order for the filing to be accepted, the circuit court clerk must approve the filing and the user must completely pay the total amount of the fees to file the case.

Doc. 27 at 14 (citing VIRGINIA JUDICIARY E-FILING SYSTEM USER'S GUIDE, Ch. 3, § II, B, available at http://www.courts.state.va.us/online/vjefs/usersmanual.pdf). The website further indicates that "once the pre-authorized payment has been approved by the clerk, the user will be routed to the New Filing—New Case submitted page." Id. Therefore, it appears that the Clerks' offices are responsible for approving the electronically filed complaint before it is available to view on the public access terminal and any delay in their approval would also result in a delay to the document being visible on the public access terminal. Plaintiff further alleges that it is the Clerk's office who has delayed access by either failing to allow Plaintiff to view a newly filed complaint before it is scanned into the e-filing system or by exercising undue delay in approving an electronically filed complaint once it is filed by a user. Both actions are directly controlled by the administration of the clerk's office.

The core issue in this lawsuit is whether the Clerks are depriving the Plaintiff of its First Amendment rights to access to civil court filings in a timely fashion. Thus, the alleged harm that Plaintiff seeks to remedy is delay, which it argues is unconstitutionally caused by Defendants. OES does not control how the Clerks conduct the business of their offices, including the rate at which court filings are released to the public. Rather, OES merely provides tools which Clerks may use in running their offices. See Daily Press, LLC v. Office of the Exec. Sec'y of the Supreme Court, 800 S.E.2d 822, 826 (Va. 2017) (finding that OES merely provides a support role to Circuit Court

Clerks). As Defendants conceded at oral arguments, the Clerks operate their offices independently and make their own policies. Thus, the Court observes that OES is not dictating the procedure of the Clerks' offices.

Accordingly, the Court can grant complete relief to the parties without joining OES and without effecting the rights or interests of OES. Therefore, the Defendants' Motion to Dismiss under Rule 12(b)(7) is **DENIED**.

II. MISJOINDER AND MOTION TO DISMISS FOR IMPOPER VENUE AS TO DEFENDANT SMITH

Defendants also claim that the Prince William Clerk is misjoined in this case. Additionally, Defendants argue that but-for the allegedly improper joinder, venue in the Norfolk Division with respect to the Prince William Clerk is improper.

A. MISJOINDER

i. Legal Standard

To determine whether a party has been misjoined, courts look to Rule 20 of the Federal Rules of Civil Procedure. Under Federal Rule of Civil Procedure 20(a)(2) defendants can be joined in the same action if "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences" and "any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). Under Rule 20, "all reasonably related claims for relief by or against different parties [are] tried in a single proceeding." Saval v. BL, Ltd, 710 F.2d 1027, 1031 (4th Cir. 1983). Additionally, "the rule should be construed in light of its purpose, which is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits." Id. "To be reasonably related, there must be some logical connection or

relationship between the transactions or occurrences." Johnson v. City of Fayetteville, No. 5:12cv456, 2015 WL 3409058 at *2 (E.D.N.C. May 27, 2015).

Misjoinder is not a ground for a court to dismiss an action; however, the court may add, drop, or sever any claim against a mis-joined party. Fed. R. Civ. P. 21. A district court possesses broad discretion in ruling on a requested severance under Rule 21. Hanna v. Gravett, 262 F. Supp. 2d 643, 647 (E.D. Va. 2003).

ii. Discussion

Defendants concede that their matters involve common questions of law and fact. Doc. 29 at 5. Therefore, the only issue for the Court to resolve is whether the claims arise out of the same transaction or series of transactions. Defendant Shaefer also concedes that it is proper for the Court to proceed against him in the Norfolk Division of the Eastern District of Virginia. However, Defendants contend that Defendant Smith's case is improperly joined and should be severed and transferred to the Alexandria Division. Doc. 22 at 15, n.4.

Defendants argue that their joinder is improper because Plaintiff's alleged injuries arise from "different complaints filed in . . . different jurisdictions on different dates and [are] processed according to the local practices then-existing in each locality by different employees." Doc. 22 at 14. Accordingly, Defendants contend that the actions against each defendant will involve a "wholly different factual record." Id. Defendants also argue that Defendant Smith will be improperly burdened if she is forced to travel from Prince William County to defend this action as any witnesses pertaining to the factual allegations against Prince William County's clerk's office will also have to travel from Prince William County to defend the action. Id. (noting that the distance between Prince William and the Norfolk Division is approximately 200 miles and a three-

hour drive). Therefore, Defendants request that the Court sever the claims against Defendant Smith for Defendant Smith under Rule 21.

Plaintiff responds by arguing that the right to relief that it asserts against Defendants involves the same "series of transactions and occurrences" because "CNS' allegations against both Defendants are substantially identical . . . [and] Defendants' processes and defenses are substantially the same and nearly identical." In support of its argument, CNS cites Hinson v. Norwest Fin. S.C., Inc., 239 F.3d 611, 618 (4th Cir. 2001) and M.K. v. Tenet, 216 F.R.D. 133, 142 (D.D.C. 2002). In Hinson, the Fourth Circuit reasoned that a set of plaintiffs' actions involved the same "series of transactions and occurrences" where:

> [P]laintiffs alleged that they participated in the same kind of transaction in which the [other plaintiffs] had participated and that all the transactions involved similar loans from [the same defendant]. The joining plaintiffs also alleged the same or similar types of violations committed by [the defendant] in these transactions . . . . While it is true that the factual circumstances of each transaction differed, we cannot say that it was an abuse of discretion for the district court to have permitted the joinder.

Hinson v. Norwest Fin. S.C., Inc., 239 F.3d 611, 618 (4th Cir. 2001). Likewise, in Tenet, the district court found that the actions of joined parties were "logically related" where the events consisted of a consistent pattern of behavior employed by defendants. 216 F.R.D. at 142. Plaintiff contends that here, "Defendants' accepting, docketing, and filing of newly-filed civil complaints constitute a series of transactions or occurrences" for the purposes of Rule 20 as each defendant describes utilizing nearly identical processes in each of their offices. Doc. 27 at 21; Shaeffer Decl. ¶¶ 12-28; Smith Decl. ¶¶ 12-28.

Rule 20 is generally read broadly and in a way favoring of judicial convenience, the expeditious resolution of disputes, and avoiding multiple litigation. Saval, 710 F.2d at 1031 (quoting Mosley v. General Motor Corp., 497 F.2d 1330, 1332-33 (8th Cir. 1974)). To accommodate that need, all reasonably related claims are permitted to be tried together. Id. Those

principles in mind, the Court cannot accept Defendants' arguments. While the alleged constitutional deprivations did not take place in the same courthouse, they are nearly – if not completely – identical. The substantially identical claims against the two Clerks are thus logically related. Therefore, they meet the same transaction or series of transactions requirement within the broad, flexible meaning of Rule 20(a).

Moreover, litigating the same legal question with substantially the same fact pattern would result in duplicative and unnecessary costs to the parties and courts. The parties would likely incur additional attorneys' fees and filing costs just to get the parallel Alexandria case up to speed with its sister case here in Norfolk. In litigating and trying the cases, costs – such as, attorneys' fees, filing costs, judges' time, and parties' time – will be spent twice just to answer substantially similar questions. While it may be somewhat burdensome for witnesses to commute from Prince William County, the costs of that commute are likely less than the costs of severing the Prince William Clerk's case and sending it to the Alexandria Division. Further, having parallel litigation would not only result in duplicative costs, it would also present a risk of the two Clerks within the same judicial District being subject to inconsistent interlocutory orders and judgments. While each case is determined on its own facts, concerns of efficiency, economy, and convenience counsel in favor of litigating these cases in one action.

Accordingly, the Court **FINDS** that the Prince William Clerk is not misjoined and **DENIES** the Motion to Dismiss insofar as it seeks severance.

B. IMPROPER VENUE

Defendants also move to dismiss the case against the Prince William Clerk, because venue is allegedly improper in this judicial Division. Because the Court **FINDS** that the two Defendants are properly joined, it also **DENIES** the Motion to Dismiss under Rule 12(b)(3).

Local Rule of Civil Procedure 3 states that divisional venue is determined by using the federal venue statute as if it read "division" instead of "district." Loc. R. Civ. P. 3(C). Thus, the applicable divisional venue rule reads: "[a] civil action may be brought in a [division] in which any defendant resides, if all defendants are residents of the State in which the [division] is located." 28 U.S.C. § 1391(b)(1) (as adjusted by Loc. R. Civ. P. 3(C)).

No one disputes either that both Clerks are residents of Virginia – or for that matter, the Eastern District of Virginia – or that venue in this Division is proper for the Norfolk Clerk. Thus, because the Court **FOUND** that the Prince William Clerk is properly joined, divisional venue is appropriate in the Norfolk Division as to both Defendants. Accordingly, the Motion to Dismiss due to Improper Venue is **DENIED**.

III. MOTION FOR ABSTENTION

Defendants ask this Court to abstain under the doctrine announced in Younger v. Harris, specifically the O'Shea v. Littleton and Rizzo v. Goode cases. Plaintiffs responds that that motion is untimely filed and that this is not an appropriate case for abstention, regardless of the timeliness of its filing. Because the Court agrees with the Plaintiff, Defendant's Motion for Abstention is **DENIED**.

A. THE MOTION FOR ABSTENTION IS UNTIMELY FILED.

The Supreme Court has held that Younger's abstention rule governs when there is an ongoing state case and the federal litigation is "in an embryonic stage and no contested matter [has] been decided." Doran v. Salem Inn, Inc., 422 U.S. 922, 929 (1975).

Plaintiff argues that the Motion to Abstain is filed "beyond the embryonic stage," doc. 43 at 10, because this litigation has carried on deep into discovery. Id. at 11. Plaintiff cites to a

number of cases which address whether abstention was timely requested. Id. at 10.[3] Plaintiff also cites Hill v. Snyder, 878 F.3d 193 (6th Cir. 2017). In that case, the Sixth Circuit noted that "[f]ederalism is not a one-way street," and the considerations that would lead a court to abstain from exercising its jurisdiction, also require consideration of the interests of the federal sovereign as well. 878 F.3d at 206. The Sixth Circuit went on to consider the amount of resources that go into federal litigation:

> Both this court and the district court have invested significant time and energy on this case. So too have the parties. They have actively litigated this case for seven years, including engaging in discovery, a costly and burdensome process. To jump ship now would be to exhibit a callous disregard for the meaningful litigation that has already occurred in the federal court system.

Id.

Defendants argue that this Motion is not untimely. Defendants begin by noting that this timeliness of an abstention motion may not necessarily be about the amount of time passed, but rather argue that the question is whether the federal court has reached questions on the merits of the case, like on a petition for a preliminary injunction. Doc. 45 at 2-3. Defendants go on to distinguish Hill, by pointing out that Hill was pending for seven (7) years. Id. at 3. Defendants conclude by arguing that there have not been any proceedings of substance in this case and that they have not even Answered the Complaint yet. Id. at 3-4.

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[3] Plaintiff cites: Nationwide Biweekly Admin. v. Owen, 873 F.3d 716, 730 (9th Cir. 2017) (holding that courts should consider the length of time along with the facts in determining whether abstention is appropriate) (noting that six (6) months has been held to be too long for Younger abstention to be appropriate); Ciotti v. Cook County, 712 F.2d 312 (7th Cir. 1983) (holding that a state court proceeding filed before the federal court held a proceeding of substance called for dismissal of the federal case); Merk Sharp & Dohme Corp. v. Conway, 909 F. Supp. 2d 781 (E.D. Ky. 2012) (noting that a federal action pending for six (6) months weighs against abstention).

This case is nearly nine (9) months old, having been filed on July 19, 2018. Defendants did not file this Motion for Abstention until January 31, 2019, more than six (6) months after their initial Motion to Dismiss.[4] Since this case began, extensive discovery has taken place and considerable resources have been put into the litigation of this matter. Trial is set five (5) months from the filing of the Motion for Abstention, and three (3) months from now. To abstain now would disregard all the costly and time-consuming work both parties have devoted to this federal litigation. While the hearing on these motions was the first in-court argument, it cannot be said that this case is still "embryonic."

B. EVEN IF THE COURT REACHED THE MERITS OF THE MOTION FOR ABSTENTION, THE COURT IS NOT PERSUADED THAT THIS IS AN APPROPRIATE CASE FOR ABSTENTION.

i. Younger Abstention

Defendants argue that this Court should abstain from using its jurisdiction under the Younger doctrine, and its "most salient extensions," O'Shea v. Littleton, 414 U.S. 488 (1974) and Rizzo v. Goode, 423 U.S. 362 (1976). Doc. 36 at 8-11.

Younger v. Harris, 401 U.S. 37 (1971) and its progeny set forth a federal policy against intervening in ongoing state court proceedings, absent some extraordinary circumstance. 401 U.S. 37, 41. The Supreme Court has identified three "exceptional" instances when federal courts should invoke Younger abstention: when either a (1) state court criminal prosecution, (2) state civil enforcement proceeding, or (3) state civil proceeding involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions are pending while the

[4] While Defendants try to explain their late filing of this motion by the Seventh Circuit's recent holding in Courthouse News v. Brown, cited infra, the Court is not persuaded that that fact alone should excuse an untimely filing. Abstention is an established principle in federal court jurisdiction. Defendants did not need Brown to file their motion; indeed, they heavily rely on three Supreme Court cases which are decades old. Thus, Defendants would have been free to move this Court for abstention at an earlier, more appropriate stage of the litigation.

federal litigation is ongoing. Sprint Communications v. Jacobs, 571 U.S. 69, 73 (2013). The Fourth Circuit has observed that Younger abstention is properly invoked when: "(1) an ongoing state judicial proceeding, instituted prior to any substantial progress in the federal proceeding; that (2) implicates important, substantial, or vital state interest; and (3) provides an adequate opportunity for the plaintiff to raise the federal constitutional claim advanced in the federal lawsuit." Laurel Sand & Gravel, Inc. v. Wilson, 519 F.3d 156,165 (4th Cir. 2008). "Absent any pending proceeding in state tribunals, therefore, application by the lower courts of Younger abstention [is] clearly erroneous." Ankenbrandt v. Richards, 504 U.S. 689, 705 (1992).

O'Shea was a case of multiple plaintiffs alleging racial discrimination in the setting of state court bail and state court sentences. 414 U.S. at 490-91. That relief would have entailed federal courts supervising state court criminal proceedings. Id. at 500. The Court held that the claims were not yet ripe, because the plaintiffs sought relief for actions that could happen in future state court prosecutions. Id. at 495-99. It went on to say that even if they were ripe, federal courts should not intervene because the relief would create an "ongoing federal audit" of state criminal prosecutions. Id. at 500-01. This would indirectly accomplish what Younger sought to prevent. Id.

The Rizzo case was brought by a federal lawsuit filed against Philadelphia city officials for insufficient handling of citizen complaints against the police. 423 U.S. at 365-66. There, the plaintiffs requested, and the district court granted, an injunction requiring the city officials to present a new, comprehensive plan for handling citizen complaints. Id. at 364-65. The Court first noted that there was not a sufficient case or controversy to trigger federal jurisdiction. Id. at 372-73. Going beyond the case and controversy issue, the Court noted that the injunction against the city officials would put a "sharp limitation on the department's latitude in the dispatch of its own

affairs." Id. at 379 (internal quotations omitted). The Court described the request as "novel [and] quite at odds with the settled rule that in federal equity cases that the nature of the violation determines the remedy." Id. at 378 (internal quotations omitted). The Court added that federal courts should consider "the special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law." Id. (internal quotations omitted).

ii. Discussion

In their argument, Defendants rely heavily on Courthouse News Service v. Brown, 908 F.3d 1063 (7th Cir. 2018), petition for cert. filed, --- U.S.L.W. --- (March 15, 2019) (18-1203). Defendants argue that that neither the Seventh Circuit nor the Supreme Court provide "the sort of access" that Plaintiff seeks. Doc. 36 at 13 (citing Brown, 908 F.3d at 1065, 1070). Defendants further argue that states have a significant interest in running their own clerk's office filing procedures, and that when those procedures are challenged, the states should be given the first opportunity to assess the procedures. Id. (citing Brown, 908 F.3d at 1071, 1075). Defendants also argue that the injunction sought by the Brown plaintiffs, and thus the Plaintiff here, is too high, and that the states should therefore have a chance to first review the constitutional question. Id. at 13-14 (citing Brown, 908 F.3d at 1071-75). Finally, Defendants ask this Court to follow the public policies underlying the Brown case. Those policies include, respecting the state's significant interests in running its filing systems, avoiding conflicts with Virginia statutory law,[5] and avoiding excessive federal entanglement in state affairs. Id. at 14-15.

[5] Defendant argues that if the Court were to grant Plaintiff's relief, Defendants would be in the "impossible position" of complying with conflicting mandates, presumably this Court's order and the statute. Defendants cite Va. Code § 17.1-208, which provides in part: "[n]o person shall be permitted to use the clerk's office for the purpose of making copies of records in such manner, or to such extent, as will, in the determination of the clerk, interfere with the business of the office or with its reasonable use by the general public." Va. Code § 17.1-208(B). The Court is not convinced that this is an "impossible position." The statute confers discretion on the clerks. Obviously, that discretion cannot be used in an unconstitutional

Plaintiffs argue that Younger abstention is inappropriate, because there is no underlying, ongoing state court proceeding. Doc. 43 at 14. Plaintiffs go on to argue that abstention under O'Shea is inappropriate, because O'Shea was concerned with federal courts monitoring future state court proceedings and "case by case evaluations" of state court discretionary decisions. Id. at 16-7. Plaintiffs seem to argue that Rizzo addressed the limit of federal equity power, rather than whether abstention was warranted. Id. at 20.

Abstention is the exception, not the rule, because federal courts have a "virtually unflagging obligation" to exercise the jurisdiction given to them. Ankenbrandt, 504 U.S. at 705. When the Fourth Circuit has addressed Younger abstention, it has noted that the existence of an ongoing state court proceeding is a necessary condition for Younger abstention to be appropriate. Laurel Sand & Gravel, Inc., 519 F.3d at 165 (giving three elements for Younger, one of which is an ongoing state court proceeding). Here, there is no ongoing state court proceeding.

That fact aside, this case does not implicate matters "uniquely in furtherance of the state courts' ability to perform its judicial function." Sprint Communications, 571 U.S. at 73. When the Supreme Court first identified that category of case justifying abstention, it was referring to civil contempt orders and requirements for posting bond pending appeal. New Orleans Public Service, Inc. v. Council of the City of New Orleans, 491 U.S. 350, 368 (1989). Here, the rate at which local clerks release filings is not as "uniquely in furtherance" of a court's judicial function. The Plaintiff's requested relief would not inhibit a court from resolving cases or enforcing its orders. Rather, Plaintiff's ask that they be given access to fillings more quickly. Such relief does not implicate a core judicial function. Because there is no state court proceeding in this case, and this

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manner. Thus, if the Court were to grant Plaintiff's relief, the Clerks still can operate their offices, they would just have to release filings faster.

matter is not within the three "exceptional" cases warranting Younger abstention, the Younger doctrine does not apply.

O'Shea, Rizzo, and Brown likewise do not require abstention here. The relief sought in this case would not invade any state court proceedings, ongoing or future. Moreover, it would not require continuous federal policing. Plaintiffs ask for an order requiring Defendants to release state court filings faster. While some future litigation may take place to enforce this Court's order, if it were to grant one, that does not rise to the level of a federal audit that would caution against exercising jurisdiction. See Courthouse News Service v. Planet, 750 F.3d 776, 792 (9th Cir. 2014) (holding that a substantially similar lawsuit did not call for abstention). Accordingly, O'Shea is distinguishable from this case.

The Court is also not convinced that principles of equity, comity, and federalism require abstention. The Fourth Circuit has observed that abstention is not "a license for free-form ad hoc balancing of . . . state and federal interests." Martin v. Stewart, 499 F.3d 360, 364 (4th Cir. 2007). Rather, abstention is a principle of defined doctrines. Id. Nevertheless, the Court is aware that the Brown was decided on principles of equity, comity, and federalism. Likewise, to the extent that Rizzo can be read as an abstention case, it is one which depends heavily on such principles. Federalism does not require federal courts to yield matters of constitutional concern when a federal order would not excessively entangle a federal court in the states' own internal affairs. When Congress enacted 42 U.S.C. § 1983, it gave federal courts jurisdiction to issue relief against persons who, under color of state law, deprive another of a right secured by the federal Constitution. Plaintiff asks for a single injunction to remedy an alleged First Amendment violation. While the Court is not at this time prepared to comment on the merits of such a request in this case, the Court need not altogether abstain from addressing the merits of such a request.

Accordingly, this Court **DENIES** Defendants' Motion for Abstention as untimely and inappropriate.

CONCLUSION

In sum, this Court:

1. **DENIES** the Motion to Dismiss for Failure to Join a Necessary Party;
2. **FINDS** that the Prince William Clerk is not misjoined;
3. **DENIES** the Motion to Dismiss due to Improper Venue; AND
4. **DENIES** the Motion for Abstention.

It is **SO ORDERED**.

Norfolk, Virginia
March 18, 2019

/s/
Henry Coke Morgan, Jr.
Senior United States District Judge

HENRY COKE MORGAN, JR.
SENIOR UNITED STATES DISTRICT JUDGE