**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

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| PHILIP SULLIVAN,<br>CHARLOTTE SULLIVAN,<br><br>Plaintiffs,<br><br>v.<br><br>JEFFREY STEIN, et al.,<br><br>Defendants. | :<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>: | Civil No. 3:03cv1203 (MRK) |

**RULING AND ORDER**

Pending before the Court is Plaintiffs' Motion for Preliminary Injunction [**doc. #181**] and Motion to Bring in an Additional Defendant [**doc. #189**]. Both of these motions relate to Plaintiffs' request for a preliminary injunction from this Court enjoining the criminal trial in *Connecticut v. Phillip Sullivan*, CR1010665 – currently scheduled to commence in the Connecticut Superior Court on January 5, 2005 – from proceeding during the pendency of this action on the ground that the State is violating Plaintiff Phillip Sullivan's constitutional rights by continuing with the criminal trial against him. After considering the parties' briefs, including Plaintiffs' Amendment to their Motion for a Preliminary Injunction [doc. #199] and Plaintiffs' Response to the Court's December 23, 2004 Order to Show Cause [doc. #196], the Court declines to grant Plaintiffs the relief they seek in either of their motions for the reasons explained below.

Plaintiffs' request for a preliminary injunction is clearly barred by the *Younger* abstention doctrine. *See Younger v. Harris*, 401 U.S. 37, 54 (1971).[1] As explained more fully in this

[1] Because the Court concludes that it must abstain, it has no need to address the many other defects in Plaintiffs' motion that are pointed out in the State's Memorandum in Opposition

Court's decision in *Sica v. Connecticut*, 331 F. Supp. 2d 82 (D. Conn. 2004), the *Younger* abstention doctrine requires federal courts to abstain from asserting jurisdiction over "federal constitutional claims that involve or call into question ongoing state proceedings." *Id*. at 84 (quoting *Diamond "D" Constr. Corp. v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002)). *Younger* abstention applies when three factors are present: (1) there is an ongoing state proceeding; (2) the claim raises important state interests; and (3) the state proceedings provide an adequate opportunity to raise the federal constitutional claims. *See Schlagler v. Phillips*, 166 F.3d 439, 441 (2d Cir. 1999). If *Younger* applies, "abstention is mandatory." *Id*. at 441. There is no question that all three elements are present in this case.

As for the first element, Plaintiffs ask this Court to enjoin an ongoing state criminal prosecution, a factual setting that is nearly identical to *Younger* case itself. As for the state's interest, the second element, "it is axiomatic that a state's interest in the administration of criminal justice within its borders is an important interest." *Hansel v. Town Court*, 56 F.3d 391, 393 (2d Cir. 1995) (citing *Middlesex County Ethics Comm. v. Garden State Bar Ass'n.*, 457 U.S. 423, 432 (1982)). *See also Gibson v. Berryhill*, 411 U.S. 564, 574 (1973) ("a federal court may not enjoin a pending state criminal proceeding in the absence of special circumstances"). Finally, the state criminal proceedings clearly afford Plaintiffs an adequate opportunity to raise their constitutional claims. In fact, Plaintiffs allege that such claims have already been considered and denied by the state court. *See* Mot. Prelim. Inj. at 4 [doc. #181].[2]

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to Motion for Preliminary Injunction [doc. #194].

[2] If, as alleged, the Superior Court has already rejected Plaintiffs' constitutional claims, the *Rooker-Feldman* doctrine would likely stand as an additional jurisdictional barrier to this Court's consideration of Plaintiffs' claims. *See District of Columbia Court of Appeals v.*

Therefore, this Court must abstain from interfering with the ongoing state criminal prosecution involving Plaintiffs unless an exception to *Younger* abstention applies. There are only two "tightly defined" exceptions to the doctrine of *Younger* abstention. They are "bad faith" and "extraordinary circumstances." *Sica*, 331 F. Supp. 2d at 85 (citing *Diamond "D"*, 282 F.3d at 197). "A plaintiff seeking to invoke either the bad faith or extraordinary circumstances exceptions may not rely on conclusory allegations in a complaint or affidavit but must instead 'affirmatively demonstrate the justification for application of an exception.' " *Sica*, 331 F. Supp. 2d at 85 (quoting *Kirschner v. Klemons*, 225 F.3d 227, 236 (2d Cir. 2000)). "Absent such [specific factual] allegations, the district court is not required to conduct a hearing to determine whether the criminal defendant's general claims have merit." *Saunders v. Flanagan*, 62 F. Supp. 2d 629, 634 (D. Conn. 1999); *see also Didden v. Port Chester*, 304 F. Supp. 2d 548, 567 (S.D.N.Y. 2004).

Plaintiffs have failed to carry their burden of establishing that either exception to *Younger* abstention applies in this case. To begin with, Plaintiffs have not alleged that either of these exceptions apply in their moving papers. Plaintiffs' Response to the Court's Order to Show Cause [doc. #196], even when liberally construed, does little more than make conclusory and unsubstantiated claims of a general "conspiracy" between unidentified "state actors" and "private parties." Mot. Prelim. Inj. at 2 [doc. #181]; Pl.'s Resp. at 12-20 [doc. #196]. Based on the facts before the Court, the Court has no reason to believe that the criminal proceedings against

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*Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). Under the *Rooker-Feldman* doctrine, federal courts lack subject matter jurisdiction "over claims that effectively challenge state court judgments." *Kropelnicki v. Siegel*, 290 F.3d 118, 128 (2d Cir. 2002). Neither party has addressed the applicability of this doctrine, but because it implicates subject matter jurisdiction, the Court can raise a Rooker-Feldman challenge *sua sponte*. *Id.*

Plaintiff Phillip Sullivan was initiated in "bad faith" or with a harassing or illegitimate motive.

Similarly, Plaintiffs do not allege any facts suggesting "extraordinary circumstances" that would render the state court incapable of fully and fairly deciding the federal issues before it. *See Diamond "D"*, 282 F.3d at 202 ("a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary") (quoting *Pennzoil v. Texaco*, 481 U.S. 1, 15 (1987)). To the contrary, Plaintiffs' real complaint appears to be that the state court has already decided the federal issues, but in a manner with which they disagree. *See* Mot. Prelim. Inj. at 4 [doc. #181]. Thus, having concluded that no material issues of fact exist regarding either of the exceptions to the *Younger* abstention doctrine, this Court must abstain from interfering with the ongoing state criminal prosecution of Mr. Sullivan. Therefore, Plaintiffs' Motion for Preliminary Injunction [doc. #181] is denied.

In light of the Court's ruling denying Plaintiffs' preliminary injunction motion, Plaintiffs' Motion to Bring in an Additional Defendant [doc. #189] is denied as futile. *See Oneida Indian Nation v. City of Sherrill*, 337 F.3d 139, 168 (2d Cir. 2003) ("While leave to amend a pleading shall be freely granted when justice so requires, Fed. R. Civ. P. 15(a), amendment is not warranted in the case of, among other things, 'futility.' "). Plaintiffs' sole reason for bringing in John Malone as a defendant was to enable the Court to issue a preliminary injunction against him. Since the Court has now decided to deny Plaintiffs' preliminary injunction motion on *Younger* abstention grounds, Plaintiffs' amendment is futile.

In conclusion, Plaintiffs' Motion for Preliminary Injunction [**doc. #181**] is DENIED on *Younger* abstention grounds and Plaintiffs' Motion to Bring in Additional Defendant [**doc. #189**] is DENIED as futile.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut on: January 4, 2005.