UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

WILLIAM P. GREENE,	:	
	:	
Plaintiff,	:	NO. 3:04CV658 (MRK)
	:	
v.	:	
	:	
STATE OF CONNECTICUT,	:	
STATE OF CONNECTICUT	:	
JUDICIAL BRANCH, and	:	
STATE OF CONNECTICUT DEPARTMENT	:	
OF CHILDREN AND FAMILIES,	:	
	:	
Defendants.	:	

MEMORANDUM OF DECISION

In this case, *pro se* Plaintiff William Greene sues the State of Connecticut, its Judicial Branch, and its Department of Children and Families ("DCF") for alleged federal constitutional violations arising out of ongoing state criminal and administrative proceedings involving Plaintiff. Currently pending before this Court are Plaintiff's Motion for an Immediate Ruling [doc. #28], Plaintiff's Motion to Amend/Correct Complaint [doc. #22], Defendants' Motion to Dismiss [doc. #13], Plaintiff's Application for a Preliminary Injunction [doc. #17], and Plaintiff's Motion for Sanctions [doc. #21].

I.

As a preliminary matter, the Court GRANTS Plaintiff's Motion for an Immediate Ruling [doc. #28] and Plaintiff's Motion to Amend/Correct Complaint [doc. #22]. Accordingly, the Court will construe Defendants' Motion to Dismiss as addressing Plaintiff's Amended Complaint.

The Second Circuit has cautioned district courts that "the pleadings of a pro se plaintiff must be read liberally and should be interpreted 'to raise the strongest arguments that they suggest.' " *Graham v. Henderson*, 89 F.3d 75, 79 (2d Cir. 1996) (quoting *Burgos v. Hopkins*, 14 F.3d 787, 790 (2d Cir.1994)). The Court heeds that caution and construes the Amended Complaint [doc. #22] together with Plaintiff's Application for a Preliminary Injunction [doc. #17] and his other filings[1] as asserting claims under 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988 against the State Defendants for violations of Plaintiff's Fourteenth Amendment Due Process and Equal Protection rights. Defendants nonetheless assert that Plaintiff's claims are barred by the Eleventh Amendment, because Plaintiff has sued the State itself, a branch of state government, and a state agency. This Court agrees.

The Supreme Court has construed the Eleventh Amendment to bar lawsuits by citizens against non-consenting states. As the Supreme Court held in its key decision in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), "Although a case may arise under the Constitution and laws of the United States, the judicial power does not extend to it if the suit is sought to be prosecuted against a State, without her consent, by one of her own citizens." *Id.* at 68. Similarly, the Second Circuit has noted that "[t]he Eleventh Amendment has been interpreted to render states absolutely immune from suit in federal court unless they have consented to be sued in that forum or unless Congress has overridden that immunity by statute." *National Foods, Inc. v. Rubin*, 936 F.2d 656, 658-59 (2d Cir. 1991). Moreover, the Eleventh Amendment immunity

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[1] Plaintiff's other filings include: Plaintiff's Memorandum in Opposition to Motion to Dismiss [doc. #15]; Plaintiff's Affidavit in Support of Preliminary Injunction [doc. #18]; Plaintiff's Reply to Defendants' Objection to Motion for Sanctions [doc. #27]; and Plaintiff's Memorandum in Support of Plaintiff's Motion for Immediate Ruling [doc. #29].

from federal court lawsuits that states themselves enjoy also extends to state agencies, state branches of government, and other arms of the state unless the state has consented to suit or Congress has properly overridden the states' immunity. *See, e.g.*, *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) ("It is clear, of course, that in the absence of consent a suit in which the State or *one of its agencies or departments* is named as the defendant is proscribed by the Eleventh Amendment.") (emphasis added).

Accordingly, Defendant State of Connecticut is immune from Plaintiff's claims in this lawsuit under the Eleventh Amendment. *See, e.g.*, *Quern v. Jordan*, 440 U.S. 332, 342 (1979) (§ 1983 does not override the state's Eleventh Amendment immunity). Similarly, Defendant State of Connecticut Judicial Branch, which is an arm of the State of Connecticut, and Defendant DCF, which is a state agency, are also entitled to the same Eleventh Amendment immunity that the State of Connecticut enjoys. *See Johnson v. State of Connecticut Dept. of Children and Families*, No. 03CV151(MRK), 2004 WL 722237 at *4 (D. Conn. Mar. 26, 2004) ("DCF is a state agency or instrumentality and, as such, defendant DCF is entitled to Eleventh Amendment protection."); *Allen v. Egan*, 303 F. Supp. 2d 71, 75 (D. Conn. 2004) ("[C]laims against the Judicial Branch are barred by the Eleventh Amendment and the doctrine of sovereign immunity."); *Roberts v. Judicial Dept.*, No. 99CV14(RNC), 2001 WL 777481 at *2 (D. Conn. Mar. 28, 2001) (same). Because all of the Defendants are immune from suit in this Court under the Eleventh Amendment, the Court must grant Defendants' motion to dismiss and deny Plaintiff's motion for a preliminary injunction.

For the benefit of Plaintiff, the Court notes that a party seeking to vindicate federal constitutional rights can, in a proper case, avoid Eleventh Amendment immunity in two ways.

First, in some circumstances, a plaintiff may be able to obtain prospective injunctive relief against a state official engaged in an ongoing violation of federal law. The Supreme Court's decision in *Ex Parte Young*, 209 U.S. 123 (1908), creates "a limited exception to the general principle of sovereign immunity[, which] allows a suit for injunctive relief challenging the constitutionality of a state official's actions in enforcing state law under the theory that such a suit is not one against the State, and therefore not barred by the Eleventh Amendment." *Ford v. Reynolds,* 316 F.3d 351, 354-55 (2d Cir. 2003); *see CSX Transp. v. N.Y. State Office of Real Prop. Servs.*, 306 F.3d 87, 98 (2d Cir. 2002). Second, while the Eleventh Amendment also bars claims for damages against state officials in their official capacities,[2] in a proper case, a plaintiff may be able to sue a state actor for damages under § 1983 for violating a plaintiff's constitutional rights under color of state law, so long as the state official is sued in his or her *individual*, as opposed to *official*, capacity. *See Hafer v. Melo*, 502 U.S. 21, 23 (1991) (although state officials acting in their official capacity are not subject to liability under § 1983, "state officials sued in their individual capacities are 'persons' for purposes of § 1983" and therefore may be liable for damages under § 1983).

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[2] *See Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997) ("It has long been settled that the reference to actions against one of the United States encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities. Thus, when the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit.") (internal quotations and citations omitted); *Ford*, 316 F.3d at 354 ("The Eleventh Amendment bars the award of money damages against state officials in their official capacities.").

Plaintiff's Amended Complaint and Application for Preliminary Injunction allege ongoing violations of federal law and seek prospective injunctive relief, at least in part. However, Plaintiff has not named any state official as a defendant. The Court cannot and will not guess whether Plaintiff wishes to seek injunctive relief against any state officials or whether Plaintiff wishes to recover damages against state officials in their individual capacities. Nor will the Court guess which state officials Plaintiff might sue in those circumstances. However, because Plaintiff may be able to state a claim against certain state officials in certain circumstances, the Court's dismissal of his Amended Complaint will be without prejudice and the Court will give Plaintiff an opportunity to file another amended complaint within 30 days of this ruling specifying whether Plaintiff intends to sue any particular state official and if so, whether he is seeking only injunctive relief against that state official or whether he seeks damages against the official in his or her individual capacity.

The Court emphasizes that it expresses no view on whether any amended complaint Plaintiff may file will survive a motion to dismiss. In particular, the Court cautions Plaintiff that to the extent he seeks to enjoin ongoing state proceedings (and that appears to be the case from his current Amended Complaint), his action likely will be barred by a doctrine known as *Younger* abstention. Under the *Younger* abstention doctrine, "absent unusual circumstances, a federal court could not interfere with a pending state criminal prosecution." *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992) (citing *Younger v. Harris*, 401 U.S. 37, 54 (1971)). "*Younger* generally requires federal courts to abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings." *Diamond "D" Constr. Corp. v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002). Although *Younger* itself involved an ongoing

state criminal proceeding, it is now well settled that the *Younger* abstention doctrine applies equally to state administrative proceedings. *Id.*; *see Kirschner v. Klemons*, 225 F.3d 227 (2d Cir. 2000) (applying *Younger* to state disciplinary proceedings involving dentist).[3]

The Court also points out that Plaintiff may not ask this Court (as he appears to do in the Amended Complaint) to order criminal prosecution of the state employees involved in his ongoing state proceedings. As the Supreme Court stated in *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973), "[I]n American jurisprudence . . . a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Id.* at 619; *see, e.g.*, *Sattler v. Johnson*, 857 F.2d 224, 227 (4th Cir. 1988) (there is no constitutional right as a "member of the public at large and as a victim" to have someone criminally prosecuted). Therefore, "[a]n alleged victim of a crime does not have a right to have the alleged perpetrator investigated or criminally prosecuted." *Osuch v. Gregory*, 303 F. Supp. 2d 189, 194 (D. Conn. 2004).

II.

Having considered Plaintiff's Motion for Sanctions [doc. #21], the Court concludes that it is without merit. Plaintiff's motion is based on (1) Defendants' use of the word "child abuse" instead of "child neglect" in their Supplemental Objection to Plaintiff's Application for Preliminary Injunction [doc. #20]; and (2) Defendants' assertion that Plaintiff has not properly

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[3] "Under *Younger* and its progeny, a federal court should abstain from exercising jurisdiction where three factors are present: (1) there is an ongoing state criminal proceeding; (2) the claim raises important state interests; and (3) the state proceedings provide an adequate opportunity to raise the constitutional claims." *Schlagler v. Phillips*, 166 F.3d 439, 442 (2d Cir. 1999). As the Second Circuit discussed at some length in *Diamond "D"*, there are only two "tightly defined exceptions to the *Younger* abstention doctrine." *Diamond "D"*, 282 F.3d at 197. They are the "bad faith" exception and the "extraordinary circumstances" exception, which provide only a "very narrow gate for federal intervention in pending state [] proceedings." *Kugler v. Helfant*, 421 U.S. 117, 124 (1975).

served Defendants by mail before filing pleadings with the Court. Construing Plaintiff's motion as having been brought under Rule 11 of the *Federal Rules of Civil Procedure*, it does not comply with Rule 11(c)(1)(A), which states that a motion for sanctions "shall not be filed with or presented to the court unless, within 21 days after service of the motion . . . the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected." *Id.* Rule 11 required Plaintiff to serve his motion for sanctions on Defendants, then wait twenty-one (21) days before filing the motion with the Court, in order to give Defendants the opportunity to correct any perceived problem on their own accord without the Court's involvement. In fact, the Court notes that in their Objection to Motion for Sanctions [doc. #23] and in their Corrections to Pleadings and Briefs [doc. #31], Defendants did correct and clarify their use of "child abuse" instead of "child neglect," and Defendants apologized for any unintended implications in their use of the term "child abuse" in their original filings. As to Defendants' claims regarding the propriety of Plaintiff's service of pleadings, Rule 5(d) of the Federal Rule of Civil Procedure does, as Defendants' assert, require service on the Defendants *before* filing with the Court. Plaintiff should be aware that future pleadings submitted to the Court may be returned to him if he does not conform with the requirements of Rule 5(d).

III.

In sum, the Court GRANTS Plaintiff's Motion for an Immediate Ruling [doc. #28] and Plaintiff's Motion to Amend/Correct Complaint [doc. #22]. The Court DENIES Plaintiff's Application for a Preliminary Injunction [doc. #17] and Plaintiff's Motion for Sanctions [doc. #21]. Finally, the Court GRANTS Defendants' Motion to Dismiss [doc. #13] Plaintiff's Amended Complaint, but without prejudice to Plaintiff's right to file another amended complaint

no later than **December 22, 2004. If Plaintiff does not file an amended complaint by December 22, 2004, the Clerk is directed to close this file.**

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: November 22, 2004