

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

ALBERT J. STALEY,
ADC #144308

PLAINTIFF

v.

No. 5:10CV00249 JLH-JTK

LARRY D. MAY, et al.

DEFENDANTS

ORDER

The Court has received proposed findings and recommendations from United States Magistrate Judge Jerome T. Kearney. The plaintiff, Albert J. Staley, has filed timely objections. After review of the proposed findings and recommendations and the timely objections, as well as a *de novo* review of the record, the Court adopts the proposed findings and recommendations in part, as will be explained.

Albert Staley alleges that the defendants have unlawfully seized his Social Security benefits to pay the cost of his incarceration. It is undisputed that the State of Arkansas commenced a civil action against Staley in the Circuit Court of Randolph County, Arkansas, pursuant to the Arkansas State Prison Inmate Care and Custody Reimbursement Act, Ark. Code Ann. § 12-29-501 *et seq.*, and that that proceeding is ongoing. The funds at issue have been deposited into the registry of the Court. So far as the record before the Court indicates, no final disposition of that action has been made.

The magistrate judge recommended that this action be dismissed pursuant to *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971). The magistrate judge correctly states that abstention pursuant to *Younger* is appropriate where there is an ongoing state court proceeding that implicates important state interests and there is an adequate opportunity to raise any relevant federal questions in the state proceeding. However, the Court may not dismiss an action for

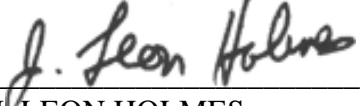
damages unless the damages sought would require a declaration that a state statute is unconstitutional. *Yamaha Motor Corp. v. Stroud*, 179 F.3d 598, 603 (8th Cir. 1999). In such a case, a stay rather than a dismissal is the preferred procedure to use in abstaining. *Id.*

Here, Staley seeks compensatory and punitive damages. It remains to be seen whether his request for relief would require a declaration that the state statute at issue is unconstitutional. Accordingly, the Court will stay the present proceedings rather than dismiss Staley's complaint.

CONCLUSION

For the reasons stated, this action is hereby stayed pending disposition of *State of Arkansas v. Albert J. Staley*, in the Circuit Court of Randolph County, Arkansas, No. CV-2009-172. The Clerk of the Court is directed to terminate this action administratively. Either party may file a motion to reopen this action within sixty days after final disposition of the state court action referenced above. If neither party files a motion to reopen within sixty days after final disposition of that action, this action will be deemed dismissed without prejudice.

IT IS SO ORDERED this 28th day of November, 2011.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE