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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CHARLES L. STRINGER,

Plaintiff,

v.

ROBERT WOOLSEY, *et al.*,

Defendants.

Case No. 2:10-CV-00048-KJD-PAL

ORDER

Presently before the Court is Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction (#2). Plaintiff seeks to enjoin the proceedings in his criminal case arising in municipal court in Boulder City, Nevada.

The Younger abstention doctrine forbids federal courts from enjoining pending state criminal proceedings, absent extraordinary circumstances that create a threat of irreparable injury. See Younger v. Harris, 401 U.S. 37, 53-54 (1971); Kenneally v. Lungren, 967 F.2d 329, 331 (9th Cir. 1992), cert. denied, 506 U.S. 1054 (1993). “Younger generally directs a federal court to abstain from granting injunctive or declaratory relief that would interfere with pending state judicial proceedings.” Martinez v. Newport Beach City, 125 F.3d 777, 781 (9th Cir. 1997). “When a case falls within the proscription of Younger, a district court must dismiss the federal action.” World

1 Famous Drinking Emporium, Inc. v. City of Tempe, 820 F.2d 1079, 1081 (9th Cir. 1987); see
2 Kenneally, 967 F.2d at 331.

3 Under the Younger abstention doctrine, barring exceptional circumstances, federal courts
4 may not stay or enjoin pending state criminal court proceedings. Carden v. Montana, 626 F.2d 82,
5 83 (9th Cir. 1980). If Younger abstention applies, a court may not retain jurisdiction, but should
6 dismiss the action. Judice v. Vail, 430 U.S. 327, 348 (1977). Courts have “long recognized that in
7 some circumstances considerations of comity and concerns for the orderly administration of criminal
8 justice require a federal court to forego the exercise of its habeas corpus power.” Francis v.
9 Henderson, 425 U.S. 536, 539 (1976). Younger abstention promotes both the interests of comity and
10 judicial economy. A party may be acquitted at trial, or on appeal, thereby mooting the federal issue
11 in the petition. Sherwood v. Thompson, 716 F.2d 632, 634 (9th Cir. 1983).

12 Younger abstention is appropriate when: (1) the state proceedings are ongoing; (2) the
13 proceedings implicate important state interests; and (3) the state proceedings provide an adequate
14 opportunity to raise federal questions. Middlesex County Ethics Commission v. Garden State Bar
15 Association, 457 U.S. 423, 432 (1982); Kenneally, 967 F.2d at 331; Dubinka v. Judges of the
16 Superior Court, 23 F.3d 218, 223 (9th Cir. 1994).

17 Under the first prong of the Younger test, the pendency of the state proceedings is determined
18 at the time the federal complaint is filed. Mission Oaks Mobil Home Park v. City of Hollister, 989
19 F.2d 359, 360-61 (9th Cir. 1993), cert. denied, 510 U.S. 1110 (1994); Beltran v. California, 871 F.2d
20 777, 782 (9th Cir. 1988). State proceedings are ongoing if appellate remedies have not been
21 exhausted. Huffman v. Pursue Ltd., 420 U.S. 592 (1975).

22 As to the second factor, state proceedings may implicate important state interests when they
23 are necessary for the vindication of important state policies. Middlesex County Ethics Commission,
24 457 U.S. at 432; see World Famous Drinking Emporium, 820 F.2d at 1082-83 (civil proceeding
25 implicated state's interest in enforcing municipal ordinances regulating public nuisances).

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1 In considering the third factor, the Supreme Court has noted that “where vital state interests
2 are involved, a federal court should abstain ‘unless state law clearly bars the interposition of the
3 constitutional claims.’ ” Middlesex County Ethics Commission, 457 U.S. at 432. To satisfy this
4 requirement, it is sufficient that constitutional claims may be raised in state court judicial review of
5 the proceeding. See Ohio Civil Rights Commission v. Dayton Christian Schools, Inc., 477 U.S. 619,
6 629 (1986).

7 A federal court should assume that state procedures will afford an adequate opportunity for
8 consideration of constitutional claims “in the absence of unambiguous authority to the contrary.”
9 Pennzoil Co. v. Texaco, Inc., 481 U.S. 15 (1987). It appears that Nevada law affords Plaintiff an
10 opportunity to present his constitutional claims.

11 All three of the Younger requirements are satisfied in the present case. Abstention is
12 therefore required unless an exception to Younger applies. Younger exceptions are few and far
13 between. “Only in the most unusual circumstances is the defendant entitled to have federal
14 interposition by way of injunction or habeas corpus until after the jury comes in, judgment has been
15 appealed from and the case concluded in the state courts. Apparent finality of one issue is not
16 enough.” Drury v. Cox, 457 F.2d 764, 764-65 (9th Cir. 1972).

17 Federal courts cannot interfere with pending state criminal proceedings, absent extraordinary
18 circumstances that create a threat of irreparable injury. Younger v. Harris, 401 U.S. 37, 53-54 (1971).
19 Irreparable injury does not exist if the threat to the plaintiff’s federally protected rights may be
20 eliminated by his defense of the criminal case. Id. at 46. Moreover, even irreparable injury is
21 insufficient to permit interference with the proceeding unless it is “both great and immediate.” Id.
22 “The Younger doctrine was born of the concern that federal court injunctions might unduly hamper a
23 state in its prosecution of criminal laws.” Miofsky v. Superior Court, 703 F.2d 332, 336 (9th Cir.
24 1983).

25 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion for Temporary Restraining
26 Order and/or Preliminary Injunction (#2) is **DENIED**;

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IT IS FURTHER ORDERED that Plaintiff's Complaint is **DISMISSED**.

DATED this 29TH day of January 2010.



Kent J. Dawson
United States District Judge