IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

COORDINATED ESTATE SERVICES, INC., *dba* Otis Campbell's Bar & Grill/Aunt Bea's Café, Plaintiff, vs. LYNN M. WALDING, Administrator of the Alcoholic Beverages Division of the State of Iowa; THOMAS NEWTON, Director of Public Health; BONNIE E. MAPES, Director of Tobacco Use Prevention & Control of the Iowa Department of Public Health; and THE STATE OF IOWA, Defendants.	No. 3:08-cv-0138-JAJ **ORDER**

This action is before the court pursuant to Defendants Lynn M. Walding ("Walding"), Thomas Newton ("Newton"), Bonnie E. Mapes ("Mapes"), and the State of Iowa's ("Iowa") ("Defendants") Motion to Dismiss (Dkt. No. 7). Plaintiff Coordinated Estate Services, d/b/a Otis Campbell's Bar & Grill/Aunt Bea's Café ("Plaintiff") filed suit to enjoin Iowa officials from enforcing the Iowa Smokefree Air Act and to seek declaratory relief that this statute is unconstitutional because it violates the Commerce Clause, Equal Protection Clause, and Privileges and Immunities Clause of the United States Constitution (Dkt. No. 1). In addition, the Plaintiff filed suit against Defendants Walding, Newton, and Mapes to recover damages from these individuals for allegedly violating Plaintiff's procedural due process rights (Dkt. No. 1). Defendants filed this Motion to Dismiss, contending that (1) Plaintiff's claims against Defendants Walding, Newton, and Mapes are barred as a matter of law because these individual defendants are entitled to absolute immunity and (2) the court should abstain under the Younger abstention doctrine because

the state law enforcement proceeding that is the underlying basis of the complaint is currently pending before an Iowa administrative agency. For the foregoing reasons, Defendants' motion is granted in part and denied in part.

I. ALLEGATIONS MADE IN THE COMPLAINT

According to the facts alleged in the Complaint (Dkt. No. 1), Plaintiff operates a restaurant, Aunt Bea's, and a restaurant/bar, Otis Campbell's Bar & Grill in West Burlington, Iowa. Plaintiff holds a liquor license which permits it to sell alcoholic beverages, which is an integral part of Plaintiff's business.[1] Aunt Bea's, which is smoke-free, "nets (after sales taxes) approximately $315,000 annually" (Complaint, ¶ 14). Otis Campbell's, which permitted smoking "nets (after sales taxes) approximately $1.2 million annually" (Complaint, ¶ 14). The two restaurants employ forty-two employees.

In 2008, the Iowa legislature passed the Smokefree Air Act (the "Act") which seeks, in part, to prohibit the consumption of cigarette and other smoking tobacco products in Iowa. The Act prohibits smokers from smoking in certain areas, requires employers and owner-operators of such areas to enforce this prohibition, and take other affirmative steps to ensure compliance, such as removing ashtrays and posting no-smoking signs. The Act provides for a progressive civil penalty scheme as well as the possibility of license suspension/revocation, private causes of action, and injunctive or declaratory relief.

Upon direction of Defendants Newton and Mapes, the Iowa Department of Public Health ("Department") adopted and implemented administrative rules to enforce the Act, including: (1) "[e]stablishing a system of taking complaints"; (2) "[c]reating a database of those complaints"; (3) "[m]aking the number and some of the contents of the complaints public"; (4) "[p]roviding and causing to be published the number of complaints and some

[1]While Plaintiff's liquor license permits it to sell alcoholic beverages at either location, it only sells alcohol at Otis Campbell's.

of the contents of the complaint, to the media and potential enforcement personnel"; (5) "[t]argeting suspected violators and publicizing some of the contents of the database regarding those suspected violators"; (6) "[i]nvestigating some of the complaints and determining the credibility of some complaints without any input from the suspected violator"; (7) "[i]ssuing notices of 'potential violation' to suspected violators when the Department determined a complaint was 'credible'"; (8) "[t]argeting and publicizing the names of suspected violators along with the contents of these notices of 'potential violation'"; (9) "[d]irecting site inspections of suspected violators by various governmental and non-governmental personnel"; (10) "[d]irecting local municipalities and/or designees of the Department of Public Health to pursue the denial of liquor licenses of suspected violators"; and (11) directing or utilizing the State Alcoholic Beverages Division ("ABD") "to pursue liquor license revocation and suspension administrative agency actions against suspected violators" (Complaint, ¶ 25). The administrative rules provide that the Department will accept complaints, investigate them, and "issue a written notice of violation." Yet, Plaintiff contends that the Act requires that a judicial magistrate determine whether there has been a violation of the Act.[2] Plaintiffs contend that Newton, Mapes, and the Department violated Plaintiff's procedural due process rights by adopting rules that are contrary to the Act.

In July and August of 2008, Defendants targeted Plaintiff by publishing some of the contents of complaints and notices of potential violations filed against Plaintiff. Defendants also directed the local police chief of West Burlington to conduct a site inspection of Plaintiff's establishments. The police chief, in turn, refused to approve Plaintiff's request to renew its liquor license based on "violations" of the Act even though a judicial magistrate had not yet found a violation. After a discussion of Plaintiff's

[2]The Iowa Smokefree Air Act provides that "[j]udicial magistrates shall hear and determine violations of this chapter." Iowa Code § 142D.8(1) (2008).

"violations," the West Burlington City Council consented to renewing Plaintiff's liquor license. The State later renewed the liquor license.

On or about September 10, 2008, Defendants started an administrative agency action against Plaintiff. Defendants sought to suspend or revoke Plaintiff's liquor license because of multiple violations of the Act within a short time of renewal. This complaint was provided to the media and published on the internet. Mapes and the State of Iowa were later informed that the Act must be enforced through the judicial process rather than through administrative proceedings. Yet, Defendants did not terminate the administrative proceedings.

II. PROCEDURAL HISTORY AND CLAIMS

On October 24, 2008, Plaintiff filed this lawsuit in the United States Court for the Southern District of Iowa claiming that Defendants had violated its constitutional rights. First, Plaintiff claims that its procedural due process rights were violated because Defendants instituted an administrative action rather than a judicial proceeding as required by the Act. Plaintiff also asserts that the Act violates procedural due process. Second, Plaintiff claims that the Act violates the Commerce Clause of the federal Constitution because Iowa has burdened and discriminated against tobacco commerce. Third, Plaintiff claims that the Act violates the Equal Protection Clause as well as the Privileges and Immunities Clause of the Fourteenth Amendment because it provides differential treatment to different classes of similarly situated entities.

Defendants filed this motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Defendants contend that (1) Plaintiff's claims against Defendants Walding, Newton, and Mapes are barred as a matter of law because these individual defendants are entitled to absolute immunity and (2) the court should abstain under the Younger abstention doctrine because the state law enforcement proceeding that is the underlying basis of the complaint is currently pending before an

Iowa administrative agency. For the foregoing reasons, Defendants' motion is granted in part and denied in part.

III. CONCLUSIONS OF LAW

A. Standard for Motion to Dismiss for Failure to State a Claim

In order to adequately state a claim, the plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1965 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level," Id. (citing 5 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1216, 235-36 (3d ed. 2004). When analyzing the adequacy of a complaint's allegations under Rule 12(b)(6), the court must accept as true all of the complaint's factual allegations and view them in the light most favorable to the plaintiff. Bell Atlantic, 127 S. Ct. at 1969; see Swierkiewicz v. Sorema N.A., 534 U.S. 506, 508 n.1 (2002); Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007) ("when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint") (citations omitted)).

B. Absolute Immunity

Defendants first argue that Walding, Newton, and Mapes are absolutely immune from suit. They assert that agency officials are entitled to absolute immunity for their quasi-judicial and prosecutorial acts. Defendants argue that because the agency action which provides the basis for Plaintiff's § 1983 claims was quasi-judicial and prosecutorial, these officials have absolute immunity.

Plaintiff argues that these individual defendants knowingly implemented an enforcement system that circumvented the Act and then pursued Plaintiff with this process. Plaintiff asserts that these defendants were performing an administrative function when they created this enforcement system and thus they are not entitled to absolute immunity.

The official has the burden to show that absolute immunity is justified. Burns v. Reed, 500 U.S. 478, 486 (1991). There is a presumption that qualified immunity is "sufficient to protect government officials in the exercise of their duties." Burns v. Reed, 500 U.S. 478, 486-87 (1991). For the reasons discussed below, the court finds that Walding and Newton have satisfied this burden to establish absolute immunity.

1. Walding

Plaintiff argues that Walding is liable for damages for violating Plaintiff's procedural due process rights by deciding "to continue administrative agency proceedings after receiving information that those actions were contrary to the statute" (Complaint, ¶ 49). Defendants assert that Walding is entitled to absolute immunity because he acted within the jurisdiction of his agency and official appointment by continuing administrative proceedings, even if he misapplied the Act or violated the Constitution.

"[T]hose officials who are responsible for the decision to initiate or continue a proceeding subject to agency adjudication are entitled to absolute immunity from damages liability for their parts in that decision." Butz v. Economou, 438 U.S. 478, 516 (1978). It is irrelevant whether the official has made an unconstitutional or unlawful decision. Patterson v. Von Riesen, 999 F.2d 1235, 1239 (8th Cir. 1993). Rather, the court must determine "whether the subject matter of the decision was within the official's power, and whether the official was acting in her official capacity." Id.

Walding, as Administrator for the ABD, had the statutory authority to institute an administrative liquor license suspension or revocation proceeding against any liquor licensee. Iowa Code §§ 123.20, 123.21, 123.39. Thus, Walding was clearly acting in his official capacity and within his statutory authority in deciding to continue this proceeding against Plaintiff. As a result, Walding has absolute immunity from suit for his involvement in the decision to continue the administrative liquor license suspension or revocation proceeding against Plaintiff. Accordingly, Plaintiff's claim against Walding must be dismissed.

2. Newton

Plaintiff first argues that Newton is liable for damages for violating Plaintiff's procedural due process rights by deciding "to continue administrative agency proceedings after receiving information that those actions were contrary to the statute" (Complaint, ¶ 49). For the same reasons discussed above, Newton has absolute immunity from suit for his role in instituting or continuing this administrative liquor license suspension or revocation proceeding. Newton acted in his official capacity in deciding to continue this administrative proceeding. Newton, as director of the Department, was responsible for implementing the Act. The Act expressly provides that a violation may result in a suspension or revocation of any permit or license. Iowa Code § 142D.9. Newton clearly was not acting outside of his agency's jurisdiction in allowing this administrative proceeding to continue. Thus, he is absolutely immune from suit for this claim.

Second, Plaintiff argues that Newton directed the Department to adopt administrative rules to enforce the Act (Complaint, ¶ 24). Administrative agency officials who promulgate rules are absolutely immune from suit for damages. Redwood Vill. P'ship v. Graham, 26 F.3d 839, 841 (8th Cir. 1994), cert. denied, 513 U.S. 962 (1994). The Eighth Circuit Court of Appeals explained that "exposure to liability for monetary damages would unduly inhibit executive officials when carrying out the quasi-legislative act of rulemaking." Id. The Act mandates that the Department shall adopt rules to administer the Act. Iowa Code § 142D.8. As director of the Department, Newton had the authority to begin rulemaking procedures. Because Newton was acting within his official capacity in directing the Department to adopt administrative rules to enforce the Act, he is absolutely immune from any suit for damages based on this rulemaking.

3. Mapes

First, Plaintiff argues that Mapes violated Plaintiff's procedural due process rights by "deciding to continue administrative agency proceedings after receiving information that those actions were contrary to the statute" (Complaint, ¶ 49). For the reasons discussed

above, Mapes has absolute immunity from suit for her role for continuing this administrative liquor license suspension or revocation proceeding. Mapes acted in her official capacity in deciding to continue this administrative proceeding. Mapes was responsible for implementing the Act. The Act expressly provides that a violation may result in a suspension or revocation of any permit or license. Iowa Code § 142D.9. Mapes clearly was not acting outside of her agency's jurisdiction in allowing this administrative proceeding to continue. Thus, she is absolutely immune from suit for this claim.

Second, Plaintiff argues that Mapes violated Plaintiff's procedural due process rights by directing the Department to adopt administrative rules to enforce the Act (Complaint, ¶ 24). For the reasons discussed above, Mapes is absolutely immune from any suit for damages based on this rulemaking.

Finally, Plaintiff argues that Mapes violated Plaintiff's procedural due process rights by publishing "information of suspected violations to the media, various governmental and non-governmental [entities]" (Complaint, ¶ 49). Defendants argue that Mapes is entitled to absolute immunity because she acted in a quasi-judicial or prosecutorial function. Plaintiffs argue that Mapes is not entitled to absolute immunity because publicizing the suspected violations does not constitute a quasi-judicial or prosecutorial function. Rather, Plaintiff characterizes this action as administrative in nature.

In analyzing whether a prosecutor is entitled to absolute immunity, the Supreme Court has refused to extend absolute immunity to those acts that have no functional tie to the judicial process, including making comments to the media. See Buckley v. Fitzsimmons, 509 U.S. 259, 278 (1993). Likewise, in the administrative context, there is no absolute immunity for prosecutorial acts that are not functionally connected to the administrative adjudication. The court finds that publicizing suspected violations to the media and non-governmental entities does not constitute a prosecutorial function and thus, Mapes is not entitled to absolute immunity for these acts. Furthermore, it is clear that

Mapes was not performing a quasi-judicial function when she allegedly provided information about the suspected violations to the media and other external entities. Accordingly, the court denies the defendants' motion to dismiss this claim for damages against Mapes on the grounds of absolute immunity.

B. Younger Abstention Doctrine

"In Younger, the Supreme Court held that federal courts may not enjoin pending state court criminal proceedings except in very unusual situations." Night Clubs, Inc. v. City of Fort Smith, Ark., 163 F.3d 475, 479 (8th Cir. 1998). The Younger abstention doctrine was later "expanded to prohibit federal courts from interfering in certain pending state civil cases as well as pending state administrative proceedings which are judicial (as opposed to legislative in nature)." Id. (internal citations omitted). Now, "Younger abstention is appropriate when (1) the federal action would disrupt an ongoing state judicial proceeding (2) which implicates important state interests and (3) which provides an adequate opportunity to raise constitutional challenges." Cormack v. Settle-Beshears, 474 F.3d 528, 532 (8th Cir. 2007) (citing Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982). "If all three questions are answered affirmatively, a federal court should abstain unless it detects 'bad faith, harassment, or some extraordinary circumstance that would make abstention inappropriate.'" Night Clubs, Inc., 163 F.3d at 479 (quoting Middlesex, 457 U.S. at 435). For the reasons discussed below, the court finds that it is required to abstain under Younger.

1. Is There an Ongoing State Judicial Proceeding?

Defendants argue that there is an ongoing state judicial proceeding because the Iowa Alcoholic Beverages Division ("IABD"), a state administrative agency, has held a disciplinary proceeding regarding Plaintiff's alleged failure to comply with the Act. It is clear that this administrative proceeding constitutes a state judicial proceeding. "Generally, a plaintiff need not exhaust administrative remedies before seeking federal

court relief pursuant to 42 U.S.C. § 1983. Planned Parenthood of Greater Iowa, Inc. v. Atchison, 126 F.3d 1042, 1047 (8th Cir. 1997) (citing Patsy v. Bd. of Regents, 457 U.S. 496 (1982)). "The Supreme Court has suggested, however, that application of Younger abstention in a § 1983 action is proper where administrative proceedings are coercive, begin before any substantial advancement in the federal action takes place, and involve an important state interest." Planned Parenthood of Greater Iowa, Inc., 126 F.3d at 1047 (citing Ohio Civil Rights Comm'n v. Dayton Christian Schs., Inc., 477 U.S. 619 (1986)). "Administrative proceedings may be judicial for purposes of Younger if they 'declare and enforce liabilities' between the parties." Cedar Rapids Cellular Telephone, L.P. v. Miller, 280 F.3d 874, 882 (8th Cir. 2002) (quoting Yamaha Motor Corp., U.S.A. v. Stroud, 179 F.3d 598, 602-03 (8th Cir. 1999)).

This administrative proceeding was commenced on September 10, 2008 when the Iowa Department of Public Safety filed a hearing complaint against Plaintiff alleging that it had repeatedly violated the Act. On October 24, 2008, Plaintiff filed the complaint in the instant case. It is clear that this administrative proceeding began prior to the filing of this federal action. Furthermore, the administrative proceeding is coercive and judicial in nature because it will affect the legal rights of Plaintiff, namely its ability to sell alcoholic beverages. See Ebiza, Inc. v. City of Davenport, 434 F. Supp. 2d 710, 722 (S.D. Iowa 2006) (holding that the city's consideration of a property owner's liquor license application constituted a judicial administrative proceeding). Finally, the judicial proceeding involved important state interests, including, enforcement of state liquor license laws and regulations, regulation of the sale of alcoholic beverages, and the regulation of smoking. See id.; infra Part III.B.3. Accordingly, the state administrative proceeding in question constitutes a state judicial proceeding for Younger purposes.

Finally, it is clear that this state judicial proceeding is still pending. On January 2, 2009, an Administrative Law Judge ("ALJ") issued a proposed decision that included a 30-day suspension of Plaintiff's liquor license pending a showing that Plaintiff was in

compliance with the Act. On January 26, 2009, Plaintiff filed an "Appeal From Proposed Decision, and Request for Review" with the ABD Administrator pursuant to Iowa Code §§ 17A.15(3), 123.39(1)(a). The ALJ's proposed decision has been stayed pending review by the ABD Administrator. Once the ABD Administrator issues a final decision, either party will have the opportunity to seek judicial review of the decision in state court. See Iowa Code § 17A.19(3). Because Plaintiff sought further administrative review of the proposed decision, it is clear that this state proceeding is still pending. Accordingly, the first prong of the Younger abstention doctrine is satisfied.

2. Does the State Proceeding Implicate Important State Interests?

Defendants assert that there are several important state interests at stake in the administrative proceeding, including licensing where alcoholic beverages can be sold, the regulation of the traffic in alcoholic liquors, and the regulation of smoking in public places. This administrative proceeding was commenced by the Iowa Department of Public Safety ("IDPS"). IDPS alleged that Plaintiff's open and continuing failure to comply with all applicable provisions of the Act constituted a violation of Iowa Code section 123.30(2) and 185 IAC 4.2(1) and thus provided sufficient grounds for the suspension and/or revocation of Plaintiff's liquor license. Section 123.30(2) provides that "[n]o liquor control license shall be issued for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations." This administrative proceeding seeks to compel Plaintiff to comply with the Act by considering the suspension or revocation of Plaintiff's liquor license. The Act expressly considers the possibility that violations of this Act may "result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred. Iowa Code § 142D.9(4) (2008).

The court finds that the administrative proceeding implicates several important state interests. First, this administrative proceeding implicates the licensing of where alcoholic beverages may be sold, which this court has previously found to constitute an important

state interest for Younger purposes. See Ebiza, Inc., 434 F. Supp. 2d at 723 (noting that "[l]icensing where alcoholic beverages may be sold inherently implicates uniquely state-oriented concerns"). Second, the state has an interest in the enforcement of its land use regulations. See Night Clubs, Inc., 163 F.3d at 480 (stating that "it is well-established that for abstention purposes, the enforcement and application of zoning ordinances and land use regulations is an important state and local interest"). Third, the state has an interest in ensuring compliance with the Act, which was enacted pursuant to the state's general police power "to improve the public health of Iowans." Iowa Code § 142D.1(3) (2008). The court finds that this administrative proceeding clearly implicates important state interests. Accordingly, the second prong of the Younger abstention doctrine is satisfied.

***3. Does the State Proceeding Provide Adequate Opportunity to Raise Constitutional Challenges*?**

Plaintiffs assert that, "[i]f the Court applied abstention because the State could be pursuing an administrative enforcement action, it is difficult to see any constitutional challenge of potential administrative action" (Plaintiff's Brief in Resistance to Defendants' Motion to Dismiss, Dkt. No. 11). Plaintiff's argument implies that the federal courts are the only courts capable of interpreting our federal constitution. Yet, Younger abstention is premised on the state court's ability to interpret our federal constitution. This court can only intervene in a dispute that is the subject of a state judicial proceeding when the state proceeding does not provide an adequate opportunity to raise constitutional challenges. The Supreme Court has made clear that "to restrain a state proceeding that afforded an adequate vehicle for vindicating the federal plaintiff's constitutional rights 'would entail an unseemly failure to give effect to the principle that state courts have the solemn responsibility equally with the federal courts' to safeguard constitutional rights and would 'reflec(t) negatively upon the state court's ability' to do so." Trainor v. Hernandez, 431 U.S. 434, 443 (1977) (citing Steffel v. Thompson, 415 U.S. 452, 460-61 (1974)).

The burden is on Plaintiff to establish that it is unable to assert its constitutional claims in the state proceeding. See Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 14 (1987). "[T]he third element of the Middlesex test is satisfied whenever a party can assert its constitutional claims in state-court judicial review of the administrative action." Alleghany Corp., 898 F.2d at 1318 (citing Dayton Christian Schs., 477 U.S. at 629, Middlesex, 457 U.S. at 436). "[W]hen a litigant has not attempted to present his federal claims in related state-court proceedings, a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary. Id. at 15.

In the administrative proceeding, Plaintiff asserted that the Act was unconstitutional. The proposed agency decision stated that while the agency was unable to decide this constitutional issue, Plaintiff had properly preserved this issue for judicial review. Here, Plaintiff could have sought judicial review of the agency decision at which time Plaintiff could have challenged the constitutionality of the Act or of the agency action. See Iowa Code § 17A.19(10)(a) (stating that a court may reverse or modify an agency decision if it is "[u]nconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied"). Plaintiff has not presented any authority to the contrary. Plaintiff must at least attempt to bring its constitutional challenge in state court before it can argue that it is unable to bring such a challenge in the state proceeding. The court finds that there was an adequate opportunity to challenge the constitutionality of the Act or the agency action. Accordingly, the third prong of the Younger abstention doctrine is satisfied.

4. Is Abstention Inappropriate?

This court should abstain unless it finds that Defendants have either acted in bad faith or brought this administrative proceeding in order to harass Plaintiff. See Middlesex, 457 U.S. at 435. "Such an exception must be construed narrowly and only invoked in 'extraordinary circumstances.'" Aaron v. Target Corp., 357 F.3d 768, 778 (8th Cir. 2004)

(quoting Younger, 401 U.S. 53-54). The Eighth Circuit Court of Appeals has only recognized the bad faith exception in the criminal context. Id. (citing Lewellen v. Raff, 843 F.2d 1103, 1109-10 (8th Cir. 1988)). "[B]ad faith 'generally means that a prosecution has been brought without a reasonable expectation of obtaining a valid conviction.'" Lewellen, 843 F.2d at 1009 (internal citations omitted). This exception "also encompass[es] those prosecutions that are initiated to retaliate for or discourage the exercise of constitutional rights." Id. This exception must be "construed narrowly and only invoked in 'extraordinary circumstances.'" Aaron, 357 F.3d at 778-79 (quoting Younger, 401 U.S. at 53-54). In order to intervene in the state proceeding, "the 'circumstances must be 'extraordinary' in the sense of creating an extraordinary pressing need for immediate federal equitable relief, not merely in the sense of presenting a highly unusual factual situation.'" Aaron, 357 F.3d at 779 (quoting Moore v. Sims, 442 U.S. 415, 433 (1979)).

Plaintiff asserts that ABD acted in bad faith because it knowingly acted without jurisdiction in instituting an administrative proceeding against Plaintiff. However, ABD's actions do not rise to the level of bad faith needed to fit within this exception. First, it is unclear whether the bad faith exception applies to civil administrative enforcement actions. Second, even if the Eighth Circuit applied the bad faith exception to civil administrative enforcement actions, this would not constitute "bad faith" as a matter of law. Plaintiff argues that ABD is without jurisdiction to enforce the Act. It is true that ABD does not have authority to find someone in violation of the Act. However, ABD was acting within its jurisdiction by instituting proceedings to pursue liquor license revocation or suspension pursuant to Iowa Code section 123.30(2). There is no suggestion that ABD instituted this action without a reasonable expectation of obtaining a valid judgment against Plaintiff. Thus, Plaintiff has failed to establish that ABD or the other defendants acted in bad faith.

Plaintiff also asserts that the Department implemented a system to publicize accused violations of the Act in order to harass Plaintiff and others. More specifically, Plaintiff alleges that the enforcement system was "a form of harassment against it and others" (Plaintiff's Brief in Resistance to Defendants' Motion to Dismiss, Dkt. No. 11, p. 11). Even if the bad faith exception were to apply in civil administrative enforcement actions, the court finds that Plaintiff's allegations of harassment are insufficient as a matter of law to overcome the Younger abstention doctrine. This exception protects a defendant against prosecution that is instituted in bad faith or in order to harass the defendant. The establishment of a generally applicable enforcement system is not enough to trigger this exception to the Younger abstention doctrine.

This court may also exercise jurisdiction over the case if Plaintiff establishes that the Act is "patently and flagrantly unconstitutional." See Cent. Ave. News, Inc. v. City of Minot, N.D., 651 F.2d 565, 570 (8th Cir. 1981). "The plaintiff, however, carries a strong burden in establishing the overwhelming unconstitutionality of the state statute." Id. (citing Huffman, 420 U.S. at 602). While Plaintiff alleges that the Act is unconstitutional, the court finds that Plaintiff has failed to meet its burden to establish that the Act is "patently and flagrantly unconstitutional." Because Plaintiff has failed to fit within any of these narrow exceptions to the Younger abstention doctrine, this court must abstain under Younger.

5. Should the Court Dismiss or Stay the Federal Proceedings?

"In general, the Younger abstention doctrine 'directs federal courts to abstain from granting injunctive or declaratory relief that would interfere with pending judicial proceedings.'" Night Clubs, Inc., 163 F.3d at 481 (internal citations omitted). When a plaintiff seeks only injunctive or declaratory relief, if the court finds that it must abstain under Younger then it should dismiss the federal suit. Id. (internal citations omitted). However, dismissal is inappropriate where the plaintiff also seeks damages unless the

damages sought would require a declaration that a state statute is unconstitutional. Yamaha Motor Corp. U.S.A. v. Stroud, 179 F.3d 598, 603 (8th Cir. 1999) (citing Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 730 (1996)). Rather, in such a case, the federal court should stay the federal proceeding until the state proceeding is concluded. "A stay is preferred to dismissal in cases where there is a possibility that the parties will return to federal court." Cedar Rapids Cellular Telephone, L.P., 280 F.3d at 882 (citing Fuller, 76 F.3d at 960-61).

The court has dismissed all of Plaintiff's claims for damages against Walding and Newton in their individual capacity because they have absolute immunity. However, because Plaintiff's claim for damages against Mapes based on her alleged publication of information about Plaintiff's suspected violations is still intact, the court must stay the federal proceeding until the state proceeding is concluded.

Upon the foregoing,

IT IS ORDERED

That Defendants Walding, Newton, Mapes, and Iowa's Motion to Dismiss (Dkt. No. 7) is granted in part. Plaintiff's claims for damages against Walding and Newton are dismissed. All remaining claims are stayed pending the conclusion of the state proceeding.

DATED this 7th day of April, 2009.

JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA