APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 17-2658

[Filed August 8, 2018]

Minnesota Living Assistance, Inc., doing business as Baywood Home Care	)
Plaintiff - Appellant	)
v.	)
Ken B. Peterson, Commissioner, Department of Labor and Industry, State of Minnesota, in his official capacity; John Aiken, Interim Director of Labor Standards, Department of Labor and Industry, State of Minnesota, in his official capacity	)
Defendants - Appellees	)

Appeal from United States District Court
for the District of Minnesota - Minneapolis

Submitted: June 13, 2018
Filed: August 8, 2018

Before GRUENDER, ERICKSON, and GRASZ, Circuit Judges.

GRUENDER, Circuit Judge.

This case involves two sets of proceedings. In the first, the Minnesota Department of Labor and Industry ("DLI") brought an administrative action against Minnesota Living Assistance, Inc. ("Baywood") for failing to pay overtime compensation to companionship-services employees in violation of the Minnesota Fair Labor Standards Act ("MFLSA"). In the second, the one before us today, Baywood sued in federal court the Commissioner and the Director of Labor Standards at the DLI, arguing that the federal Fair Labor Standards Act ("FLSA") preempts the MFLSA and that Baywood therefore need not pay state penalties for any MFLSA violation. The district court[1] found that the *Younger* doctrine required it to abstain while the state proceeding was pending and dismissed the case. Because we find abstention appropriate, we affirm.

I.

Baywood is a Minnesota corporation that employs domestic-service workers who provide companionship services.[2] The FLSA and the MFLSA both provide

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[1] The Honorable David S. Doty, United States District Judge for the District of Minnesota.

[2] "[C]ompanionship services means the provision of fellowship and protection for an elderly person or person with an illness, injury,

requirements regarding the minimum wage and the maximum hours per week that an individual can work before an employer is required to pay overtime compensation. But during the relevant time period, there were two pertinent differences between the statutes: (1) the FLSA standards were generally more protective than the MFLSA, *compare* 29 U.S.C. §§ 206(a)(1)(C), 207(a)(1), *with* Minn. Stat. §§ 177.24, subdiv. 1(b) (2012), 177.25; and (2) the FLSA exempted companionship-services employees from protection, whereas the MFLSA did not, *compare* 29 U.S.C § 213(a)(15), *with* Minn. Stat. § 177.23, subdiv. 11.

In 2014, a Baywood employee filed a complaint alleging that Baywood violated the MFLSA by failing to pay overtime compensation to companionship-services employees from March 2012 to March 2014. The DLI conducted an investigation into Baywood's practices and determined that Baywood had not paid its companionship-services employees the wages required by the MFLSA. The DLI issued a compliance order in May 2016. The order assessed a penalty of $1,000 for failure to keep records pursuant to Minn. Stat. § 177.30 and required Baywood to pay back wages of $557,714.44 in addition to liquidated damages of $557,714.44. The order also indicated that Baywood should cease its illegal practices and comply with the MFLSA.

Baywood contested the compliance order, so, in August 2016, the DLI initiated a contested case

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or disability who requires assistance in caring for himself or herself." 29 C.F.R. § 552.6. The MFLSA adopts the FLSA definition of companionship services. *See* Minn. Stat. § 177.23, subdiv. 11.

proceeding before an administrative law judge ("ALJ") at the Minnesota Office of Administrative Hearings. In June 2017, the ALJ issued a report recommending that the DLI Commissioner enforce the compliance order as to backpay and liquidated damages but that he deny it as to the determination that Baywood failed to keep accurate records.

While the proceeding before the ALJ was pending, but before the June recommendation, Baywood filed suit in federal district court seeking (1) a declaration that the FLSA preempts the MFLSA and (2) injunctive relief prohibiting the DLI from further processing, investigating, or adjudicating its claims against Baywood. The DLI moved to dismiss the complaint, arguing that the district court should abstain from exercising jurisdiction under *Younger v. Harris*, 401 U.S. 37 (1971). The district court granted the DLI's motion to dismiss under *Younger*.

II.

We review the district court's decision to abstain under *Younger* for abuse of discretion. Whether *Younger* abstention is appropriate is a question of law, and the district court abuses its discretion when it makes an error of law. *Geier v. Mo. Ethics Comm'n*, 715 F.3d 674, 678 (8th Cir. 2013) (citing *Plouffe v. Ligon*, 606 F.3d 890, 894-95 (8th Cir. 2010) (Colloton, J., concurring)). Although federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them," *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976), exceptions to this obligation exist in limited circumstances. In *Younger v. Harris*, the Supreme Court held that, consistent with our nation's commitment to the

principles of comity and federalism, a federal court should abstain from exercising jurisdiction in cases where there is a parallel, pending state criminal proceeding, so long as certain conditions are met. 401 U.S. 37, 43-46 (1971). Since *Younger*, the Supreme Court has issued a series of decisions that have clarified and expanded the *Younger* abstention doctrine. *See Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69 (2013); *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans (NOPSI)*, 491 U.S. 350 (1989); *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982).

Three lines of inquiry for determining whether *Younger* abstention is appropriate emerge from these decisions. *See Sirva Relocation, LLC v. Richie*, 794 F.3d 185, 192-93 (1st Cir. 2015) (distilling a three-part taxonomy from the Court's abstention analyses). First, does the underlying state proceeding fall within one of the three "exceptional circumstances" where *Younger* abstention is appropriate? *See Sprint*, 571 U.S. at 78. Second, if the underlying proceeding fits within a *Younger* category, does the state proceeding satisfy what are known as the "*Middlesex*" factors? *See id.* at 81 (discussing *Middlesex*). And third, even if the underlying state proceeding satisfies the first two inquiries, is abstention nevertheless inappropriate because an exception to abstention applies? *See NOPSI*, 491 U.S. at 367. We address these three lines of inquiry in turn.

A.

We begin by determining whether the underlying enforcement proceeding against Baywood fits within one of the three categories where *Younger* abstention

applies. *Sprint*, 571 U.S. at 72-73, 78. *Younger* abstention is applicable only where the state proceeding qualifies as (1) a criminal prosecution, (2) a civil enforcement proceeding that is akin to a criminal prosecution, or (3) a proceeding implicating a state's interest in enforcing the orders and judgments of its courts. *Id.*

Here, the parties agree that a civil enforcement proceeding resembling a criminal prosecution is the only abstention category into which the DLI proceeding could fit. *Sprint* identified three important characteristics for recognizing a civil proceeding that resembles a criminal prosecution: (1) the action was initiated by the State in its sovereign capacity; (2) the action involves sanctions against the federal plaintiff for some wrongful act; and (3) the action includes an investigation, often culminating in formal charges. 571 U.S. at 79-80. In this case, the underlying proceeding meets all three criteria and thus falls within an applicable *Younger* category.

The DLI proceeding satisfies both the state-involvement and the investigation criteria because the action was initiated by the State, via the DLI, following an investigation into Baywood's failure to pay overtime wages to companionship-services employees. Baywood contests this conclusion by arguing that "the case was initiated by an employee complaint about Baywood's nonpayment of overtime," rather than the State. According to Baywood, because the case was initiated by an employee, the DLI merely "stepped in to settle the dispute between Baywood and its employees about overtime." Indeed, Baywood attempts to analogize the facts here to those in *Sprint*, where administrative

proceedings were triggered by a private complaint. *See* 571 U.S. at 74. But this analogy falls short.

In *Sprint*, "[a] private corporation . . . initiated the action[,] [n]o state authority conducted an investigation into Sprint's activities, and no state actor lodged a formal complaint against Sprint." 571 U.S. at 80. Under those circumstances, the Supreme Court concluded that Iowa's authority was merely "invoked to settle a civil dispute between two private parties," and thus, the proceeding was not a civil proceeding akin to a criminal proceeding for purposes of *Younger*. *Id.* By contrast, here, the DLI conducted the investigation, issued the compliance order, and brought the contested case proceeding against Baywood before the ALJ to enforce Minnesota law. The DLI was not merely an arbiter of a private dispute. Thus, even though the investigation was triggered by an employee complaint, the underlying proceeding bears the first and third characteristics of a civil proceeding akin to a criminal prosecution.[3] *See Ohio Civil Rights Comm'n v. Dayton Christian Schs., Inc.*, 477 U.S. 619, 623-24, 625 (1986) (finding abstention appropriate even where the agency investigation was initiated by a private complaint); *see also Sirva*, 794 F.3d at 194.

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[3] Baywood also makes a related argument that because the proceeding *could have been* brought by a private party, *Younger* abstention is inappropriate. In other words, it suggests that *Younger* abstention is not applicable where a private cause of action is available. But neither *Dayton* nor *Sprint*, nor any circuit deciding cases in their wake, suggests that the presence of a private right of action renders abstention inappropriate. *See, e.g.*, *Sirva*, 794 F.3d at 194, 200 (applying *Younger* abstention even where a private cause of action was available). Therefore, we reject this argument.

The DLI proceeding also involves "sanctions for wrongful conduct." Baywood argues that the underlying proceeding is merely an administrative wage claim with no criminal analog, yet Baywood concedes that the MFLSA provides for criminal penalties in addition to the civil penalties pursued here. *See* Minn. Stat. § 177.32, subdiv. 1(7). Thus, the underlying proceeding resembles cases in which the Supreme Court affirmed the exercise of abstention where "state authorities also had the option of vindicating the[] policies through criminal prosecutions," but instead chose to pursue less severe civil sanctions. *Trainor v. Hernandez*, 431 U.S. 434, 444 (1977); *see also id.* at 449-50 (Blackmun, J., concurring) ("The propriety of abstention should not depend on the State's choice to vindicate its interests by a less drastic, and perhaps more lenient, route.").

Here, the DLI imposed significant liquidated damages in addition to backpay. Minn. Stat. § 177.27, subdiv. 7 (providing for the imposition of equal liquidated damages). These double damages function to sanction Baywood for its failure to pay overtime wages. *See Helvering v. Mitchell*, 303 U.S. 391, 400 (1938). Furthermore, the cease and desist order sought by the State operates to restrain Baywood's conduct going forward. Minn. Stat. § 177.27, subdiv. 7 ("If an employer is found by the commissioner to have violated [the MFLSA] . . . the commissioner shall order the employer to cease and desist from engaging in the violative practice . . . ."); *Wilson v. Commodity Futures Trading Comm'n*, 322 F.3d 555, 561 (8th Cir. 2003) (characterizing an agency's order to "cease and desist" as a sanction). Though not themselves criminal

penalties, the sanctions sought support *Younger* abstention.

Because all three essential characteristics identified by *Sprint* are present here, the underlying proceeding qualifies as a civil proceeding akin to a criminal prosecution.

B.

Given that the DLI proceeding falls into one of the categories that triggers *Younger*, we now consider the three *Middlesex* factors as "additional factors appropriately considered by [a] federal court before invoking *Younger*." *See Sprint*, 571 U.S. at 81. Under *Middlesex*, we ask whether the state proceeding (1) is judicial in nature, (2) implicates important state interests, and (3) provides an adequate opportunity to raise constitutional challenges. 457 U.S. at 432.

Before the district court, Baywood challenged only the second factor, arguing that abstention was inappropriate because an important state interest was not implicated. On appeal, Baywood contests all three factors. "Ordinarily this court will not consider arguments raised for the first time on appeal," *see Wever v. Lincoln Cty.*, 388 F.3d 601, 608 (8th Cir. 2004), and Baywood offers no persuasive reason to deviate from our general practice, *see Weitz Co. v. Lloyd's of London*, 574 F.3d 885, 891 (8th Cir. 2009). Thus, we limit our analysis to whether the underlying proceeding implicates important state interests. *See Middlesex*, 457 U.S. at 432.

Here, Minnesota has an important interest in the application of its wage and hour laws. Indeed, "States possess broad authority under their police powers to

regulate the employment relationship to protect workers within the State." *Metro. Life Ins. Co v. Massachusetts*, 471 U.S. 724, 756 (1985). Taking our cue from the Supreme Court, we recognize that "States have traditionally regulated the payment of wages," and, "[a]bsent any indication that Congress intended [otherwise]," we are hesitant to "significantly interfere with the separate spheres of governmental authority preserved in our federalist system." *Massachusetts v. Morash*, 490 U.S. 107, 119 (1989) (internal quotation marks omitted). Under this view, the underlying proceeding satisfies the important-state-interest factor.

Baywood raises three counter arguments. First, it points to cases in which federal courts were found to be uniquely situated to adjudicate a claim even though it implicated a traditionally state-law matter. But those cases involved, at their core, non-state interests. *See Barzilay v. Barzilay*, 536 F.3d 844, 850 (8th Cir. 2008) (addressing issues related to the Hague Convention on child abduction); *Ayers v. Philadelphia Hous. Auth.*, 908 F.2d 1184, 1195 n.21 (3d Cir. 1990) (focusing on the federal interest in allocating funds for HUD housing programs). Here, the state proceeding resolved a question of Minnesota wage and hour law. Second, Baywood claims that there can be no important state interest "when the state law has been preempted and the state does not have the authority to regulate." But this argument assumes preemption when the very purpose of our inquiry is to determine whether we can address preemption.[4] In any case, the mere *allegation* of preemption does not undermine the propriety of

[4] To the extent that Baywood argues facial preemption, we address that issue in the next section.

abstention. Third, Baywood claims that finding an important state interest in this case would be the equivalent of finding an important interest any time a state enacts and enforces its own laws. But this fear is unfounded. Here, the Supreme Court has specifically confirmed the importance of the state interest. *See Morash*, 490 U.S. at 119.

C.

Because the underlying proceeding satisfies the first two layers of the abstention inquiry, we move to the final consideration: whether an exception to *Younger* applies. Even where the proceeding falls into a *Younger* category and satisfies the *Middlesex* factors, the Court in *NOPSI* left open the possibility that a "facially conclusive" claim of federal preemption may be sufficient to render abstention inappropriate. *See* 491 U.S. at 367. While many of our sister circuits have adopted such an exception to abstention, we have never addressed the question in those terms.[5] *See Cedar Rapids Cellular Tel., L.P. v. Miller*, 280 F.3d 874, 880 (8th Cir. 2002) (noting that *NOPSI* left open the possibility of an exception but declining to address the issue). The courts that have considered this question have found that preemption is facially conclusive if binding precedent already decided the issue or if it is otherwise "readily apparent." *See, e.g.*, *Woodfeathers, Inc. v. Washington Cty.*, 180 F.3d 1017, 1021-22 (9th Cir. 1999). In other words, preemption is not facially conclusive if it requires a "detailed analysis." *Colonial*

[5] We need not decide today whether this exception is a required part of the abstention analysis because it does not affect the outcome of the case. We address it here for completeness.

Life & Accident Ins. Co. v. Medley, 572 F.3d 22, 27-28 (1st Cir. 2009); *GTE Mobilnet of Ohio v. Johnson*, 111 F.3d 469, 478 (6th Cir. 1997).

Here, Baywood asks the court to find facially conclusive its assertion that the FLSA preempted the MFLSA, even as to companionship-services employees, during the relevant time period. But Baywood cites no binding precedent deciding the issue, and we do not find preemption "readily apparent." Although the MFLSA generally adopted a lower minimum wage and higher maximum hours than did the FLSA, the FLSA exempted companionship-services employees from its protection. Resolving the preemption question would require a detailed analysis of the relative protections of the two statutes.[6] Thus, as the district court correctly determined, preemption is not facially conclusive, and no exception to *Younger* abstention applies.

III.

For the foregoing reasons, we affirm the district court's decision to abstain.

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[6] Indeed, similar preemption questions have generated conflicting results in other courts. *Compare, e.g.*, *Pac. Merch. Shipping Ass'n v. Aubry*, 918 F.2d 1409, 1418-19 (9th Cir. 1990) (holding that the FLSA overtime provision did not preempt a state's overtime provision as applied to seamen, a group of individuals, like companionship-services employees, who are excluded from relevant FLSA protection), *with Coil v. Jack Tanner Co.*, 242 F. Supp. 2d 555, 558-59, 561 (S.D. Ill. 2002) (holding that the FLSA preempted a state's overtime law as applied to the same group of excluded workers).

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 17-2658

[Filed August 8, 2018]

Minnesota Living Assistance, Inc., doing business as Baywood Home Care	)
Plaintiff - Appellant	)
v.	)
Ken B. Peterson, Commissioner, Department of Labor and Industry, State of Minnesota, in his official capacity; John Aiken, Interim Director of Labor Standards, Department of Labor and Industry, State of Minnesota, in his official capacity	)
Defendants - Appellees	)

Appeal from U.S. District Court
for the District of Minnesota - Minneapolis
(0:17-cv-01011-DSD)

JUDGMENT

Before GRUENDER, ERICKSON, and GRASZ, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

August 08, 2018

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Civil No. 17-1011 (DSD/DTS)

[Filed June 28, 2017]

Minnesota Living Assistance, Inc., d/b/a Baywood Home Care,	)
Plaintiff,	)
v.	)
Ken B. Peterson, Commissioner, Department of Labor and Industry, State of Minnesota, in his official capacity; and John Aiken, Interim Director of Labor Standards, Department of Labor and Industry, State of Minnesota, in his official capacity,	)
Defendants.	)

ORDER

Bruce J. Douglas, Esq., Stephanie J. Willing, Esq. and Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 90 South Seventh Street, Suite 3800, Minneapolis, MN 55402, counsel for plaintiff.

Jonathan D. Moler, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 900, St. Paul, MN 55101, counsel for defendants.

This matter is before the court upon the motions to dismiss by defendants Ken B. Peterson and John Aiken[1] and for summary judgment by plaintiff Minnesota Living Assistance, Inc. d/b/a Baywood Home Care (Baywood). Based on a review of the file, record, and proceedings herein, and for the following reasons, the court grants defendants' motion to dismiss and denies plaintiff's motion for summary judgment.

BACKGROUND

Baywood is a Minnesota corporation that employs domestic service workers who provide companionship services as defined under the Federal Labor Standards Act (FLSA).[2] Compl. ¶¶ 1, 3. The FLSA establishes a minimum wage of $7.25 an hour and a maximum workweek of forty hours, after which employers must pay workers one and one-half times their regular hourly pay. See 29 U.S.C. §§ 206(a)(1)©, 207(a)(1). Workers who perform companionship services,

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[1] Peterson and Aiken are sued in their official capacities as Commissioner for the Minnesota Department of Labor and Industry and Interim Director of Labor Standards for the Minnesota Department of Labor and Industry. Although Aiken is sued as Interim Director, he is actually the Director.

[2] "[C]ompanionship services means the provision of fellowship and protection for an elderly person or person with an illness, injury, or disability who requires assistance in caring for himself or herself." 29 C.F.R. § 552.6(b). The Minnesota Fair Labor Standards Act (MFLSA) adopts the FLSA definition of companionship services. See Minn. Stat. § 177.23, subdiv. 11.

however, are exempt from the minimum wage and weekly maximum hour requirements. See 29 U.S.C. § 213(a)(15). Unlike the FLSA, the MFLSA subjects companionship services to minimum wage, maximum weekly hours, and overtime requirements. See Minn. Stat. § 177.23, subdiv. 11.

Based on a complaint by a Baywood employee, the Minnesota Department of Labor and Industry (DLI) investigated whether Baywood unlawfully withheld overtime compensation for companionship services employees from March 21, 2012, to March 21, 2014.[3] Compl. ¶¶ 17-18. After its investigation, on May 17, 2016, DLI assessed a penalty of $1,000 for failure to keep records pursuant to Minn. Stat. § 177.30 and ordered Baywood to pay back wages of $557,714.44 in addition to liquidated damages of $557,714.44. Compl. ¶ 22; Moler Aff. Ex. A. Baywood objected to the penalties, and DLI brought a contested case proceeding at the Minnesota Office of Administrative Hearings before an Administrative Law Judge (ALJ).[4] Compl. ¶ 23; Moler Aff. Ex. B.

On May 31, 2017, Baywood brought this suit seeking a declaration that the FLSA preempts the MFLSA and injunctive relief prohibiting DLI from further processing, investigating, or adjudicating its

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[3] It is unclear when the complaint was made or the investigation began.

[4] On June 1, 2017, the ALJ recommended that the Commissioner grant DLI's motion for summary disposition regarding unpaid overtime wages. See Moler Aff. II Ex. A. Baywood may file exceptions with DLI within ten days, and the Commissioner has ninety days to issue a final decision. See Minn. Stat. §§ 14.61-62.

claims against Baywood. Defendants now move to dismiss the complaint arguing that the court should abstain from exercising jurisdiction under Younger v. Harris, 401 U.S. 37 (1971).

DISCUSSION

I. Younger Abstention Doctrine

Under the Younger abstention doctrine, "federal courts should abstain from exercising jurisdiction when (1) there is an ongoing state proceeding, (2) which implicates important state interests, and (3) there is an adequate opportunity to raise any relevant federal questions in the state proceedings." Plouffe v. Ligon, 606 F.3d 890, 892 (8th Cir. 2010) (citing Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982)). The parties do not dispute that the first and third elements are met. Baywood argues, however, that Younger abstention does not apply because an important state interest is not implicated. Specifically, Baywood contends that an important state interest cannot exist when the state law the underlying proceeding seeks to enforce is preempted by federal law.

Baywood's argument is based, in part, on dicta in New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans, 491 U.S. 350 (1989) (NOPSI), where the "Supreme Court left open the possibility of an exception to Younger for preemption claims that are facially conclusive." Cedar Rapids Cellular Tel., L.P. v. Miller, 280 F.3d 874, 880 (8th Cir. 2002) (internal quotation marks and citation omitted); see also NOPSI, 491 U.S. at 367 (emphasis in original) ("[N]OPSI argues [that] ... even if a substantial claim of federal pre-emption is not

sufficient to render abstention inappropriate, at least a facially conclusive claim is. Perhaps so. But we do not have to decide the matter here ....").

The Eighth Circuit has not addressed what makes a preemption claim facially conclusive. Other circuits, however, have identified the following scenarios where preemption claims are not facially conclusive: (1) when a further factual inquiry is required; (2) when the claim involves a question of first impression; and (3) when the court must conduct a "detailed analysis" of the state statute in question, "including resolving interjurisdictional differences." Colonial Life & Accident Ins. Co. v. Medley, 572 F.3d 22, 27-28 (1st Cir. 2009) (citing Woodfeathers, Inc. v. Washington County, Oregon, 180 F.3d 1017, 1022 (9th Cir. 1999); GTR Mobilnet of Ohio v. Johnson, 111 F.3d 469, 478 (6th Cir. 1997)). When courts have found that preemption was facially conclusive, they merely applied established precedent that easily resolved the preemption issue. See Chaulk Servs., Inc. v. Mass. Comm'n Against Discrimination, 70 F.3d 1361, 1370 (1st Cir. 1995) (holding that under Supreme Court precedent it was "readily apparent" the conduct at issue was subject to the National Labor Relations Act); Gartrell Constr. Inc. v. Aubry, 940 F.2d 437, 441-42 (9th Cir. 1991) (holding that under Ninth Circuit precedent it was "readily apparent" that the state law at issue was preempted by ERISA).[5]

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[5] Baywood also cites Norfolk & W. Ry. Co. v. Pub. Utils. Comm'n of Ohio, 926 F.2d 567, 573 (6th Cir. 1991), but in that case the federal statute expressly preempted the state statute. Here, it is undisputed that the FLSA does not expressly preempt the MFLSA.

Here, Baywood fails to cite to any binding precedent that the FLSA preempts the MFLSA, or, more specifically, that the FLSA preempts state regulation of workers who are exempt under the FLSA. In fact, it appears that federal courts may be divided on the issue. Compare Pac. Merch. Shipping Ass'n v. Aubry, 918 F.2d 1409, 1418 (9th Cir. 1990) (holding that preemption from the FLSA did not preempt the state's ability to enforce overtime provision as to seamen), with Coil v. Jack Tanner Co., 242 F. Supp. 2d 555, 559 (S.D. Ill. 2002) (holding that the state's overtime laws as applied to seamen directly conflicted with the exemption of seamen under the FLSA). This division in the federal courts belies Baywood's argument that preemption of the MFLSA is readily apparent.

Baywood also argues that the FLSA clearly preempts the MFLSA because the MFLSA fails to meet the requirements of the FLSA's Savings Clause.[6] Specifically, Baywood argues that the Savings Clause does not apply because, during the relevant period, the MFLSA set a minimum wage of $6.15 per hour and a forty-eight-hour maximum workweek whereas the FLSA set a minimum wage of $7.25 per hour and a forty-hour maximum workweek. See 29 U.S.C. §§ 206

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[6] The Savings Clause states in relevant part:

> No provision of this chapter or any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter ....

29 U.S.C. § 218(a).

(a)(1)©, 207 (a)(1); Minn Stat. §§ 177.24, subdiv. 1(b) (2011), 177.25, subdiv. 1. Defendants reply that the court should focus on the work requirements as applied to companionship services. Under defendants' analysis, the MFLSA provides a higher minimum wage and lower maximum workweek because under the FLSA companionship services are subject to no minimum wage and no maximum workweek.

In order to determine whether the Savings Clause applies to the MFLSA, the court must conduct a detailed analysis as to whether the Savings Clause requirements refer to a state's regulations in general, as argued by Baywood, or as applied to the specific class of workers at issue, as argued by defendants. As a result, it is not readily apparent that the FLSA preempts the MFLSA. In the absence of a readily apparent preemption of the MFLSA, the court finds that the State has a strong interest in its ability protect workers by enforcing its wage and labor laws. See Massachusetts v. Morash, 490 U.S. 107, 119 (1989) (citation and internal quotation marks omitted) ("The States have traditionally regulated the payment of wages .... Absent any indication that Congress intended [otherwise], we are reluctant to ... significantly interfere with the separate spheres of governmental authority preserved in our federalist system.").

Baywood next argues that Younger abstention is inappropriate because the DLI proceeding is not a type of exceptional case to which abstention applies. Younger abstention is appropriate only in exceptional cases, which include "[1] state criminal prosecutions, [2] civil enforcement proceedings, and [3] civil proceedings involving certain orders that are uniquely

in furtherance of the state courts' ability to perform their judicial functions." Sprint Commc'ns, Inc. v. Jacobs, 134 S. Ct. 584, 588 (2013) (citation and internal quotation marks omitted). The Younger doctrine applies to civil enforcement proceedings only if the civil enforcement is similar to a criminal prosecution.[7] Id. at 592. A civil enforcement proceeding is similar to a criminal prosecution when a state actor initiates a proceeding that seeks to sanction the federal plaintiff. See id. Further, in such proceedings, "investigations are commonly involved, often culminating in the filing of a formal complaint or charges." Id.

Baywood contends that the DLI proceeding is insufficiently akin to a criminal prosecution. The court is not persuaded. Here, the DLI proceeding meets all three indicia of a criminal proceeding: the civil enforcement action was "brought by the State in its sovereign capacity" in order to sanction Baywood after an investigation which culminated in charges against it. Trainor v. Hernandez, 431 U.S. 434, 444 (1977).

Baywood responds that, because DLI has not sought criminal sanctions, the enforcement action is more akin to civil suits brought by employees to recover unpaid wages than a criminal enforcement proceeding. But the Younger doctrine does not require that the State seek criminal penalties in addition to civil enforcement. See Trainor, 431 U.S. at 444 (applying the Younger doctrine to a state civil enforcement action to recover fraudulent obtained welfare payments where the state "also had the option of vindicating these policies

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[7] It is undisputed that the DLI proceeding does not fall into the first or third category of cases.

through criminal prosecutions"); see also Ohio Civil Rights Comm'n v. Dayton Christian Sch., 477 U.S. 619, 627-29 (1986) (holding abstention was appropriate in a state-initiated civil proceeding to enforce civil rights laws); Moore v. Sims, 442 U.S. 415 (1979) (state-initiated civil proceeding to gain custody of allegedly abused children). As a result, the civil enforcement proceeding against Baywood is akin to a criminal prosecution, and abstention is appropriate.

II. Summary Judgment

Because the court abstains from exercising jurisdiction, it denies Baywood's motion for summary judgment as moot.

CONCLUSION

Accordingly, based on the above, **IT IS HEREBY ORDERED** that:

1. Defendants' motion to dismiss [ECF No. 8] is granted;

2. Plaintiff's motion for summary judgment [ECF No. 10] is denied as moot; and

3. The case is dismissed without prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 27, 2017

s/David S. Doty
David S. Doty, Judge
United States District Court

APPENDIX C

UNITED STATES DISTRICT COURT
District of Minnesota

Case Number: 17-cv-1011 DSD/DTS

[Filed June 28, 2017]

Minnesota Living Assistance, Inc., d/b/a Baywood Home Care,	)
Plaintiff(s),	)
v.	)
Ken B. Peterson, Commissioner, Department of Labor and Industry, State of Minnesota, in his official capacity; and John Aiken, Interim Director of Labor Standards, Department of Labor and Industry, State of Minnesota, in his official capacity,	)
Defendant(s).	)

JUDGMENT IN A CIVIL CASE

☐ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court**. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Defendants' motion to dismiss [ECF No. 8] is granted;
2. Plaintiff's motion for summary judgment [ECF No. 10] is denied as moot; and
3. The case is dismissed without prejudice.

Date: 6/28/2017

RICHARD D. SLETTEN, CLERK

s/Katie Thompson
(By) Katie Thompson, Deputy Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-2658

[Filed September 14, 2018]

Minnesota Living Assistance, Inc., doing business as Baywood Home Care	)
Appellant	)
v.	)
Ken B. Peterson, Commissioner, Department of Labor and Industry, State of Minnesota, in his official capacity and John Aiken, Interim Director of Labor Standards, Department of Labor and Industry, State of Minnesota, in his official capacity	)
Appellees	)

Appeal from U.S. District Court for the District of Minnesota - Minneapolis
(0:17-cv-01011-DSD)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

September 14, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

_____

/s/ Michael E. Gans

APPENDIX E

29 U.S.C. § 218. Relation to other laws

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

* * *