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Volume 2010 | Issue 1 Article 18

3-1-2010

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Recommended Citation
Taylor G. Selim, *Remedial and Coercive Administrative Proceedings Under Younger: The Tenth Circuit's Test in Brown v. Day*, 2010 BYU L. Rev. 267 (2010).
Available at: https://digitalcommons.law.byu.edu/lawreview/vol2010/iss1/18

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# Remedial and Coercive Administrative Proceedings Under *Younger*: The Tenth Circuit's Test in *Brown v. Day*

## I. INTRODUCTION

The Tenth Circuit's recent decision in *Brown v. Day*[1] highlights a circuit split regarding the applicability of *Younger* abstention[2] to state administrative proceedings. This split is rooted in two Supreme Court cases that have left lower courts with the difficult task of fleshing out their meaning. In *Patsy v. Board of Regents*,[3] the Court held that exhausting administrative remedies was not required before federal intervention could be sought under 42 U.S.C § 1983.[4] In *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*,[5] however, the Court indicated that the non-exhaustion rule of *Patsy* applied to remedial, rather than coercive, administrative proceedings.[6] Since *Dayton Christian Schools*, circuit courts have struggled in applying and dissecting the meaning of the Court's remedial/coercive distinction.[7]

This Note analyzes two key issues at the forefront of the Tenth Circuit's decision in *Brown*. First, the court offers a test for determining the remedial or coercive nature of an administrative proceeding that focuses solely on the "ongoing proceeding" prong of *Younger*. This Note explores whether such a test is reasonable and whether it falls in line with federal abstention jurisprudence. Second, this Note addresses the court's narrow and mechanical treatment of the remedial/coercive distinction. *Brown* deviates from a traditional

1. 555 F.3d 882 (10th Cir. 2009).

2. "*Younger* abstention" refers to the judicially created doctrine of federal abstention first articulated in *Younger v. Harris*, 401 U.S. 37 (1971).

3. 457 U.S. 496 (1982).

4. *Id.* at 516.

5. 477 U.S. 619 (1986).

6. *Id.* at 627–28 n.2.

7. Brown v. Day, 555 F.3d 882, 896 (10th Cir. 2009) (Tymkovich, J., dissenting) (discussing the divergent approaches adopted by the circuit courts in applying the remedial/coercive distinction).

*Younger* analysis, which requires an organic evaluation of the principles of equity, federalism, and comity that federal courts must explicitly consider in deciding whether to abstain from a state administrative proceeding.

## II. FACTS AND PROCEDURAL BACKGROUND IN *BROWN V. DAY*

### *A. Facts of the Case*

Dena Brown, the plaintiff, is a severely mentally disabled adult.[8] Her disability has left her with the mental capacity of a three- or four-year-old child.[9] Due to her extreme disability, Brown requires constant care and supervision.[10] Prior to the commencement of her lawsuit, Brown lived and received care at a private, non-profit residential care facility.[11] The cost of such care exceeded her monthly income, which consisted solely of Social Security payments.[12] Prior to August 2005, the federal Medicaid program covered the difference in Brown's income versus her cost of care.[13]

In 2003, Brown's mother passed away, leaving her as the beneficiary of a residuary trust.[14] The corpus of the trust included roughly $15,000 in cash, two annuities totaling approximately $23,000, and a 160-acre piece of land valued around $30,000.[15] Brown's brother was appointed as the trustee, and Brown, given her disability, had no legal authority to compel distribution of the trust income or corpus at any time.[16] As such, prior to 2004, the state of Kansas did not consider the trust an "available resource" in determining Brown's Medicaid eligibility.[17]

In July 2004, however, the Kansas legislature amended the law dealing with Medicaid eligibility to include within the definition of

8. *Brown*, 555 F.3d at 885.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.* at 886.
15. *Id.*
16. *Id.*
17. *Id.*

"available resources" trust assets "to the extent, using the full extent of discretion, the trustee may make any of the income or principal available to the applicant or recipient of medical assistance."[18] Per the requirements of the revised statute, the Kansas Division of Health Policy and Finance ("HPF") informed Brown that her Medicaid benefits would be terminated at the end of August 2005.[19]

### *B. Procedural History*

Brown first sought relief from the termination of her Medicaid benefits by requesting a hearing before the HPF. She opted for the HPF hearing, instead of initially filing suit in federal court, because there was a legitimate question as to whether the amended statute could apply to her retroactively. Furthermore, the HPF allowed her to continue receiving Medicaid benefits during the pendency of her appeal. The hearing officer restored Brown's benefits on the grounds that the amended statute did not apply retroactively. However, a Final Order issued by Robert Day, HPF's director, informed Brown that the previous decision to terminate her benefits was being reinstated. The Order further stated that Brown had thirty days to file a petition for state judicial review.[20]

A few days prior to the expiration of the allowable time period for Brown to seek state judicial review, she filed suit in federal district court naming Day, in his official capacity as director of HPF, as the defendant. Brown sought declaratory judgment and an injunction of the termination of her Medicaid coverage. The remedies sought were based upon Brown's claim that Day's decision violated 42 U.S.C. § 1983.[21]

The district court initially granted Brown's request for a preliminary injunction. The court found that Day and HPF had acted arbitrarily in terminating Brown's Medicaid coverage. Shortly after the court's ruling, Day moved to have the case dismissed, arguing the court should abstain from hearing Brown's claims given that she had abandoned a current state proceeding to seek federal

18. KAN. STAT. ANN. § 39-709(e)(3)(B) (2008 Supp.).
19. *Brown*, 555 F.3d at 886.
20. *Id.*
21. *Id.* at 886–87.

review. The district court agreed with Day and dismissed, citing *Younger*. The court found there was an ongoing state proceeding that, under the circumstances, required the federal judiciary to respect the state's interest in adjudicating the matter. Brown then appealed to the Tenth Circuit Court of Appeals.[22]

## III. SIGNIFICANT LEGAL BACKGROUND

### *A. The Historical Roots and Development of "Our Federalism"*[23]

Traditionally, *Ex parte Young*[24] is considered to be the genesis of *Younger* abstention.[25] In that case, the Supreme Court issued an injunction against the Attorney General of Minnesota from enforcing a state statute dealing with reductions in railroad rates. In making its decision, however, the Court noted that the federal judiciary could not "interfere in a case where the proceedings were already pending in a state court."[26] A subsequent line of decisions by the Court established the principle that a federal court could not enjoin the bringing of a state prosecution except under extraordinary circumstances.[27]

Although the basic tenets of "Our Federalism" can be found in pre-*Younger* cases, the Court, in *Dombrowski v. Pfister*,[28] appeared to have opened the doors to the federal courts for those seeking

22. *Id.* at 887.

23. "Our Federalism" is synonymous with *Younger* abstention. The Court in *Younger* used the phrase in a discussion concerning the delicate nature of the relationship between the states and the federal government:

> [T]he concept . . . represent[s] . . . a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.

Younger v. Harris, 401 U.S. 37, 44 (1971).

24. 209 U.S. 123 (1908).

25. MARTIN H. REDISH & SUZANNA SHERRY, FEDERAL COURTS: CASES, COMMENTS, AND QUESTIONS 532 n.1 (6th ed. 2007). *But see* Burton D. Wechsler, *Federal Courts, State Criminal Law and the First Amendment*, 49 N.Y.U. L. REV. 740 (1974) (arguing that pre-*Young*, the federal trial courts had freely given injunctive relief to federal plaintiffs).

26. *Young*, 209 U.S. at 162.

27. *See* REDISH & SHERRY, *supra* note 25.

28. 380 U.S. 479 (1965).

protection from threatened criminal prosecution.[29] Justice Brennan, writing for the Court, maintained that federal intervention, under *Dombrowski*, was only appropriate in cases dealing with the threat of future prosecutions, not a currently pending prosecution.[30] However, the apparent departure from previous precedent by the Court created uncertainty and confusion regarding the role of the federal judiciary as it pertained to pending or future state prosecutions.[31]

The perception of expansive federal judicial oversight created by *Dombrowski* was narrowed in *Younger v. Harris*.[32] The Court's opinion in *Younger*, along with other forms of judicially created doctrines of abstention, requires that federal courts give great deference to state proceedings in the name of equity, federalism, and comity.[33] Under *Younger*, the federal courts are required to abstain from hearing a complaint if (1) there is an ongoing state proceeding, (2) the state court provides an adequate forum to adjudicate the federal rights, and (3) the state proceeding involves an important state interest.[34] Thus, *Younger* narrowed *Dombrowski* by holding that the federal courts are open only for complaints seeking protection from state prosecutions that would inflict irreparable harm upon the federal plaintiff.[35] The scope of *Younger* abstention was traditionally

29. Robert Allen Sedler, *The* Dombrowski*-Type Suit as an Effective Weapon for Social Change: Reflections from Without and Within*, 18 U. KAN. L. REV. 237, 244–45 (1970).

30. *See Dombrowski*, 380 U.S. at 485–86.

31. *See generally* Douglas Laycock, *Federal Interference with State Prosecutions: The Cases* Dombrowski *Forgot*, 46 U. CHI. L. REV. 636 (1979).

32. 401 U.S. 37 (1971). A year after *Younger* was decided, the Court, in *Mitchum v. Foster*, 407 U.S. 225 (1972), held that 42 U.S.C. § 1983 was an expressly authorized exception to the Anti-Injunction Act. After *Mitchum*, the Anti-Injunction Act posed no barrier for plaintiffs seeking relief from state court proceedings in federal courts; however, *Younger* abstention still acts as a gatekeeper in promoting equity, federalism, and comity between the state and federal courts. *Id*. at 242–43. Therefore, § 1983 federal plaintiffs still face *Younger* as a bar in trying to bring their cases before a federal court.

33. *Younger*, 401 U.S. at 43–44.

34. Taylor v. Jaquez, 126 F.3d 1294, 1297 (10th Cir. 1997) (citing *Younger*, 401 U.S. at 37).

35. *Younger*, 401 U.S. at 43 (citing *Ex parte* Young, 209 U.S. 123 (1908)). Additionally, the Court offered two additional exceptions to *Younger* abstention but left the door open for more. The first exception applies to cases involving a clear showing by the plaintiff of bad faith or harassment by state officials. The second exception is truly remarkable in that courts may intervene if the challenged statute is "'flagrantly and patently violative of

left only for criminal proceedings; however, *Younger* has since been applied to quasi-criminal proceedings in the civil and administrative context.

### *B. The Expansion of* Younger *to Non-Criminal Proceedings*

#### *1.* Younger *in civil proceedings*

In *Huffman v. Pursue, LTD.*,[36] the Court extended *Younger* to a civil proceeding in which the state was a party. The proceeding was centered on a state nuisance statute that allowed the state, in effect, to shut down any establishment in violation of the statute's broad terms.[37] In *Huffman*, the establishment in question was a movie theater showing pornographic films.[38] After losing at trial in state court, the operators of the theater sought injunctive relief in federal court.[39] The Supreme Court held that *Younger* required federal abstention because the "state proceeding . . . [was] akin to a criminal prosecution."[40] Thus, the Court held, "the State's interest in the nuisance litigation [was] likely to be every bit as great as it would be were this a criminal proceeding."[41]

Two years later, the Court held that *Younger* applied to a case involving a state contempt proceeding in *Juidice v. Vail*.[42] In *Juidice*, a judgment debtor sought injunctive relief from the federal court system after he was held in contempt by the state court.[43] The federal district court granted the injunction, but the Supreme Court reversed, holding that *Younger* applied because "[t]he contempt power lies at the core of the administration of a State's judicial system."[44]

express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it.'" *Id.* at 53–54 (quoting Watson v. Buck, 313 U.S. 387, 402 (1941)).

36. 420 U.S. 592 (1975).
37. *Id.* at 595–97.
38. *Id.* at 595.
39. *Id.* at 598.
40. *Id.* at 604.
41. *Id.*
42. 430 U.S. 327 (1977).
43. *Id.* at 328–29.
44. *Id.* at 335.

The same year that *Juidice* was decided, the Supreme Court applied *Younger* to a state civil suit filed by the state in order to recoup fraudulently received welfare benefits in *Trainor v. Hernandez*.[45] The recipients of the welfare benefits sought injunctive relief in federal court.[46] The Supreme Court declined to give a definitive statement regarding the application of *Younger* to civil proceedings, but it did find abstention appropriate. The Court focused on the important state interest that was involved with administering welfare programs in making its decision to apply *Younger*.[47]

Finally, the high-water mark for *Younger* in the setting of a civil proceeding, and the current standard employed today, is found in *Pennzoil Co. v. Texaco*.[48] *Pennzoil* involved a case where the state was not even a named party in the civil action. In that case, Texaco was found liable for actual and punitive damages exceeding $11 billion.[49] Texaco intended to appeal the award, but a Texas statute required that to postpone enforcement of the $11 billion judgment, Texaco would need to post bail for the amount of the award plus costs and interest.[50] Rather than post bond, Texaco sought to enjoin Pennzoil in federal court from enforcing the judgment.[51] The Supreme Court held the federalism concerns found in *Younger* required federal abstention "not only when the pending state proceedings are criminal, but also when certain civil proceedings are pending, if the State's interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government."[52] It is not entirely clear whether *Pennzoil* broadens the reach of *Younger* abstention to all civil proceedings.[53]

45. 431 U.S. 434 (1977).

46. *Id.* at 435–38.

47. *Id.* at 444.

48. 481 U.S. 1 (1987).

49. *Id.* at 4.

50. *Id.* at 4–5.

51. *Id.* at 6.

52. *Id.* at 11.

53. *See* Howard B. Stravitz, Younger *Abstention Reaches A Civil Maturity:* Pennzoil Co. v. Texaco Inc., 57 FORDHAM L. REV. 997, 1032 (1989).

*2.* Younger *in administrative proceedings*

*Younger* abstention in civil proceedings seems rather uncontroversial given (1) the adequacy of the state forum to adjudicate federal civil claims and (2) the fact that civil litigation likely involves important state interests. Although these two prongs of *Younger* are not always satisfied in civil proceedings, administrative proceedings are even more susceptible in failing to offer an adequate forum for the adjudication of federal rights or to demonstrate the involvement of an important state interest. This, however, has not prevented the Court from extending *Younger* to administrative proceedings under certain circumstances.

In *Middlesex County Ethics Committee v. Garden State Bar Ass'n*,[54] the Court applied *Younger* to a federal claim for injunctive relief against a state attorney disciplinary proceeding on the grounds that the proceeding "[bore] a close relationship to proceedings criminal in nature, as in *Huffman* . . . ."[55] In evaluating whether the administrative proceeding was the type of proceeding requiring *Younger* deference, the Court noted that the state had "an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses."[56]

The same year that *Middlesex* was decided, the Court held in *Patsy v. Board of Regents*[57] that a teacher seeking damages under § 1983 for sex discrimination need not exhaust her administrative remedies before seeking federal review of the violation of her federal rights.[58] Following *Mitchum v. Foster*,[59] the Court found that Congress, when it enacted § 1983, had expressly mandated that the federal judiciary assume jurisdiction for claims brought under that statute.[60] The decision of the Court gave great weight to the mistrust that Congress had shown towards the inadequate, potentially biased, fact-finding processes of state administrative bodies.[61]

54. 457 U.S. 423 (1982).
55. *Id.* at 432.
56. *Id.* at 434.
57. 457 U.S. 496 (1982).
58. *Id.* at 516.
59. 407 U.S. 225 (1972); *see supra* note 32.
60. *Mitchum*, 407 U.S. at 503.
61. *Patsy*, 457 U.S. at 505–06.

*Ohio Civil Rights Commission v. Dayton Christian Schools*[62] involved a subject matter similar to *Patsy*. In that case, Dayton Christian Schools sought, under § 1983, to prevent the Ohio Civil Rights Commission from hearing a sex discrimination complaint.[63] The Commission moved for dismissal under *Younger*. The Court's opinion considered all components of *Younger* abstention in evaluating whether the administrative proceeding was the type of proceeding that deserved federal deference. After considering the interests of the state in the proceeding and the adequacy of the forum, the Court, in a footnote, distinguished *Patsy* on the grounds that the proceeding before the Court was coercive, while the proceeding in *Patsy* was remedial.[64] No explanation or additional treatment was given to this remedial/coercive distinction. In the context of the opinion, however, it seems that it was one of many factors used by the Court in evaluating the entirety of the *Younger* doctrine.[65] The failure of the Court to explain this distinction has led to the current circuit split.[66]

### *3. A seven-ten split? Confusion among the courts in applying the remedial/coercive distinction*

Judge Tymkovich, dissenting in *Brown*, points out the current split among the circuit courts in handling the remedial/coercive distinction.[67] On one side, the First and Tenth Circuits have implemented a mechanical, multi-pronged test that focuses on who initiated the administrative proceeding.[68] If the proceeding was initiated by the federal plaintiff, then the proceeding is remedial; if the proceeding was initiated by the state, it is coercive.[69] On the other side, the Third, Fourth, and Seventh Circuits have taken a

62. 477 U.S. 619 (1986).

63. *Id.* at 621.

64. *Id.* at 627 n.2.

65. *Id.* at 627 ("We have also applied [*Younger*] to state administrative proceedings in which important state interests are vindicated, so long as in the course of those proceedings the federal plaintiff would have a full and fair opportunity to litigate his constitutional claim.").

66. Brown v. Day, 555 F.3d 882, 896 (10th Cir. 2009) (Tymkovich, J., dissenting).

67. *Id.*

68. *See* Kercado-Melendez v. Aponte-Roque, 829 F.2d 255, 260 (1st Cir. 1987).

69. *Brown*, 555 F.3d at 889.

broader, more flexible approach by simply "asking whether the proceedings can be characterized as state enforcement proceedings."[70] In making this query, these circuits have held that a state enforcement proceeding is by definition coercive, which makes such proceedings "judicial in nature."[71]

## IV. THE COURT'S DECISION

### *A. The Court's Interpretation of the* Younger *Framework*

The Tenth Circuit in *Brown* reversed the district court's decision to abstain from a state administrative proceeding dealing with the termination of Medicaid benefits to a mentally handicapped person.[72] The court acknowledged three requirements that, if satisfied, demand federal abstention under *Younger*: (1) the presence of an ongoing state proceeding (the "ongoing proceeding" prong), (2) a showing that the state administrative proceeding "provides an adequate forum to hear the claims raised in the federal complaint" (the "adequacy" prong), and (3) the involvement of an important state interest (the "state interest" prong).[73]

Within this framework, the court states that the analysis in determining the applicability of *Younger* to *Brown* turns solely on evaluating the "ongoing proceeding" prong.[74] Within the "ongoing proceeding" prong, the court identifies two sub-parts that guide the analysis: (1) whether there was an ongoing state proceeding, and (2) whether the proceeding is the type of proceeding (the "type of proceeding" analysis) deserving of *Younger* deference.[75] The court avoids addressing the first sub-part and focuses its analysis only on the "type of proceeding" sub-part. To determine if the putative

70. *Id*. at 896 (Tymkovich, J., dissenting).

71. *Id*. (citing Laurel Sand & Gravel v. Wilson, 519 F.3d 156, 166 (4th Cir. 2008); Majors v. Engelbrecht, 149 F.3d 709, 712 (7th Cir. 2007); O'Neil v. City of Philadelphia, 32 F.3d 785, 791 n.13 (3d Cir. 1994)).

72. *See supra* Part II.

73. *Brown*, 555 F.3d at 887.

74. *See id*. at 888.

75. *Id*. ("The initial prong of the *Younger* inquiry involves two sub-parts. This court must determine whether there is an *ongoing* state proceeding. The court must also decide whether that proceeding is the *type* of state proceeding that is due the deference accorded by *Younger* abstention." (citations omitted)).

proceeding is the type of proceeding meriting *Younger* abstention, the court asks if, following *Dayton Christian Schools*,[76] the proceeding is remedial or coercive.[77] This query, the court determines, can be evaluated by applying an additional three-pronged test based upon the standard articulated by the First Circuit.[78]

### B. The Remedial vs. Coercive Distinction

The Tenth Circuit's remedial/coercive test evaluates (1) "whether the federal plaintiff initiated the state proceeding of her own volition to right a wrong inflicted by the state"[79] (if so, the proceeding is remedial); (2) whether "the federal plaintiff contends that the state proceeding is unlawful (coercive),"[80] or whether "the federal plaintiff seeks a remedy for some other state-inflicted wrong (remedial)";[81] and (3) whether the federal plaintiff has committed some bad act (coercive).[82] In analyzing only the remedial/coercive distinction within the vacuum of the "ongoing proceeding" prong, the court, by design, gives no express treatment to the adequacy of the proceeding or the possible interest that the state might have in such a proceeding. By limiting its analysis in such a way, the court is able to sidestep the tension between *Patsy*[83] and *Huffman*[84] regarding the conflicting exhaustion requirements of those cases.[85]

76. 477 U.S. 619 (1986).
77. *Brown*, 555 F.3d at 888–90.
78. *Id.* at 889–91.
79. *Id.* at 889.
80. *Id.*
81. *Id.*
82. *Id.* at 891.
83. 457 U.S. 496, 516 (1982).
84. 420 U.S. 592, 607–11 (1975).
85. *Brown*, 555 F.3d at 890 (citing *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 627–28 n.2 (1986)). A more difficult task, perhaps, than giving meaning to the remedial/coercive distinction, would be reconciling the apparent conflict between *Patsy*'s non-exhaustion of state administrative remedies rule and *Huffman*'s exhaustion of state appellate review requirement. The difficulty of that task lies in determining when application of *Patsy* ends and when application of *Huffman* begins. In other words, at what point does an administrative proceeding, which does not require exhaustion, become an appellate proceeding, which does require exhaustion? The facts of *Brown* highlight this problem because Brown had already gone through the administrative proceeding. *Id.* at 886. Her next option

In applying the above mentioned test to Brown's administrative proceedings, the court found them to be remedial because (1) Brown initiated the proceedings, (2) the administrative "proceedings themselves [were] not the challenged state conduct," and (3) Brown "committed no cognizable bad act that would have precipitated state coercive proceedings."[86] The Tenth Circuit rejected the district court's finding that the state had initiated the proceedings by eliminating Brown's Medicaid benefits in the first place.[87] The court did not accept that the decision to terminate Brown's Medicaid benefits fit within *Younger*'s "traditional roots" that allows for the expansion of federal abstention doctrine to proceedings similar to a criminal prosecution. In other words, *Younger* applies "in situations where federal involvement would block a state's efforts to enforce its laws."[88] It appears the court argued that *Younger* does not apply to an administrative proceeding seeking relief from the summarily terminated Medicaid benefits of an individual given the absence of even the veneer of judicial process.[89] If this is the case, such an argument would be consistent with Justice Scalia's statement in *New Orleans Public Service v. Council of New Orleans*[90] that the Supreme Court has "never extended [*Younger*] to proceedings that are not 'judicial in nature.'"[91]

## V. ANALYSIS

The critique of the *Brown* decision offered by this Note is not aimed at contrasting and comparing the different approaches taken by the circuit courts in applying the coercive/remedial distinction.

was to seek state judicial review of the administrative proceeding from a state trial court. The court is able to completely avoid this issue by limiting its analysis to the remedial/coercive distinction within its interpretation of the *Younger* framework.

86. *Id.* at 893.

87. *Id.*

88. *Id.* (citations omitted).

89. *See* Maymo-Melendez v. Alvarez-Ramirez, 364 F.3d 27, 36 (1st Cir. 2004) ("*Huffman* is a reliable guide only where full-fledged state administrative proceedings of a judicial character and, arguably, of a coercive nature, are directed against the federal plaintiff.").

90. 491 U.S. 350 (1989).

91. *Id.* at 370 (quoting Middlesex County Ethics Comm. v. Garden State Bar Ass'n., 457 U.S. 423, 433–34 (1982)).

Judge Tymkovich, dissenting, lays out an excellent argument as to why the approach taken by the several other circuits should be followed instead of the test adopted by the First Circuit.[92] Nor is the purpose of this Note to challenge the result reached by the Tenth Circuit. The limited and narrow focus of this Note is simply to ask whether the Tenth Circuit's analysis is logically consistent and generally consistent with *Younger* abstention jurisprudence. The answer to both inquiries is no.

The means by which the Tenth Circuit achieved the result in *Brown* is not conducive to the broad, free-flowing discussions regarding equity, federalism, and comity usually found in *Younger* abstention cases. The court appears to view the remedial/coercive analysis of an administrative proceeding in a binary fashion. That is, an administrative proceeding is either remedial or it is coercive depending upon the application of a few simple factors. This vision would justify the mechanical test adopted by the court; however, the heart of *Younger* is a careful balancing test that pits the interests of the federal judiciary in protecting federal rights against the interests of the states in furthering matters of state law and policy.[93] The Tenth Circuit test, unfortunately, substitutes the nuanced flexibility of a traditional *Younger* analysis with a bright-lined, multi-pronged test that fails to capture the core concepts of "Our Federalism."

### *A. Does* Brown*'s Treatment of the Remedial/Coercive Distinction Make Sense?*

As previously stated, it is currently unclear how much weight courts should give the remedial/coercive distinction or how and when it should be applied within the broader framework of *Younger* abstention.[94] The Tenth Circuit, as previously explained, has created a sub-prong to the first part of the *Younger* analysis, namely the ongoing proceeding prong.[95] The purpose of this sub-prong is to evaluate whether a proceeding is the type of proceeding that should

92. *Brown*, 555 F.3d at 894–906 (Tymkovich, J., dissenting).
93. *See* Younger v. Harris, 401 U.S. 37, 43–44 (1971).
94. *Brown*, 555 F.3d at 896–97 (Tymkovich, J., dissenting).
95. *Id*. at 888 (majority opinion).

be given *Younger* deference.[96] This construction of *Younger* places the entire weight of the analysis within the sterile confines of the court's own remedial/coercive test with no consideration given to the adequacy of the state forum or the state's interest in the matter. Without further explanation from the court, it is difficult to understand why an analysis of whether a certain type of proceeding should be given *Younger* deference is placed solely within a discussion of *Younger's* ongoing proceeding prong. After all, the million dollar question behind every *Younger* abstention case is whether the proceeding is the type of proceeding meriting federal deference. The court relies on *New Orleans Public Service* in justifying its type of proceeding analysis; however, the analysis in *New Orleans Public Service* does not call upon an analysis as constructed by the Tenth Circuit. The adequacy and state interest prongs of *Younger* should also be evaluated because the type of proceeding analysis has implications that permeate the entire *Younger* discussion.

It seems obvious that an analysis of the ongoing proceeding prong would include a discussion of whether the putative proceeding is the type of proceeding that deserves *Younger* deference. The Tenth Circuit's refusal to apply this discussion to the rest of *Younger*, however, is where the court's test begins to come undone. The type of proceeding analysis inherently requires an evaluation of the adequacy of the state forum to hear the federal complaint and the state's interest in the underlying matter. How can a federal court decide if a proceeding is the type deserving of federal abstention without expressly evaluating the adequacy of the state forum or the state's interest in adjudicating the matter? The Tenth Circuit attempts to avoid the adequacy and state interest prongs of *Younger*, but the influence of those factors can be found beneath the surface of the court's decision.[97]

The remedial/coercive distinction is especially relevant in evaluating the state's interest in an administrative proceeding. Although no explanation is offered by the Supreme Court, a

96. *Id.*

97. It seems reasonable to speculate that the court's narrow application of the remedial/coercive distinction was done to avoid the greater uncertainty surrounding the *Patsy* and *Huffman* exhaustion requirements. *See supra* note 85.

reasonable argument for the denial of *Younger* deference to remedial proceedings is that such proceedings, generally, will not involve important matters of state interest that would require federal abstention. This presumes that states have a greater interest in coercive proceedings that enforce state laws than in proceedings that merely seek to remedy a wrong done to an individual by the state. Using the remedial/coercive distinction in determining the extent of the interest that a state has in an administrative proceeding as part of the "type of proceeding" analysis is a better way to organically apply *Younger* in its entirety, rather than the mechanical, compartmentalized test offered by the Tenth Circuit.

Furthermore, the remedial/coercive distinction naturally assists in evaluating *Younger*'s adequacy prong as well. *New Orleans Public Service* tells us that the elements of *Younger* are to be evaluated by determining whether the putative proceeding is "judicial in nature."[98] This follows because, presumably, a proceeding that is judicial in nature will likely provide an adequate forum to adjudicate the federal issues underlying the federal complaint. In asking whether a proceeding is judicial in nature, an analysis of the remedial/coercive status of the proceeding would be helpful in further evaluating the adequacy of the state forum because a proceeding that is coercive, e.g., a proceeding in which the state seeks to enforce its laws, will likely provide a sufficient process by which a state defendant may have her federal complaint properly heard. Assuming the state has an interest in enforcing its laws and protecting the federal rights of its citizens, it seems reasonable that the state will provide adequate, judicial-like forums to enforce those laws. Thus, *Brown* offers an inadequate treatment of the remedial/coercive distinction, as the court should have applied the distinction to all parts of the *Younger* analysis.

### *B. Is* Brown *Consistent with the Broad Principles of Younger Abstention?*

*Brown*'s creation of a test consisting of a convoluted maze of prongs and their sub-prongs is at odds with the core principles of

98. New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 370 (1989).

"Our Federalism." Essentially, *Brown* turned on the fact that Brown (1) initiated the administrative proceeding, (2) was challenging the application of a new law rather than the lawfulness of the proceeding, and (3) committed no bad act. As previously argued, the remedial/coercive distinction seems to require consideration of all factors that make up the *Younger* analysis. The three prongs of *Younger*, identified by the Tenth Circuit, set out to evaluate just how important a given proceeding is to a state. The interest of the federal judiciary in adjudicating federal rights is presumed. Only by a showing that a state's interest in a proceeding is of sufficient importance should a federal court abstain for the sake of avoiding the potentially harmful friction between state and federal governments that *Younger* abstention is designed to prevent.

It is hard to see where in the Tenth Circuit's test there is room for the careful balancing of state and federal interests as required by *Younger*. It could be argued that such a discussion is imbedded within the three sub-prongs found in the court's test; however, it is just as reasonable, if not more so, to argue that a nuanced application of a traditional *Younger* analysis will be lost in the mechanics of the court's standard. The Tenth Circuit's multi-pronged test does not embody the principles of equity, federalism, and comity that require explicit consideration under *Younger*.

## V. CONCLUSION

The Tenth Circuit's test in *Brown* may have the appearance of a clean, predictable legal standard; however, the court's isolated application of the remedial/coercive distinction to only the ongoing proceeding prong of *Younger* contradicts the notion of "Our Federalism." Federal abstention jurisprudence has demonstrated over time that *Younger* abstention is an extremely fact-sensitive endeavor. To implement a test that focuses on a narrow set of factors, without considering the adequacy of the state forum or the interests of the state explicitly, prevents the federal courts from being able to properly balance the competing interests of the federal and state governments that are at the core of "Our Federalism." Although the outcome reached in *Brown v. Day* is what may be required under *Younger*, the standard articulated by the Tenth Circuit is unsupported by federal abstention jurisprudence.

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