APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

No. 20-1525

NICOLE K., by next friend LINDA R., *et al.*,

Plaintiffs-Appellants,

v.

TERRY J. STIGDON, Director of the Indiana Department of Child Services, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 1:19-cv-01521-JPH-MJD –
James Patrick Hanlon, *Judge.*

ARGUED OCTOBER 26, 2020 – DECIDED MARCH 5, 2021

Before EASTERBROOK, ROVNER, and WOOD, *Circuit Judges.*

EASTERBROOK, *Circuit Judge.* When officials in Indiana believe that children may be suffering from abuse or neglect, they initiate a process that they call CHINS, for Child in Need of Services. The plaintiffs in this suit are children (represented by next friends)

about whom CHINS proceedings are under way. Indiana automatically appoints lawyers to represent the parents in CHINS proceedings but does not do the same for children. Plaintiffs contend that the Constitution entitles each of them to appointed counsel at public expense. In other words, they seek a civil parallel to the holding in *Gideon v. Wainwright*, 372 U.S. 335 (1963), that all criminal defendants are entitled to counsel when imprisonment is in prospect. But the district court declined to resolve this contention, ruling that *Younger v. Harris*, 401 U.S. 37 (1971), requires abstention. 2020 U.S. Dist. LEXIS 36844 (S.D. Ind. Mar. 3, 2020).

When *Younger* applies, participants must raise their federal arguments in the state proceeding, with review by the Supreme Court of the United States if the state judiciary ultimately rejects the constitutional arguments. Plaintiffs contend on appeal that they are not the kind of parties, and CHINS proceedings are not the sort of "quasi-criminal" litigation (their language), to which they believe *Younger* is limited.

Moore v. Sims, 442 U.S. 415 (1979), holds that *Younger* applies to some kinds of child-welfare proceedings, and *Milchtein v. Chisholm*, 880 F.3d 895 (7th Cir. 2018), adds that child-custody proceedings are among those governed by *Younger*. But, as plaintiffs see things, CHINS proceedings do not always entail the same state interests as child-custody matters. The state's brief describes the CHINS process, showing that it can span a variety of situations and correspondingly a wide range of state interests:

The State's intervention begins with a report of suspected child abuse or neglect. Upon receipt of such a report, the Indiana Department of Child Services initiates an assessment of the allegation. See Ind. Code §§ 31-33-7-1 *et seq.*, 31-33-8-1 *et seq*. If the Department is able to substantiate the allegation of abuse or neglect, it may then initiate a CHINS proceeding by filing a CHINS petition on the child's behalf. See Ind. Code ch. 31-34-9 *et seq*.

The trial court must hold an initial hearing within ten days of the Department's filing of a CHINS petition, Ind. Code §31-34-102(a), earlier (within two days) if the child has been removed from the home upon the Department's assessment of the reported abuse or neglect. See Ind. Code §§ 31-34-5-1(a), 31-34-10-2(j). During the initial hearing, the parents are asked to admit or deny the allegations in the petition: If the parents deny the allegations, then the court must generally hold a fact-finding hearing within 60 days, Ind. Code §31-34-11-1, and if after that hearing the court determines that the child is a CHINS, it must then schedule a dispositional hearing to occur within 30 days of the CHINS determination. Ind. Code §§ 31-34-11-2, 31-34-19-1(a). But if the parents admit the allegations at the initial hearing, the court enters judgment and schedules a dispositional hearing. See Ind. Code §§ 31-34-10-8, 31-34-10-9(a), (c).

During the dispositional hearing, the court considers appropriate placement and treatment

for the child and then enters a dispositional decree. See Ind. Code §31-34-19-1, ch. 31-34-20 *et seq*. The court's dispositional decree not only provides for the child's placement and services, but in most cases it also spells out the services in which the parent must engage to remedy the conditions that led to the CHINS adjudication. See Ind. Code §§ 31-3420-1, 31-34-21-5.5; cf. Ind. Code §31-34-21-5.6 (providing for narrow circumstances under which services are not required).

After the court enters the dispositional decree, it periodically reviews the case—at least once every six months—to ensure that the child's case plan, services, and placement continue to serve the child's best interests. Ind. Code §§ 31-34-21-2, 31-34-21-4.5, 31-34-21-5(a). The court takes into account a host of considerations, including whether the child requires additional services or counseling and the extent to which the child's parent, guardian, or custodian has enhanced the ability to fulfill parental obligations and has cooperated with reunification efforts. See Ind. Code §31-34-21-5(b). In the course of its review, the court also considers whether to prepare or implement a permanency plan for the child. Ind. Code §31-34-21-5(b)(15).

CHINS cases remain open until "the objectives of the dispositional decree have been met," Ind. Code §31-34-21-11, which can mean several things, such as reunification or termination of parental rights and adoption, among others. If reunification is not a viable option,

the State may initiate a termination of parental rights (TPR) proceeding. See, e.g., Ind. Code §§ 31-34-21-7.5, 3135-2-1. The CHINS case continues until the child achieves permanency, which often does not occur until after the TPR proceeding (including any appeals) concludes. See Ind. Code §§ 3119-11-6; 31-34-21-11.

In a CHINS or TPR proceeding, state law entitles the child's parents to counsel as a matter of right, while the child does not have such a statutory entitlement, see Ind. Code §§ 31-32-4-1, 31-34-4-6(a)(2)(A)—though the state trial court does have discretion to appoint counsel for the child, see Ind. Code §31-32-4-2(b), and the Department can request appointment of counsel for the child as well. But in practice, trial courts rarely have occasion to consider whether to appoint counsel to children in CHINS cases.

The child's interests . . . are neither unrepresented nor disregarded. In addition to the State's *parens patriae* protection, most children are represented by a Guardian ad Litem (GAL), a Court Appointed Special Advocate (CASA), or both. See Indiana Youth Institute, *2019 Indiana Kids Count Data Book* 23 (2019) ("In 2017, 29,630 Hoosier children were designated as Children in Need of Services. . . . In 2017, 4,273 volunteers spoke for abused and neglected Hoosier children in 30,480 CHINS cases."). Indeed, one of the first things a court does upon the filing of a CHINS petition is to determine whether

> appointment of such an advocate is warranted. Ind. Code §31-34-10-3. State law requires the court to appoint a GAL or CASA in abuse and neglect cases, *id.*, but courts may appoint a GAL or CASA even if not required, see Ind. Code §31-32-3-1; *Gibbs v. Potter*, 77 N.E. 942, 943 (Ind. 1906).

Indiana Br. 3–6 (cleaned up).

The variety of goals and outcomes in this kind of proceeding makes us reluctant to decide categorically whether *Younger* does, or does not, apply across the board. Ten children are plaintiffs, and Indiana does not contend that all of them have been separated from their parents or are at risk of that outcome.

We also conclude that it does not matter whether *Younger* applies to all CHINS proceedings. Although, when *Younger* applies, abstention is compulsory, a federal court has discretion to put any federal proceeding on hold while a state works its way through an administrative process that was under way before the federal suit began. See, e.g., *Courthouse News Service v. Brown*, 908 F.3d 1063 (7th Cir. 2018). Principles of comity entitle the states to make their own decisions, on federal issues as well as state issues, unless there is some urgent need for federal intervention. This is summed up in the rule that there is no such thing as federal-defense removal. See, e.g., *Chicago v. Comcast Cable Holdings, L.L.C.*, 384 F.3d 901, 904 (7th Cir. 2004). Many a federal issue will arise in the resolution of a proceeding under state law, but the norm is that the state tribunal handles the entire proceeding, with

review of the federal question (if one matters in the end) by the Supreme Court rather than a federal district judge.

Withholding peremptory federal adjudication of a single issue in the state proceedings is the appropriate disposition. Indiana represents, and plaintiffs do not deny, that state judges have the authority to appoint counsel for children. What's more, most children have adult representatives—either guardians *ad litem* or special advocates. Some of those adult representatives may be lawyers; others may engage counsel to advise them how best to represent the children's interests. Unless there is a "civil *Gideon*" principle requiring counsel in every case, the state's procedures suffice—at least in the sense that they permit an adult to argue, to the state judiciary, that a lawyer is necessary in a particular case.

Gideon overruled a series of cases, exemplified by *Betts v. Brady*, 316 U.S. 455 (1942), that abjured any rule about whether counsel is necessary in criminal prosecutions. *Betts* held that courts must decide whether each particular defendant could represent his own interests adequately. The Justices stated in *Gideon* that the program of *Betts* had failed because judges just can't tell, even with the benefit of hindsight, what a lawyer might have done had one been appointed. The only reliable solution, *Gideon* held, is to appoint counsel all the time. This understanding lies behind plaintiffs' argument that every child in every CHINS proceeding is entitled to an appointed lawyer.

But the Justices have not taken *Gideon* as far as they might. They treat it as a decision about the scope of the Counsel Clause in the Sixth Amendment rather than the Due Process Clause in the Fifth. They have not extended *Gideon* to courts martial, see *Middendorf v. Henry*, 425 U.S. 25 (1976), or to civilian misdemeanor criminal prosecutions that do not end in sentences of imprisonment, see *Nichols v. United States*, 511 U.S. 738 (1994). Revocation of probation or supervised release does not entail an automatic right to counsel, even though the consequences may include imprisonment. See *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). In these and other situations, the Justices have used the case-by-case approach of *Betts*.

The situations the Justices have approached one dispute at a time under the Due Process Clause include civil child-welfare proceedings. So, for example, a parent is not automatically entitled to counsel in a civil-contempt proceeding arising out of a child-welfare adjudication, even though the remedies for defiance to a court may include imprisonment until the recalcitrant litigant obeys. See *Turner v. Rogers*, 564 U.S. 431 (2011). And in *M.L.B. v. S.L.J.*, 519 U.S. 102, 116–19 (1996), while analogizing child-custody-termination proceedings to criminal prosecutions for the purpose of determining whether a state may condition appeal on ability to prepay the cost of a transcript (the Due Process Clause bars this, the Court held), the Justices reaffirmed the holding of *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), that the Constitution does not automatically entitle parents to appointed counsel

before a court terminates parental rights. No decision since *M.L.B.* has even hinted at restiveness about the holding of *Lassiter*. In other words, there is no "civil *Gideon*" principle for child-custody or child-welfare proceedings.

Because children are not automatically entitled to lawyers—as opposed to the sort of adult assistance that Indiana routinely provides—it would be inappropriate for a federal court to resolve the appointment-of-counsel question in any of the ten plaintiffs' state proceedings. A state judge may appoint counsel, if that seems necessary, or may explain why that step is unnecessary under the circumstances. In the absence of a "civil *Gideon*" analog, that question is a proper part of the state proceeding, subject (as all federal issues are) to the possibility of review by the Supreme Court once a final decision has been rendered.

AFFIRMED

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

NICOLE K. by next friend Linda R.; for themselves and those similarly situated, ABIGAIL R. by next friend Nancy B.; for themselves and those similarly situated, ANNA C. by next friend Jessie R.; for themselves and those similarly situated„ ROMAN S. by next friend Linda R.; for themselves and those similarly situated, LILY R. by next friend Nancy B.; for themselves and those similarly situated, RACHEL H. by next friend Nancy B.; for themselves and those similarly situated, BRIAN P. by next friend Jessie R.; for themselves and those similarly situated, AMELIA P. by next friend Jessie R.; for themselves and those similarly situated, ALEXA C. by next friend Jessie R.; for themselves and those similarly situated, ZACHARY H. by next friend)

Jessie R.; for themselves and those similarly situated,	)	
Plaintiffs,	)	
v.	)	No. 1: 19-cv-01521-JPH-MJD
TERRY J. STIGDON Director of the Indiana Department of Child Services in her official capacity, MARILYN A. MOORES Honorable, Marion Superior Court Judge, in her official capacity, MARK A. JONES Honorable, Marion Superior Court Judge, in his official capacity, THOMAS P. STEFANIAK, JR. Honorable, Lake Superior Court Jude, in his official capacity, MARSHA OWEN HOWSER Honorable, Scott Superior Court Judge, in her official capacity, JASON M. MOUNT Honorable, Scott Circuit Court Judge, in his official capacity,	)	
Defendants.	)	

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

(Filed Mar. 3, 2020)

This case was brought by several minors who are involved in Child in Need of Services ("CHINS") proceedings pending in state courts in Marion, Scott, and Lake counties, Indiana. Plaintiffs allege that because

they were not appointed counsel to represent them in their CHINS cases, the Director of the Indiana Department of Child Services and state judges in those counties caused the deprivation of their liberty interests without due process. *See* dkt. 40. Defendants have filed a motion to dismiss the complaint for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted. Dkt. [59]. Important state interests presented in CHINS proceedings require the Court to abstain under the doctrine of *Younger v. Harris*, so Defendants' motion is **GRANTED**.

I.
Facts and Background

Because Defendants have moved for dismissal under Rule 12(b)(1) and 12(b)(6), the Court accepts and recites "the well-pleaded facts in the complaint as true." *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011); *Scott Air Force Base Props., LLC v. Cty. of St. Clair, Ill.*, 548 F.3d 516, 519 (7th Cir. 2008).

Plaintiffs are ten children involved in Indiana CHINS proceedings. N.K. and R.S. live with a foster parent in Marion County and have been designated CHINS by the Marion Superior Court. Dkt. 40 at 13. A.R., L.R., and R.H. live with a foster parent in Lake County and have been designated CHINS by the Lake Superior Court. *Id.* at 15. An.C., B.P., A.P., Al.C., and Z.H. are in foster care in Scott County and have been designated CHINS by the Scott Superior Court. *Id.* at 18.

Plaintiffs are not represented by counsel in their pending CHINS proceedings. *Id.* at 14, 17, 21. Under Indiana law, appointment of counsel for children in CHINS proceedings is discretionary. *Id.* at 26 (citing Ind. Code § 31-32-4-2(b)). The Indiana Department of Child Services ("DCS") can request that counsel be appointed, but in practice it does not do so. *Id.* at 27. And courts presiding over CHINS proceedings rarely appoint counsel. *Id.* at 29–32. In the Marion Superior Court, Lake Superior Court, and Scott Superior and Circuit Courts, counsel is appointed for children in CHINS proceedings in less than 10% of cases. *Id.*

Plaintiffs have sued Terry Stigdon, the Director of DCS; Marilyn Moores and Mark Jones, judges and co-heads of the Marion Superior Court Juvenile Division; Thomas Stefaniak, Jr., judge of the Lake Superior Court Juvenile Division; Marsha Howser, judge of the Scott Superior Court; and Jason Mount, judge of the Scott Circuit Court. Plaintiffs allege that Defendants violated the Fourteenth Amendment equal protection and due process rights "of children in dependency proceedings by failing to provide counsel to those children." *Id.* at 4, 34–35. They seek declaratory and injunctive relief, including: (1) a declaration that Ind. Code § 31-32-4-2(b) is unconstitutional on its face and as applied to Plaintiffs; (2) a declaration that Defendants have unconstitutionally caused Plaintiffs to have no attorney representation in CHINS and termination of parental rights proceedings; and (3) an injunction requiring the appointment of counsel to Plaintiffs. *Id.* at 36.

Defendants have filed a motion to dismiss this case for lack of jurisdiction and for failure to state a claim upon which relief can be granted, arguing that this case should be dismissed for several reasons, including the *Younger* abstention doctrine. Dkt. 59.[1]

II.
Applicable Law

A motion to dismiss on abstention grounds fits best under Federal Rule of Civil Procedure 12(b)(1). *Nadzhafaliyev v. Hardy*, No. 17 C 4469, 2019 WL 4138996 at *3 (N.D. Ill. Aug. 29, 2019). The Court accepts as true the well-pleaded factual allegations, drawing all reasonable inferences in the plaintiffs' favor. *Scott Air Force Base*, 548 F.3d at 519.

III.
Analysis

Defendants argue this case should be dismissed under the *Younger* abstention doctrine because Indiana trial courts are able to address Plaintiffs' constitutional claims in the pending CHINS proceedings. Dkt. 60 at 18–19. Plaintiffs respond that *Younger* abstention is improper because this case does not involve the same subject matter as the CHINS cases and because it does not fit into any of the three exceptional categories to which the Supreme Court has limited *Younger's*

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[1] Plaintiffs' unopposed motion for leave to file a surreply is **GRANTED**. Dkt. [80].

application. Dkt. 67 at 26–27 (relying on *Sprint Comms., Inc. v. Jacobs*, 571 U.S. 69, 78 (2013)).

A. *Younger* Abstention

A federal court's obligation to hear and decide a case within its jurisdiction is "virtually unflagging." *Sprint*, 571 U.S. at 78. An exception to this rule, the *Younger* abstention doctrine, requires federal courts to abstain from deciding cases when the federal claims can be raised in state court and "the prospect of undue interference with state proceedings counsels against federal relief." *Sprint*, 571 U.S. at 78; *see Younger v. Harris*, 401 U.S. 37 (1971). Abstention in these circumstances is required by comity and federalism; specifically, "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *New Orleans Pub. Sew., Inc. v. Council of New Orleans*, 491 U.S. 350, 364 (1989) ("*NOPSI*") (quoting *Younger*, 401 U.S. at 44).

Because *Younger* abstention is an exception to the rule that a federal court must hear and decide cases within its jurisdiction, the doctrine applies in only three "exceptional" categories. *Sprint*, 571 U.S. at 78; *see NOPSI*, 491 U.S. at 368. They are when federal involvement would intrude into (1) state criminal prosecutions, (2) quasi-criminal civil enforcement

proceedings, or (3) "civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." *Id.* Defendants argue that this case falls into *Sprint's* second and third categories, and that abstention is appropriate under both pre- and *post-Sprint* case law. Dkt. 77 at 6–9. Plaintiffs respond that *Sprint* "narrowed the scope of *Younger* abstention," and that this case does not fall into any of *Sprint's* categories. Dkt. 80-1 at 2; dkt. 67 at 27.

Sprint is not the narrowing that Plaintiffs imagine. In *Sprint*, the Supreme Court merely held that *Younger* abstention is limited to the categories identified by the Court in NOPSI thirty years ago—it did not remove or narrow those categories. *Sprint, 571* U.S. at 78 (holding that "in accord with" prior cases, the three categories "define *Younger's* scope"); *NOPSI, 491* U.S. at 368 (identifying the three exceptional categories "after surveying prior decisions").

B. Plaintiffs' CHINS proceedings are state quasi-criminal enforcement proceedings.

The exercise of federal jurisdiction here would intrude into state quasi-criminal civil enforcement proceedings. The Supreme Court and Seventh Circuit have consistently found that *Younger* abstention applies in similar quasi-criminal contexts. In *Moore v. Sims*, for example, parents brought a federal constitutional challenge to Texas's child-custody framework after one of their children was taken into custody

because of an abuse report. 442 U.S. 415, 419–21 (1979). The Supreme Court held that because of the important state interests and quasi-criminal context of the pending state-court custody proceedings, *Younger* abstention applied. *Id.* at 423. In *Sprint*, the Court cited *Moore* to explain that a "state-initiated proceeding to gain custody of children allegedly abused by their parents" is a quasi-criminal proceeding that triggers *Younger* abstention. 571 U.S. at 79.

Plaintiffs argue that the state CHINS proceedings are not quasi-criminal because the purpose is not to punish parents, and parents cannot be incarcerated, put on probation, or even fined. Dkt. 67 at 27. But in *Brunken v. Lance*, the Seventh Circuit reversed a district court's decision not to abstain under *Younger* from a federal challenge to a pending Illinois child-custody case. 807 F.2d 1325, 1330–31 (7th Cir. 1986). The court emphasized the similarities to a criminal proceeding, including that the state is heavily involved in the proceedings and prosecutes "its very strong interest in the health and welfare of the child." *Id.* These same interests are at the core of Indiana's child-welfare system. As the Indiana Supreme Court recently emphasized, nothing less than the "fundamental right" of parents to raise their children is at stake. *In re Ma.H.*, 134 N.E.3d 41, 44–46 (Ind. 2019). Moreover, CHINS and termination of parental rights proceedings "can implicate a parent in criminal activity," so trial courts presiding over those cases "must remain conscientious of possible criminal implications and safeguard a parent's constitutional rights." *Id.*

C. Addressing the constitutional issue here would intrude on Indiana's child-welfare framework.

As the Seventh Circuit recently said, important state interests require "federal court[s] [to] abstain" under *Younger* "from resolving isolated legal issues that might matter" to pending state child-welfare or child-custody proceedings. *Milchtein v. Chisholm*, 880 F.3d 895, 898–99 (7th Cir. 2018). Because of its compelling interest in child health and welfare, *Brunken*, 807 F.2d at 1330, the state must "encourage and support the integrity and stability of an existing family environment and relationship" throughout a CHINS proceeding, *In re KD.*, 962 N.E.2d 1249, 1258 (Ind. 2012). The constitutional issue here—whether children in CHINS proceedings are entitled to counsel—is therefore one piece of a much larger and integrated child-welfare framework. The cost of a *federal* court's interference in that *state* system "militate[s] in favor of abstention." *Moore*, 442 U.S. at 427.

Plaintiffs nevertheless argue this case does not involve the same subject matter as the pending CHINS proceedings because the appointment of counsel is a procedural issue that does not go to the outcome or merits of the CHINS proceedings. Dkt. 67 at 26. But the entire premise of Plaintiffs' case is that not having counsel in a CHINS proceeding is what caused their loss of liberty interests. *See* dkt. 40 ¶ 1; dkt. 67 at 14–15. Moreover, as explained above, even "isolated legal issues" that might matter to pending state child-welfare or child-custody proceedings trigger *Younger*.

Milchtein, 880 F.3d at 898–99. Similarly, the Supreme Court's decision in *Kowalski v. Tesmer* teaches that "ancillary challenges" implicate *Younger* abstention. 543 U.S. 125 (2004). *Kowalski* involved a federal challenge to a Michigan law that allowed state courts not to appoint counsel for a criminal appeal after a guilty plea. *Id.* at 127. The Supreme Court said that the criminal-defendant plaintiffs could not circumvent *Younger* by raising the "ancillary" right-to-counsel issue in federal court. *Id.* at 133. Since the appointment of counsel implicated *Younger* in *Kowalski*, it does here too.

D. Plaintiffs have not shown they cannot raise their federal claims in their state-court CHINS proceedings.

For the reasons above, *Younger* abstention is appropriate here so long as Plaintiffs had the opportunity to present their federal claims in the state proceedings. *See Moore*, 442 U.S. at 425 (citing *Juidice v. Vail*, 430 U.S. 327, 337 (1977)). Plaintiffs argue that they did not have that opportunity, dkt. 67 at 27 n.2, but they fail to carry their burden of proving it, *see Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1987) (citing *Moore*, 442 U.S. at 432). Plaintiffs do not identify any legal barrier to raising their claims in their CHINS proceedings. *See Moore*, 442 U.S. at 426 ("Certainly, abstention is appropriate unless state law clearly bars the interposition of the constitutional claims."). And they have not alleged or argued that they tried to raise these claims there. *See Pennzoil*, 481 U.S. at 15 ("[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."). The Southern District of Texas case cited by Plaintiffs, *M.D. v. Perry*, 799 F. Supp. 2d 712, 721 (S.D. Tex. 2011), does not relieve Plaintiffs of their obligation to try to raise their constitutional claim in the CHINS proceeding or explain why they cannot do so. In *M.D.*, the court found that the "limited state court review hearings" that Texas provided in foster-care cases did not provide an adequate opportunity to raise complex federal constitutional challenges. *Id.* Plaintiffs do not argue that Indiana's CHINS proceedings are similarly limited.

In sum, Plaintiffs have not shown that they cannot raise their federal constitutional challenges in their pending CHINS cases. Exercising federal jurisdiction over this case therefore presents the same danger as in *Kowalski*: "unnecessary conflict between the federal and state courts" and "confusion among [Indiana] judges attempting to implement . . . conflicting commands." 543 U.S. at 133 n.4. The better path—since Indiana courts are competent to adjudicate these federal constitutional claims—is to leave the integrated CHINS framework to the Indiana courts. *Moore*, 442 U.S. at 430; *Milchtein*, 880 F.3d at 899.[2] Plaintiffs

[2] In a footnote in their response brief and in one sentence in their surreply, Plaintiffs hint that this Court should not abstain under *Younger* because they are seeking class relief. Dkt. 67 at 27 n.2; dkt. 80-1 at 3. But underdeveloped arguments are waived. *See Dexia Credit Local v. Rogan*, 629 F.3d 612, 624–25 (7th Cir. 2010). Notwithstanding waiver, Plaintiffs cite only *M.D.*, 799

should therefore raise their claim in state court and, if necessary, follow the state appellate process. *See Simpson v. Rowan*, 73 F.3d 134, 138 (7th Cir. 1995) (citing *NOPSI*, 491 U.S. at 369; *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975)).

Therefore, this case is **DISMISSED without prejudice**. *See Moses v. Kenosha County*, 826 F.2d 708, 710 (7th Cir. 1987) (*Younger* abstention "require[s] the district court to dismiss all claims without prejudice to the plaintiffs right to raise the same contentions in a state tribunal").[3]

IV.
Conclusion

Defendants' motion to dismiss is **GRANTED**. Dkt. [59]. Plaintiffs' motion for class certification is

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F. Supp. 2d 712, in support. There, the Southern District of Texas declined to abstain under *Younger* in part because Plaintiffs sought "broad-based," "overarching systemic," and "wide-ranging" class relief. *Id.* at 721–22; *see M.D. v. Perry*, No. C-11-84, 2011 WL 2173673 (S.D. Tex. June 2, 2011) (certifying the class). This case is different because no class has been certified and Plaintiffs pursue one discrete constitutional theory—that the Fourteenth Amendment provides them a right to counsel in their CHINS proceedings—without explaining why that position cannot be sufficiently addressed by the state courts presiding over the CHINS proceedings.

[3] Because *Younger* abstention applies, the Court does not consider Defendants' other arguments for dismissal, including that Plaintiffs lack standing. *See* dkt. 60; *Tenet v. Doe*, 544 U.S. 1, 6 n.4 (2005) (recognizing that *Younger* abstention "may be resolved before addressing jurisdiction").

DENIED as moot. Dkt. [43]. This case is **DISMISSED**; final judgment will issue in a separate entry.

SO ORDERED.

Date: 3/3/2020

/s/ James Patrick Hanlon
James Patrick Hanlon
United States District Judge
Southern District of Indiana

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APPENDIX C

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

April 26, 2021

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 20-1525	)	Appeal from the
NICOLE K., by next friend LINDA R., *et al.*, *Plaintiffs-Appellants*,	)	United States District Court for the Southern District of Indiana, Indianapolis Division.
v.	)	
TERRY J. STIGDON, Director of the Indiana Department of Child Services, *et al.*, *Defendants-Appellees*.	)	No. 1:19-cv-01521-JPH-MJD James Patrick Hanlon, *Judge*.

Order

(Filed Apr. 26, 2021)

Plaintiffs-Appellants filed a petition for rehearing and rehearing en banc on April 9, 2021. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

APPENDIX D

U.S. CONST. amend. XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Ind. Code § 31-32-2-1 "Rights of child"

Sec. 1. Except when a child may be excluded from a hearing under IC 31-32-6, a child is entitled to:

(1) cross-examine witnesses;

(2) obtain witnesses or tangible evidence by compulsory process; and

(3) introduce evidence on the child's own behalf.

Ind. Code § 31-32-2-2 "Additional rights of child charged with delinquent act"

Sec. 2. In addition to the rights described in section 1 of this chapter, a child charged with a delinquent act is also entitled to:

(1) be represented by counsel under IC 31-32-4;

(2) refrain from testifying against the child; and

(3) confront witnesses.

Ind. Code § 31-32-2-5 "Parent's right to representation by counsel"

Sec. 5. A parent is entitled to representation by counsel in proceedings to terminate the parent-child relationship.

Ind. Code § 31-32-4-1 "Persons entitled to representation by counsel"

Sec. 1. The following persons are entitled to be represented by counsel:

(1) A child charged with a delinquent act, as provided by IC 31-32-2-2.

(2) A parent, in a proceeding to terminate the parent-child relationship, as provided by IC 31-32-2-5.

(3) Any other person designated by law.

Ind. Code § 31-32-4-2 "Court appointment of counsel to represent child"

Sec. 2. (a) If:

(1) a child alleged to be a delinquent child does not have an attorney who may represent the child without a conflict of interest; and

(2) the child has not lawfully waived the child's right to counsel under IC 31-32-5 (or IC 31-6-7-3 before its repeal);

the juvenile court shall appoint counsel for the child at the detention hearing or at the initial hearing, whichever occurs first, or at any earlier time.

(b) The court may appoint counsel to represent any child in any other proceeding.