No. 21-479

In the Supreme Court of the United States

NICOLE K., BY NEXT FRIEND LINDA R., *et al.*,
PETITIONERS

v.

TERRY J. STIGDON, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE INDIANA DEPARTMENT OF CHILD SERVICES, *et al.*,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE INSTITUTE FOR JUSTICE, THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, AND THE INSTITUTE FOR FREE SPEECH AS AMICI CURIAE SUPPORTING PETITIONERS

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INTEREST OF AMICI CURIAE

Amici are public-interest legal groups, two of which regularly represent plaintiffs in federal-court litigation against state actors. Substantively, our missions differ. We are united, however, in our view that jurisdictional rules must be clear, knowable, and impartially applied. Because the Seventh Circuit's misuse of abstention invites confusion, waste, and injustice, each of us has an interest in the proper resolution of this case.[1]

The **Institute for Justice** is a public-interest law firm committed to securing constitutional protections for individual liberty. We represent plaintiffs in Section 1983 cases in federal courts nationwide, including within the Seventh Circuit. *See, e.g.*, *Carson* v. *Makin*, No. 20-1088 (U.S.); *Brumit* v. *Granite City*, No. 19-cv-1090 (S.D. Ill.); *Lozano* v. *City of Zion*, No. 19-cv-6411 (N.D. Ill.); *Davis* v. *City of Chicago*, No. 19-cv-3691 (N.D. Ill.).

The **National Association of Counsel for Children** (NACC), founded in 1977, is a 501(c)(3) nonprofit child-advocacy and membership association dedicated to advancing the rights, wellbeing, and opportunities of youth in the child welfare system through access to high-quality legal representation. NACC is a multidisciplinary organization, and its members include child-welfare attorneys, judges, and professionals from the fields of medicine, social work, mental health, and education. NACC's work includes federal and state policy advocacy, the Child

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[1] Counsel for all parties received notice of amicus Institute for Justice's intent to file this brief at least ten days before its due date. All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part and no person other than amici, their members, or their counsel have made any monetary contributions intended to fund the preparation or submission of this brief.

Welfare Law Specialist attorney certification program, a robust training and technical-assistance arm, and the amicus curiae program. More information can be found at www.naccchildlaw.org.

The **Institute for Free Speech** is a nonpartisan, nonprofit organization dedicated to the protection of the First Amendment rights of speech, press, assembly, and petition. Along with scholarly and educational work, the Institute represents individuals and civil-society organizations in litigation securing their First Amendment liberties.

SUMMARY OF ARGUMENT

This case presents a straightforward but exceptionally important question of federal jurisdiction: do Article III courts have freewheeling discretion to surrender their jurisdiction—to abstain—in "any federal proceeding" that overlaps in any way with state-court litigation? *See* Pet. App. 6a. Time and again, this Court has answered *no*, affirming "the general rule" that "[t]he pendency of an action in [a] state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Sprint Commc'ns, Inc.* v. *Jacobs*, 571 U.S. 69, 73 (2013) (citation omitted). Most courts of appeals follow that teaching faithfully. In recent years, however, the Seventh Circuit has staked out an outlier position, dismissing federal cases based not on any specific source of authority, but on an abstract sense of the deference owed to state actors.

As petitioners ably demonstrate, the Seventh Circuit's approach to abstention has been disavowed by two courts of appeals (the Fourth Circuit and the Ninth) and conflicts irreconcilably with the holdings of a half-dozen

more. Equally important, the Seventh Circuit's stance breaks with two central tenets of Article III: that people with federal claims are presumptively entitled to federal-court protection and that jurisdictional rules must above all be clear. In the Seventh Circuit, fifty years of "carefully defined" abstention principles (*New Orleans Pub. Serv., Inc.* v. *Council of City of New Orleans*, 491 U.S. 350, 359 (1989)) have gone by the board, replaced by a standard under which the federal courts may claim "discretion" to abstain whenever a state court might "work[] its way through" the federal issues on its own. Pet. App. 6a. Where this Court has said (and said again) "that, even in the presence of parallel state proceedings, abstention . . . is the 'exception, not the rule,'" *Sprint Commc'ns, Inc.*, 571 U.S. at 81-82, the Seventh Circuit says the opposite: that the federal courts should presumptively abstain "unless there is some urgent need for federal intervention." Pet. App. 6a. In this way, the Seventh Circuit has injected uncertainty into an area that demands clear, transparent rules. Worse, the confusion will fall hardest on people seeking to vindicate their federally protected rights.

This case is the perfect vehicle for addressing the Seventh Circuit's error. That is because the decision below reflects some of the worst consequences of the Seventh Circuit's approach to abstention. Consider the posture. The district court's judgment and the resulting appeal involved *Younger* abstention alone—a doctrine this Court "clarif[ied]" as recently as 2013. *Sprint Commc'ns, Inc.*, 571 U.S. at 82. At oral argument in the court of appeals, the State of Indiana conceded that *Younger* did not apply to most of petitioners. Oral Arg. 16:52-17:59 ("Well, Your Honor, I don't think *Younger* would bar their claims

in that sense . . . ."), https://tinyurl.com/cczjk8s. Yet the court of appeals brushed aside that concession, discarded the parties' arguments ("it does not matter whether *Younger* applies" (Pet. App. 6a)), and resolved the case using a form of freestyle abstention that finds no support in this Court's precedent. Simply, the decision below underscores both the virtues of this Court's clear jurisdictional rules and the vices of the Seventh Circuit's contrary approach. The Court's review is warranted.

ARGUMENT

A. The decision below conflicts with basic Article III principles.

1. Abstention doctrines are sometimes thorny, but their shared premise is simple: Article III courts have a "strict duty to exercise the jurisdiction that is conferred upon them by Congress." *Quackenbush* v. *Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). Thus, abstention—relinquishing jurisdiction in deference to state courts—is consciously "the 'exception, not the rule.'" *Sprint Commc'ns, Inc.* v. *Jacobs*, 571 U.S. 69, 82 (2013). *Colorado River* abstention, for example, is warranted only in "exceptional circumstances." *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 813 (1976) (citation omitted). *Burford* abstention applies only in a "narrow range of circumstances." *Quackenbush*, 517 U.S. at 726. Likewise for *Younger* abstention—the basis for the district court's decision below—which extends to "three 'exceptional circumstances'" and "no further." *Sprint Commc'ns, Inc.*, 571 U.S. at 82; *see also id.* at 77-78 (offering a concise survey of *Younger* precedent). Across this slate of doctrines, the core principles are the same. The federal courts start with a "virtually unflagging" duty

to exercise their jurisdiction. *Id.* at 77 (citation omitted). And they can depart that baseline—they can abstain—only pursuant to a specific source of authority.

2. The decision below broke with these principles at a bedrock level. The district court and the litigants approached this case through the *Younger* framework. But the court of appeals declined to follow suit. The court maintained that "it does not matter whether *Younger* applies to all [petitioners' state-court] proceedings." Pet. App. 6a. For with or without *Younger*, the court reasoned, the federal courts always have "discretion" to give up their jurisdiction in deference to state courts. Pet. App. 6a. The court of appeals thus affirmed the district court's dismissal based not on any abstention doctrine, but on a gestalt judgment about the respect due to state actors in general.

In this, the court of appeals erred badly. In the panel's view, federal courts can abstain from "any federal proceeding" that overlaps in any way with state-court litigation. Pet. App. 6a. Time and again, however, this Court has said the opposite. That "[a]bstention is not in order simply because a pending state-court proceeding involves the same subject matter." *Sprint Commc'ns, Inc.*, 571 U.S. at 72. That "we do not remotely suggest 'that every pending proceeding between a State and a federal plaintiff justifies abstention.'" *Moore* v. *Sims*, 442 U.S. 415, 423 n.8 (1979). That "[s]uch a broad abstention requirement would make a mockery of the rule that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States." *New Orleans Pub. Serv., Inc.* v. *Council of City of New Orleans*, 491 U.S. 350, 368 (1989) (*NOPSI*). On this front, the lesson is clear: the

federal courts may abstain if a specific source of authority requires or permits it, but not otherwise.

The court of appeals' gesture to comity was equally misplaced. "Principles of comity," the panel said, counsel that the federal courts can abstain whenever there's parallel state-court litigation—absent "some urgent need for federal intervention." Pet. App. 6a. Here, too, this Court has articulated the opposite rule: the courts' task "is not to find some substantial reason for the *exercise* of federal jurisdiction," but to "ascertain whether there exist 'exceptional' circumstances . . . to justify the *surrender* of that jurisdiction." *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr. Corp.*, 460 U.S. 1, 25-26 (1983) (addressing *Colorado River* abstention). The *Younger* doctrine embodies this principle as well. By its terms, *Younger* is rooted in the same "notion of 'comity'" the court of appeals harnessed here. 401 U.S. 37, 44 (1971). Yet this Court has held decisively that those notions of comity do not justify abstention "simply because a pending state-court proceeding involves the same subject matter." *Sprint Commc'ns, Inc.*, 571 U.S. at 72, 77. Rather, comity supports the "carefully defined" abstention principles articulated by this Court and spurned by the decision below. *See NOPSI*, 491 U.S. at 359.

3. The court of appeals' reasoning reinforces how far afield it strayed.

First, the court of appeals minimized its decision by suggesting that the district court had merely put petitioners' case "on hold." Pet. App. 6a. But the district court did no such thing. It dismissed the case outright, and in affirming, the court of appeals declined to consider whether any of this Court's abstention precedents supported that

result. Simply, the federal courts lack the authority to opt out of cases in this way. (Even had the court of appeals been addressing itself to a "hold," moreover—that is, a stay—stays in deference to state courts are cabined as well, to "exceptional circumstances." *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 19.)

Second, the court of appeals cited the rule against "federal-defense removal" as supporting its view of abstention. Pet. App. 6a. But the two concepts have nothing in common. The rule against "federal-defense removal" reflects a statutory limit on the federal courts' subject-matter jurisdiction. *See* 28 U.S.C. § 1331; *Merrell Dow Pharm. Inc.* v. *Thompson*, 478 U.S. 804, 808 (1986) ("A defense that raises a federal question is inadequate to confer federal jurisdiction."). It emphatically does not, as the court of appeals posited, give the courts *carte blanche* to opt out of cases (like this one) where federal jurisdiction exists. *See* Compl., D. Ct. Doc. 1 ¶¶ 20-21, 105-113 (Feb. 6, 2019). Far from honoring congressional limits, the decision below conflicts both with this Court's precedent and with Congress's charge that the judiciary hear and decide cases "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

B. The decision below invites confusion on a question of exceptional importance.

The Seventh Circuit's error is of great legal and practical importance. Few questions are more demanding of clear answers than whether and when an Article III court can surrender jurisdiction granted it by Congress. Clarity is key. "[C]ourts benefit from straightforward rules under which they can readily assure themselves of their power to hear a case." *Hertz Corp.* v. *Friend*, 559 U.S. 77,

94 (2010). So, too, do litigants, who can look to predictable rules of law in determining what forums are available for vindicating their rights. *Id.* at 95. "Jurisdictional rules," in short, "should be clear." *Grable & Sons Metal Products, Inc.* v. *Darue Eng'g & Mfg.*, 545 U.S. 308, 321 (2005) (Thomas, J., concurring). Yet the Seventh Circuit's decision invites all manner of uncertainty. For decades, this Court has sought to "carefully define[]" its abstention doctrines. *NOPSI*, 491 U.S. at 359. On the Seventh Circuit's view, though, anything goes. If a state court or agency might "work[] its way through" a federal issue on its own, the federal courts can claim freewheeling "discretion" to bow out. Pet. App. 6a.

For would-be plaintiffs in the Seventh Circuit, that view of abstention promises endless confusion. Were the Seventh Circuit's view correct, in fact, countless cases in this Court, in other circuits, and in the Seventh Circuit itself might have turned out differently. On the Seventh Circuit's theory, for instance, the lower courts in *Sprint* could have exercised "discretion" to abstain; a parallel state-court proceeding was pending and, to borrow the Seventh Circuit's words, the state court may have in time "work[ed] its way through" the issues raised in federal court. Pet. App. 6a. The same would have been true of the courts in *NOPSI*. 491 U.S. at 369. And of cases from most of the circuits[2]—including, in years past, the Seventh

[2] *Rio Grande Cmty. Health Ctr., Inc.* v. *Rullan*, 397 F.3d 56, 69 (1st Cir. 2005) ("[T]he ongoing state proceeding involved here is not the proper type of proceeding to require adherence to *Younger* principles."); *ACRA Turf Club, LLC* v. *Zanzuccki*, 748 F.3d 127, 129 (3d Cir. 2014) (reversing *Younger*-based dismissal because the parallel state proceeding "does not fit within the framework for abstention

itself.[3] Federal-court proceedings routinely overlap to some degree with state-court or -agency matters. But throughout, "abstention from the exercise of federal jurisdiction is the 'exception, not the rule.'" *Sprint Commc'ns, Inc.*, 571 U.S. at 82. Those exceptions are governed by a generally predictable set of abstention principles—the product of fifty years' precedent. Within the Seventh Circuit, however—home to one of the most populous States in the Nation—federal-court litigants are now hamstrung by circuit-level precedent divorced from knowable standards.

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outlined in *Sprint*"); *Google, Inc.* v. *Hood*, 822 F.3d 212, 223 (5th Cir. 2016) ("The district court did not err in declining to abstain because there was no 'ongoing state judicial proceeding' fitting one of *Younger's* three categories."); *FCA US, LLC* v. *Spitzer Autoworld Akron, LLC*, 887 F.3d 278, 290 (6th Cir. 2018) ("[T]he Ohio administrative proceeding . . . does not fall within any of the 'exceptional' circumstances that warrant *Younger* abstention in civil cases."); *Cook* v. *Harding*, 879 F.3d 1035, 1039 (9th Cir.) ("After more than forty years of unchecked doctrinal expansion, the Supreme Court changed course and made clear that *Younger* abstention was appropriate only in the two 'exceptional' categories of civil cases it had previously identified . . . ."), *cert. denied*, 139 S. Ct. 72 (2018); *Planned Parenthood of Kansas* v. *Andersen*, 882 F.3d 1205, 1222 (10th Cir.) ("We agree with the district court that the administrative proceedings in this case were not civil enforcement actions subject to *Younger* abstention."), *cert. denied*, 139 S. Ct. 638 (2018); *Barone* v. *Wells Fargo Bank, N.A.*, 709 F. App'x 943, 949 (11th Cir. 2017) (per curiam) (vacating *Younger* dismissal because the "parallel state proceeding does not fall within one of the categories of proceedings which define *Younger*'s scope").

[3] *Mulholland* v. *Marion Cnty. Election Bd.*, 746 F.3d 811, 816 (2014) ("The planned Election Board meeting in this case is not the type of quasi-criminal proceeding that would warrant *Younger* abstention, at least after *Sprint* . . . .").

This state of affairs promises real harms to real people. It will make it harder for people to vindicate their federal rights. It will close federal courthouses to people who have every right to be there. It will waste resources, as plaintiffs "litigate, not the merits of their claims, but which court is the right court to decide those claims." *Hertz Corp.*, 559 U.S. at 94. And by impeding civil-rights actions like petitioners', it will harm not just individual plaintiffs, but "society at large." *Blanchard* v. *Bergeron*, 489 U.S. 87, 96 (1989); *see also City of Riverside* v. *Rivera*, 477 U.S. 561, 574 (1986) (plurality opinion) ("Congress has determined that 'the public as a whole has an interest in the vindication of the rights conferred by the statutes enumerated in § 1988 . . . .'") (citation omitted). Here above all, the need for clear, impartial rules is paramount. "The very purpose of § 1983," after all, "was to interpose the federal courts between the States and the people, as guardians of the people's federal rights." *Mitchum* v. *Foster*, 407 U.S. 225, 242 (1972). The Seventh Circuit's ongoing misuse of abstention is a serious error, and it warrants the Court's attention.

C. This case is an excellent vehicle for realigning the Seventh Circuit's outlier position with this Court's precedent.

This case spotlights both the virtue of clear jurisdictional rules and the vice of the Seventh Circuit's contrary approach. Since this Court last considered a similar petition, moreover, the division among the circuits has sharpened and the Seventh Circuit's misuse of abstention has become more ingrained. At the same time, the Seventh Circuit's error is susceptible to an easy fix, and this case is an excellent vehicle for that court to be brought back into harmony with the other circuits.

1. This case captures some of the worst consequences that follow from the Seventh Circuit's misuse of abstention. Under a straightforward application of this Court's precedents, petitioners' appeal should have been simple. The district court dismissed petitioners' putative class action on *Younger*-abstention grounds. On appeal, the parties joined issue on *Younger* and *Younger* alone. And at oral argument, remarkably, the State gave the game away: it conceded that *Younger* does not apply to seven of the ten named plaintiffs. Oral Arg. 16:52-17:59 ("Well, Your Honor, I don't think *Younger* would bar their claims in that sense . . . ."), https://tinyurl.com/cczjk8s.

That concession should have disposed of the appeal—for those seven plaintiffs, at least. As to that supermajority, the district court's judgment was a clear candidate for vacatur by the court of appeals. For "the federal-state comity considerations underlying *Younger* are . . . not implicated" when a State foreswears abstention. *See Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 381 n.1 (1992). Yet the court of appeals overrode the State's concession. It ventured far beyond the arguments presented by the parties ("it does not matter whether *Younger* applies"). Pet. App. 6a. And with no notice to the parties, it deployed a form of freestyle abstention that the State had not asked for and that breaks with this Court's precedent. Making matters worse, the court then devoted itself to scuttling petitioners' merits theories (also unbriefed) before jettisoning the case on non-merits grounds. Pet. App. 7a-9a.

Respectfully, petitioners—and other litigants and, for that matter, the public at large—deserve better. Clear jurisdictional rules do not just benefit the parties and the courts; they secure the public's "confidence in the

judiciary and in the rule of law," the principle that "a judge's decisions must not be—and must not seem to be—arbitrary, based on personal preference, or unbounded." Bryan A. Garner et al., *The Law of Judicial Precedent* 21 (2016); *see also* Barry Friedman, *Under the Law of Federal Jurisdiction: Allocating Cases Between Federal and State Courts*, 104 Colum. L. Rev. 1211, 1225 (2004). ("[B]right line rules . . . have their place, and one place in particular is the law of jurisdiction."). Against that backdrop, the decision below shows how quickly things can go off the rails when clear jurisdictional rules are replaced with unchecked discretion. In any other circuit, petitioners would have been assured of an articulated application of the rules presented by their and their adversaries' arguments. In the decision below, they got ejected from federal court based on an unargued exercise of a judge-made rule—one that contravenes a half-century of this Court's precedent and is susceptible to no principled application going forward. That is arbitrariness made manifest, it encapsulates the Seventh Circuit's current approach to abstention, and it demands correction.

2. This Court denied certiorari in a similar Seventh Circuit case in 2019, *Courthouse News Serv.* v. *Brown*, 908 F.3d 1063 (2018), *cert. denied*, 140 S. Ct. 384, but petitioners' case is a far stronger vehicle. For one thing, the Seventh Circuit's outlier view was less pronounced in 2019. The Fourth Circuit had yet to explicitly disavow the Seventh Circuit's approach. And the respondent in *Brown* could at least argue that the Ninth Circuit's disagreement with the Seventh was "unclear." Br. in Opp. at 18, *Courthouse News Serv.* v. *Brown* (No. 18-1203). Since then, however, both the Fourth Circuit and the Ninth have repudiated the Seventh Circuit's approach. Pet. 10-

13. The Seventh Circuit, for its part, has doubled down: it is now deploying its idiosyncratic view to scotch not just courthouse-records disputes (as in *Brown*) but federal litigation on a trans-substantive range of topics. *See* Pet. 28. The division among the circuits is entrenched. And given the record of constitutional violations by state actors within the Seventh Circuit,[4] the need for clarity on federal-court access in that jurisdiction is acute.

3. As discussed (pp. 7-10, *supra*), the decision below promises confusion for future litigants in the Seventh Circuit. The fix, however, is an easy one. The court of appeals wrongly ventured beyond the parties' arguments and introduced a peculiar abstention doctrine of its own making. As a result, it failed even to consider the questions framed by petitioners' appeal: whether the district court's *Younger* analysis was correct and whether the State's concessions called for vacatur as to at least some of petitioners. As a "court of final review and not first view," this Court could therefore correct the Seventh Circuit's threshold error—its refusal to consider *Younger*—and remand for the Seventh Circuit to evaluate the district court's judgment under *Younger* in the first instance. *Zivotofsky ex rel. Zivotofsky* v. *Clinton*, 566 U.S. 189, 201 (2012) (citation omitted); *see also id.* ("[W]hen we reverse

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[4] *See*, *e.g.*, *Timbs* v. *Indiana*, 139 S. Ct. 682 (2019); *McDonald* v. *City of Chicago*, 561 U.S. 742 (2010); *see also* Lexi Cortes, *Granite City crime-free housing rules displace hundreds—even those not accused of crime*, Belleville News-Democrat (Apr. 2, 2020), https://tinyurl.com/2h85kfj8; Will Jones, *Landlord, tenants temporarily halt Zion home inspection program*, abc7 (Sept. 28, 2019), https://tinyurl.com/nbudzyfc; John Pearley Huffman, *An Inside Look at Chicago's Seedy Car-Impound Netherworld: How the Windy City takes its citizens' vehicles*, Car and Driver (Aug. 25, 2019), https://tinyurl.com/3zhu59er.

on a threshold question, we typically remand for resolution of any claims the lower courts' error prevented them from addressing."). That narrow disposition—suitable, potentially, for a summary vacatur—would realign the Seventh Circuit's approach with this Court's precedent and would resolve the split among the courts of appeals on the important question petitioners present.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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