No. _____

In the Supreme Court of the United States

JIM JUSTICE, ET AL.,

Petitioners,

v.

JONATHAN R., MINOR, BY NEXT FRIEND SARAH DIXON, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

West Virginia courts continuously oversee the placement and well-being of the State's foster children. These courts are the key decision-makers when it comes to foster children's treatment and care, following strict criteria written into state law. So when suit was brought against West Virginia state officials and a state agency for purportedly mishandling that treatment and care, the suit necessarily implicated related state-court proceedings. The district court recognized as much and thus abstained. In contrast, the Fourth Circuit concluded that the suit *must* remain in federal court. It believed that a state foster-care proceeding is not the sort of case that can ever trigger abstention and that the plaintiffs might struggle to obtain class-wide relief in state court. Now, the plaintiffs can pursue systemic relief in federal court that could both fundamentally upset the ways West Virginia courts administer the State's child welfare laws and indefinitely require the federal court to superintend the State's entire child welfare system.

The questions presented are:

1. Must federal courts abstain from interfering with state-court child welfare proceedings under *Younger* v. *Harris*, 401 U.S. 37 (1971)?
2. May federal courts refuse to abstain because plaintiffs seek class-wide relief?

PARTIES TO THE PROCEEDING

Petitioners who were defendants in the district court and defendants-appellees in the court of appeals are Jim Justice, in his official capacity as the Governor of West Virginia; Bill Crouch, in his official capacity as the Cabinet Secretary of the West Virginia Department of Health and Human Resources; Jeremiah Samples, in his official capacity as the Deputy Secretary of the Department of Health and Human Resources; Linda Watts, in her official capacity as the Commissioner of the Bureau for Children and Families; and the West Virginia Department of Health and Human Resources.

Respondents who were plaintiffs in the district court and plaintiffs-appellants in the court of appeals are Jonathan R., minor, by Next Friend, Sarah Dixon; Anastasia M., minor, by Next Friend, Cheryl Ord; Serena S., minor, by Next Friend, Sarah Dixon; Theo S., minor, by Next Friend, L. Scott Briscoe; Garrett M., minor, by Next Friend, L. Scott Briscoe; Gretchen C., minor, by Next Friend, Cathy L. Greiner; Dennis R., minor, by Next Friend, Debbie Stone; Chris K., Calvin K., and Carolina K., minors, by Next Friend, Katherine Huffman; Karter W., minor, by Next Friend, L. Scott Briscoe; Ace L., minor, by Next Friend, Isabelle Santillion; and individually and on behalf of all others similarly situated.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

Jonathan R., et al. v. *Jim Justice, et al.*, No. 3:19-cv-00710 (S.D. W. Va.) (memorandum opinion and order granting defendants' motions to dismiss issued July 28, 2021);

Jonathan R., minor, by next friend Sarah Dixon, et al., v. *Jim Justice, et al.*, No. 21-1868 (4th Cir.) (opinion affirming in part, reversing in part, and remanding issued July 20, 2022; motion to stay mandate denied August 15, 2022; mandate issued August 23, 2022).

There are no other directly related proceedings.

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INTRODUCTION

Everyone agrees that federal courts must abstain from interfering with certain state proceedings. See *Younger* v. *Harris*, 401 U.S. 37 (1971). And though *Younger* involved a pending state criminal prosecution, the Court has never limited *Younger* abstention to that narrow context. The doctrine now extends to state civil enforcement proceedings and other civil matters that advance state courts' abilities to perform their judicial functions. See *Sprint Commc'ns, Inc.* v. *Jacobs*, 571 U.S. 69, 73 (2013).

Not long after deciding *Younger*, the Court brought state child welfare litigation within its scope in *Moore* v. *Sims*, 442 U.S. 415 (1979). And three decades later the Court confirmed that *Moore* is as correct as ever. See *Sprint*, 571 U.S. at 79 (citing *Moore* with approval). Most of the courts of appeals have thus held that federal courts must abstain when federal plaintiffs' claims interfere with ongoing child welfare proceedings. Not may or might or should—must.

Not all courts, though, have applied *Moore*'s message this way. When this suit was brought on behalf of a group of West Virginia foster children challenging the State's child welfare system, the federal district court did what it should have: It abstained under *Younger* and dismissed the case. See App.48a-81a. But when the Fourth Circuit looked at West Virginia's comprehensive child welfare regime, it reversed and held that federal courts—not the State's courts—should decide whether relief is warranted for the deficiencies Respondents allege. The Fourth Circuit believed that West Virginia's child welfare proceedings are not the sort of actions *Younger* addressed; it also thought that Respondents' request for class-wide relief created a special need for a federal forum.

The decision below drips with antipathy towards state courts and the State of West Virginia generally. See, *e.g.*, App.7a ("[W]hen all else fails—which it often does in West Virginia …."). Starting from that vantage point, there is little surprise that it got *Younger* abstention so wrong. It also exacerbated circuit splits on two important issues. In both, the Fourth Circuit now sits in the minority.

First, most circuits abstain in cases that implicate state child welfare proceedings. But even in the face of *Moore* (and the strong circuit consensus that tracks it), the Fourth Circuit joined two other circuits in refusing to do so. Along the way, it infringed the dual sovereignty central to our constitutional system. It ignored West Virginia's deep interest in the welfare of its children—an interest that the continuous judicial proceedings concerning every foster child in the State reflects. And it escalated confusion around *Moore*'s continued vitality.

Second, courts are split on how to apply *Younger* to class complaints. Some circuits—the Fourth now included—find a state forum inadequate for *Younger* purposes if the plaintiff seeks class-wide relief in the federal suit and it is not obvious that the plaintiff could seek that relief in the state forum. But other circuits are satisfied so long as the plaintiff could seek individual relief in state court. This difference matters, as the first approach may allow procedural class-certification rules to determine a party's substantive rights to relief in federal court. Congress never meant for the rules to do that. More concerning, refusing to abstain because the plaintiff wants class-wide relief invites a degree of federal oversight over state courts that this Court has rejected before—and should again here.

Splits aside, this case involves one of the most important and urgent duties the States shoulder:

guaranteeing the welfare of our children. West Virginia pursued its role as "ultimate protector of the rights of [its] minors," *In re B.C.*, 755 S.E.2d 664, 671 (W. Va. 2014), by building a state-court-directed process to ensure children receive the care and attention they deserve. The decision below takes that system, at least in part, out of the state courts' hands. The Court should grant review to return West Virginia's children and families to firmer ground, knowing that their state officials and courts are responsible for disputes over how this process succeeds.

This case is also the right vehicle to tackle these issues. It turns on clean questions of law, not case-specific discretionary factors. Its issues need no further percolation; all the relevant circuits have weighed in on the first question, and the split on the second is well defined. And the decision below exemplifies the worst problems in the minority sides of both splits. The Fourth Circuit ignored the complexities of West Virginia's child welfare system. It disregarded state procedural protections for parents and children alike. It minimized the State's interest in the subject matter. It brushed aside interference with the same ongoing state-court proceedings it considered incapable of delivering relief. In short, it made no bones about its disdain for state-led systems and courts. The Court should take this opportunity to insist that federal courts give their state counterparts the equal respect that federalism demands.

OPINIONS BELOW

The Fourth Circuit's opinion (App.1a-47a) is reported at 41 F.4th 316. The district court's opinion (App.48a-81a) is unreported but available at 2021 WL 3195020.

JURISDICTION

The Fourth Circuit entered judgment on July 20, 2022. Petitioners timely filed this petition for certiorari on September 12, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant West Virginia Code provisions appear at App.82a-131a.

STATEMENT

1. When the Court in *Younger* reversed the injunction of a California criminal prosecution in 1971, it seemed likely that this brand of abstention would reach other contexts, too. The wait was not long. The Court started by expanding the protection to three kinds of civil proceedings that directly involve the State—public nuisance judgments, *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592 (1975); judicial contempt proceedings, *Juidice* v. *Vail*, 430 U.S. 327 (1977); and state welfare payment recovery actions, *Trainor* v. *Hernandez*, 431 U.S. 434 (1977). Child abuse and neglect proceedings were not far behind. *Moore* v. *Sims*, 442 U.S. 415 (1979). Then the Court covered state bar disciplinary proceedings, *Middlesex Cnty. Ethics Comm.* v. *Garden State Bar Ass'n*, 457 U.S. 423 (1982), and sex discrimination actions, *Ohio C.R. Comm'n* v. *Dayton Christian Sch., Inc.*, 477 U.S. 619 (1986). And after that, the Court reached a civil action between two private parties. See *Pennzoil Co.* v. *Texaco Inc.*, 481 U.S. 1 (1987) (judgments pending appeal). Only when faced with an "essentially legislative act"—a city council's decision to issue a rate order—did the Court decline to expand *Younger* abstention further. *New*

Orleans Pub. Serv., Inc. v. *Council of City of New Orleans*, 491 U.S. 350 (1989) (*NOPSI*).

Every time the Court applied *Younger* to a new type of state proceeding, the doctrine's scope became a little clearer. Most relevant here, for example, *Moore* stressed that "important state interests" like "the informed evolution of state policy by state tribunals" are often found in certain key civil proceedings—including child welfare actions. 442 U.S. at 423 (citing *Trainor*, 431 U.S. at 445). So "unless state law clearly bars" presentation of constitutional claims in the forum, federal courts must abstain. *Id.* at 425-26, 432. The Court strengthened this principle in *Middlesex*, confirming that state proceedings must be ongoing to trigger abstention. 457 U.S. at 432. And *NOPSI* clarified that *Younger* extends to state proceedings that are "judicial in nature." 491 U.S. at 369-70.

The Court's 2013 decision in *Sprint Communications, Inc.* v. *Jacobs* synthesized this string of rulings into a rule: Although "federal courts are obliged to decide cases within the scope of federal jurisdiction," "exceptional circumstances" require abstaining from three categories of proceedings, so long as they satisfy *Middlesex*'s three "*additional* factors." 571 U.S. at 72, 78, 81-82 (emphasis in original). Those categories are "ongoing state criminal prosecutions," "civil enforcement proceedings" that are "akin to criminal prosecutions," and civil proceedings "that implicate a State's interest in enforcing the orders and judgments of its courts." *Id.* at 72-73, 78 (cleaned up). As for the additional factors, the state proceedings must be ongoing, "implicate important state interests," and "afford an adequate opportunity … to raise constitutional challenges." *Middlesex*, 457 U.S. at 432; accord *Sprint*, 571 U.S. at 81.

2. West Virginia's child welfare system addresses the kind of critical state interests that *Younger* and *Sprint* said—and *Moore* confirmed—belong to state courts. And indeed, West Virginia law gives its courts significant authority over that system. Circuit court judges across West Virginia's 55 counties decide whether a child will enter state custody and then make the key decisions as long as he or she remains there. App.72a-75a. West Virginia's Department of Health and Human Resources (DHHR) provides for these children, but they are ordered into DHHR's care "by courts" and courts alone. W. VA. CODE § 49-2-101(a).

Courts typically order children into DHHR custody through one of two proceedings.

One is an abuse-and-neglect hearing. W. VA. CODE § 49-4-601. The children involved in these hearings comprise the customary foster care population and include 90 percent of the children in DHHR's care. App.5a. West Virginia treats these "abuse and neglect cases" as "among the highest priority for the courts' attention." *In re Carlita B.*, 408 S.E.2d 365, 375-76 (W. Va. 1991).

The other is a juvenile-justice hearing. Circuit courts conduct a juvenile-delinquency or juvenile-status-offense proceeding either while a charge is pending against a minor or after an adjudication. W. VA. CODE § 49-4-701, *et seq*. These proceedings turn on factors like the child's best interest and the public safety. See *id.* § 49-4-714. They give the State a middle ground between returning child offenders to their parents and placing them in a state detention facility.

3. Whichever process is involved (and sometimes, both are), West Virginia courts comprehensively oversee foster care. State courts direct a child's placement and

then monitor the child's safety and well-being, W. VA. CODE § 49-4-110(a), as part of a "systematic review," *Carlita B.*, 408 S.E.2d at 376. Foster children and juvenile justice children are served by DHHR's Child Protective Services and Youth Services caseworkers, respectively. But once the State initiates a child welfare proceeding, the child remains under the state court's continuous jurisdiction until he or she is no longer in state custody. See W. VA. CODE §§ 49-4-601, *et seq.*, 49-4-701, *et seq.*; see also, *e.g.*, *In re J.L.*, 763 S.E.2d 654, 660 (W. Va. 2014) (stressing state courts' "continuing jurisdiction" over abuse-and-neglect matters).

Abuse-and-neglect proceedings start, continue, and end with the state circuit court. The circuit court first decides whether to grant temporary custody of a child to DHHR, then conducts preliminary and adjudicatory hearings to develop the record and decide whether the child is, in fact, being abused or neglected. W. VA. CODE §§ 49-4-105, 49-4-601. To be sure, the court works with others, including DHHR, court-appointed counsel, and the parties themselves. *Id.* §§ 49-4-405, 49-4-601(c), (f). But every central decision belongs to the circuit court. The court determines whether the child is abused or neglected, whether removal from the home is in the child's best interests, where the child should be placed if necessary, whether family visitation should be allowed, what services the child and family will receive, and what permanency plan to pursue. *Id.* §§ 49-4-108, 49-4-110, 49-4-404, 49-4-601(i), 49-4-602(b), 49-4-604(c), 49-4-608(e). Ultimately, the circuit court keeps "exclusive jurisdiction to determine the permanent placement of a [foster] child." W. Va. R. P. Child Abuse and Neglect Proceedings 36(e); see also *id.* at R. 6; W. VA. CODE § 49-4-606.

The framework is generally the same for children who enter the system through juvenile-justice proceedings, except that the hearings are adversarial against the child instead of the parents. See generally W. VA. CODE § 49-4-701, *et seq.*

In short, while "both" DHHR and the circuit court work to ensure a foster child's care, the court decides where children will be placed and what services they will receive while in state custody. *State* v. *Chafin*, 444 S.E.2d 62, 70 (W. Va. 1994); W. VA. CODE §§ 49-4-604, 49-4-714. And ongoing state-court jurisdiction is not an empty promise. So long as a child is in state custody, the circuit court holds quarterly post-adjudication hearings—every 90 days—and issues new orders concerning the child's care. *Id.* §§ 49-4-110, 49-4-405, 49-4-406. Here again, these orders reach all manner of questions, including placement, *State* v. *Michael M.*, 504 S.E.2d 177, 184-86 (W. Va. 1998); visitation, *id.* at 186-87; placement in an out-of-state facility, W. VA. CODE § 49-4-608(d); modification of the child's case plan, see, *e.g.*, *State* v. *Dyer*, 836 S.E.2d 472, 522 n.29 (W. Va. 2019); compliance with the case plan, W. VA. CODE § 49-4-404; and transition to independent living, *id.* § 49-4–608(c).

Further, the child's representative can raise federal claims, constitutional or otherwise. The circuit courts that hear child welfare cases in West Virginia are courts of "general jurisdiction." W. Va. Const. art. 8, § 6; *State* v. *Pancake*, 544 S.E.2d 403, 404 (W. Va. 2001) (citing W. VA. CODE § 49-6-1, *et seq.*). They thus have "power to determine all controversies that can possibly be made the subject of civil actions," including federal constitutional claims like Respondents' here. *State ex rel. Silver* v. *Wilkes*, 584 S.E.2d 548, 552 (W. Va. 2003); compare with *Moore*, 442 U.S. at 425 & n.9 (emphasizing that the state

forum could hear federal claims as part of abstention rationale). And should parties to a child welfare proceeding be unhappy with the circuit court's resolution, they can appeal any final ruling to the Supreme Court of Appeals of West Virginia. W. VA. CODE § 49-4-102. DHHR too—if it disagrees with a circuit court's child welfare order, it "cannot ignore or refuse to comply" with it. *State ex rel. Daniel M.* v. *DHHR*, 516 S.E.2d 30, 34 (W. Va. 1999). It must appeal. *Id.*

Finally, these child welfare proceedings—including the ongoing post-adjudication hearings—mirror many elements of a criminal trial. See W. VA. CODE §§ 49-4-110, 49-4-601 (applying procedural rights to "any proceeding under this article"). With the State serving as the moving party, each county's prosecuting attorney represents DHHR and participates with any multidisciplinary treatment team advising the court. *Id.* §§ 49-4-402, 49-4-501; compare with *Moore*, 442 U.S. at 419 (noting that state proceeding was "precipitated" by local authorities supervised by relevant state agency). The court takes evidence and finds facts using formal rules of evidence. *Id.* §§ 49-4-601(k), 49-4-701(k). Defendants have the right to cross-examine witnesses, and both parents and children have the right to be heard. *Id.* §§ 49-4-405, 49-4-601, 49-4-701. The circuit court appoints counsel for the child and any parent or custodian involved. *Id.* §§ 49-4-601, 49-4-701. Finally, adjudicatory proceedings have evidentiary burdens elevated beyond the ordinary civil standard, with abuse-and-neglect hearings requiring "clear and convincing evidence," *id.* § 49-4-601, and delinquency hearings using the "constitutionally imposed burden to prove the juvenile's guilt beyond a reasonable doubt," *State* v. *Peterman*, 260 S.E.2d 728, 728 (W. Va. 1979). Beyond that, juvenile-delinquency proceedings *are*

criminal proceedings. See, *e.g.*, *State* v. *Allah Jamaal W.*, 543 S.E.2d 282, 284 (W. Va. 2000).

4. Respondents, next friends of 12 children who were in West Virginia's foster care system at the time, filed a class action suit in federal court seeking broad institutional and system-wide changes to West Virginia's child welfare system. App.4a. They named as defendants DHHR and various executive state officers. And they defined the putative class to include all children who had entered or would enter the State's custody through either entry point, currently or in the future. App.49a-50a.

The complaint alleged many problems with the State's child welfare system and argued that DHHR failed to adequately prevent or address them. The allegations included lack of staffing, poorly trained foster-care families leading to a lack of stability, and reliance on institutionalized facilities (including out-of-state placements). App.9a. Respondents invoked substantive due process, "the right to familial association," the Social Security Act, the Americans with Disabilities Act, and the Rehabilitation Act. App.9a-10a.

Much of Respondents' requested relief would dictate how West Virginia's circuit courts administer child welfare proceedings. Among other things, the plaintiffs ask for specific directives on where children can be placed, including in residential care or with "kin" who have not been certified as foster families; they also seek specific staffing ratios, new requirements for services for disabled children, new standards for handling children over the age of 14, and a federally appointed monitor to oversee the whole enterprise. App.53a-54a.

Given the relief sought, Petitioners moved to dismiss based on *Younger* and other abstention and jurisdictional grounds.

5. The district court granted Petitioners' motion in July 2021, holding that *Younger* required it to abstain.

In the district court's view, the State's foster care proceedings "easily" fell into a "hybrid" of two categories of proceedings that the Court has confirmed warrant *Younger* abstention: "state civil proceedings that are akin to criminal prosecutions" and "civil proceedings involving certain orders ... uniquely in furtherance of the state courts' ability to perform their judicial function." App.67a-68a (quoting *Sprint*, 571 U.S. at 78). West Virginia's child welfare proceedings resemble state-initiated civil enforcement actions, as in *Moore*, 442 U.S. at 415, and are core judicial proceedings that make interference inappropriate, as in *O'Shea* v. *Littleton*, 414 U.S. 488 (1974). App.68a.

The district court also held that West Virginia's child welfare proceedings satisfy the three *Middlesex* factors that further counsel for abstention. App.70a-80a. *First*, Respondents' required relief would interfere with West Virginia's ongoing child welfare proceedings. App.70a-78a. The district court detailed how "heavily involved" West Virginia's state courts are at all stages of the process. App.72a-76a. State courts (not DHHR officials) are responsible for the key decisions relating to every individual foster child's placement and services. Granting Respondents' requested relief would thus "[r]emov[e]" the state courts' "discretion" and replace it with "federal court review over [their] decisions." App.77a. *Second*, the court held that West Virginia's child welfare proceedings implicate important state interests—a point no party disputed. App.78a. *Third*, it held that Respondents had

adequate opportunity to raise their claims in the state-court proceedings themselves. App.78a-80a. West Virginia's courts are "capable of hearing" Respondents' federal claims. App.79a. Respondents had just never given them "an opportunity to consider" them. App.79a.

Holding that the State's child welfare proceedings satisfied every requirement for *Younger* abstention and triggered none of its exceptions, the district court dismissed the case. App.81a.

6. In July 2022, the Fourth Circuit issued a decision affirming in part and reversing in part the district court's order, and remanding the case. Judge Rushing wrote separately to dissent in part from the opinion and concur in the judgment.

After dispensing with a concern over mootness, the Fourth Circuit moved to *Younger*. It started by treating the quarterly post-adjudication state-court hearings as the only relevant ongoing proceedings, even though they are part of a unified case beginning with the petition to remove a child from the home. App.17a, 21a. The court then held that these quarterly hearings did not fall within any of the three *Younger* categories laid out in *Sprint*. The proceedings were not criminal because West Virginia conceded as much. App.21a. They were not akin to criminal prosecutions because they "proceed in a 'conciliatory' manner." App.21a-22a. And they were not the right kind of civil proceedings because "[n]othing about [them] implicates 'the administration' of West Virginia's judiciary." App.24a. In the Fourth Circuit's view, the possibility that the federal action would undermine state courts' ability to issue contempt orders did not trigger the next phase of the abstention analysis, either. App.24a-25a.

Although it recognized that other circuits had decided differently, App.25a-26a & n.7, the Fourth Circuit found that no "historical precedent" supported West Virginia's argument, App.18a. It thought *Moore*, for example, addressed only the parental-rights side of the process. App.21a. The Fourth Circuit deemed hearings on parental rights distinct from any continuing hearings on the status of the child—so even though these latter hearings are part of the same case, they could not trigger abstention. App.21a-22a. In sum, the court believed that the suit did "not challenge" West Virginia courts' "authority" over foster proceedings. App.24a.

Two judges on the panel opined further that the other factors justifying abstention would be missing even if the proceedings had fit into a *Younger* category. They believed that "halting the litigation on th[e] record would be premature" because it was not yet clear what relief the plaintiffs would obtain. App.31a. They also thought the plaintiffs were complaining about DHHR's conduct, not the courts'—even though they recognized that the "buck" stops with the courts. App.6a, 28a-29a. And the panel majority felt that the suit did not ask the district court to unduly involve itself in state judicial administration because, unlike in *O'Shea*, the federal court's final order in the case would not issue against judges directly. App.30a.

These issues aside, the two-judge majority also fretted that—even if the plaintiffs could obtain all requested relief in their individual cases—the state proceedings would not give them the tools to effect "systemic" change (read: class-wide relief) across the entire foster-care system. App.31a-36a; contrast *Moore*, 442 U.S. at 426 (reversing a refusal to abstain premised on the idea that a challenge to the "entire statutory scheme" for protecting children should be heard in federal court). These judges concluded

that it would be unfair to ask Respondents to "litigate their claims piecemeal." App.5a. They thought Respondents' "only real choice" for relief was a class action. App.36a.

The majority then catalogued prior cases in which it thought that West Virginia's courts should have ordered more relief to children; it supposed that those cases reflect "state courts' reluctance to order deep structural changes within [DHHR]." App.38a. So with this precedent in hand, any court in the Fourth Circuit may now declare a state forum inadequate for *Younger* purposes if it disagrees with the results of prior cases addressing similar issues. But see, *e.g.*, *Baffert* v. *Cal. Horse Racing Bd.*, 332 F.3d 613, 621 (9th Cir. 2003) (explaining that a party's lack of prior success in state court "does not render the forum inadequate").

Following the opinion, Petitioners moved for the Fourth Circuit to stay the mandate. The court denied the motion on August 15, 2022. This Petition followed.

REASONS FOR GRANTING THE PETITION

I. The Court Should Resolve Whether *Younger* Abstention Applies To State Child Welfare Proceedings.

The decision below deepens a circuit split over abstention from state child welfare proceedings—one side holds that federal courts *must* abstain and the other holds that they *cannot*. This issue should have been settled years ago when the Court decided *Moore*. But instead the confusion has grown broad and deep in the ensuing 43 years.

One thing has not changed since *Moore*: the importance of the issue. Child welfare proceedings matter

to us all. So does the degree to which federal courts can dictate how States and their courts address the critical questions that arise throughout the hundreds of those proceedings that take place every day nationwide. These are matters of federalism, comity, and primacy at the heart of our constitutional order.

A. The decision below intensifies an open and acknowledged circuit split.

1. Every circuit except the Federal Circuit has now considered whether *Younger* applies to child welfare proceedings—and they are firmly split over the answer. On one side are decisions like the one here: Three circuits have held that abstaining from state-court child welfare proceedings is not an option. On the other side, ten circuits have said that federal courts *must* abstain. Those courts are on the same page on the issues that count—respect for state courts, noninterference with legitimate state functions, protection of strong state interests, and all the rest. They also sit above district courts that have *declined* to abstain despite contrary precedent from their own circuit courts. See App.40a; see also David Marcus, *Groups and Rights in Institutional Reform Litigation*, 97 NOTRE DAME L. REV. 619, 672 (2022) ("*Younger* motions have left a mess of contradictory decisions for foster care reform litigation."). So the confusion runs even deeper than the lopsided circuit count shows. This is both the time and the case for the Court to intervene.

2. Take first the ten circuits that have held that *Younger* requires federal courts to abstain from interfering with state-court child welfare proceedings.

The Seventh Circuit is the most emphatic. In a string of three recent decisions, it discussed several reasons why federal courts must yield to state courts. Those reasons

range from the State's strong interest in their children's welfare, to principles of federalism and comity, to the opportunity to raise a particular challenge in the state-court proceedings, to the adequacy of the state system itself to address claims like these. See *Ashley W.* v. *Holcomb*, 34 F.4th 588, 593-94 (7th Cir. 2022); *Nicole K.* v. *Stigdon*, 990 F.3d 534, 538 (7th Cir. 2021); *Milchtein* v. *Chisholm*, 880 F.3d 895, 899 (7th Cir. 2018); accord *Brunken* v. *Lance*, 807 F.2d 1325, 1330-31 (7th Cir. 1986) (requiring abstention from child custody proceedings).

Also in the last five years, the Second and Eighth Circuits issued similar rulings. The Second Circuit's case addressed state abuse-and-neglect investigations and proceedings. *Lowell* v. *Vermont Dep't of Child. & Fams.*, 835 F. App'x 637 (2d Cir. 2020). The Eighth's concerned temporary custody proceedings. *Oglala Sioux Tribe* v. *Fleming*, 904 F.3d 603, 610 (8th Cir. 2018). Because these proceedings fell within the *Sprint* categories and satisfied the *Middlesex* factors, both circuits held that abstention was required. See *Lowell*, 835 F. App'x at 639-40; *Oglala*, 904 F.3d at 607-13 (8th Cir. 2018).

Over the course of the two prior decades—between this Court's *NOPSI* and *Sprint* decisions—four other circuits looked at similar state proceedings and held the same. The Third and Ninth Circuits required abstaining from pending state proceedings that involved areas of state interest and concern that also afforded sufficient opportunity to adjudicate the claims plaintiffs would have preferred to litigate in federal court. See *Wattie-Bey* v. *Att'y Gen.'s Off.*, 424 F. App'x 95, 97 (3d Cir. 2011); *Lazaridis* v. *Wehmer*, 591 F.3d 666, 670-71 (3d Cir. 2010); *Zimmermann* v. *Gregoire*, 18 F. App'x 599, 601 (9th Cir. 2001); *H.C. ex rel. Gordon* v. *Koppel*, 203 F.3d 610, 613 (9th Cir. 2000); cf. *E.T.* v. *Cantil-Sakauye,* 682 F.3d 1121, 1124

(9th Cir. 2012) (relying on *Younger* principles to find *O'Shea* abstention appropriate in challenge to size of foster-children's attorneys' caseloads).

In the same period, the Tenth and Eleventh Circuits likewise mandated abstention for state child welfare proceedings. Their rulings upheld the States' important interests in these areas. They also worried that the requested relief would give federal courts an impermissible degree of control over state proceedings contrary to *Younger*'s letter and purpose. See *J.B. ex rel. Hart* v. *Valdez*, 186 F.3d 1280, 1291, 1293 (10th Cir. 1999); *Joseph A. ex rel. Corrine Wolfe* v. *Ingram*, 275 F.3d 1253, 1268, 1271-72 (10th Cir. 2002); *31 Foster Children* v. *Bush*, 329 F.3d 1255, 1274-82 (11th Cir. 2003).

And decades before, the First, Fifth, and Sixth Circuits had planted the flag that abstention from state child welfare proceedings is required. Their reasons should sound familiar by now: The States' interests were strong, the subject matter fell within the States' wheelhouses, and state courts were capable of addressing the claims. See *Malachowski* v. *City of Keene*, 787 F.2d 704, 708-09 (1st Cir. 1986); *DeSpain* v. *Johnston*, 731 F.2d 1171, 1179-81 (5th Cir. 1984); *Parker* v. *Turner*, 626 F.2d 1, 4, 6, 8-10 (6th Cir. 1980); *Huynh Thi Anh* v. *Levi*, 586 F.2d 625, 633 (6th Cir. 1978).

3. Three circuits looked at state child welfare proceedings and *Younger* and went a different way. In *LaShawn A.* v. *Kelly*, the D.C. Circuit called the D.C. Superior Court's Family Division a "questionable vehicle for adjudicating" claims from a class of foster children challenging Family Division proceedings. 990 F.2d 1319, 1323 (D.C. Cir. 1993). Charging the Division with refusal and general inability to hear these claims, the D.C. Circuit reasoned that there was no "adequate forum" for claims

seeking "broad-based injunctive relief based on federal law." *Id.* at 1323-24. Thus, held the court, abstention was not an option.

Three years earlier over in the Ninth Circuit, that court began what would become an intra-circuit split. In *L.H.* v. *Jamieson*, the court reversed an abstention finding in a case involving juvenile plaintiffs who sought more funding for the various state-care facilities where they lived. 643 F.2d 1351 (9th Cir. 1981). Their request fell outside the realm of what the plaintiffs could raise as either a claim or defense in an ongoing state proceeding, convincing the court that *Younger* did not apply. *Id.* at 1354. And because the older case prevails when two cases from the Ninth Circuit conflict, *United States* v. *Hardesty*, 958 F.2d 910, 914 (9th Cir. 1992), the circuit's more recent attempts at course-direction only add to district courts' confusion. See, *e.g.*, *Tinsley* v. *McKay*, 156 F. Supp. 3d 1024, 1036 (D. Ariz. 2015) (relying on *L.H.*'s rejection of an argument based on "inherent interference" with state child welfare proceedings).

Then, of course, there is the Fourth Circuit's decision here forbidding *Younger* abstention. Intent, it seems, on amplifying the circuit split, the court tried to distinguish many of the decisions above, including *Moore* and the recent decisions from the Seventh, Eighth, Tenth, and Eleventh Circuits. See App.25a-26a. It leaned instead on a so-called "overwhelming majority" of largely district-court "cases [that] have rejected *Younger* abstention in similar lawsuits challenging foster care systems"—showing that even circuits on the *other* side of the divide have not been wholly successful putting the confusion around this issue to rest. App.39a-40a (citing *L.H.*, 643 F.2d at 1352 and quoting *M.D.* v. *Perry*, 799 F. Supp. 2d 712, 723 (S.D. Tex. 2011)).

* * * *

With all the relevant circuits now weighing in, the circuit split is deep and fresh. There is no way out of it without the Court's intervention.

B. The split implicates profoundly important matters of federalism.

The circuits in the majority did more than get *Younger* right. They also advanced the currents of federalism and comity that flow through it and the cases applying it. Abstention respects the States by staying out of their legitimate functions. It recognizes that state courts are just as competent as federal ones to resolve claims of all kinds. It honors the role state courts play in shaping state law, especially when it comes to the traditional state zone of domestic relations. All these markers are missing from the decision below (and its Ninth and D.C. Circuit counterparts). The Court should take up this case and reverse to solidify the principled federalism of the majority approach.

1. Federalism and comity animate *Younger*. For the States, parsing responsibilities among sovereigns properly is no small thing. Our system of government recognizes that States retain "residuary and inviolable sovereignty," *Alden* v. *Maine*, 527 U.S. 706, 715 (1999) (quoting THE FEDERALIST NO. 39, at 245), "subject only to limitations imposed by the Supremacy Clause," *Tafflin* v. *Levitt*, 493 U.S. 455, 458 (1990). *Younger* brings that doctrine to life. It emphasizes "sensitivity" to the States' interests rather than "undu[e] interfere[nce]" in their "legitimate activities." *Younger*, 401 U.S. at 44.

The Court acted on the same consideration when it expanded *Younger* abstention to the civil realm.

"[C]entral" to *Younger*—and "even more vital" than noninterference with "state criminal proceedings"—is federalism and its "notion of comity." *Huffman*, 420 U.S. at 600-01. *Younger* allows a suite of abstention-related benefits to run their natural course. It lets States "effectuat[e] [their] substantive policies" and "vindicate any constitutional objections interposed against" them. *Id.* at 604. It avoids "duplicative legal proceedings" and the waste, frustration, and confusion left in their wake. *Id.* And it discredits the lie that state courts cannot "enforce constitutional principles." *Id.*

These concepts are important. The result of abstention is "proper respect for state functions" by leaving the "States and their institutions … free to perform [them] in their separate ways." *Juidice*, 430 U.S. at 334 (quoting *Huffman*, 420 U.S. at 601). Abstention cases' "common thread," then, is "that they all implicate … underlying principles of equity, comity, and federalism foundational to our federal constitutional structure." *J.B.* v. *Woodard*, 997 F.3d 714, 722 (7th Cir. 2021).

2. Clarifying *Younger*'s proper reach also respects the importance of noninterference with "the operation of state courts." *Trainor*, 431 U.S. at 441. Federal courts must treat state courts as equals with their federal siblings. Yet despite the Court's "repeated[] and emphatic[] reject[ion]" of the idea that "state courts [are] not competent to adjudicate federal constitutional claims," *Moore*, 442 U.S. at 430, some lower federal courts believe it anyway. In fact, it happened here—the Fourth Circuit speculated that West Virginia's courts are too "reluctan[t] to order deep structural changes." App.38a. That belief is wrong. Dual sovereignty means that "state courts have inherent authority, and are thus presumptively

competent, to adjudicate claims arising under the laws of the United States." *Tafflin*, 493 U.S. at 458.

3. Any law student passingly familiar with *Erie* knows another reason to insist that lower courts get abstention right: "State courts are the principal expositors of state law." *Moore*, 442 U.S. at 429-30; see *Schlesinger*, 420 U.S. at 755-56. When federal courts interfere with state-court actions—particularly, as here, "far ranging" "constitutional challenge[s]"—that intervention halts "the informed evolution of state policy by state tribunals." *Moore*, 442 U.S. at 429-30. It is especially dangerous when federal courts draw conclusions about state-law systems as complex as those here. See *Robinson* v. *Thomas*, 855 F.3d 278, 285 (4th Cir. 2017) (reasoning, in applying *Younger*, that a State's interest in interpreting its own laws is "strengthened" when those laws reflect "a complex web" of legal developments).

What is more, it is hard to name an area of the law on which States have a tighter traditional grip than domestic relations. The Court has "consistently recognized" that "the whole subject … belongs to the laws of the States," *Rose* v. *Rose*, 481 U.S. 619, 625 (1987) (cleaned up), and to "state regulation," *United States* v. *Morrison*, 529 U.S. 598, 615-16 (2000). From the "century and a half" old domestic-relations exception to federal jurisdiction, *Ankenbrandt* v. *Richards*, 504 U.S. 689, 694-95 (1992), to the Court's general refusal to hear most matters involving divorce and alimony, *Ohio ex rel. Popovici* v. *Agler*, 280 U.S. 379, 383 (1930), and child custody, *Ex parte Burrus*, 136 U.S. 586, 594 (1890), one thing is clear: Family matters belong in state court. See *Moore*, 442 U.S. at 435. So "[i]f ever there were an area" for Justice Holmes's "admonition … that 'a page of history is worth a volume of logic,'" "domestic relations" is it. *Santosky* v. *Kramer*, 455

U.S. 745, 770 (1982) (Rehnquist, J., dissenting) (footnote omitted).

In line with that state court-federal court divide, "[t]he federal courts generally have applied *Younger* abstention in a variety of cases implicating underlying state-court domestic relations" issues. Meredith Johnson Harbach, *Is the Family A Federal Question?*, 66 WASH. & LEE L. REV. 131, 150 n.76 (2009) (collecting authorities). Yet the court below was unwilling to recognize the heightened state interests here. It thought that because the federal government provides some funding to foster care programs, it "arguably has just as much at stake as West Virginia." See, *e.g.*, App.36a. Whether the Fourth Circuit was right goes to federalism's core.

4. State sovereignty, state-court competence, and state primacy over domestic relations are all vital interests—important enough to justify this Court's attention. But at bottom, this case also strikes at another one of every State's most critical interests: the well-being of children. Though the court below mocked West Virginia, *e.g.*, App.7a ("when all else fails—which it often does in West Virginia"), the State carries a deep and abiding interest for its children. The State "is the ultimate protector of the rights of minors" and has "a substantial interest in providing for their health, safety, and welfare." *In re Betty J.W.*, 371 S.E.2d 326, 329 (W. Va. 1988). The decision below creates uncertainty over how the State's child welfare system will be administered—and who will administer it. If left standing, it will erase previously long-settled expectations that state courts will and should take the lead.

The Court should grant review to rectify this unsettling decision. In this case and those like it, federal courts must abstain.

II. The Court Should Resolve Whether Federal Courts May Refuse To Abstain Under *Younger* Because Plaintiffs Seek Class-Wide Relief.

Two members of the panel refused to stop at ordering the district court not to abstain from child welfare cases generally. They also held that *Younger* was unavailable because West Virginia's child welfare proceedings purportedly did not give the plaintiffs an adequate opportunity to litigate their claims, and those claims did not interfere with ongoing state actions. The majority reasoned that the plaintiffs were pursuing "systemic," class-wide relief, and the State failed to show that similar *collective* relief was available in state court. App.34a-36a. This holding ignores that without "unambiguous authority to the contrary" federal courts must "assume that state procedures will afford an adequate remedy"—particularly where, as here, "a litigant has not attempted to present his federal claims in related state-court proceedings." *Pennzoil*, 481 U.S. at 15.

The holding also deepens another circuit split, this time on whether a request for class relief is relevant to *Younger* at all. Like the first, this split does substantial harm. Courts that factor class relief into their analysis allow procedural rules to warp substantive rights. Worse still, favoring a federal forum in class cases invites the sort of intrusive litigation and far-flung judicial oversight that this Court has said—more than once—does *not* belong in federal courts. The Court should intervene on this issue as well to ensure that federal courts do not act as indefinite overseers of critical state systems.

A. The decision below deepens another circuit split.

The Fourth Circuit jumped into a second crystallized circuit split on a straightforward issue: May federal courts decline to abstain under *Younger* whenever a litigant wants—but might not get—class-wide relief in the state forum?

1. The Tenth and Eleventh Circuits stand on one side of the split.

In *Joseph A.*, the Tenth Circuit considered an institutional-reform challenge to New Mexico's foster-care system. 275 F.3d at 1253. Much like the plaintiffs here, those plaintiffs argued that the State's "Children's Court" was "not authorized to hear class actions and other representative suits." *Id.* at 1274. The court took that fact as true but found it irrelevant. It sufficed that "no case … hold[s] that a party is entitled to avoid the effects of [] *Younger* … where relief is available to individual litigants in ongoing state proceedings but not to represented parties in a class action." *Id.*

Similarly, in *31 Foster Children*, the Eleventh Circuit described an earlier case in which it abstained from deciding claims that plaintiffs "could have brought" in "individual criminal trials, even though it [was] obvious that the broad-sweeping remedy" they wanted "was unavailable there." 329 F.3d at 1281 n.12 (citing *Luckey* v. *Miller*, 976 F.2d 673, 676, 679 (11th Cir. 1992)). That circuit has also doubled down on the idea that state forums are adequate if members of a potential federal class could "raise[] their claims during their" *individual* state-court proceedings. *Pompey* v. *Broward Cnty.*, 95 F.3d 1543, 1551 (11th Cir. 1996).

These decisions track the notion that *Younger* "does not require that all the procedures for the interposition of the federal defense be as advantageous in the state court as in the federal action." *Kirschner* v. *Klemons*, 225 F.3d 227, 235 (2d Cir. 2000); accord *Boyd* v. *Mich. Sup. Ct.*, No. 95-1180, 1995 WL 538693, at *2-3 (6th Cir. Sept. 8, 1995) (affirming *Younger* abstention despite argument that "state court relief for a single plaintiff cannot vindicate the rights of the affected 'class'"); *Carson P. ex rel. Foreman* v. *Heineman*, 240 F.R.D. 456, 531 (D. Neb. 2007) (existence of class relief irrelevant to *Younger* analysis).

2. On the other side of the divide are the D.C. Circuit and, now, the Fourth. Turning again to *LaShawn A.*, there the D.C. Circuit found that the Family Division of the District's judiciary was not "an appropriate forum for [a] multi-faceted class-action challenge to the [District's] administration of its entire foster-care system." 990 F.2d at 1323. The court leaned heavily on the D.C. Superior Court's refusal in another case to hear claims that stretched beyond the disposition of a single child. *Id.*

Building in part on *LaShawn A.*, the Fourth Circuit went further—holding that *any* ability to bring a claim in systemic fashion that does not include everything a federal class action permits renders the state forum inadequate. See App.34a-36a, 39a-40a; see also, *e.g.*, *Tinsley*, 156 F. Supp. 3d at 1040-41 ("[I]t does not appear Plaintiffs could raise their classwide claims or pursue the systemic reforms they seek within the framework of the periodic review hearings in the juvenile courts."); *Perry*, 799 F. Supp. 2d at 721-22 ("[T]here is no indication that [plaintiffs] could seek or obtain [in state court] the type of wide-ranging injunctive and declaratory relief that they desire [as a class].").

3. Finally, the Fifth Circuit seems to take a half-loaf position. In *Bice* v. *Louisiana Public Defense Board*, that court rejected the argument that "[r]elief sought on behalf of an *uncertified* class should be considered in the *Younger* abstention analysis." 677 F.3d 712, 720 (5th Cir. 2012) (emphasis added). It deliberately left open the possibility, though, that a state court's lack of a class-wide remedy might make it inadequate in cases where a class has been certified. See *id.* at 720 n.8 (distinguishing a district court opinion finding state forums inadequate to address "systemic concerns" because "a class had already been certified before the court decided whether to abstain under *Younger*"); but see, *e.g.*, *Hernandez* v. *Finley*, 471 F. Supp. 516, 521 (N.D. Ill. 1978) (explaining that district courts should reach *Younger* abstention "first and only determine class certification if dismissal based on abstention is not proper").

Again one thing is plain: The circuits do not agree.

B. The split raises serious questions about class actions and the role of federal courts in overseeing state institutions.

Usually the "breadth of a challenge to a complex state statutory scheme" "militate[s] in *favor* of abstention." *Moore*, 442 U.S. at 427 (emphasis in original). *Moore* thus rejected the argument that a suit belonged in federal court because it challenged a State's entire child custody system. *Id.* at 426. The Fourth Circuit flipped that standard, finding that the "wide-reaching, intertwined, … 'systemic,'" and class-wide nature of the relief plaintiffs seek counseled against abstention. App.34a. That inversion creates two problems that justify the Court's attention.

1. The first: The Fourth Circuit's decision elevates the ability to pursue a class action to a substantive-right status it has never enjoyed before. A litigant's right "to employ Rule 23 is a procedural right only, ancillary to the litigation of substantive claims." *Deposit Guar. Nat'l Bank* v. *Roper*, 445 U.S. 326, 332 (1980). Thus, the class-action rule "leaves the parties' legal rights and duties intact and the rules of decision unchanged." *Shady Grove Orthopedic Assocs., P.A.* v. *Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (opinion of Scalia, J.). By allowing the existence (or non-existence) of this procedural right in state court to determine whether plaintiffs must be allowed to pursue their claims in a federal forum, the Fourth Circuit rewrote the parties' legal rights. That was wrong. See *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 367 (2011) (rejecting an attempt to the use class-action rule to change a defendant's defenses); cf. *Roper*, 445 U.S. at 355 (Powell, J., dissenting) ("[T]he Court's concern for compensation of putative class members," which led it to tweak the mootness standard, was "at worst inconsistent with the command of the Rules Enabling Act.").

The decision below shows how things go awry when courts elevate the class-action rule to the level of substantive right—especially before any court has decided that a class should be certified in the first place. For example, the Fourth Circuit found that class relief *must* be available to help individual plaintiffs overcome problems like standing and mootness. See App.34a-35a. But no authority holds that a class must be in the offing any time an individual plaintiff might otherwise struggle to mount a case. Cf. *Brown* v. *Plata*, 563 U.S. 493, 552 (2011) (Scalia, J., dissenting) (finding that no "procedural principle justifies certifying a class of plaintiffs so they may assert a claim of systemic unconstitutionality"). Standing and mootness, after all, are not arbitrary

"hurdles" thrown in a plaintiff's way, but constitutional requirements grounded in Article III. App.34a.

Likewise, the decision below speculates that an individual plaintiff may face problems summoning enough evidence to support relief without help from a class. App.34a-35a. But here again, no case suggests that the challenges of building a case should justify twisting legal doctrines to make it easier. A plaintiff wanting to take on a big case will often have to bear big responsibilities. Abstention is concerned with whether the plaintiff can raise his or her claims in the state forum, not whether raising them in federal court is easier.

And all in all, the Fourth Circuit confused Rule 23(b)(3)'s superiority analysis with the adequacy aspect of *Younger*. See, *e.g.*, App.35a-36a (relying on authority describing some of the reasons why class actions can be superior in explaining why West Virginia courts are purportedly inadequate). It must be said for a third time—no authority supports that approach.

2. The second problem: The Fourth Circuit greenlit the sort of institutional oversight of state institutions by federal courts that this Court repudiated in *O'Shea*. That case precluded "an ongoing federal audit of state … proceedings." *O'Shea*, 414 U.S. at 500. It took particular issue with federal proceedings that could impair state-court administration—permitting those suits "would indirectly accomplish the kind of interference that *Younger* … and related cases sought to prevent." *Id.* As the Tenth Circuit has explained, "*O'Shea* and its progeny suggest[] that federal court oversight of state court operations, even if not framed as direct review of state court judgments, may nevertheless be problematic for *Younger* purposes." *Joseph A.*, 275 F.3d at 1271. And *O'Shea* works hand-in-hand with more recent decisions

warning about the "sensitive federalism concerns" inherent in "institutional reform litigation"; concerns that are "heightened" when that litigation "has the effect of dictating state or local budget priorities." *Horne* v. *Flores*, 557 U.S. 433, 448 (2009).

The "systemic" relief the plaintiffs seek here would require pervasive institutional oversight in every sense. It would involve "intensive, context-specific legal inquiry" to determine whether DHHR submits the right plans, makes the right placements, offers the right services, and keeps the right children in state custody for the right amount of time. *Courthouse News Serv.* v. *Planet*, 750 F.3d 776, 791 (9th Cir. 2014). State courts, with continuing state-law jurisdiction over child welfare cases, would be relegated to something approaching an "assistant manager" role. Each of their judgments would be subject to direct federal-court review—precisely the interference *O'Shea* and the many cases like it rejected.

The district court realized that it didn't take a seer to predict this result. The relief at stake—including a federal "monitor" to "implement and oversee" the court's order—is "highly problematic" because it would "interfere extensively with ongoing state court proceedings" as "articulated in *O'Shea*." App.75a-78a. The potential for indefinite federal oversight of state child welfare systems through watered down abstention standards is not confined to West Virginia, either. Quite the opposite. Most of the States have faced or are currently facing similar broad-ranging institutional reform suits in this area. See, *e.g.*, *A.A.* v. *Buckner*, No. 2:21-cv-367 (M.D. Ala. May 20, 2021); *Jeremiah M.* v. *Crumb*, No. 3:22-cv-00129 (D. Alaska May 19, 2022); *Bryan C.* v. *Lambrew*, No. 1:21-cv-00005 (D. Me. Jan. 6, 2021); *G.K.* v. *Sununu*, No. 1:21-cv-00004 (D.N.H. Jan. 5, 2021); *Elisa W.* v. *New York*, No.

1:15-cv-05273 (S.D.N.Y. July 8, 2015); *Wyatt B.* v. *Brown*, No. 6:19-cv-00556 (D. Or. Apr. 16, 2019).

Finally, the Fourth Circuit's new amenability to system-wide litigation challenging state-wide systems is not limited to the child welfare context. The decision below gives all future institutional-reform plaintiffs who might otherwise face a *Younger* problem a simple way out: plead a claim for class relief. Justices have condemned federal courts' attempts to "direct[] or manage[] the reconstruction of entire institutions and bureaucracies" before. *Missouri* v. *Jenkins*, 515 U.S. 70, 126 (1995) (Thomas, J., concurring). State courts are at least "the legatees of a considerable tradition of state judicial supervision over the activities and affairs of local government." JOHN MARTINEZ, LOCAL GOVERNMENT LAW § 29:8 (2022 supp.). The same cannot be said about federal courts. But with a new get-out-of-abstention-free card in hand, institutional-reform plaintiffs can more aggressively seek broad forms of relief and federal monitoring against state-related targets. The Fourth Circuit's "decision not only affirms the structural injunction but vastly expands its use." *Brown*, 563 U.S. at 555 (Scalia, J., dissenting).

The Court should grant certiorari to address these important concerns. A State's decision not to mirror Rule 23 in all state forums should not allow federal courts to abstain.

III. The Decision Below Is Wrong—But The Right Vehicle For Review.

The Fourth Circuit should have required abstention. State courts can vindicate federal rights. Federal courts can too, but only with "sensitivity to [] legitimate [state] interests" and without "unduly interfer[ing] with

legitimate [state] activities." *Younger*, 401 U.S. at 44. The decision below shows no sensitivity—the court hardened itself to West Virginia's legitimate interests.

A. The Fourth Circuit should not have limited its *Younger* analysis to the quarterly post-adjudication hearing phase of West Virginia's child welfare proceedings. App.21a-23a. Those hearings are part of a single, unified case in which state courts make and continuously assess decisions regarding placement, reunification, and permanency. W. VA. CODE §§ 49-4-102, 49-4-110. By divorcing the hearings from everything that comes before, the court below ignored the full context it needed to determine whether federal oversight is "antipathetic to established principles of comity." *O'Shea*, 414 U.S. at 501.

Anyway, the Fourth Circuit was wrong in thinking that the quarterly hearings do not qualify as civil enforcement. A state actor "routinely [is] a party" in civil enforcement "and often initiates the action." *Sprint*, 571 U.S. at 79. So too here. See W. VA. CODE §§ 49-4-402, 49-4-501. Yet the court dismissed the hearings as "conciliatory," App.21a-22a, contrasting the intent to "sanction" that *Sprint* highlighted, 571 U.S. at 79-80. True, these hearings are rooted in rehabilitation and care, not punishment. But so are the State's indisputably criminal juvenile-justice proceedings. And make no mistake: Real liberty—including "institutionalization," termination of parental rights, "or other similar restraint[s]"—is at stake. *DeShaney* v. *Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989); W. VA. CODE §§ 49-4-110, 49-4-608. The court below also ignored that abuse-and-neglect proceedings use the cardinal "due process protections for a criminal trial." *Doe* v. *Univ. of Ky.*, 860 F.3d 365, 370 (6th Cir. 2017). Children and

parents alike have rights to counsel, to be heard, to cross-examine, to the rules of evidence, and to elevated burdens of proof. W. VA. CODE §§ 49-4-110, 49-4-601, 49-4-701. The Fourth Circuit should have recognized these marks of proceedings "akin to a criminal prosecution." *Sprint*, 571 U.S. at 79 (cleaned up).

B. The Fourth Circuit also misapplied *Younger*'s third category, which covers orders "uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint*, 571 U.S. at 78. It held that letting the federal case proceed would not interfere with the state courts' power to issue *initial* orders concerning foster children's placement and care. App.25a. That conclusion is wrong on the law. For one, its presumption that "court orders will be obeyed," App.25a, means that the federal court's orders will almost certainly conflict with competing state orders from the quarterly proceedings, which monitor "compliance" with the case plan and constitute "judgment[s] of [the] court." *Pennzoil*, 481 U.S. at 13-14; W. VA. CODE § 49-4-110. The quarterly proceedings are also "integral to" West Virginia "court[s'] ability to" administer the child welfare system, a core "judicial function" in domestic affairs. See *Falco* v. *Just. of the Matrimonial Parts of Sup. Ct. of Suffolk Cnty.*, 805 F.3d 425, 428 (2d Cir. 2015) (recognizing the third *Younger* category applied to a court order, after a custody dispute, regarding payment for a child guardian). Letting federal jurisdiction override the status hearings would thus undermine the system from start to finish.

C. And the Fourth Circuit was wrong in believing that the plaintiffs' requested relief would only "enjoin *the Department's* actions." App.24a (emphasis in original). Even if relief were directed solely to DHHR, what happens when a state court believes that foster care is "in

accordance with federal standards," App.52a, but the federal court disagrees? Who decides whether a child needs out-of-state or institutionalized care—the state court tasked to do so by statute, W. VA. CODE § 49-4-608, or the federal court Respondents ask to limit this very possibility? App.7a-9a, 50a. Refusing abstention is virtually certain to render some West Virginia state-court judgments "nugatory." *Pennzoil*, 481 U.S. at 14 n.12.

D. Perhaps the only good news here is that this case is a clean vehicle to rectify these issues. The doctrines at stake are straightforward and legal. Factual disputes do not cloud the issues; the features of West Virginia's state-court-directed child welfare system are set by statute. The decision below took a firm—but misguided—position on the legal questions, consciously putting itself at odds with other courts of appeals. Nor is this a request for case-specific error-correction. As noted above, using federal jurisdiction to force system-wide change to state child welfare regimes is no one-off. The Fourth Circuit's approach conflicts with decisions of this Court, other federal courts, and basic constitutional norms. The Court should intervene and set it right.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted.

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