No. 22-240

IN THE

Supreme Court of the United States

JIM JUSTICE, GOVERNOR OF WEST VIRGINIA, ET AL.,

Petitioners,

v.

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

Respondents.

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

BRIEF OF *AMICI CURIAE* STATES OF OREGON, ALASKA, AND NEW HAMPSHIRE IN SUPPORT OF PETITIONERS

ELLEN F. ROSENBLUM
Attorney General of Oregon
BENJAMIN GUTMAN
Solicitor General
Counsel of Record
ROBERT A. KOCH
Assistant Attorney General
1162 Court Street NE
Salem, Oregon 97301-4096
Phone: (503) 378-4402
benjamin.gutman@
doj.state.or.us
(Additional Counsel Listed on Signature Page)

QUESTION PRESENTED

Whether lower federal courts should abstain from hearing claims about the nature and extent of placements and services in a state's child-welfare system when state trial courts oversee that system.

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INTEREST OF AMICI CURIAE[1]

This case concerns a central duty and mission of state government: protecting vulnerable children. The amici states share the parties' interests in improving state child-welfare systems. Without question, that task is critical, challenging, and complex. But this case presents the question of whether states and state trial courts, or federal courts and court-appointed federal monitors, have the ultimate responsibility and expertise to oversee that task. As states that work every day to improve their child-welfare systems, the amici states have a substantial interest in the proper resolution of this case.

The amici states also share a particular interest in the abstention question at issue here. As with West Virginia, plaintiff group A Better Childhood, an advocacy organization based in New York City, has sued Oregon and Alaska seeking a federal class action and the appointment of a federal monitor to reform, restructure, and effectively run the state child-welfare systems;[2] that group has sued child-welfare agencies across ten states, as well as the District of Columbia.[3]

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[1] Counsel of record received timely notice of the intent to file this brief under Rule 37.2(a). Consent of counsel was not required under Rule 37.4.

[2] *Wyatt B. v. Brown*, No. 6:19-cv-556 (D. Or.); *Jeremiah M. v. Crum*, No. 3:22-cv-129 (D. Alaska).

[3] *Ashley W. v. Holcomb*, No. 3:19-cv-129 (S.D. Ind.); *T.F. v. Hennepin Cty.*, No. 17-cv-1826 (D. Minn.); *Olivia Y. v. Barbour*, No. 3:04-cv-251 (S.D. Miss.); *Charlie H. v. Whitman*, No. 2:99-cv-3678 (D.N.J.); *Elisa W. v. City of N.Y.*, No. 1:15-cv-5273 (S.D.N.Y.); *D.G. v. Henry*, No. 08-cv-74 (N.D. Okla.); *M.D. v. Abbott*, No. 2:11-cv-84 (S.D. Tex.); *Lashawn A. v. Barry*, No. 1:89-cv-1754 (D.D.C.).

New Hampshire, meanwhile, has been sued by a different New York City-based advocacy organization that similarly seeks a federal class action and the appointment of a federal monitor to run that state's child-welfare system.[4] In Oregon, the federal district court has denied the state's abstention motion and granted plaintiffs' motion to certify a statewide class.[5] Oregon has spent millions of dollars just in defending discovery, and the ultimate imposition of a federal monitor could cost millions of dollars a year in administrative costs alone.[6]

All the while, as discussed below, federal courts of appeals have diverged in these cases on whether lower federal courts should abstain entirely under this Court's *Younger* abstention doctrine, given the central oversight role that state trial courts play in ongoing child-welfare cases. The resulting uncertainty has driven costly litigation across the country that diverts energy and resources from improving child-welfare systems. All states across the country therefore have a significant interest in this Court resolving that circuit split and providing clear abstention guidance on the issue to lower federal courts.

DISCUSSION

This case strikes at the heart of state government and the dual principles of federalism and comity. Since our Nation's founding, states have been charged with developing and implementing domestic relations

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[4] *G.K. v. Sununu*, No. 1:21-cv-4 (D.N.H.).

[5] *Wyatt B.*, No. 6:19-cv-556, Dkt. Nos. 215, 275.

[6] *See, e.g.*, *M.D.*, No. 2:11-cv-84, Dkt. Nos. 1287, 1288 (monthly monitoring bills for August 2022 in A Better Childhood's litigation against Texas).

law. Central to each state's law is the protection of children. As pertinent here, state trial courts generally protect and serve a state's most vulnerable children by overseeing their placement and care throughout their time in the state's child-welfare system. In doing so, state courts have the authority and expertise to validate and enforce the rights of the children in their care, including rights afforded by federal law. Nevertheless, the Fourth Circuit held that the ultimate arbiter of a state's child-welfare system, and thereby the oversight of that system by state courts, should be a federal court with the possible appointment of a federal monitor.

In so holding, the decision below deepened an existing circuit split on whether and to what extent federal courts should adjudicate such claims. More fundamentally, the decision contravened this Court's *Younger* abstention doctrine, under which principles of federalism and comity mandate that lower federal courts abstain from interfering with state civil enforcement proceedings, as well as from ongoing involvement with and oversight of state trial court proceedings. The Court should grant certiorari to resolve the circuit split and reaffirm those bedrock principles.

A. The decision below deepened an existing circuit split.

This Court has long held that, as a general rule, principles of federalism and comity require that federal courts abstain from hearing cases and claims that interject into certain state court proceedings. *Younger v. Harris*, 401 U.S. 37 (1971). In particular, lower federal courts must abstain under *Younger* when "pending state-court proceedings involve[] the

same subject matter" and comprise any of three categories of cases: "state criminal prosecutions, civil enforcement proceedings, and civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72–73 (2013) (cleaned up) (quoting *New Orleans Pub. Serv., Inc. (NOPSI) v. Council of City of New Orleans*, 491 U.S. 350, 367–68 (1989)). If *Younger* applies, then lower federal courts have a duty to abstain unless a federal plaintiff can prove that state procedural law bars their claim. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1987) (citing *Moore v. Sims*, 442 U.S. 415, 432 (1979); *Younger*, 401 U.S. at 45).

As the Court has explained, both federalism and comity counsel abstention. Our constitutional order was founded on the ideal of "Our Federalism," under which "the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Younger*, 401 U.S. at 44. Comity likewise requires "a proper respect for state functions," as "the entire country is made up of a Union of separate state governments"; as such, "the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Id.*

Since *Younger*, federal courts of appeals have split on the question at issue here, namely, whether abstention is required for class-action claims by children in substitute care over the nature and quality of the services that they are receiving while wards of the state. The decision by the Fourth Circuit below only

deepened that split, amplifying the need for resolution by this Court.

On one side, the Seventh, Tenth, and Eleventh Circuits have squarely held that systemic claims against state child-welfare systems warrant abstention under *Younger*. *Ashley W. v. Holcomb*, 34 F.4th 588, 594 (7th Cir. 2022); *Joseph A. ex rel. Wolfe v. Ingram*, 275 F.3d 1253, 1272 (10th Cir. 2002); *31 Foster Children v. Bush*, 329 F.3d 1255, 1282 (11th Cir. 2003). All three cases were litigated by the same lead plaintiffs' counsel advancing the litigation here, similarly seeking the appointment of a federal monitor or monitoring team to reform and effectively run a state's child-welfare system. *See Ashley W.*, 34 F.4th at 591 (Indiana); *Joseph A.*, 275 F.3d at 1259 (New Mexico); *31 Foster Children*, 329 F.3d at 1262 (Florida). In each, the court of appeals held that *Younger* abstention was required due to the ongoing child-welfare proceedings for each individual plaintiff in state court, the close relation those proceedings held with state criminal statutes for child abuse and neglect, and the central oversight role that state courts play in child-welfare cases, all of which federal court involvement would interfere with and compromise. *Ashley W.*, 34 F.4th at 591–94; *Joseph A.*, 275 F.3d at 1267–72; *31 Foster Children*, 329 F.3d at 1274–82. Moreover, the plaintiffs had failed to prove that state law barred them from raising their constitutional claims in their state court proceedings. *Ashley W.*, 34 F.4th at 593–94; *Joseph A.*, 275 F.3d at 1274; *31 Foster Children*, 329 F.3d at 1281.

Relatedly, five other circuits—although not addressing the specific question at issue here—have applied *Younger* to require dismissal of federal chal-

lenges to other child-welfare proceedings, largely due to the state's significant interest in family law, as well as the state's role in bringing and maintaining the proceedings. *See Malachowski v. City of Keene*, 787 F.2d 704, 708 (1st Cir. 1986) (per curiam) (parent challenge to juvenile delinquency); *Lowell v. Vt. Dep't of Children & Families*, 835 F. App'x 637, 639 (2d Cir. 2020) (per curiam) (parent challenge to child abuse investigation); *Lazaridis v. Wehmer*, 591 F.3d 666, 671 (3d Cir. 2010) (per curiam) (parent challenge to child custody); *DeSpain v. Johnston*, 731 F.2d 1171, 1180 (5th Cir. 1984) (parent challenge to child abuse investigation); *Parker v. Turner*, 626 F.2d 1, 10 (6th Cir. 1980) (parent challenge to contempt proceedings for child support); *Oglala Sioux Tribe v. Fleming*, 904 F.3d 603, 614 (8th Cir. 2018) (tribe class action challenge to child custody procedures).

Nevertheless, the Fourth Circuit joined the D.C. Circuit on the other side of the equation, holding that such federal claims brought by the same advocacy organization, on behalf of children in child welfare challenging the quality of their services and placements, do not trigger *Younger* abstention. Pet. App. 40a; *LaShawn A. ex rel. Moore v. Kelly*, 990 F.2d 1319, 1324 (D.C. Cir. 1993). In those courts' view, a federal class action over ongoing child-welfare services is legally distinct from the initial proceedings that brought individual plaintiffs into the child-welfare system, while compliance monitoring by a federal court or monitor would not intrude on state courts because an injunction could be directed at a state agency for implementation and enforcement. Pet. App. 18a–33a; *LaShawn A.*, 990 F.2d at 1322–23. The courts further found that state court proceedings ap-

peared unable to remedy the harms alleged, primarily because no state court to date had ordered such a systemic overhaul. Pet. App. 34a–40a; *LaShawn A.*, 990 F.2d at 1323–24.

Meanwhile, the Ninth Circuit appears to have an intra-circuit split on the issue. Four decades ago, the court first held that abstention on such claims was not required. *L.H. v. Jamieson*, 643 F.2d 1351, 1354 (9th Cir. 1981). But two decades later, the court held that abstention was required for a challenge to child custody proceedings. *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 614 (9th Cir. 2000).

In short, there is an existing and well-defined circuit split on the question presented in this case. Indeed, within mere months of each other, the Fourth and Seventh Circuits joined opposing sides of that split when faced with the same question presented, raised by the same plaintiff advocacy organization. That group continues to press the circuit split with litigation in federal courts across the country seeking federal monitors to reform and run state child-welfare systems. The stakes could not be higher for states: in running their own child-welfare systems, in seeking to improve those systems, and in responsibly managing their public fisc. The Court should grant certiorari to resolve the deepening circuit split.

B. The decision below was wrong.

Certiorari also is warranted in this case because the decision below joined the wrong side of the circuit split. In holding that *Younger* abstention did not apply, the Fourth Circuit misunderstood and misstated the central role that state trial courts play in the placement and care of children in state child-welfare

systems. In doing so, the court misapplied this Court's *Younger* abstention case law and contravened the principles of federalism and comity on which it rests.

1. In West Virginia, as in Oregon and elsewhere, state trial courts oversee the placement and care of children in child welfare.

Central to the Fourth Circuit's decision was its assessment that state trial courts play a limited role in the placement and care of children in West Virginia's child-welfare system. The court stated, without citation to any state law, that "the operative 'pending' state court proceedings" for a child in child welfare "likely do not encompass" the initial order of custody entered by a state trial court. Pet. App. 23a. The court explained that, in its view, state courts then merely "accept" the placement and service options suggested by a state agency. Pet. App. 29a. The court thereby concluded that federal oversight and decisions on what care and services a child in child welfare *should* receive "simply [would] not interfere" with state court hearings on the care and services that a child *will* receive. Pet. App. 26a–27a. To the extent conflict results between the two, the court waved away that concern as the "normal res judicata effects" of a federal court enjoining and controlling state executive action. Pet. App. 29a (cleaned up) (citation omitted).

But the picture painted by the Fourth Circuit bears no meaningful relation to the way that state child-welfare systems actually operate, in both statute and practice. In West Virginia, as in Oregon and

elsewhere, state custody over a child begins, continues, and ends with a state trial court.

As explained in the petition, in cases of suspected abuse or neglect, a state trial 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." Pet. 7 (citing W. Va. Code §§ 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)); *see, e.g.*, Or. Rev. Stat. §§ 419B.183, 419B.185, 419B.305, 419B.328, 419B.337, 419B.373, 419B.449. Similar decision-making occurs in cases of suspected juvenile delinquency, with the added qualification that a trial court also factors public safety into its analysis. Pet. 6, 8 (citing W. Va. Code §§ 49-4-701, 49-4-704); *see, e.g.*, Or. Rev. Stat. §§ 419C.005, 419C.020, 419C.059, 419C.080, 419C.109, 419C.261.

After finding a child within its jurisdiction, the state trial court determines whether a child will be placed in the legal custody of a child-welfare agency; the court also may specify the type of care and services to be provided by that agency. Pet. 8 (citing W. Va. Code. §§ 49-4-604, 49-4-714); *see, e.g.*, Or. Rev. Stat. §§ 419B.325, 419B.328, 419B.337, 419B.343, 419B.346, 419B.349, 419B.352, 419C.005, 419C.109. To be sure, state agencies work to develop and implement placement and service options, consistent with the traditional role played by the executive branch in our constitutional structure. Pet. 7 (citing W. Va. Code §§ 49-4-405, 49-4-601); *see, e.g.*, Or. Rev. Stat. §§ 419B.346, 419B.352, 419B.440, 419C.109.

But the state trial court is the legal authority that examines, approves, and orders the types of placement and services, through both hearings and updated orders, that the child will receive while a ward of the state. Pet. 8 (citing W. Va. Code §§ 49-4-110, 49-4-405, 49-4-406); *see, e.g.*, Or. Rev. Stat. §§ 419B.440, 419B.449, 419B.470, 419B.476, 419C.153, 419C.610, 419C.626.

Given the gravity of state child-welfare proceedings, procedural protections mirror other state criminal and civil enforcement proceedings. The state is usually the petitioning party; state trial courts take evidence and make factual findings; and parents and children have a right to be heard and represented in court. Pet. 9–10 (citing W. Va. Code §§ 49-4-402, 49-4-405, 49-4-501, 49-4-601, 49-4-701); *see, e.g.*, Or. Rev. Stat. §§ 419B.185, 419B.337, 419B.449, 419B.809, 419B.875, 419C.020, 419C.285. Each child is represented by an attorney, retained or court-appointed, who can seek orders and findings from the court related to the child's placement and services. Pet. 9 (citing W. Va. Code §§ 49-4-601, 49-4-701); *see, e.g.*, Or. Rev. Stat. §§ 419B.195, 419C.200. In addition, because state courts are courts of general jurisdiction, the child's attorney can raise both state and federal claims on behalf of the child, constitutional or otherwise. Pet. 8 (citing W. Va. Const. art. VIII, § 6); *see, e.g.*, Or. Const. art. VII, § 1 (original), § 2 (amended).

In sum, state trial courts oversee the placement and care of children in a state's child-welfare system. State trial courts make children their wards and have the authority to place the children in the legal custody and guardianship of the state's child-welfare agency. A court's wardship determination gives the state

jurisdiction over a child until the wardship is terminated. The court thereby orders and oversees the types of placement and services that the child receives. And throughout, the court is charged with safeguarding the rights of the child under both state and federal law.

2. Principles of federalism and comity warrant federal court abstention from oversight of state child-welfare systems.

With a proper understanding of the central role that state trial courts play in overseeing the care that wards of the state receive while placed in the custody of a state's child-welfare agency, the Fourth Circuit's legal error becomes clear. Under *Younger*, principles of federalism and comity require lower federal courts to abstain from hearing claims about the nature and extent of placements and services in a state's child-welfare system.

In *Moore*, the Court applied *Younger* to require abstention in a federal due process challenge to ongoing state civil enforcement proceedings, specifically, child-welfare proceedings involving suspected child abuse. 442 U.S. at 418–23. The Court explained that, as in *Younger*, the state was a party to the proceedings in its capacity as a sovereign. *Id.* at 423. Relatedly, the proceedings were "in aid of and closely related to criminal statutes," given the underlying child-welfare allegations that had led to intervention by the state. *Id.* (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975)).

In such proceedings brought and maintained by the state, "interference * * * prevents the state not only from effectuating its substantive policies, but al-

so from continuing to perform the separate function of providing a forum competent to vindicate any constitutional objections interposed against those policies." *Huffman*, 420 U.S. at 604. That was particularly true for the child-welfare proceedings in *Moore*, which pertained to family relations, "a traditional area of state concern." 442 U.S. at 435. As a result, federalism and comity warranted abstention by lower federal courts. *Id.*; *see Huffman*, 420 U.S. at 603 (abstention required for nuisance proceedings to avoid "federal judicial interference with state civil functions"); *see also Trainor v. Hernandez*, 431 U.S. 434, 446 (1977) (abstention required for proceedings to recover state funds to avoid "disruption of suits by the State in its sovereign capacity").

Similarly, in *O'Shea v. Littleton*, 414 U.S. 488 (1974), the Court applied *Younger* to mandate abstention in a challenge to the local administration of a state criminal justice system by prosecutors, investigators, and state trial court judges. *Id.* at 490–93. In doing so, the court examined the nature of the relief being sought by the federal plaintiffs, namely, federal review and oversight of state trial court proceedings to examine and ensure compliance with asserted federal standards. *Id.* at 492–93. As pertinent here, the requested relief would enjoin and result in federal review over the decisions and orders of state trial court judges. *Id.*

The Court concluded that such a result would constitute "nothing less than an ongoing audit of state * * * proceedings" and "a form of monitoring of the operation of state court functions that is antipathetic to established principles of comity." *Id.* at 500–01. Moreover, compliance enforcement and monitoring

would require "such a major continuing intrusion of the equitable power of the federal courts into the daily conduct of state * * * proceedings." *Id.* at 502. The Court held that abstention thus was required. *Id.* at 504; *see Juidice v. Vail*, 430 U.S. 327, 335 (1977) (abstention required for challenge to civil contempt proceedings, which "lie[] at the core of the administration of a State's judicial system"); *see also Pennzoil*, 481 U.S. at 13 (abstention required for challenge to state court judgment due to "the importance to the States of enforcing the orders and judgments of their courts").

Here, abstention is warranted for the reasons explained in both *Moore* and *O'Shea*. As in *Moore*, plaintiffs seek federal court interference with ongoing state civil enforcement proceedings that are brought and maintained by the state in its sovereign capacity; they want a federal court and a federal monitor to prescribe the placements and services that state agencies should develop and, in turn, that state trial courts should order for them. As in *O'Shea*, the imposition of federal oversight to examine and measure compliance with asserted federal standards would result in pervasive, continuing federal intrusion into the daily conduct of state trial courts as they conduct hearings and issue orders pertaining to the care of their wards; whether plaintiffs were receiving care that met the asserted standard would necessarily depend on what a state trial court ordered for them. Federalism and comity prohibit this direct federal infringement on state policies and proceedings that, for centuries, have been an area of state concern. *Moore*, 442 U.S. at 423, 435; *O'Shea*, 414 U.S. at 500–02; *see Ankenbrandt v. Richards*, 504 U.S. 689, 703–04

(1992) (discussing "the special proficiency developed by state tribunals over the past century and a half in handling issues that arise in" family law, including child custody).

In holding to the contrary, the Fourth Circuit misunderstood the central role that state trial courts play in child-welfare systems and, by extension, the resulting violation of both federalism and comity that federal oversight of such systems would cause. More than mere "res judicata" against executive agencies would be at stake. Pet. App. 29a. Rather, as explained by the Eleventh Circuit:

> The federal and state courts could well differ, issuing conflicting orders about what is best for a particular plaintiff, such as whether a particular placement is safe or appropriate or whether sufficient efforts are being made to find an adoptive family. The federal court relief might effectively require an amendment to a child's case plan that the state court would not have approved, and state law gives its courts the responsibility for deciding upon such an amendment. Even though any remedial order would run against the [state agency], state law makes it a duty of state courts to decide whether to approve a case plan, and to monitor the plan to ensure it is followed.

31 Foster Children, 329 F.3d at 1278–79 (citation omitted). As such, "taking the responsibility for a state's child dependency proceedings away from state courts and putting it under federal court control constitutes 'federal court oversight of state court operations, even if not framed as direct review of state

court judgments' that is problematic, calling for *Younger* abstention." *Id.* at 1279 (quoting *Joseph A.*, 275 F.3d at 1271).

Finally, plaintiffs here have failed to prove that state procedural law bars their claims, as required to except otherwise-warranted abstention. *Pennzoil*, 481 U.S. at 14 (citing *Moore*, 442 U.S. at 432; *Younger*, 401 U.S. at 45) (requiring such a showing). The Fourth Circuit reached a contrary conclusion, first stating that things generally "fail[]" in West Virginia, and then finding that state trial courts appeared "reluctan[t] to order deep structural changes with the [state agency]." Pet. App. 7a, 38a. That is not the law. Where, as here, "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." *Pennzoil*, 481 U.S. at 15. Plaintiffs point to no such authority. Abstention thus was required under *Younger*, and the Fourth Circuit contravened federalism and comity in holding otherwise.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General of Oregon
BENJAMIN GUTMAN
Solicitor General
Counsel of Record
ROBERT A. KOCH
Assistant Attorney General
1162 Court Street NE
Salem, Oregon 97301-4096
Phone: (503) 378-4402
benjamin.gutman@
doj.state.or.us

TREG R. TAYLOR
Attorney General of Alaska
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501

JOHN M. FORMELLA
Attorney General
of New Hampshire
33 Capitol Street
Concord, New Hampshire 03301