

APPENDICES

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APPENDIX A

PUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 25-1232

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,

Plaintiffs - Appellants,

v.

PATRICK MORRISEY, in his official capacity as the
Governor of West Virginia; ALEX J. MAYER, in his
official capacity as Secretary of the West Virginia
Department of Human Services; CAMMIE CHAPMAN,
in her official capacity as Deputy Secretary of the
Department of Health and Human Resources; LORI
BRAGG, in her official capacity as Interim Commissioner

of the Bureau for Social Services; WEST VIRGINIA
DEPARTMENT OF HUMAN SERVICES,

Defendants - Appellees.

LAW SCHOLARS; THE NATIONAL CENTER FOR
YOUTH LAW AND 32 ADDITIONAL
ORGANIZATIONS; THE ARC OF THE UNITED
STATES; THE CENTER FOR PUBLIC
REPRESENTATION; THE NATIONAL HEALTH
LAW PROGRAM; THE JUDGE DAVID L. BAZELON
CENTER FOR MENTAL HEALTH LAW,

Amici Supporting Appellants.

THE LIBERTY JUSTICE CENTER; STATES OF
ALASKA; ALABAMA; ARKANSAS; DELAWARE;
FLORIDA; GEORGIA; IDAHO; IOWA; KANSAS;
LOUISIANA; MISSISSIPPI; NEBRASKA; NEW
HAMPSHIRE; NORTH DAKOTA; SOUTH
CAROLINA; TEXAS,

Amici Supporting Appellees.

No. 25-1239

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,

Plaintiffs - Appellees,

v.

PATRICK MORRISEY, in his official capacity as the Governor of West Virginia; ALEX J. MAYER, in his official capacity as Secretary of the West Virginia Department of Human Services; LORI BRAGG, in her official capacity as Interim Commissioner of the Bureau for Social Service; CAMMIE CHAPMAN, in her official capacity as Deputy Secretary of the Department of Health and Human Resources; WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES,

Defendants - Appellants.

THE LIBERTY JUSTICE CENTER; STATES OF ALASKA; ALABAMA; ARKANSAS; DELAWARE; FLORIDA; GEORGIA; IDAHO; IOWA; KANSAS; LOUISIANA; MISSISSIPPI; NEBRASKA; NEW HAMPSHIRE; NORTH DAKOTA; SOUTH CAROLINA; TEXAS,

Amici Supporting Appellants.

LAW SCHOLARS; THE NATIONAL CENTER FOR YOUTH LAW AND 32 ADDITIONAL ORGANIZATIONS; THE ARC OF THE UNITED STATES; THE CENTER FOR PUBLIC REPRESENTATION; THE NATIONAL HEALTH LAW PROGRAM; THE JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW,

Amici Supporting Appellees.

Appeals from the United States District Court for the Southern District of West Virginia, at Huntington. Joseph R. Goodwin, District Judge. (3:19-cv-00710)

Argued: September 10, 2025 Decided: June 4, 2026

Amended: June 8, 2026

Before HARRIS and RUSHING, Circuit Judges, and FLOYD, Senior Circuit Judge.

Reversed and remanded by published opinion. Judge Floyd wrote the opinion in which Judge Harris joined. Judge Rushing wrote an opinion concurring in the judgment in part and dissenting in part.

ARGUED: Laura Welikson, A BETTER CHILDHOOD, New York, New York, for Appellants/Cross-Appellees. Michael Ray Williams, OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia, for Appellees/Cross-Appellants. **ON BRIEF:** Marcia Robinson Lowry, Julia K. Tabor, Robyn Goldberg, John Hazelwood, David Baloché, A BETTER CHILDHOOD, New York, New York; Richard W. Walters, J. Alexander Meade, SHAFFER & SHAFFER, PLLC, Charleston, West Virginia; Nicholas Ward, DISABILITY RIGHTS OF WEST VIRGINIA, Charleston, West Virginia, for Appellants/Cross-Appellees. John B. McCuskey, Attorney General, Holly J. Wilson, Principal Deputy Solicitor General, Caleb B.

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FLOYD, Senior Circuit Judge:

This appeal is the latest chapter in the lawsuit brought on behalf of thousands of West Virginia’s foster children against the state’s officials. Having already reversed a prior dismissal of the case in *Jonathan R. ex rel. Dixon v. Justice (Jonathan R. I)*, 41 F.4th 316 (4th Cir. 2022), we now review a second dismissal by the lower court. This time, at stake is whether the district court is within its power to provide the injunctive and declaratory relief sought by Plaintiffs. Because federal courts not only have the authority, but also a duty, to remedy systemic constitutional rights violations, we reverse.

I.

On September 30, 2019, twelve children in foster care¹ filed a class action complaint in the Southern District of West Virginia against five defendants, including Governor Jim Justice and the West Virginia Department of Health and Human Resources (DHHR). Under Governor Justice’s administration, DHHR served as “the legal guardian of children in the state’s foster care system.” J.A. 149. That agency has since been reorganized and oversight of the foster care system now belongs to the Department of Human Services (DHS).

Plaintiffs’ proposed General Class included approximately 6,800 children who were in the foster care custody of the state at the time of filing suit. Plaintiffs

¹ The Complaint included ten Named Plaintiffs: Jonathan R., Anastasia M., Serena S., Theo S., Garrett M., Gretchen C., Dennis R., Karter W., Ace L., and siblings Chris K., Calvin K., and Caroline K. At the time of filing, each was a minor in the custody of West Virginia DHHR.

proposed three other subclasses: a “Kinship Subclass” consisting of children placed with relatives, an “ADA Subclass” comprising children with disabilities, and an “Aging Out Subclass” that included children above the age of 14 who were nearing transition out of the program.

The alleged abuses and rights violations within the foster care system are well documented in our previous opinion, *Jonathan R. I.* For example, in their Complaint, Plaintiffs proffered data showing the 2017 “rate of child deaths related to abuse and neglect per 100,000 children in West Virginia was more than double the national average.” J.A. 149. Plaintiffs also cited abuse, neglect, inadequate foster care placement rates, understaffing, lengthy delays in case assessments, over-reliance on institutional care, and wide-ranging failures to supply in-home physical and mental health services. Plaintiffs allege these dysfunctional practices deprived them of their Fourteenth Amendment substantive due process rights to “freedom from maltreatment,” “services necessary to prevent unreasonable risk of harm,” and “treatment and cares consistent with the purpose and assumptions of government custody,” among others. J.A. 238. In addition, Plaintiffs cited violations of their First Amendment rights to free association and the Ninth Amendment’s reservation of rights to the people. West Virginia’s practices also allegedly deprived them of certain federal statutory rights, including those under the Adoption Assistance and Child Welfare Act, 42 U.S.C. § 670; the Americans with Disabilities Act, 42 U.S.C. § 12101; and the Rehabilitation Act, 29 U.S.C. § 794.²

² Plaintiffs’ class action was not the first time concerns were raised over West Virginia’s foster care system. The Complaint also alleges that in 2015, the U.S. Department of Justice Civil Rights Division

Ultimately, Plaintiffs requested declaratory relief; namely, for the court to “declare unconstitutional and unlawful” violations of Plaintiffs’ constitutional and statutory rights. J.A. 246–47. Plaintiffs also requested injunctive relief, including but not limited to the following:

- i. Require DHHR to contract with an appropriate outside entity to complete a needs assessment of the state’s provision of foster care placement and services.
- ii. Require that DHHR ensure that all children who enter foster care placement receive within 30 days of entering care a complete and thorough evaluation of the child’s needs.
- iii. Require that DHHR ensure that all children who enter foster care placement receive within 60 days of entering care an adequate and individualized written case plan for treatment.
- iv. Require that DHHR ensure that all children whose case plan identifies a need for services and/or treatment timely receive those services and/or treatment.
- v. Require that DHHR shall ensure that all children who are placed in foster care are placed in a safe home or facility and are adequately monitored in accordance with federal standards.
- vi. Require that DHHR shall hire, employ, and retain an adequate number of qualified and appropriately trained caseworkers.

investigated DHHR and published a report finding many similar concerns about the welfare of children in foster care.

- vii. Require DHHR to develop an adequate statewide plan, to be approved by [a court-appointed neutral monitor].

J.A. 246–48.³ In 2023, the district court dismissed the case, first finding that the claims of adopted plaintiffs were moot, then holding that it was “barred from consideration of this case under *Younger* [*v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971),] and its progeny, based on concern that federal court proceedings could interfere with “state-initiated abuse and neglect proceedings.” *Jonathan R. v. Justice*, No. 3:19-cv-00710, 2021 WL 3195020, at *5, 8, 14 (S.D. W. Va July 28, 2021), *rev’d* *Jonathan R. I.*, 41 F. 4th 316. We reversed on appeal, holding that neither abstention nor mootness principles precluded federal court review. *Jonathan R. I.*, 41 F.4th at 339–41.

Upon remand, the district court certified Plaintiffs’ proposed General Class and ADA Subclass and denied certification to the two other subclasses. The parties proceeded with extensive document discovery and took a total of forty-five depositions. Trial was scheduled for May 6, 2025.

In July 2024, West Virginia filed a motion for summary judgment. Without resolving that motion, the district court *sua sponte* dismissed the case with prejudice for lack of standing in late February 2025 pursuant to Federal Rule of Civil Procedure 12(h)(3).⁴ *Jonathan R. v.*

³ Plaintiffs tailored the requested injunctive relief to each of the four subclasses. *See* J.A. 247–250. This quoted list encompasses the injunctive relief requested for the General Class, which is the “major class” in this action. J.A. 157.

⁴ The district court committed one of several legal errors by dismissing the case with prejudice. “A dismissal for lack of standing—

Morrissey, 768 F. Supp. 3d 756, 768–70 (S.D. W. Va. 2025). In dismissing the case, the district court neither provided notice to the parties nor gave opportunity for briefing.

The lower court concluded it was powerless under the limitations inherent to Article III of the Constitution to provide the injunctive remedies Plaintiffs sought. *Id.* at 760–61. Plaintiffs, therefore, failed to meet the “redressability” requirement necessary for Article III standing. *Id.* at 759. Furthermore, the district court found that not even declaratory judgment would suffice to establish redressability. *Id.* at 769.

Plaintiffs appeal the *sua sponte* dismissal, seeking reversal and reassignment to a different district court judge. West Virginia urges us to affirm the decision of the district court, either based on the court’s redressability analysis or in the alternative, because Plaintiffs failed to establish injury in fact. West Virginia also filed a conditional cross-appeal to seek class decertification if we reverse.

II.

At its core, this appeal is about the extent to which federal courts may intervene in state institutions to remedy rights violations. The district court tethered its vision of restricted judicial power to Article III standing requirements in its dismissal. Under the doctrine of standing, the Constitution requires plaintiffs to establish that: (1) they have suffered an injury in fact, (2) that injury is “fairly traceable” to the defendant’s actions, and (3) it is

or any other defect in subject matter jurisdiction—must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits.” *S. Walk Broadlands Homeowner’s Ass’n, Inc. v. OpenBand Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013).

“likely” the injury will be “redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (citation modified). We will first address redressability, the grounds on which the district court dismissed this case. Because we find that Plaintiffs’ injuries are redressable, we then turn to West Virginia’s alternative argument raised on appeal that Plaintiffs do not establish an injury in fact.⁵

“We review a district court’s dismissal for lack of standing de novo.” *Bishop v. Bartlett*, 575 F.3d 419, 423 (4th Cir. 2009). We analyze a challenge to a plaintiff’s standing differently “depending on the stage of litigation at which the challenge is brought.” *Overbey v. Mayor of Balt.*, 930 F.3d 215, 227 (4th Cir. 2019). “When standing is challenged on the pleadings,” as here, “we accept as true all material allegations of the complaint and construe the complaint in favor of the complaining party.”⁶ *Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 187 (4th Cir. 2018).

A.

This Court’s test for redressability is exemplified by the two-step inquiry in *Buscemi v. Bell*, 964 F.3d 252, 259 (4th Cir. 2020), which first assesses whether “the court has

⁵ Neither party challenges the notion that Plaintiffs’ injuries are traceable to the state’s actions. Because injury in fact and redressability are the only standing elements challenged, we focus on those two elements. See *Hutton v. Nat’l Bd. of Exam’rs in Optometry, Inc.*, 892 F.3d 613, 621 (4th Cir. 2018).

⁶ The district court framed its conclusion on redressability within Plaintiffs’ Complaint. *Jonathan R.*, 768 F. Supp. 3d at 762 (“Plaintiffs’ Complaint asks this court to do many things.”), 763 (“This court cannot order the relief Plaintiffs seek.”).

the power to grant the plaintiff's requested relief" and second whether "such relief would redress the plaintiff's injury." Both steps require an affirmative response for standing to exist.

The district court ended the *Buscemi* inquiry at step one when concluded it was powerless to "order the relief Plaintiffs seek." *Jonathan R.*, 768 F. Supp. 3d at 763. Yet, despite the district court's assertion that the "Constitution does not permit federal courts to step in and govern" state programs, *id.* at 759, longstanding precedent firmly bestows federal courts with the power to mandate and oversee the reform of state institutions when they systematically deprive citizens of constitutional rights. Upon concluding that the first prong of *Buscemi* is satisfied, we turn to the second prong and ultimately find that Plaintiffs' injuries are redressable.

1.

First, we address whether it is within the power of the courts to grant the requested relief. *See Buscemi*, 964 F.3d at 259. In so doing, we consider and respond to each of the district court's legal errors about the extent of its own injunctive authority as derived from Article III. First, precedent establishes a lengthy history of institutional reform decrees in the federal court system spanning most of the last century. Second, modern, binding authority affirms the use of comprehensive institutional reform. Third, the courts may enact expansive reforms including the judicial authority to direct the use of state funds, provided the court follows the guardrails that the Supreme Court has established to guide the exercise of judicial power. Fourth, Plaintiffs' requests fall well within the boundaries of lawful injunctive relief. The district court erred in its contrary conclusions. As such, we

reverse the district court's finding that Plaintiffs' claims are not redressable.

i.

The federal courts have a lengthy and robust history of granting injunctive relief akin to Plaintiffs' requested remedies. Though the case needs no introduction, *Brown v. Board of Education (Brown I)* resulted in the Supreme Court delivering a sweeping rebuke of widespread Fourteenth Amendment rights violations in segregated school systems. 347 U.S. 483, 495, 74 S. Ct. 686, 98 L. Ed. 873 (1954). At the same time, the Court considered "formulating decrees" as the essential method of remedying these violations. *Id.* One year later, the Supreme Court supplemented its decision with *Brown v. Board of Education (Brown II)*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955), which introduced the machinery of judicial enforcement. The Supreme Court directed "the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases." *Id.* at 301. The Court thus ushered in the modern structural reform injunction. John C. Jeffries, Jr. & George A. Rutherglen, *Structural Reform Revisited*, 95 Calif. L. Rev. 1387, 1408 (2007).

As Amici Law Scholars explain, institutional reform litigation expanded beyond the context of school desegregation in the 1960s. Br. of Amici Curiae Law Scholars in Support of Appellants-Plaintiffs at 5. Plaintiffs increasingly targeted state penal systems for Eighth and Fourteenth Amendment rights violations. A "dramatic proliferation of prison decisions" swept across the United States, with courts frequently declaring entire prison systems to be unconstitutional and placing them under

comprehensive court-ordered reform.⁷ Malcom M. Feeley & Edward L. Rubin, *JUDICIAL POLICY MAKING AND THE MODERN STATE* 39–49 (1998). For example, in *Hutto v. Finney*, 437 U.S. 678, 98 S. Ct. 2565, 57 L. Ed. 2d 522 (1978), the Supreme Court affirmed the district court’s precise policy reform of an Arkansas prison’s rules regarding punitive isolation.⁸ *See id.* at 681, 688 (“[W]e find no error in the inclusion of a 30-day limitation on sentences to punitive isolation as a part of the District Court’s comprehensive remedy.”).

Today, structural reform litigation exists in areas of state administration beyond schools and prisons. A brief survey of recent consent decrees from across the country is illuminating.⁹ In 2018, the Eastern District of Wisconsin ordered the introduction of over a dozen policy reforms for the Milwaukee Police Department to remedy systemic Fourth Amendment rights violations. Order and

⁷ Plaintiffs found initial success in Arkansas, whereafter “federal courts declared prisons in Mississippi, Oklahoma, Florida, Louisiana, and Alabama to be unconstitutional, in whole or part.” Malcom M. Feeley & Edward L. Rubin, *JUDICIAL POLICY MAKING AND THE MODERN STATE* 39–40 (1998). “[F]ederal courts ended up promulgating a comprehensive code for prison management, covering such diverse matters as residence facilities, sanitation, food, clothing, medical care, discipline, staff hiring, libraries, work, and education. The decisions themselves . . . specify many requirements in . . . painstaking or excruciating detail.” *Id.* at 41.

⁸ *Abrogated on other grounds by Dep’t of Agric. Rural Dev. Rural Housing Serv. v. Kirtz*, 601 U.S. 42, 56 (2024).

⁹ “Consent decrees, of course, are injunctions.” *Juan F. ex rel. Lynch v. Weicker*, 37 F.3d 874, 878 (2d Cir. 1994). Although consent decrees may contemplate broader reforms than court-ordered injunctions, this survey demonstrates that there are a multitude of options before the district court to order relief that redresses injuries of the type Plaintiffs allege.

Settlement Agreement, *Collins v. City of Milwaukee*, No. 17-CV-234 (E.D. Wis. July 23, 2018), Dkt. No. 135. In Ohio, plaintiffs achieved judicial reform of state programs for people with disabilities. Opinion and Order Granting Settlement Agreement, *Ball v. DeWine*, No. 2:16-cv-282 (S.D. Ohio Apr. 24, 2020), Dkt. No. 473. Institutional reform litigation has reached child welfare programs as well. Since the 1970s, dozens of cases seeking reform of these programs have culminated in “settlement agreements or consent decrees that have resulted in complete restructurings of the child welfare systems of the affected jurisdictions.” Zach Strassburger, *Crafting Complaints & Settlements in Child Welfare Litig.*, 21 U. Pa. J.L. & Soc. Change 219, 221–22 (2018).

Courts across our sister circuits have had occasion to review lawsuits specifically seeking institutional reform of state foster care systems too. In *B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957, 963 (9th Cir. 2019), the Ninth Circuit considered a class action suit brought by ten foster children alleging violations of their constitutional and statutory rights against Arizona state agencies. The Plaintiffs “[sought] to enjoin, under the Due Process Clause, certain state-wide policies that allegedly expose them to a substantial risk of not receiving certain medical services.” *Id.* at 978 (Adelman, J., concurring in part and dissenting in part). The Court specifically addressed the issue of standing and found that “[i]f those allegedly deficient policies and practices are abated by an injunction, that harm may be redressed by a favorable court decision. [Class Representative] therefore has standing to press the due process claims she brings on behalf of the General Class.” *Id.* at 967.

The Fifth Circuit similarly considered a class action claim brought by foster children in *M.D. ex rel.*

Stukenberg v. Abbott, 907 F.3d 237 (5th Cir. 2018). There, the circuit court concluded it was a “responsibility” of the federal courts to “issu[e] permanent injunctions mandating institutional reform.” *Id.* at 271. Though the court ultimately modified several measures within the lower court’s “expansive injunction,” *id.*, it agreed “remedial action [was] appropriate” in the form of injunctive relief. *Id.* at 272. It subsequently approved several of the measures imposing major policy change on the state’s Department of Family Protective Services. *Id.* at 273, 276.

ii.

The previous section enumerates numerous examples of federal courts entertaining cases calling for institutional reform and entering orders providing relief for plaintiffs. Yet, the lower court would have us assume most of these efforts are unconstitutional. To the contrary, this Court and the Supreme Court continue to affirm the power of the federal courts to reform state institutions.

The lower court declares that “federal courts ‘should not be in the business of administering institutions.’” *Jonathan R.*, 768 F. Supp. 3d at 763 (quoting *Matherly v. Andrews*, 859 F.3d 264, 276–77 (4th Cir. 2017)). Though the court invokes our Circuit’s decision in *Matherly* to cast doubt on the court’s power to redress Plaintiffs’ injuries, contextualizing *Matherly* reveals the case does not in fact question the power of federal courts to order institutional reform. In *Matherly*, the plaintiff asked this Court to impose a legal presumption of “punitive conditions” when prisons confine civil detainees in conditions similar to those of their criminal counterparts. 859 F.3d at 276. We expressed concern, however, that imposing a *presumption* to this effect would improperly haul prison administrators into court “to justify their every move.” *Id.*

at 275–76. This line in *Matherly*, therefore, served to protect against judicial encroachment into everyday activities of state officials. *See id.* It did not, however, provide a general rule that courts have no role in overseeing and mandating reform if and when they identify that systemic rights violations are occurring.

In contrast with this view, we have repeatedly affirmed the use of injunctive relief in institutional reform litigation. In *Small v. Hunt*, 98 F.3d 789, 792 (4th Cir. 1996), we reviewed a 1985 consent decree ordering improvement of prison conditions in North Carolina. We affirmed the district court’s modification of the decree to ensure continued compliance with increased prison standards while simultaneously adapting it to the state’s financial needs and changing prison population. *Id.* at 796–97, 799. Nine years later, in *Thompson v. United States Department of Housing and Urban Development*, 404 F.3d 821, 824 (4th Cir. 2005), we considered an appeal regarding a lower court’s “Consent Decree [that] impos[ed] numerous obligations on the [Housing Authority of Baltimore City] and HUD.” At issue was not merely whether the district court was within its authority to issue such a decree, but rather whether it had the power to modify the decree in light of violations. *Id.* at 827. We answered affirmatively. *Id.* at 833–34. Our vision of the federal judge as a “manager” of institutional reform in these cases was clear:

In overseeing broad institutional reform litigation, the district court becomes in many ways more like a manager or policy planner than a judge. Over time, the district court gains an intimate understanding of the workings of an institution and learns what specific changes are needed within

that institution in order to achieve the goals of the consent decree.

Id. at 827 (quoting *Navarro-Ayala v. Hernandez-Colon*, 951 F.2d 1325, 1338 (1st Cir. 1991)).

We have also specifically considered the issue of redressability as applied to a class action suit filed by children seeking declaratory and injunctive relief against a local juvenile detention facility. *See Doe 4 ex rel. Lopez v. Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d 327, 334 (4th Cir. 2021). “Because [plaintiffs’] proposed remedy focuse[d] on the treatment and services provided by [the juvenile center],” we held, the child class’s requested relief was “likely to redress their injuries.” *Id.* at 336. In each of these cases, this Court approved district judges’ power to impose injunctive relief in institutional reform contexts.

But don’t just take it from us. Contrary to the lower court’s assertion, the Supreme Court itself has also affirmed federal courts’ fashioning of judicial remedies to unconstitutional conduct by state institutions. In *Milliken v. Bradley*, 433 U.S. 267, 269, 97 S. Ct. 2749, 53 L. Ed. 2d 745 (1977), the Court considered “whether a District Court can, as part of a desegregation decree, order compensatory or remedial educational programs for schoolchildren who have been subjected to past acts of de jure segregation.” Concluding that “the decree . . . was aptly tailored to remedy the consequences of the constitutional violation,” *id.* at 287, the Court found no “reason to believe that the broad and flexible equity powers of the [lower] court were abused in this case,” *id.* at 288.

More recently, in *Brown v. Plata*, 563 U.S. 493, 499–500, 131 S. Ct. 1910, 179 L. Ed. 2d 969 (2011), overcrowded prison conditions in California prompted two suits by

prisoners alleging violations of their Eighth Amendment rights. After two district courts found that the prison conditions violated plaintiffs' rights, the courts granted the separate plaintiffs' requests "to convene a three-judge court empowered under the [Prison Litigation Reform Act] to order reductions in the prison population." *Id.* at 509. The cases were consolidated for the panel, which ordered "the State to reduce overcrowding in its prisons" and set a prison population target to achieve this outcome. *Id.* at 500–01. The Supreme Court affirmed this injunctive remedy, acknowledging that "[c]ourts have substantial flexibility when making these judgments." *Id.* at 502, 538. "[T]he scope of a district court's equitable powers," the Court explained, "is broad, for breadth and flexibility are inherent in equitable remedies." *Id.* at 538 (internal quotation marks omitted). The federal judiciary not only holds the power, but a duty, to implement, oversee, and administer reform of state institutions that violate the federal rights of citizens. *Id.* at 511 ("Courts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration."); *id.* at 542 ("A court that invokes equity's power to remedy a constitutional violation by an injunction mandating systemic changes to an institution has the continuing duty and responsibility to assess the efficacy and consequences of its order."). Such principles lie in stark contrast with the lower court's assertion in this case that "the Supreme Court has removed district courts from managerial oversight of state institutions." *Jonathan R.*, 768 F. Supp. 3d at 764 n.3. Ultimately, nationwide precedent since *Brown I* provides an unambiguous legal reality: that the federal courts can and must remedy systemic rights violations through comprehensive injunctive reform of state institutions.

iii.

We next turn to the permissible breadth and scope of institutional reform. The intervention envisioned in these cases is expansive. The *Plata* Court acknowledged that in complex cases not “susceptible of simple or straightforward solutions[,] . . . [o]nly a multifaceted approach aimed at many causes . . . will yield a solution.” 563 U.S. at 525–226. “Courts faced with the sensitive task of remedying unconstitutional prison conditions must consider a range of available options, including appointment of special masters or receivers and the possibility of consent decrees.” *Id.* at 511. The Court ultimately affirmed the lower court’s order to substantially reduce the state’s prison population within two years. *Id.* at 545. In *Hutto*, the district court significantly altered Arkansas state prison policy when it limited “the number of men that could be confined in one cell, required that each have a bunk, discontinued the ‘grue’ diet, and set 30 days as the maximum isolation sentence.” 437 U.S. at 684. The Supreme Court affirmed. *Id.* at 700.

Comprehensive policy reform is available in other contexts of state administration as well. In *Swann v. Charlotte-Mecklenburg Board of Education*, the Supreme Court upheld the implementation of a comprehensive desegregation plan devised by a court-appointed expert, despite the plan’s potentially onerous requirements. 402 U.S. 1, 8, 20, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971). “The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.” *Id.* at 28.

In the child welfare context, the Second Circuit in *Juan F.* affirmed the lower court's 120-page "comprehensive, multifaceted consent decree." 37 F.3d at 876, 878. "Implementation required development of a manual for each section of the decree." *Id.* at 876. "These manuals [comprised] guidelines and handbooks that set forth directives and details concerning the procedures, timetables, additional staffing requirements, funding requirements, and other matters necessary to implement and monitor the mandates in the consent decree." *Id.* The lower court then appointed a neutral monitor to oversee the reform process. *Id.* And in *M. D. ex rel. Stukenberg*, the Fifth Circuit specifically approved injunctive requirements for the state agency charged with administering foster care to "track caseloads," "report [caseload] figures to the monitor(s)[] on a quarterly basis," and "ensure statewide implementation of . . . [a] training model." 907 F.3d at 273.

The district court next claims it "cannot move state funds . . . to enact statewide reform." *Jonathan R.*, 768 F. Supp. 3d at 763. But the Supreme Court has again suggested otherwise. The Court's decision in *Plata* addressed and rejected the argument made by the lower court in the case before us today:

Expanding such community-based measures may require an expenditure of resources by the State to fund new programs or expand existing ones. The State complains that the order therefore requires it to "divert" savings that will be achieved by reducing the prison population and that setting budgetary priorities in this manner is a "severe, unlawful intrusion on the State authority." Brief for Appellants

55. This argument is not convincing. The order does not require the State to use any particular approach to reduce its prison population or allocate its resources.

563 U.S. at 537 n.12. This clarifies that relief that requires state expenditures is permissible and does not represent an improper intrusion by the courts. *See id.* Though it is true “[f]ederalism concerns are heightened when, as in these cases, a federal court decree has the effect of dictating state or local budget priorities,” *Horne v. Flores*, 557 U.S. 433, 448, 129 S. Ct. 2579, 174 L. Ed. 2d 406 (2009), there is no question a court may generally order the “payment of state funds . . . as a necessary consequence of compliance.” *Milliken*, 433 U.S. at 289 (quoting *Edelman v. Jordan*, 415 U.S. 651, 668, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974)).

To be sure, there are outer limits to the scope of the institutional reform power. As the district court notes, it is true the federal judiciary does not possess “some ‘amorphous’ power to supervise ‘the operations of government.’” *Jonathan R.*, 768 F. Supp. 3d at 763 (quoting *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 40, 142 S. Ct. 522, 211 L. Ed. 2d 316 (2021)). At the same time, courts still retain the power to protect “the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action.” *Raines v. Byrd*, 521 U.S. 811, 829, 117 S. Ct. 2312, 138 L. E. 2d 849 (1997) (quoting *United States v. Richardson*, 418 U.S. 166, 192, 94 S. Ct. 2940, 41 L. Ed. 2d 678 (1974) (Powell, J., concurring)). Acknowledging this tension, the *Brown II* Court declared that “[i]n fashioning and effectuating the [reform] decrees, the courts will be guided by equitable principles.” 349 U.S. at 300. The Supreme Court has since provided additional detail on

what these principles entail in order to balance the structural reform power with the interests of federalism.

First, “the nature of the . . . remedy is to be determined by the nature and scope of the constitutional violation.” *Missouri v. Jenkins*, 515 U.S. 70, 89, 115 S. Ct. 2038, 132 L. Ed. 2d 63 (1995) (quoting *Milliken*, 433 U.S. at 280). This limitation may be referred to as a “tailoring principle.” See Br. of Amici Curiae Law Scholars in Support of Appellants-Plaintiffs at 8. For example, in the context of segregated school districts, “[t]he proper response to an intradistrict violation is an intradistrict remedy.” *Jenkins*, 515 U.S. at 90. This principle ensures courts may pursue expansive remedies only when necessary, without overstepping their Article III powers.

A second limiting principle requires district judges to consider state and local interests when crafting decrees. The Supreme Court in *Milliken* ordered that “federal courts in devising a remedy must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution.” 433 U.S. at 280–81. This principle was later affirmed in *Rufo v. Inmates of Suffolk County Jail* in the context of decree modification. See 502 U.S. 367, 392, 112 S. Ct. 748, 116 L. Ed. 2d 867 (1992) (“[T]he public interest and [c]onsiderations based on the allocation of powers within our federal system . . . require that the district court defer to local government administrators . . . to resolve the intricacies of implementing a decree modification.” (alteration in original) (citations omitted)). Although courts may order reform that implicates state funds, such finances “are a legitimate concern of government defendants in institutional reform litigation and therefore are appropriately considered in tailoring a consent decree modification.” *Id.* at 392–93. It follows that courts must

also consider the state's financial constraints in fashioning the original decree as well.

Finally, a decree cannot always bind parties forever. “Federal Rule of Civil Procedure 60(b)(5) permits a party to obtain relief from a judgment or order if, among other things, ‘applying the judgment or order prospectively is no longer equitable.’” *Horne*, 557 U.S. at 447 (quoting Fed. R. Civ. P. 60(b)(5)) (citation modified). “The party seeking relief bears the burden of establishing that changed circumstances warrant relief” and district courts have a duty to modify accordingly. *Id.* The Supreme Court in *Horne* was acutely aware of the role played by Rule 60(b)(5) in guiding the formation of consent decrees:

Rule 60(b)(5) serves a particularly important function in what we have termed “institutional reform litigation.” . . . For one thing, injunctions issued in such cases often remain in force for many years, and the passage of time frequently brings about changed circumstances—changes in the nature of the underlying problem, changes in governing law or its interpretation by the courts, and new policy insights—that warrant reexamination of the original judgment.

Id. at 447–48 (citation omitted). Accordingly, “courts must take a flexible approach to Rule 60(b)(5) motions addressing such decrees.” *Id.* at 450 (citation omitted). This third limiting principle, therefore, ensures that a decree would not “place West Virginia’s foster care system under indefinite federal control” as the district court fears. *Jonathan R.*, 768 F. Supp. 3d at 760. Taken together, all these principles create guardrails that

guarantee the lower court need not “step beyond constitutional limits.” *Contra id.*

iv.

Having explained this judicial power and its guardrails, we may now determine whether it is within the district court’s authority to implement Plaintiffs’ requests for injunctive relief.¹⁰ Their requests are neither inconsistent with nor anomalous to the many forms of structural reform imposed on state institutions in the last eight decades. Plaintiffs’ core requests are as follows: needs assessments for foster care placement, time restrictions on evaluations and placements for new entrants into foster care, imposition of a new child-per-caseworker ratio, development of an adequate statewide plan for retaining foster homes, improvement of services for foster children with disabilities, and the institution of a neutral monitor. Though such measures may implicate state expenditures, Plaintiffs do not desire for the court to “dictate how the agency should spend state funds or other resources to meet its obligations.” Reply Br. of Appellants-Plaintiffs at 16.

West Virginia relies on non-binding “principles”—which it pulls from dissenting opinions—to argue these measures would make the district court “indistinguishable[] from a DHS official,” Br. of Defendants-Appellees at 33 (quoting *Plata*, 563 U.S. at 555 (Scalia, J., dissenting)), and that “the district court

¹⁰ The district court did not challenge the notion that it has the power to issue a declaration that a state agency’s actions violate the Constitution (only that such a declaration as applied to this case would not alleviate their harm). See *Jonathan R.*, 768 F. Supp. 3d at 762–63 (citing Plaintiffs’ injunctive requests, but not their declaratory relief request, as outside the scope of the court’s authority), 769 (explaining that a declaration “fails to redress Plaintiffs’ injuries.”).

would also end up far afield from ‘what [it] [is] good at: applying precedent, interpreting statutes, and exercising traditional equitable powers.’” *Id.* at 34 (quoting *Doe 4 ex rel. Lopez*, 985 F.3d at 347 (Wilkinson, J., dissenting)). But these arguments, though perhaps valid public policy concerns, do not represent a legal bar for redressability. Plaintiffs’ requests invoke the court’s equity power and are similar to the many forms of institutional reform ordered by courts since *Brown I.* An “order . . . is not overbroad because it encompasses the entire . . . system.” *Plata*, 563 U.S. at 532. “Nor is the order overbroad because it limits the State’s authority to run its [institutions].” *Id.* at 533.

Should the lower court ultimately grant the requested relief, it would still “leave[] much to the State’s discretion,” *id.*, and in no way itself become a *de facto* state official. West Virginia also expresses concern about the prospect of the court maintaining constant oversight of a complex state system. However, Plaintiffs “seek the appointment of a neutral Monitor to ‘conduct record reviews as necessary to ensure compliance’ with the ultimate decree” to alleviate this very burden. Opening Br. of Appellants-Plaintiffs at 20 (quoting J.A. 251). Despite West Virginia’s policy concerns, “the remedy does not exceed the violation if the remedy is tailored to cure the condition that offends the Constitution.” *Milliken*, 433 U.S. at 282 (internal quotation marks omitted). Given Plaintiffs’ allegations of systemic rights violations of one of West Virginia’s most vulnerable groups, we are confident the district court has the legal authority and guiding principles to fashion a comprehensive decree incorporating any and all of these requests, should Plaintiffs prevail. Consequently, it is easy to conclude that “the court has the power to grant the plaintiff’s requested relief.” *Buscemi*, 964 F.3d at 259. Any necessary tailoring

of their requested relief is better left for “after a determination of the merits of [their] claim[s].” *Id.* at 262.

2.

Having established the court’s lawful power to provide redress, we next assess whether “such relief would redress [Plaintiffs’] injury” under the second prong of the *Buscemi* test. *See id.* The district court ruled that the requested declaratory relief would not provide a remedy, although it suggested that Plaintiffs’ request for injunctive relief may suffice (but it concluded the court lacked the authority to grant it). *Jonathan R.*, 768 F. Supp. 3d at 768–69. West Virginia contends that neither form of relief would be adequate. We disagree and conclude that both forms of relief would effectively redress Plaintiffs’ injuries.

It is well established that both declaratory and injunctive relief may provide redress in the right circumstances. This Court has held that “[t]he removal of even one obstacle to the exercise of one’s rights, even if other barriers remain, is sufficient to show redressability.” *Sierra Club v. U.S. Dep’t of Interior*, 899 F.3d 260, 285 (4th Cir. 2018). Furthermore, plaintiffs need only demonstrate their “injury would *likely* be redressed by judicial relief.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021) (emphasis added) (quoting *Lujan*, 504 U.S. at 560–61). Both the requested injunctive and requested declaratory relief satisfy the second prong of the *Buscemi* test. *See* 964 F.3d at 259.

First, Plaintiffs’ requested injunctive relief would redress their alleged injuries. “When an injury . . . is occurring, and a plaintiff offers good reason to think it will continue[,], he can seek redress prospectively through an

injunction.” *Wells v. Johnson*, 150 F.4th 289, 300 (4th Cir. 2025). Here, Plaintiffs allege ongoing injuries that predate the filing of this suit in 2019 and the district court itself acknowledged the dismal current state of the foster care system in its dismissal this year. *See Jonathan R.*, 768 F. Supp. 3d at 759–60 (“The filings paint a grim picture of a dysfunctional foster care system.”). The allegations of long-term, widespread neglect offer sufficient reason to believe such problems will continue. Plaintiffs accordingly request a variety of injunctive measures that are likely to alleviate at least some of their suffering.

West Virginia argues that Plaintiffs have failed to show with sufficient specificity how any requested relief measures would remove a single obstacle to the proper exercise of their rights. We agree with Plaintiffs, however, that this contention “defies common sense.” Reply Br. of Appellants-Plaintiffs at 21. Measures reducing caseloads for workers, enforcing strict time limits on initial evaluations, and requiring the state to hire more employees if necessary are all likely to result in quicker foster placement as well as greater attention and treatment for each child in the system. This in turn would directly alleviate at least some of the alleged constitutional and statutory deprivations the children have suffered, such as those affecting their “right[s] to services necessary to prevent unreasonable risk of harm” and “right[s] to be free from unnecessary institutionalization.” J.A. 238–39.

It is telling the district court itself addressed this argument in its dismissal. Though it believed its lack of jurisdiction foreclosed the redressability inquiry at step one of the *Buscemi* test, it correctly paraphrased the inquiry at step two: “is that relief likely to redress plaintiff’s injuries?” *Jonathan R.*, 768 F. Supp. 3d at 768.

The court acknowledged that, if it had the remedial power we believe it does, it must find “that the answer to the second question is . . . yes.” *Id.* We agree with the district court’s assessment and conclude that the requested injunctive relief would redress Plaintiffs’ injuries.

Second, Plaintiffs also seek declaratory relief, which we find separately satisfies the second prong of the *Buscemi* test. *See* 964 F.3d at 259. Though the district court correctly acknowledged the potential efficacy of injunctive relief, it erred when it concluded “a declaration that the actions of DHS are unconstitutional . . . fails to redress Plaintiffs’ injuries.” *Jonathan R.*, 768 F. Supp. 3d at 769. We need only look to our recent decision in *Wells* to affirm the notion that declaratory judgment may independently confer standing in these circumstances. *See* 150 F.4th at 301.

“To satisfy [Article III’s case-or-controversy] requirement—at least as for redressability—a declaratory judgment must ‘affect the rights of litigants in the case.’” *Id.* (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401, 95 S. Ct. 2330, 45 L. Ed. 2d 272 (1975)). Such judgments have the inherent capability to satisfy Article III through their “preclusive effect” on lawsuits. *Id.* However, “to show that a declaration redresses an injury, the plaintiff must show not *merely* that the judgment carries some preclusive effect—for of course it does—but also that this preclusion is at least ‘likely’ to produce a litigation-related benefit.” *Id.* at 302 (quoting *Lujan*, 504 U.S. at 561).

It is thus true that the “psychic satisfaction” derived from a declaratory judgment may not independently confer standing. *See Jonathan R.*, 768 F. Supp. 3d at 769. Our decision in *Wells*—published after the parties completed briefing for this appeal—requires that a

plaintiff establish that a declaration “will bind the party he would sue” and “must also offer reason to think the future suit where he wants to use the preclusion will come.” 150 F.4th at 303. Because *Wells* was not available when Plaintiffs briefed this argument, and because the district court did not provide any opportunity for the parties to brief this issue before it, we will not hold Plaintiffs to a strict requirement to specifically describe a future suit and “reason to think” it will come. Plaintiffs understand and have already articulated that “if a defendant refuses to comply with a declaratory judgment, plaintiffs may return to federal court to obtain an injunction.” Reply Br. of Plaintiffs-Appellants at 32 n.14. And in our view of the record, there is ample evidence to suggest “both that future litigation is likely to happen (at least absent the declaration sought) and that the declaration’s preclusive effect will likely help [Plaintiffs] in that litigation.” *See Wells*, 150 F.4th at 302.

The lengthy history of litigation and the nature of Plaintiffs’ allegations are again insightful. Plaintiffs include a vast general class and a sub-class of particularly vulnerable children in the custody of the state who have alleged ongoing and extensive harm. Even before the suit was filed in 2019, the U.S. Department of Justice published a critique of the dysfunctional system.¹¹ There is quite clear “reason to think [a] future suit . . . will come” absent systemic, court-mandated change now. *See Wells*, 150 F.4th at 303. This alone satisfies *Wells*’ standard for

¹¹ Plaintiffs reference the Department of Justice’s 2019 report in their Complaint. *See* J.A. 231–31. We are not precluded in our review of the complaint from taking notice of items in the public record such as published reports from the Department of Justice. *See Papasan v. Allain*, 478 U.S. 265, 268 n.1, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986); *Nat’l Ass’n of Immigr. Judges v. Owen*, 139 F.4th 293, 305 (4th Cir. 2025).

an “offensive” declaratory judgment. *See id.* A declaration that West Virginia has violated the rights of these children, at minimum, is likely to assist future litigation seeking more comprehensive reform should it not be granted right now. This goes beyond psychic satisfaction—it could “put[] state officials on notice that their conduct is illegal” and “it can incentivize them to comply to with the law and deter further illegal conduct.” Opening Br. of Appellants-Plaintiffs at 42. Had this suit been limited to requests for declaratory relief, Plaintiffs would have still met this Court’s standard for redressability.

B.

Having confirmed Plaintiffs’ requests are redressable, we next address West Virginia’s argument that Plaintiffs did not suffer an injury in fact.¹² We again disagree and find that Plaintiffs’ pleadings sufficiently demonstrate an ongoing injury.

Because this analysis remains part of the standing inquiry and is based on the pleadings, we again “accept as true all material allegations of the complaint and construe the complaint in favor of the complaining party.” *S. Walk Broadlands Homeowner’s Ass’n, Inc.*, 713 F.3d at 181–82. Furthermore, “[i]n evaluating a class action complaint, we analyze standing based on the allegations of personal injury made by the named plaintiffs.” *Hutton*, 892 F.3d at 620. However, to establish standing for a class as a whole,

¹² The district court did not address injury in its dismissal and failed to provide notice and opportunity for briefing, raising questions about which arguments may be preserved for appeal. *See infra* note 18. For the purposes of this appeal, we proceed with the assumption that West Virginia’s injury argument has been preserved on appeal given the lack of opportunity for briefing before the district court.

we need not examine the injuries alleged by *all* Named Plaintiffs. For purposes of justiciability, the Constitution merely requires “[a]t least one plaintiff have standing to seek each form of relief requested in the complaint.” *Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 439, 137 S. Ct. 1645, 198 L. Ed. 2d 64 (2017); *see also Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006) (“[T]he presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement.”).

The Fourth Circuit has applied this rule to named plaintiffs in class action contexts. *See Kenny v. Wilson*, 885 F.3d 280, 287 (4th Cir. 2018) (citing *Town of Chester*, 581 U.S. at 439). In *Kenny*, we held that “at least some of the named plaintiffs” in a class action sufficiently pleaded injury (and thus established standing), allowing the case to proceed. *Id.* at 281. And in *Carolina Youth Action Project v. Wilson*, 60 F.4th 770, 778 (4th Cir. 2023), we similarly considered the threshold rules for standing as applied to a class of four minor plaintiffs. There, “[w]e conclude[d] two of the named plaintiffs . . . between them have standing to seek each form of relief requested in the current complaint and granted by the district court. Accordingly, we need not consider whether the other plaintiffs have standing or if their claims are otherwise justiciable.” *Id.* (first citing *Town of Chester*, 581 U.S. at 439; and then citing *Rumsfeld*, 547 U.S. at 52 n.2). Because we have already established redressability and traceability for the Plaintiff class as a whole, we need only determine whether a single Named Plaintiff in this case has suffered a legal injury in fact.

“To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or

imminent, not conjectural or hypothetical.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016) (citation modified). An injury sufficient for standing may take the form of “an injury to one’s constitutional rights.” *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024). To obtain prospective relief (such as an injunction), as here, a plaintiff must establish either an “ongoing or future injury in fact.” *Abbott v. Pastides*, 900 F.3d 160, 176 (4th Cir. 2018) (quoting *Kenny*, 885 F.3d at 287); *see also Deal*, 911 F.3d at 189 (differentiating ongoing from future injuries).

There is no dispute on appeal that Plaintiffs have alleged past physical and psychological injuries to their constitutional and statutory rights with sufficient specificity. In denying Defendants’ motion to dismiss, the district court relied on Plaintiffs’ allegations that the state placed foster children in locations “known to be dangerous.” *Jonathan R. v. Justice*, No. 3:19-cv-00710, 2023 WL 184960, at *6 (S.D. W. Va. Jan. 13, 2023). Take, for example, Named Plaintiff Anastasia M., who alleges that West Virginia placed her “in a facility with a history of child molestation, sexual battery, and sexual assault by patients and employees alike.” *Id.* (citing J.A. 167). Or take the lead Named Plaintiff, Jonathan R, who alleges that after he entered the custody of West Virginia DHHR, the agency shuffled him between multiple abusive adoptive homes and out-of-state institutional care facilities through his early adolescence, failing to provide him with needed mental treatment. Jonathan specifically alleges he suffered “emotional and psychological harm” as a result of the Department’s deliberate indifference toward his psychiatric needs. J.A. 165. Named plaintiff Gretchen C. describes a similar experience: DHHR failed to secure a foster placement for her for four years, and the

substandard conditions in the out-of-state institutions where she has been placed have further exacerbated her emotional harm. All three of these Named Plaintiffs remained in the custody of the state at the time of the Complaint’s filing. We agree with Plaintiffs that these allegations reflect concrete, particularized, and actual injuries.

West Virginia, however, contends Plaintiffs have not alleged future injuries capable of sustaining injunctive relief. *See* Br. of Defendants-Appellees at 52–53. But past injuries with ongoing harm, as opposed to threatened future injuries, nevertheless suffice. One of the State’s cited authorities, *O’Shea v. Littleton*, 414 U.S. 488, 495–96, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974), holds as much, explaining that “[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.” Indeed, Plaintiffs’ allegations show these effects. The Complaint is not limited to isolated incidents of past abuse—it instead cites empirical evidence about ongoing staffing challenges, appalling abuse rates, inadequate numbers of foster placements, and deeply inconsistent attention to children’s needs, all of which culminate in direct physical and psychological harm to foster children.¹³ *See* J.A. 149–53. Plaintiffs describe

¹³ West Virginia presents a swathe of “contemporaneous data” on appeal alleging system improvement since 2019 and argues this undermines Plaintiffs’ allegations of ongoing injury. Br. of Defendants-Appellees at 9–15, 55. This information, however, is not relevant to this standing inquiry, where, as here, the district court dismissed for lack of standing based on the pleadings. A facial challenge to subject matter jurisdiction examines the Complaint, “and the defendant’s challenge must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction.” *Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017) (quoting *Kerns v. United*

how the state “routinely fails to ensure children achieve placement stability,” J.A. 152, and that the agency’s “actions and inactions have caused chronic and system-wide failures.” J.A. 153. Furthermore, from the perspective of the pleadings, the foster care children comprising the Named Plaintiffs remain in the custody of the state, still susceptible to harm caused by continuing dysfunction.

For example, in describing the deprivations suffered by Jonathan R., the Complaint states: “[a]s a direct result of Defendants’ actions and inactions, Jonathan has suffered and continues to suffer emotional and psychological harm.” J.A. 165. In his current foster placement, Jonathan also alleges the state “has failed to provide the family with any services or financial supports.” J.A. 164. Gretchen C.’s allegations further provide reason to believe these injuries are ongoing. At the time of the Complaint, Gretchen was actively residing in an out-of-state institution. Having been diagnosed with several mental disorders, “[s]he has repeatedly asked her caseworker for one-on-one therapy, but DHHR has failed to arrange it.” J.A. 180. Furthermore, the Complaint specifically states “DHHR has no permanency plan in place for Gretchen, and DHHR is not providing her with independent living skills as an alternative to permanency,” all of which continue to cause her harm. J.A. 182. The systemic failures described in the pleadings demonstrate continuing, present, and adverse effects on Plaintiffs—these are *ongoing* injuries.

States, 585 F.3d 187, 192 (4th Cir. 2009)). In such challenges, “[w]e will . . . not look beyond the complaint and documents incorporated by reference therein.” *Wikimedia Found. v. Nat’l Sec. Agency*, 857 F.3d 193, 213 (4th Cir. 2017). Plaintiffs correctly note the parties may litigate this new evidence on summary judgment or at trial.

West Virginia also cites *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983), to argue Plaintiffs have failed to show imminent future harm. In *Lyons*, the Supreme Court denied standing to a plaintiff seeking injunctive relief after experiencing a police chokehold because he failed to show “sufficient likelihood that he [would] again be wronged in a similar way.” *Id.* at 111. *Lyons*, however, differs from the present case precisely because that plaintiff’s alleged injury was a singular incident in the past. *See id.* at 97–98. In contrast, the pleadings here allege uncured systemic policy failures that place children in positions where they suffer ongoing constitutional and statutory rights deprivations. We need not “import the imminence requirement into cases involving ongoing injuries.” *See Deal*, 911 F.3d at 188. A demonstration of ongoing injury alone is sufficient to establish injury in fact. *Id.* at 188–89 (“The Supreme Court has always described and treated the two concepts—actual, ongoing injury vs. imminent injury—as disjunctive.”). We therefore find that these allegations reflect both “actual” and “ongoing” injuries to, at minimum, several of the named plaintiffs, and are sufficient for prospective relief. *See Deal*, 911 F.3d at 188.

* * *

In conclusion, the ongoing injuries suffered by at least one Named Plaintiff are redressable by the district court, and Plaintiffs’ requests are indeed likely to provide relief. Neither party disputes the notion that the injuries are traceable to West Virginia’s actions. Plaintiffs may seek the requested prospective forms of relief to redress their injuries, including injunctive and declaratory relief. Plaintiffs accordingly have standing.

III.

We turn next to Plaintiffs' request to reassign the case to a new district judge. Despite the lower court's incorrect interpretation of its own power, reassignment is not warranted here.

"When we remand a case, we may reassign it to a different judge when 'the appearance of fairness and impartiality is best advanced by reassignment.'" *United States v. McCall*, 934 F.3d 380, 384 (4th Cir. 2019) (quoting *United States v. Neal*, 101 F.3d 993, 1000 n.5 (4th Cir. 1996)). However, "[a]bsent a claim of bias"—not present in this case—"reassignment is appropriate in 'unusual circumstances where both for the judge's sake and the appearance of justice an assignment to a different judge is salutary and in the public interest.'" *United States v. North Carolina*, 180 F.3d 574, 582–83 (4th Cir. 1999) (emphasis added) (quoting *United States v. Guglielmi*, 929 F.2d 1001, 1007 (4th Cir. 1991)). To determine whether reassignment is warranted we look to the following factors:

- (1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.

Guglielmi, 929 F.2d at 1007 (quoting *United States v. Robin*, 553 F.2d 8, 10 (2d Cir. 1977)), *superseded by statute*

on other grounds as recognized in *United States v. Pridgen*, 64 F.3d 147, 149 n.3 (4th Cir. 1995)). Despite the district court’s legal error, none of the relevant criteria applied suggest the public interest would be better served by reassignment.

First, we find no indication that the district judge would have substantial difficulty setting aside previously expressed erroneous views. Plaintiffs point toward our previous decision in *Jonathan R. I* as evidence of the lower court’s continued “lack of respect for precedent.” Opening Br. of Appellants-Plaintiffs at 46. But our ruling in that case, though clearly preventing dismissal on mootness and abstention grounds, did not preclude the district court from dismissing the case *sua sponte* for lack of standing, even if that dismissal was legally incorrect.¹⁴

Plaintiffs also cite the district judge’s “firm and long-held beliefs about the impropriety of institutional reform of state institutions.” Opening Br. of Appellants-Plaintiffs at 47. Though the district judge expressed his “long-held concern that courts lack the kind of power sought by

¹⁴ In *Jonathan R. I*, we wrote that “principles of federalism not only do not preclude federal intervention, they compel it.” 41 F.4th at 321. This conclusion, however, remained limited to the holding that mootness did not defeat the plaintiffs’ standing and that abstention doctrines did not apply. *See id.* at 325, 339–40. This opinion did not address redressability, an essential element of standing. The Supreme Court has confirmed that all elements of standing must survive through each successive stage of litigation. *Lujan*, 504 U.S. at 561. Furthermore, we have held that “courts are free to raise the question of subject matter jurisdiction *sua sponte* at any time.” *Williams v. Jeep Sales & Serv. Co.*, 161 F.3d 5, 1998 WL 614438, at *2 (4th Cir. Sept. 10, 1998) (unpublished table decision). The district court here was well within its power to dismiss the case for lack of standing absent pursuant motion from either party, even if this took place two months before trial was scheduled.

Plaintiffs in this case,” *Jonathan R.*, 768 F. Supp. 3d at 769, he still sufficiently engaged in “thoughtful analysis” despite his legal error, *see id.* at 767–70 (citing his legal authority to dismiss the case and discussing other courts’ treatment of foster care litigation). Our conclusion under similar circumstances in *North Carolina* lends further support. *See* 180 F.3d at 582–83. There, we “[found] no indication that the judge could not put [previously expressed] views out of his mind,” even though the district judge “harshly criticized the terms of the consent decree” governing reform of discriminatory hiring practices within the state’s Department of Corrections and “expressed doubt regarding the existence of subject matter jurisdiction.” *Id.* at 583; *see also Steves & Sons, Inc. v. JELD-WEN, Inc.*, 988 F.3d 690, 729 (4th Cir. 2021) (weighing the complexity of the case and whether reassignment would waste judicial resources and concluding that though we disagreed with some of the lower court’s rulings, they nonetheless reflected thoughtful analysis). Similarly, there is no indication the court has previously been, or will be, unable to adjust its legal views in accordance with this Court’s mandate.¹⁵

¹⁵ The district court’s failure to provide notice of its consideration of *sua sponte* dismissal and opportunity for briefing, however, raises concerns. It is a bright-line rule in this Circuit that *sua sponte* dismissals based on a plaintiff’s failure to state a claim require “notice and an opportunity to amend the complaint or otherwise respond.” *Robertson v. Anderson Mill Elementary Sch.*, 989 F.3d 282, 291 (4th Cir. 2021) (quoting *Chute v. Walker*, 281 F.3d 314, 319 (1st Cir. 2002)). This Court has not specifically addressed whether this mandatory procedure extends to dismissal pursuant to lack of subject matter jurisdiction. The Seventh Circuit, however, warned that “*sua sponte* dismissals without prior notice or opportunity to be heard are hazardous” even in the subject matter jurisdiction context. *See Frey v. E.P.A.*, 270 F.3d 1129, 1132 (7th Cir. 2001). Though we need not

Second, reassignment is also not necessary to preserve the appearance of justice. The district judge has not shown any unfair animus toward Plaintiffs in his dismissal—to the contrary, he openly acknowledged the allegations of their plight. It is true the district judge expressed policy preferences when he questioned the efficacy of institutional reform litigation. But his legal basis for the dismissal (his interpretation of the power of the federal judiciary and Plaintiffs’ standing) does not present a “suspicion of partiality.” *Cf. United States v. Nicholson*, 611 F.3d 191, 217 (4th Cir. 2010) (quoting *Guglielmi*, 929 F.2d at 1007) (reassigning the case on remand to preserve the appearance of justice).

Third, reassignment would certainly waste judicial resources, especially “in light of the lengthy history of this case.” *See North Carolina*, 180 F.3d at 583 (declining to reassign the case after, *inter alia*, over a year of settlement discussions and summary judgment briefing). After all, this case is nearly ready for trial, so a new judge would be forced to become acquainted with nearly six years of litigation material in short order. Because none of the *McCall* factors support reassignment in this case, we decline to do so.

IV.

We finally turn to West Virginia’s cross-appeal seeking class decertification. Because of the effect of our reversal of the district court’s dismissal as well as the time restrictions governing such appeals in Federal Rule of Civil Procedure 23(f), we find this appeal to be effectively interlocutory and thus unreviewable.

create a new rule here, we recognize this may also serve as yet another ground for reversal—but not for reassignment.

Rule 23(f) permits appeals “from an order granting or denying class-action certification . . . within 14 days after the order is entered.” Fed. R. Civ. P. 23(f). The orders contemplated in this rule are “inherently interlocutory.” *Microsoft Corp. v. Baker*, 582 U.S. 23, 26, 137 S. Ct. 1702, 198 L. Ed. 2d 132 (2017). Outside of the strictures of Rule 23(f), parties may only appeal class certification orders after final judgment is rendered. *Id.*

To be certain, the district court’s dismissal for lack of standing constituted a final judgment in the case. But we confront a problem when we revive the case via reversal and remand. Because judgment is no longer final in these circumstances, we believe reversal renders the class certification order interlocutory once more, thereby precluding its appeal to this Court outside of the circumstances established by Rule 23(f).

Though the Fourth Circuit has not had occasion to address this problem before in a published opinion, several of our sister circuits have addressed it in rulings that predate the 1998 introduction of the modern Rule 23(f).¹⁶ The Ninth and Sixth Circuits have held that once a case is revived by an appellate reversal, the appellate court may no longer address a class-certification cross-appeal because that appeal is interlocutory. In contrast, the Seventh Circuit has reached a class certification cross appeal after reversing the lower court’s dismissal but did so without addressing the question of whether the appeal was interlocutory. As this is a question of first impression

¹⁶ Despite the fact that these opinions were published before the promulgation of the modern Rule 23(f) in 1998, our interpretation nevertheless harmonizes the reasoning of these cases with our general prohibition on review of interlocutory appeals and the exception carved out in Rule 23(f).

in this circuit, we review those decisions in greater detail in turn.

To start, the Ninth Circuit addressed a similar scenario where appellees brought a cross-appeal seeking class decertification after final judgment had been rendered. *Blake v. City of Los Angeles*, 595 F.2d 1367, 1385–86 (9th Cir. 1979). After reversing judgment, the court held that “[t]he same considerations that normally bar interlocutory review of class certification orders . . . persuade us that we should not now review the class certification order merely because the district court erroneously entered summary judgment for appellees.” *Id.* at 1386 (citation modified). Indeed, Rule 23(f) and the cases interpreting it reinforce the court’s decision. *See Microsoft Corp.*, 582 U.S. at 26.

The Sixth Circuit reached a similar conclusion when plaintiffs appealed an order that simultaneously denied their motion for class certification and dismissed the action for lack of subject matter jurisdiction:

Plaintiffs next argue that this court should reverse the district court’s denial of plaintiffs’ motion for class certification. We disagree. Because we reverse the judgment of the district court dismissing plaintiffs’ case for lack of subject matter jurisdiction, there is no longer a final judgment to support our review of interlocutory orders, even though such a judgment existed at the outset of the appeal. Thus, at this juncture, our reversal of the judgment below prevents us from reviewing the district courts’ denial of class certification.

Milan Express Co. v. W. Sur. Co., 886 F.2d 783, 785 n.1 (6th Cir. 1989) (citation modified). Although Rule 23(f) would now permit the Sixth Circuit to review the denial of class certification as an allowable interlocutory appeal in that case, its logic as applied to this case would apply with greater force: West Virginia had an opportunity to appeal class certification under the Rule, but as this appeal is outside of the time period for allowable interlocutory appeals, our reversal procedurally bars our review of class certification at this point.

It should be noted, however, that the Seventh Circuit moved forward with review of a class certification appeal despite reversing the case's dismissal. *Council 31, Am. Fed'n of State, Cnty. & Mun. Emps. v. Ward*, 978 F.2d 373, 380 (7th Cir. 1992). The court determined it could reach the merits of the cross-appeal because the defendants had "become adversely affected by the district court's orders certifying the class" upon reversal. *Id.* But following the implementation of Rule 23(f), the problem it identified is resolved: now parties who are adversely affected may appeal within 14 days. Accordingly, its reasoning is not persuasive following the enactment of the Rule.

We believe the Sixth and Ninth Circuits' interpretations are correct. Now that the case has been revived by our reversal, there is no longer final judgment. Any appeal of the 2023 order certifying two of Plaintiffs' proposed classes must be considered interlocutory.¹⁷

¹⁷ The dissent mischaracterizes our holding when it explains we have decided that because Rule 23(f)'s fourteen-day window has passed, "the State is now barred from receiving appellate review after final judgment." Diss. Op. 48. Instead, we merely hold that our reversal of the district court's dismissal renders the lower court's judgment no longer final. The procedural restrictions of Rule 23(f) thus come into

Because we are now well beyond the timeframe to challenge class certification pursuant to Rule 23(f), we may not entertain this cross-appeal until a final judgment is entered below.

V.

For the foregoing reasons, the judgment of the district court is REVERSED and the case is REMANDED for further proceedings.

REVERSED AND REMANDED

play. In short, we agree that we may review the State's class certification once it becomes final and that the parties may request alteration of the class certification order before the district court at any time.

RUSHING, Circuit Judge, concurring in the judgment in part and dissenting in part:

The district court believed that it lacked authority to grant any of Plaintiffs’ requested relief and so dismissed this case for lack of standing. While the court raised legitimate concerns about the limits of federal judicial power and the effectiveness of institutional reform decrees, precedent establishes that the court could order at least some of the relief Plaintiffs seek. Accordingly, I agree with the majority that we must reverse the district court’s judgment dismissing this case for lack of jurisdiction.

West Virginia has filed a conditional cross-appeal, asking us to reverse the district court’s order granting class certification if we reverse the final judgment from which Plaintiffs appeal. We have jurisdiction to resolve that cross-appeal; the majority errs in holding that the appeal is “effectively interlocutory and thus unreviewable.” Maj. Op. 39. I would exercise our discretion to consider the cross-appeal and resolve West Virginia’s arguments about the infirmities in the class certification order. In that respect, I dissent from the majority’s judgment.

I.

To establish constitutional standing to pursue this lawsuit, Plaintiffs must demonstrate that they have suffered or likely will suffer an injury in fact that is traceable to Defendants’ challenged actions and likely to be redressed by the requested judicial relief. *FDA v. All. for Hippocratic Med.*, 144 S. Ct. 1540, 1555 (2024). Redressability requires “that the court ha[ve] the power” to grant Plaintiffs’ requested relief and “that such relief would redress” Plaintiffs’ injuries. *Buscemi v. Bell*, 964

F.3d 252, 259 (4th Cir. 2020). An injury is not redressable if the court is powerless to provide the relief that Plaintiffs request. *Sheppheard v. Morrissey*, 143 F.4th 232, 243 (4th Cir. 2025); see *Maryland v. U.S. Dep’t of Agric.*, 151 F.4th 197, 212 (4th Cir. 2025) (asking “whether a federal court is even capable of providing the remedy the plaintiff seeks”).

Although, as the district court noted, jurists and scholars disagree about the proper bounds of federal courts’ equitable remedial authority, existing precedent instructs that district courts possess the power to enter injunctions that intervene into the operation of state governmental institutions once they find a constitutional violation. See *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15–16 (1971); cf. *Brown v. Plata*, 563 U.S. 493, 511, 538 (2011). At least some of the injunctive relief Plaintiffs seek is within the district court’s authority and would relieve at least part of Plaintiffs’ injuries. For our purposes, that is sufficient to show redressability.¹⁸

¹⁸ The district court correctly concluded that Plaintiffs’ request for a declaratory judgment does not independently establish redressability. The majority misreads *Wells v. Johnson*, 150 F.4th 289 (4th Cir. 2025), in concluding otherwise. *Wells* recognized that a declaratory judgment can provide redress if the plaintiff “show[s] himself likely to use the preclusive effect of the declaration” in a future lawsuit. *Id.* at 303. The majority, however, ignores Plaintiffs’ burden to “offer reason to think the future suit where [they] want[] to use the preclusion will come” and that “the preclusion is likely to help redress [their] injury by doing some work in [that] future litigation.” *Id.* at 303, 307.

Instead, the majority reasons that a declaratory judgment “is likely to assist” if, at some point in the future, someone decides to pursue litigation seeking “more comprehensive reform” than the district court in this case ultimately grants. Maj. Op. 29. But a judgment’s “possible, indirect benefit in a future lawsuit” does not preserve standing. *United States v. Juvenile Male*, 564 U.S. 932, 937 (2011) (per

That said, two different district court judges in this case now have expressed concerns about their authority to interfere with state institutions as radically as Plaintiffs demand. See *Jonathan R. v. Justice*, No. 3:19-cv-00710, 2021 WL 3195020, at *12 (S.D. W. Va. July 28, 2021); *Jonathan R. v. Justice*, 768 F. Supp. 3d 756, 759 (S.D. W. Va. 2025). Both judges were so troubled that they dismissed the case, the first under *Younger* abstention and the second on standing grounds. While dismissal was not warranted in either instance, the judges' sense that they were being asked to stray beyond their purview was legitimate.

The district court was appropriately concerned about the scope of the relief that Plaintiffs seek. “[I]nstitutional reform injunctions often raise sensitive federalism concerns,” which are “heightened when, as [here], a federal court decree [would] ha[ve] the effect of dictating state or local budget priorities.” *Horne v. Flores*, 557 U.S. 433, 448 (2009). And “[t]he separation of powers imposes additional restraints on the judiciary’s exercise of its remedial powers.” *Missouri v. Jenkins*, 515 U.S. 70, 132 (1995) (Thomas, J., concurring). Those restraints are especially relevant here because part of Plaintiffs’ lawsuit takes issue with remedies imposed in a Memorandum of

curiam); see *Haaland v. Brackeen*, 143 S. Ct. 1609, 1639 (2023) (“What saves proper declaratory judgments from a redressability problem . . . is that they have preclusive effect on a traditional lawsuit that is imminent.” (internal quotation marks omitted)). Nor does the majority’s observation that a declaratory judgment would “put[] state officials on notice that their conduct is illegal and . . . incentivize them to comply with the law and deter further illegal conduct” suffice for redressability. Maj. Op. 29 (internal quotation marks omitted). Even if a political actor “might do as a court says just because a court says it,” a declaration “with no future consequences . . . is just another way of saying *advisory opinion*.” *Wells*, 150 F.4th at 302.

Understanding between the U.S. Department of Justice and West Virginia that obligates the State to make certain improvements regarding child welfare.

If Plaintiffs ultimately prevail in proving a constitutional or statutory violation, the district court can and should take these concerns into account when it comes time to fashion injunctive relief tailored to remedying those specific violations. *See Swann*, 402 U.S. at 16 (“[T]he nature of the violation determines the scope of the remedy.”); *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 420 (1977) (“[O]nly if there has been a systemwide impact may there be a systemwide remedy.”). The district court was rightly attentive to “the interests of state and local authorities in managing their own affairs,” and it can account for those interests when “devising a remedy” in this case, should that prove necessary.¹⁹ *Milliken v. Bradley*, 433 U.S. 267, 280–281 (1977).

II.

West Virginia has filed a conditional cross-appeal challenging the district court’s class certification order. The majority does not merely decline to consider that cross-appeal, it holds that the appeal is interlocutory and that this Court is barred from addressing it. That is incorrect. We have final order jurisdiction to resolve the conditional cross-appeal, and I would exercise our discretion to address the State’s arguments identifying multiple flaws in the class certification order.

¹⁹ I agree with the majority that reassignment to a different judge on remand is not warranted here. *See Steves & Sons, Inc. v. JELF-WEN, Inc.*, 988 F.3d 690, 728–729 (4th Cir. 2021).

A.

Conditional cross-appeals are conditional precisely because the cross-appellant is not aggrieved by a district court's error when he has prevailed on other grounds. A victor cannot appeal. But we allow prevailing parties to file conditional cross-appeals against the contingency that we may reverse an otherwise satisfactory judgment. *See Council 31, Am. Fed. of State, Cnty. & Mun. Emps., AFL-CIO v. Ward*, 978 F.2d 373, 380 (7th Cir. 1992). If we reverse the judgment in the cross-appellant's favor, then the cross-appellant becomes aggrieved by the decision that is the subject of the cross-appeal.

Conditional cross-appeals frequently challenge interlocutory decisions that, absent a final judgment, could not be appealed on their own. *See, e.g., Eshelman v. Puma Biotechnology, Inc.*, 2 F.4th 276, 285 n.3 (4th Cir. 2021) (after prevailing at trial, plaintiff conditionally cross-appealed an evidentiary ruling and a decision on attorney-client privilege); *Bank of Montreal v. Signet Bank*, 193 F.3d 818, 821, 825–826 (4th Cir. 1999) (after prevailing at trial, plaintiff conditionally cross-appealed from the grant of summary judgment against, and dismissal of, several of its claims as well as from an evidentiary ruling). If we decide to reverse the final judgment and remand the case for further proceedings, we then address the conditional cross-appeal because the issues raised therein will be relevant as the case progresses on remand. *See Eshelman*, 2 F.4th at 285 n.3 (“Because we order a new trial, we do resolve [the plaintiff’s] conditional cross-appeals.”); *Bank of Montreal*, 193 F.3d at 826 (“Because we grant [the defendant] some of the relief it seeks, we must consider [the plaintiff’s] conditional cross-appeals.”).

The majority turns our approach to conditional cross-appeals on its head. Under circuit precedent, our action reversing the final judgment in the cross-appellant's favor makes the conditional cross-appeal relevant and ripe for decision. But under the majority's reasoning, by reversing the final judgment we lose the ability to consider the conditional cross-appeal because it challenges an otherwise interlocutory decision. That does not accord with our precedent or common sense. Our decision to reverse on one issue does not, *mid-opinion*, render the remainder of the appeal interlocutory and unreviewable. We have jurisdiction over an appeal from a final judgment, 28 U.S.C. § 1291, and that appeal permits review of all interlocutory rulings that led up to, and merged into, that judgment, *see Jenkins v. Woodard*, 109 F.4th 242, 246–247 & n.1 (4th Cir. 2024).

The fact that a conditional cross-appeal challenges a class certification order does not change the analysis. Federal Rule of Civil Procedure 23(f) was added to *expand* the opportunity for appellate review of class certification decisions beyond those available for other interlocutory decisions. *See* Advisory Committee's Notes on 1998 Amendments to Fed. R. Civ. P. 23(f) (“[S]everal concerns justify expansion of present opportunities to appeal.”). If anything, that rule should make us more receptive to this cross-appeal, not less.

The majority reasons that Rule 23(f) gave West Virginia the opportunity to petition for review of the class certification order within fourteen days and, that time having passed, the State is now barred from receiving appellate review after final judgment. That is wrong for multiple reasons.

First, the adoption of Rule 23(f) didn't abolish the typical route for appellate review of a class certification

decision on appeal from a final judgment. “Final-judgment appeals remain available to review a grant or denial of class certification on appeal from a final judgment that disposes of the entire action, merging in the judgment in the way that many other interlocutory orders merge in a final judgment.” 15B *Charles Allen Wright & Arthur R. Miller’s Federal Practice & Procedure* § 3914.19 (3d ed. 2026); see *Microsoft Corp. v. Baker*, 582 U.S. 23, 26 (2017).

Second, “[f]ailure to seek discretionary review of an order granting or denying class certification does not forfeit the right to seek review of the order on appeal from the final judgment.” 16 *Wright & Miller, supra*, § 3931.1. Rule 23(f) creates “an opportunity, not an obligation.” *Id.* Because an interlocutory appeal is “permissive rather than mandatory,” a party “retains the right to challenge the class certification following the ultimate disposition of the case” despite not previously petitioning for interlocutory review. *M. D. ex rel. Stukenberg v. Abbott*, 907 F.3d 237, 248 n.15 (5th Cir. 2018); see also *Molski v. Gleich*, 318 F.3d 937, 951 n.17 (9th Cir. 2003); cf. *Clark v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 924 F.2d 550, 553 (4th Cir. 1991) (“[F]ailure to take an available appeal does not of itself waive the right to secure review, on appeal from final judgment, of matters that could have been appealed but were not.” (internal quotation marks omitted)).

Third, even if the cross-appeal could be considered interlocutory, Rule 23(f)’s fourteen-day deadline to petition for interlocutory review of a class certification order is “a nonjurisdictional claim-processing rule.” *Nutraceutical Corp. v. Lambert*, 586 U.S. 188, 192 (2019). The time limit “therefore can be waived or forfeited by an opposing party.” *Id.* At no point have Plaintiffs objected to West Virginia’s supposedly late request for appellate

review; accordingly, Plaintiffs have forfeited the procedural time bar. *See Kontrick v. Ryan*, 540 U.S. 443, 456 (2004) (“[A] claim-processing rule . . . even if unalterable on a party’s application, can nonetheless be forfeited if the party asserting the rule waits too long to raise the point.”). The majority thus errs in holding that because “this appeal is outside of the time period for allowable interlocutory appeals, our reversal procedurally bars our review of class certification at this point.” Maj. Op. 41. Indeed, by sua sponte dismissing the cross-appeal despite Plaintiffs’ forfeiture (and without even acknowledging the principle), the majority treats Rule 23(f)’s time limit as jurisdictional in all but name.

The majority relies heavily on two cases from other circuits that were decided before the Supreme Court adopted Rule 23(f) to authorize interlocutory review of class certification orders. Neither persuades.

In *Blake v. City of Los Angeles*, the Ninth Circuit considered it a matter of discretion whether to resolve the conditional cross-appeal filed after final judgment in that case. 595 F.2d 1367, 1385–1386 (9th Cir. 1979). The court reasoned that “[t]he same considerations that normally bar interlocutory review of class certification orders,” including the “potential waste of judicial resources,” counseled against reviewing the class certification order there. *Id.* at 1386 (internal quotation marks omitted). The court also noted the seemingly fortuitous opportunity for appeal in that case, since the erroneous final judgment would have given the cross-appellants the opportunity for review of a class certification decision before the end of the case, where litigants in other cases would be forced to wait. *Id.* That reasoning no longer applies because Rule 23(f) now provides an opportunity to request an interlocutory appeal.

The Sixth Circuit in *Milan Express Co. v. Western Surety Co.* appears to have concluded it lacked jurisdiction to consider the cross-appeal there, but as the majority acknowledges, its reasoning depended on the state of the law as it existed before Rule 23(f). 886 F.2d 783, 785 n.1 (6th Cir. 1989); Maj. Op. 41. After Rule 23(f), that jurisdictional ruling is no longer good law. *See* 28 U.S.C. § 1292(e); *Nutraceutical*, 586 U.S. at 192.

Conversely, as the majority observes, the Seventh Circuit did resolve a conditional cross-appeal from an order granting class certification after deciding to reverse the district court’s grant of summary judgment and remand the case for further proceedings. *Council 31*, 978 F.2d at 380. The court correctly reasoned that, because it reversed the grant of summary judgment, the cross-appellant “has indeed become adversely affected by the district court’s order[] certifying the class,” and “[t]his development has the effect of invigorating the cross-appeal and supporting our jurisdiction.” *Id.* The subsequent adoption of Rule 23(f) does not undermine that reasoning, which applies to conditional cross-appeals from final judgments generally.

Perhaps more importantly, even after Rule 23(f), the Seventh Circuit continues to acknowledge its authority to resolve a cross-appeal “challeng[ing] the district court’s class certification decision” after reversing a final judgment. *Henry v. Hulett*, 969 F.3d 769, 787 (7th Cir. 2020) (en banc). The majority identifies no court holding to the contrary after the adoption of Rule 23(f). I would not create a circuit split here.

B.

Because we have jurisdiction and there is no procedural bar to our review, it is within our sound

discretion to resolve West Virginia's appeal of the class certification order before remanding the case for further proceedings. In my view, judicial economy, the centrality of certification to the litigation, and the substantial weaknesses the State identifies in the certification decision counsel in favor of addressing class certification now. *Cf. Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 139, 144–146 (4th Cir. 2001); *see infra* Section II.C.

As an initial matter, we have received extensive briefing from the parties and numerous amici focused on the class certification issue. The factual record was thoroughly developed below, and the asserted shortcomings of the district court's opinion turn on matters not likely to change on remand. There does not appear to be any meaningful benefit to leaving this question for another day. Although the district court retains authority to alter its class certification ruling, we have no reason to think it will do so absent direction from this Court. And, of course, the possibility of self-correction is not unique here; it exists in any Rule 23(f) appeal and in most cases destined for retrial.

Importantly, the certified classes define the shape of this case. The particular classes certified (and those rejected) are central to articulating the claims to be proven and the available relief. *See* Fed. R. Civ. P. 23(b)(2). A trial on class claims that should not proceed in that posture would be a waste of time and resources. And if permissible classes could be certified following guidance from this Court, waiting to provide that direction until after a merits resolution—requiring yet another remand—would needlessly lengthen this already protracted litigation. Further, because the scope of injunctive relief is limited to the parties before the court, the range of injunctions available to Plaintiffs and the

potential cost of compliance for Defendants is substantially impacted by which and how many classes or subclasses are certified and the sizes and parameters of those classes. While the settlement dynamic in an injunction class action differs from that of a damages class action, certification is no less central—especially here where Plaintiffs seek broad-sweeping policy reforms throughout the entire West Virginia foster care system.

This is the second appeal, second reversal, and second remand in this case thus far. It would be prudent to address any certification errors now, before returning the case to the district court for further proceedings.

C.

Turning briefly to the merits of the certification decision, West Virginia has alleged extensive problems with the district court's order. I will highlight two.

The district court certified two classes for declaratory and injunctive relief under Rule 23(b)(2). In addition to the requirements of numerosity, commonality, typicality, and adequacy of representation in Rule 23(a), injunctive classes also require that “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). The district court certified what the parties call the General Class, which consists of “all West Virginia foster children who are or will be in the foster care custody of DHHR or its successor agency.” *Jonathan R. v. Justice*, 344 F.R.D. 294, 318 (S.D. W. Va. 2023). The General Class was certified to pursue substantive due process claims predicated on three alleged policies or practices of DHHR: (1) maintaining an inadequate array of appropriate foster care placements,

(2) engaging in deficient case planning, and (3) permitting a chronic shortage of case workers and high caseloads. *Id.* at 305–309. The court also certified the “ADA Subclass,” which consists of “all members of the General Class who have physical, intellectual, cognitive, or mental health disabilities, as defined by federal law.” *Id.* at 318. The ADA Subclass was certified to pursue claims under the Americans with Disabilities Act and Rehabilitation Act based on the alleged policy or practice of maintaining an “[i]nadequate [i]nfrastructure of [t]herapeutic [s]ervice [p]roviders.” *Id.* at 311.

The first problem West Virginia flags in the district court’s certification decision regards its findings that Plaintiffs had established the existence of policies and practices sufficient to support commonality. To demonstrate commonality under their theory of the case, Plaintiffs bore the burden to identify a policy or practice of DHHR driving the alleged harm to every class member. A “pattern of individualized deficiencies” will not do. *G.T. v. Bd. of Educ. of Cnty. of Kanawha*, 117 F.4th 193, 207 (4th Cir. 2024). Rather, satisfying the commonality prerequisite in this case requires proof of “some glue holding the alleged *reasons* for all” the class members’ alleged injuries together. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 352 (2011).

As West Virginia points out, some of the policies and practices the district court found here seem merely to describe a state of affairs rather than specify an injurious policy or practice of DHHR. For instance, the court found that “[d]eficiencies in the array of placements is a recurring issue” for the State’s child welfare system, but it did not identify any policy or practice causing this problem. *Jonathan R.*, 344 F.R.D. at 306. Similarly, the court found that DHHR suffers “chronic understaffing”

but did not identify a policy or practice of Defendants that is allegedly causing that problem. *Id.* at 309.

In fact, Defendants produced evidence that the low number of foster homes and case workers is contrary to their policy and not up to the standards they strive to achieve, but the district court refused to consider this evidence. Efforts by West Virginia to bring those shortcomings into conformity with its actual policies are the kind of evidence that would tend to disprove the existence of a generalized practice of acquiescence to failure. For example, Defendants produced evidence of “several steps they have taken to expand the number of caseworkers in West Virginia.” *Id.* at 308 (internal quotation marks omitted). But the district court refused to consider Defendants’ evidence on the ground that it “prematurely assesses the merits of Plaintiffs’ case,” since it speaks to whether “Defendants acted with deliberate indifference to Plaintiffs’ liberty interest.” *Id.*; *see id.* at 313. While West Virginia’s reform efforts are relevant to the merits question of deliberate indifference, they are also relevant for evaluating whether the shortcomings complained of represent Defendants’ actual policy or practice. *See Wal-Mart*, 564 U.S. at 351 (“Frequently [a court’s class certification analysis] will entail some overlap with the merits of the plaintiff’s underlying claim.”). When evidence is relevant to both class certification and the merits, “a district court may not use the overlap [as a reason] to refuse to consider the evidence” for certification. *Goldman Sachs Grp. v. Ark. Tchr. Ret. Sys.*, 141 S. Ct. 1951, 1961 n.2 (2021).

Second, West Virginia raises significant questions about whether Plaintiffs’ contentions are actually common to every member of these broadly defined classes. *See Wal-Mart*, 564 U.S. at 350 (“Their claims must depend

upon a common contention”); *Stafford v. Bojangles’ Rests., Inc.*, 123 F.4th 671, 680 (4th Cir. 2024) (“[N]ebulous references to ‘systemic failures’ or ‘systemic deficiencies’ to satisfy commonality” often “mask a multitude of disparities” within the class.). As the sixteen amici States observe, classes as broad as “all West Virginia foster children who are or will be in foster care” and all foster children with any disability living in any part of the State “ignore the widely different circumstances of foster children.” Amicus Curiae Br. of State of Alaska et al. at 17. It is difficult to see how the alleged policies affect every member of such broadly defined classes. *See* Fed. R. Civ. P. 23(b)(2).

For instance, the district court found that common questions exist for the ADA Subclass regarding “whether Defendants’ provision of [community-based] services is in fact deficient, and if so, whether the deficiency places foster children with disabilities at risk of unnecessary institutionalization.” *Jonathan R.*, 344 F.R.D. at 313. The ADA subclass, however, consists of all current and future foster children in the State with “physical, intellectual, cognitive, or mental health disabilities.” *Id.* at 318. The array of services may be adequate for a child with a particular disability in one part of the State, but not for a child with a different disability in a different area. Even when casting the injury as a risk of unnecessary institutionalization, it would seem that not every child with a disability is exposed to that risk. If the State exclusively offered treatment options for schizophrenia in institutions, that could create a risk of unnecessary institutionalization for every foster child in the system with schizophrenia—but it would not do so for a child with anxiety and depression. Or if the State had sufficient community-based providers for anorexia treatment in Morgantown, but not in Parkersburg, it’s not clear how a

child with anorexia in Morgantown is harmed by the absence of, or would benefit from an injunction to expand, anorexia treatment services in Parkersburg.

Similar reasoning applies to claims in the General Class. Regarding the lack of appropriate case planning, for instance, the district court relied on statistics which suggest that this alleged practice does not present a common contention for every class member— that is, every child who is or will be in foster care in West Virginia. For example, those statistics indicated that while some foster parents were not included in case planning and other important events, foster parents in other cases were appropriately included. *See id.* at 307. Likewise with the supposed policy or practice of high caseloads. According to the district court, “eight of West Virginia’s twenty-nine districts have a caseload average within the recommended range.” *Id.* at 309. That fact would seem to suggest that children in those districts have not been subjected to this alleged policy or practice, and it could render the requested injunction inappropriate for the class as a whole. *See* Fed. R. Civ. P. 23(b)(2).

Although this Court declines to reach the class certification issue today, the district court retains the power to alter or amend the class certification order at any time, and the parties may ask it to decertify or alter the classes. Fed. R. Civ. P. 23(c)(1)(C). I would resolve the question now to provide guidance for the remand and perhaps save the parties yet another trip to our Court.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

[Filed February 28, 2025]

No. 3:19-cv-00710

JONATHAN R., et al.,

Plaintiffs,

v.

PATRICK MORRISEY, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Before Joseph R. Goodwin, *District Judge*.

This court cannot take over the foster care system of West Virginia. Constitutional limits prevent the court from crafting public policy and administering state agencies. West Virginia's foster care system has cycled through inaction, bureaucratic indifference, shocking neglect, and temporary fixes for years. The blame squarely lies with West Virginia state government. When elected officials fail, the ballot box is the remedy.

In recent times, the public has turned to the courts for answers to intractable policy issues. It is not difficult to understand why. When government fails—when promises

are made and usually broken, when reforms are always delayed or abandoned—people turn in desperation to the judiciary. But there are limits to what the courts can do.

The Constitution does not permit federal courts to step in and govern. It does not allow judges to develop public policy, write budgets, hire caseworkers, or administer state agencies. That is the role of the executive and the legislature. The judiciary cannot assume the responsibilities of those who were elected to lead.

The constitutional doctrine of standing requires that an injury be redressable by a judicial order. Here, it is not. For this reason, the court *sua sponte* **DISMISSES** this case for lack of jurisdiction.

I. BACKGROUND

The background of this case is well documented in previous opinions.¹ On September 30, 2019, Plaintiffs, a class of children in state foster care custody, filed their class action complaint. [ECF No. 1]. Plaintiffs alleged that Defendants, state executive officials, violated constitutional and statutory rights through West Virginia Department of Human Services (DHS) policies and practices.² The filings paint a grim picture of a dysfunctional foster care system.

¹ *Jonathan R. v. Justice*, No. 3:19-cv-00710, 2021 WL 3195020 (Johnston, J.) (July 28, 2021) (granting Defendants' motion to dismiss based on *Younger* abstention and mootness), *aff'd in part and rev'd in part* 41 F.4th 316 (4th Cir. 2022); *Jonathan R. v. Justice*, No. 3:19-cv-00170, 2023 WL 184960 (Johnston, J.) (Jan. 13, 2023) (granting in part and denying in part Defendants' motions to dismiss); *Jonathan R. v. Justice*, 344 F.R.D. 294 (2023) (Goodwin, J.) (certifying a General Class of foster children and one subclass).

² The complaint originally alleged injuries caused by the West Virginia Department of Health and Human Resources (DHHR). DHHR has

Plaintiffs ask this court to declare DHS’s actions unconstitutional, craft policies to reform DHS, and appoint a Monitor to study and supervise Defendants. *Id.* ¶¶ 404–06. In sum, Plaintiffs ask this court to take over the foster care system during and until it is reformed to their satisfaction.

In due course, Plaintiffs moved for class certification. [ECF No. 318]. On August 16, 2023, this court certified two classes. *Jonathan R. v. Justice*, 344 F.R.D. 294, 318 (2023). The General Class consists of “all West Virginia foster children who are or will be in the foster care custody of DHHR or its successor agency” and one subclass consisting of all members of the General Class with a disability. *Id.*

Primarily, Defendants argue that they have not been “deliberately indifferent” to the failures of the foster care system and the allegedly violated constitutional rights of the Plaintiff children. [ECF No. 533]. Defendants, accepting that foster care in West Virginia is far from perfect, assert that changes in policies, programs, and procedures have improved the system. *Id.* In response, Plaintiffs argue that those purported changes have been ineffectual, and West Virginia foster care has further deteriorated. [ECF No. 548].

II. LEGAL STANDARDS

“Without jurisdiction the court cannot proceed at all in any cause.” *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998) (citing *Ex parte McCardle*, 7 Wall. 506, 514 (1868)). Every court, including the Supreme Court, has an obligation to ensure that jurisdiction exists.

since been reorganized into several different agencies, including the Department of Human Services (DHS) which administers the foster care system.

Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149, 152 (1908).

Article III standing is a constitutional limit on jurisdiction of the federal courts. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (The standing doctrine developed “to ensure that federal courts do not exceed their authority as it has been traditionally understood.”). Standing requires a plaintiff to be able to show at every stage of litigation that (1) she has suffered a concrete, particularized injury, (2) her injury was caused by the defendant, and (3) her injury is redressable by the federal court for each form of relief sought. *Id.* And when a plaintiff asks for multiple forms of relief, a plaintiff “must demonstrate standing separately for each form of relief sought.” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000) (citing *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996) (“[S]tanding is not dispensed in gross.”)).

III. DISCUSSION

The federal court is one of limited jurisdiction: to interpret and apply the law. Courts do not set policy. They do not legislate. They do not govern. These principles are not abstractions—they are the foundation of constitutionally-established tripartite government.

Plaintiffs, however, ask this court to step beyond constitutional limits. They seek judicially crafted policies that would, in effect, place West Virginia’s foster care system under indefinite federal control. They ask this court to systematically reform DHS to oversee agency hiring, budget allocations, and caseworker caseloads. None of that is within the constitutional authority of a federal judge.

This is not a case of identifying a discrete constitutional violation and applying a narrowly tailored remedy. Instead, Plaintiffs ask this court to engage in long-term institutional reform—the kind of structural overhaul that belongs in the hands of policymakers held accountable to the public. *See Whole Women’s Health v. Jackson*, 595 U.S. 30, 40 (2021) (“Nor does Article III confer on federal judges some ‘amorphous’ power to supervise ‘the operations of government’ and reimagine [them] from the ground up.”). This court has no such power.

A. STANDING

To begin, the Constitution’s “central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts.” *Lujan*, 504 U.S. at 559–60 (1992). Here, Plaintiffs do not have Article III standing because this court cannot order their requested relief without usurping “the powers of the political branches.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013); *see also Allen v. Wright*, 468 U.S. 737, 752 (1984) (“[T]he law of Art. III standing is built on a single basic idea—the idea of separation of powers.”).

Standing ensures that federal courts exercise “their proper function in a limited and separated government.” John G. Roberts, Jr., *Article III Limits on Statutory Standing*, 42 Duke L.J. 1219, 1224 (1993). Article III standing does not permit federal courts to “exercise general legal oversight of the Legislative and Executive Branches, or of private entities,” nor is the federal court a “roving commission to publicly opine on every legal question.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423–24 (2021).

Therefore, three “irreducible” elements define the constitutional minimum of standing: (1) the plaintiff suffered an injury in fact, (2) the injury is “fairly traceable” to the challenged action of the defendant, and (3) it is “likely,” not just merely “speculative,” that the injury would be “redressed by a favorable decision.” *Lujan*, 504 U.S. at 560–61 (citations omitted). Without any one of those elements, the court does not have jurisdiction over the matter. This is true “however sharp and acrimonious” the parties’ dispute may be. *Diamond v. Charles*, 476 U.S. 54, 62 (1986).

Plaintiffs requested relief implicates redressability. As is true in every standing analysis, an examination of the relief requested is key to determining that issue. The court must ask two questions. First, does the court have the power to grant the Plaintiffs’ requested relief? *Buscemi v. Bell*, 964 F.3d 252, 259 (4th Cir. 2020). Second, is that relief likely to remedy Plaintiffs’ injuries? *Id.* Here, the answer to the first question is no.

1. Redressability

As to the power of the court to grant Plaintiffs’ requested relief, the court must “consider the relationship between [that relief] and the ‘injury’ suffered.” *Murthy v. Missouri*, 603 U.S. 43, 73 (2024) (quoting *California v. Texas*, 593 U.S. 659, 671 (2021)). Plaintiffs claim that the State has violated their constitutional rights in six different ways under the Substantive Due Process Clause. Those are

- (1) the right to freedom from maltreatment and repeated maltreatment, while under the protective supervision of the State, (2) the right to protection from unnecessary intrusions into the child’s emotional

wellbeing once the State has established a special relationship with that child, (3) the right to services necessary to prevent unreasonable risk of harm, (4) the right to conditions and duration of foster care reasonably related to the purpose of government custody, (5) the right to treatment and cares consistent with the purpose and assumptions of government custody, and (6) the right not to be maintained in custody longer than is necessary to accomplish the purpose to be served by taking a child into government.

[ECF No. 1 ¶ 373]. Plaintiffs also allege that the State has failed to provide services to disabled foster children.

Plaintiffs' Complaint asks this court to do many things. [ECF No. 1 ¶¶ 404–06]. This includes a number of steps that submits DHS to indefinite federal oversight. For the General Class, Plaintiffs ask this court to:

- i. Require DHHR to contract with an appropriate outside entity to complete a needs assessment of the state's provision of foster care placement and services no later than six months after judgement, to determine the full range and number of appropriate foster care placements and services for all children needing foster care placement, including the development of a plan, with timetables, within which such placements and services shall be secured, and ensure that DHHR shall comply with those timetables;
- ii. Require that DHHR ensure that all children who enter foster care placement receive within 30 days of entering care a complete and

thorough evaluation of the child's needs, performed by a qualified individual, including whether the child has any physical and/or mental disabilities sufficient to be categorized as a child with disabilities under the ADA and that the child be re-evaluated as the child's needs and the information available to DHHR change;

- iii. Require that DHHR ensure that all children who enter foster care placement receive within 60 days of entering care an adequate and individualized written case plan for treatment, services, and supports to address the child's identified needs; describe a plan for reunification with the child's parents, for adoption, or for another permanent, family-like setting; describing any interim placements appropriate for the child while the child moves towards a permanent home-like setting; and describing the steps needed to keep the child safe during the child's time in DHHR's custody.
- iv. Require that DHHR ensure that all children whose case plan identifies a need for services and/or treatment timely receive those services and/or treatment;
- v. Require that DHHR shall ensure that all children who are placed in foster care are placed in a safe home or facility and are adequately monitored in accordance with federal standards;
- vi. Require that DHHR shall hire, employ, and retain an adequate number of qualified and appropriately trained caseworkers, and ensure

that caseloads do not exceed 15 children per-worker for children in placement, with caseloads adjusted for caseworkers who carry mixed caseloads including children not in foster care custody; and

- vii. Require DHHR to develop an adequate statewide plan, to be approved by the Monitor referred to below, for recruiting and retaining foster and adoptive homes, including recruitment goals and timetables for achieving those goals, with which DHHR shall comply.

Id. ¶ 405(a). For the subclass, Plaintiffs ask this court to:

- i. Require that DHHR shall ensure that all children with physical, mental, intellectual, or cognitive disabilities shall receive foster care services in the most integrated setting appropriate to the child's needs, including, in as many instances as is required by reasonable professional standards, family foster homes with supportive services;
- ii. Require that DHHR ensure that an adequate array of community based therapeutic services are available to children with disabilities; and
- iii. Require that DHHR ensure that it develop an adequate array of community-based therapeutic foster homes and therapeutic placements to meet the needs of children with disabilities.

Id. ¶ 405(c). And lastly, the court

shall appoint a neutral Monitor, paid for by the Defendants, to monitor the terms of this Order. The Monitor shall have access to all

relevant documents and information necessary and shall conduct record reviews as necessary to ensure compliance with its terms.

Id. at 406.

This court cannot order the relief Plaintiffs seek. *Whole Women’s Health*, 595 U.S. at 40. The Constitution does not grant the court “some ‘amorphous’ power to supervise ‘the operations of government’ and reimagine [them] from the ground up.” *Id.* The Fourth Circuit and the “Supreme Court [have] made clear that the judiciary should not be in the business of administering institutions.” *Matherly v. Andrews*, 859 F.3d 264, 276–77 (4th Cir. 2017).

The court cannot write a state budget, hire state employees, or oversee child welfare administration as Plaintiffs request. *Friends of the Earth, Inc.*, 528 U.S. at 192 (“Standing doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake.”). The court cannot move state funds and shift local priorities to enact statewide reform. *Horne v. Flores*, 557 U.S. 433, 448 (2009) (“Federalism concerns are heightened when, as in these cases, a federal court decree has the effect of dictating state or local budget priorities.”). Nor can the court craft DHS policy that defines “adequate,” “appropriate,” “sufficient,” “unnecessary,” and “unreasonable” as the Plaintiffs ask.

This is for good reason—the U.S. Constitution prevents federal courts from intervening in complex state institutions. John C. Jeffries and George A. Rutherglen, *Structural Reform Revisited*, 95 Calif. L. Rev. 1387, 1416 (“[C]ourts have rarely been able to solve the problems identified by structural reform litigation without the

assistance of the political branches of government.”). Instead, state government is better suited to solve domestic issues, especially as the public pressures its representatives to act. *Id.* (“More commonly, [structural reform] litigation has placed these problems on the agenda for political reform, by calling them to the attention of the other branches of government.”).

Institutional reform raises sensitive concerns when those cases involve “areas of core state responsibility” such as providing the basic human needs for children in state custody. *Horne*, 557 U.S. at 448. The mechanism of institutional reform is “a creature poorly suited for the courts, as the role of the workaday trial judge in such litigation is often rather precarious at best and downright ineffectual at worst.” *Connor B. ex rel. Vigurs v. Patrick*, 985 F.Supp.2d 129, 157 (D. Mass. 2013).³

Balancing state issues is not a power available to the judiciary. It is the “essence of the legislative process to *weigh* some needs against others,” a process that I must leave to the legislature, executive, and electorate. *Doe 4 ex rel. Lopez v. Shenandoah Valley Juvenile Center Commission*, 985 F.3d 327, 354 (4th Cir. 2021) (Wilkinson, J. dissenting). Institutional reform litigation decrees eviscerate “a State’s discretionary authority over its own program and budgets and forces state officials to

³ The long-term success of these efforts is muddled at best, and the constitutional support has weakened over time. *Doe 4 ex rel. Lopez v. Shenandoah Valley Juvenile Center Commission*, 985 F.3d 327, 355 (4th Cir. 2021) (Wilkinson, J. dissenting). Judge Wilkinson cites *Lewis v. Casey*, 518 U.S. 343 (1996), *Rhodes v. Chapman*, 452 U.S. 337 (1981), and *Missouri v. Jenkins*, 515 U.S. 70 (1995) for the proposition that in schools and prisons—areas of state responsibility—the Supreme Court has removed district courts from managerial oversight of state institutions.

reallocate state resources and funds.” *Jenkins*, 518 U.S. at 131 (Thomas, J. concurring).

Often in institutional reform litigation, the court lacks the resources and expertise to ensure compliance with its own orders. Not surprisingly, the Plaintiffs here ask this court to appoint a federal Monitor to supervise DHS. The court, however, cannot provide that relief. Such a Monitor, along with the inevitable experts, panels, committees, and other external partners, operates her own bureaucracy to replace the state agency for the length of the litigation. Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281, 1300–02 (1976) (Judges act as “personal participant[s] in the negotiations on relief”).

These actions distance the court from its own decisions and hinders the judiciary. This court is left to question “the use of masters, receivers, monitors, experts, and consultants, lest the judiciary, in reforming bureaucracies, join their ranks.” Donald L. Horowitz, *Decreeing Organizational Change: Judicial Supervision of Public Institutions*, 1983 Duke L.J. 1265, 1302 (1983).⁴ The federal courts “should not be in the business of

⁴ Professor Horowitz asks, “[d]oes the growing use of masters, monitors, and receivers threaten the integrity of the judicial process because of the informal, ex parte way in which they operate or because of the new personnel placed between the judge and the case?” *Id.* My answer is yes. Similarly, he asks, “[t]o what extent should the proliferation of extensive decrees . . . give cause for concern that single district judges can order the reshaping of whole institutions?” *Id.* My concern here is great, especially when the State’s legislative and executive branches as well as the federal government’s executive branch are already involved. Would the changing role of judges in institutional reform “put the courts in an untenable position, a position conducive of judicial frustration and the loss of neutrality?” *Id.* Without a doubt, that must be true.

administering institutions,” but appointing a Monitor does just that. *Matherly*, 859 F.3d at 276–77.

So I return to the Plaintiffs’ requested relief: create policies to reform the West Virginia foster care system, make continuing assessments of the quality of foster care services, and appoint a Monitor to make recommendations and scrutinize compliance. Each one falls outside the court’s power to redress Plaintiffs’ injuries. The constitutional bar of standing prevents this court from granting Plaintiffs relief and becoming a West Virginia policymaker.⁵

2. Institutional Reform Examples

Notwithstanding the jurisdictional bar, courts have given in to their altruistic impulses and have attempted institutional reform. I believe it instructive to show by example that this is a perilous enterprise. In the last half century, the judiciary has intervened in state run institutions of foster care, education, incarceration, and mental health, with many of them ending up in front of the Supreme Court.⁶

For example, New York prisons have failed to improve under a decade of federal oversight. *Nunez v. New York Department of Correction*, No. 11-CV-5845-LTS, 2024 WL 4896317 (S.D.N.Y. Nov. 27, 2024) (granting Plaintiffs’

⁵ Phillip B. Kurland, *Public Policy, the Constitution, and the Supreme Court*, 12 N. Ky. L. Rev. 181, 199 (1985) (“Acquiescent acceptance of” the judiciary’s “benevolent dictatorship in time deadens the public to its responsibility for apprehending needs and dangers and demanding that their executives and legislators take appropriate measures.”) (citation omitted).

⁶ *Horne v. Flores*, 557 U.S. 433 (2009); *Missouri v. Jenkins*, 515 U.S. 70 (1995); *Lewis v. Casey*, 518 U.S. 343 (1996); *Rhodes v. Chapman*, 452 U.S. 337 (1981); Notes, *Implementation Problems in Institutional Reform Litigation*, 91 Harv. L. Rev. 428, 429–32 (1977)

motion to hold defendants in civil contempt for failing to comply with four consent agreements). After a series of remedial orders to address the defendants' continued noncompliance, the court approved a fourth plan prioritizing "staffing practices, security practices, management of people in custody, and timely staff accountability." *Id.* at *3. The remedial orders were accompanied by evidentiary hearings, contempt proceedings, and the looming threat of federal receivership. The receivership would either "supplant or work alongside the [Department of Corrections] Commissioner." *Id.* at *23–*24. But after nearly a decade, the prisons have yet to achieve satisfactory compliance. *Id.*

Sometimes, multiple lawsuits redundantly seek institutional reform when an earlier decree is left unused. In 1980, a New York district court certified a class of New York City low-income disabled residents suing defendant state officials. *Heyer v. New York City Housing Authority*, Nos. 80 Civ. 1196 (RWS), 05 Civ. 5286 (RWS), 2006 WL 1148689 (S.D.N.Y. April 28, 2006). Two years later, the district court approved the settlement and retained jurisdiction "for the purpose of enabling any party to apply for such further orders as may be necessary or appropriate for the continuation, enforcement, or implementation of" the parties' settlement and court's order. *Id.* at *1.

But that settlement was forgotten. Whether the court's order achieved its goal in the short term or the parties became "content with the inactivity" or neither party wanted to incur costs of enforcement is unclear. Jason Parkin, *Aging Injunctions and the Legacy of Institutional Reform Litigation*, 70 Vand. L. Rev. 167, 200 (2017) (discussing institutional reform injunctions that

have been forgotten or went unused). Twenty years later, a new class of plaintiffs alleged similar violations against the New York City Housing Authority. *Heyer*, 2006 WL 1148689, at *1.

“Unaware of the existence” of the prior case and settlement, the parties litigated for three years before the court consolidated the cases, dissolved the former settlement, and approved a new one. *Id.* at *1–*2. Although having ordered change in the 1980s, the court again confronted the same issues twenty years later—expending judicial resources, burdening judicial economy, and relitigating decided issues. *Id.* Sometimes institutional reform ordered in good faith and addressing the same issues, fails to remedy local issues when plaintiffs do not or cannot enforce that reform.

Even this district has once before tried its hand at state administrative reform. *Brinkley v. Hill*, 981 F. Supp. 423 (S.D.W. Va. 1997) (Hallanan, J.) (reviewing the case’s history before dismissing the case for lack of jurisdiction after nearly 10 years). On November 15, 1988, custodial parents sued state officials of the West Virginia Department of Health and Human Resources (the DHS predecessor agency) for failing to take adequate steps to obtain child support payments from noncustodial parents. *Id.* at 425. Plaintiffs’ amended motion for preliminary injunction alleged “roughly sixty-four constitutional, statutory, and regulatory violations.” *Id.* at 429. And plaintiffs asked the court to “compel Defendants to modify their system of operation to conform with no fewer than seventy-six distinct mandates.” *Id.* Those mandates included updating filing systems, implementing new systems, enforcing deadlines for many state actions, providing more information and services, and requiring increased staffing. *Id.*

The court, granting plaintiffs' motion, enjoined the defendants and imposed a series of requirements on Defendants. *Id.* at 430 (including enjoining the defendants "from failing to employ sufficient staff to implement the required actions and procedures"). Later, the court ordered a "Final Order" which represented the agreement of the parties and created an "implementation advisory committee, the purpose of which was to make recommendations for the implementation of the" court's order. *Id.* at 432.

The December 5, 1990 "Final Order" was final in name only. It was, in fact, "far from the last order entered by the Court, as the Court received from the parties no fewer than a dozen additional 'agreed Orders' over the course of the following years." *Id.* Court orders from August 12, 1991; August 19, 1991; June 15, 1992; January 20, 1993; January 6, 1994; and April 15, 1994, (1) required defendants to appoint staff, (2) appointed the advisory committee's leadership, (3) ordered defendants to make certain changes related to "specific daily operations," and (4) many other distinct mandates. *Id.* at 432–37.

Specifically, the June 15 order established "twenty-six distinct mandates which delved deeply into the specific daily operations of the" Child Advocate Office. *Id.* at 434. The January 20 order contained "sixteen separate mandates relating to various policies concerning overpayment." *Id.* at 435. The January 6 order contained "nineteen distinct mandates relating to" how the defendants "should distribute child support." *Id.* at 436. In the April 15 order, finding that the defendants failed to comply with some of the court's mandates, the court ordered the defendants "to seek additional funding from the West Virginia Legislature" to create new staff positions. *Id.* Those orders only accounted for a portion of

the court’s intervention over nearly seven years of federal oversight. *Id.* at 436.

That intervention, the court came to realize, amounted to “micro-management” of the state system—“not the proper role of a Federal court.” *Id.* Although the injury, “thousands of custodial parents rightfully owed but unforgivably denied child support,” was great, the court recognized that “a federal court is not the proper enforcer of those mandates.” *Id.* at 442–43.⁷ Even though the court framed the Plaintiffs’ originally requested relief as “quite modest,” the “requests and requirements spawned therefrom were anything but.” *Id.* at 442. After almost a decade of litigation, the court finally dismissed the case to “pass the torch” to the state offices. *Id.* at 443.

These examples all point to one conclusion: the court has no business in reforming state institutions. Intervention inexcusably exhausts judicial resources, usurps state and local authority, and creates disputes that polarize the judiciary. Without redressability, the Plaintiffs have no standing to pursue their claims.

3. Foster Care Litigation Across the Country

A small survey of foster care cases across the country demonstrates that redressability arguments are not often pursued by the parties or analyzed by district courts. The courts emphasize the severity of foster children’s injuries but only sporadically assess each of the elements of Article III standing.

⁷ The court also recognized oral argument comments from Justices O’Connor and Souter. “As was stated by Justices O’Connor and Souter, the Court has no business duplicating the compliance efforts of other competent entities, and thus the Court finds it should pass the torch.” *Id.* at 443.

Standing is sometimes invoked, but defendants and courts rarely analyze redressability. In *Connor B. ex rel. Vigurs v. Patrick*, defendants argued that the putative class of foster children did not have standing because they (1) failed to establish “a causal connection” between their harms and defendant system deficiencies and (2) they could not “prove an immediate threat of future injury.” 771 F. Supp. 2d 142, 151–53 (D. Mass 2011). The arguments, under injury and causation prongs of standing, were rejected, but the court did not discuss redressability or the constitutional power of the federal courts to grant plaintiff’s requested relief. *Id.*

Likewise, the court in *31 Foster Children v. Bush* did not address the federal court’s power to grant plaintiffs’ requested “declaratory judgment and prospective injunctive relief.” 329 F.3d 1255, 1263–69 n.6 (11th Cir. 2003). Instead, the court analyzed the “injury-in-fact” prong of standing. *Id.* The other prongs were undisputed, so the Eleventh Circuit did not consider them. *Id.*

A foster care reform court in Maine did not consider the plaintiffs’ standing. *Bryan C. v. Lambrew*, 340 F.R.D. 501 (D. Maine 2021). Defendants’ motion to dismiss argued for abstention and that plaintiffs failed to state a claim. *Id.* at 508 Defendants did not argue lack of standing despite plaintiff foster children seeking prospective injunctive relief to reform the state foster care agency. *Id.* The court denied the motion and did not address plaintiffs’ standing. *Id.* at 508–12.

The same is true in the Ninth Circuit. *B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957 (9th Cir. 2019). Defendants challenged the district court’s class certification of plaintiff foster children in part because plaintiffs did not suffer a concrete injury and therefore lacked standing to bring their due process claim. *Id.* 966–

67. The Ninth Circuit rejected that argument but did not address the court's power to grant systemic relief. *Id.*

Nebraska too has seen efforts seeking state institutional reform through the courts. *Carson P. ex rel. Foreman v. Heineman*, 240 F.R.D. 456, 509 (D. Neb. 2007). There, the district court reviewed the magistrate judge's report and recommendation to deny defendants' motion to dismiss. *Id.* The motion to dismiss argued that plaintiffs lacked standing only inasmuch as they did not satisfy the injury element, and the district court did not address the other elements of standing. *Id.*

In Rhode Island, defendants argued mootness and *Younger* abstention but did not raise standing. *Sam M. ex rel. Elliot v. Chafee*, 800 F. Supp. 2d 363 (D.R.I. 2011). The court rejected defendants' arguments and did not address standing. *Id.* at 370–383.

In the same way, the injury component of standing received primary attention in *Clark K. v. Guinn*, No. 2:06-CV-1068-RCJ-RJJ, 2007 WL 1435428, at *3–*5 (D. Nev. May 14, 2007). There, the district court denied defendant's motion to dismiss, based on mootness and injury, and found that the plaintiffs had standing, primarily analyzing the injury element of standing.

Others courts have been presented with redressability, but none have approached it in the systematic way I believe necessary.⁸ These courts have leapt over a critical

⁸ In *Gary G. v. Newsom*, defendants argued that the plaintiff foster children lacked standing because their claims were not redressable by the federal courts based on separation of powers. No. 5:23-cv-947, 2024 WL 4354697, at *3–*6 (C.D. Cal. Sept. 30, 2024). The court rejected that argument noting that Plaintiffs' requested relief did not appear to "interfere with the funding of the foster care system directly." *Id.*

question. Jurisdiction is a “threshold matter,” “inflexible and without exception,” that “spring[s] from the nature and limits of the judicial power of the United States.” *Steel Co. v. Citizen for a Better Environment*, 523 U.S. 83, 94–95 (1998) (quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)).

Redressability asks two questions: (1) is the plaintiff’s requested relief the kind appropriate for a federal court to give? and (2) is that relief likely to redress plaintiff’s injuries? If a federal court assumes that it is appropriate to establish statewide policy; set standards; mandate the hiring, training, and retention of caseworkers; issue system-wide injunctions; and obligate defendants to accumulate more foster homes then the first question is always answered in the affirmative. Given that broad power of the court, it follows that the answer to the second question is likewise yes. Redressability, however, is not so single-minded because it asks the court to question its own power. Unlike other courts, I cannot assume that this

In *Ocean S.*, defendants argued that the plaintiffs could not establish redressability because foster care systems are complex and require significant state resources to administer. *Ocean S. v. Los Angeles County*, No. LA CV23-06921 JAK (ex), 2024 WL 3973047, at *9–*12 (C.D. Cal. June 11, 2024). The court rejected that argument, suggesting that the defendants’ failures could be remedied through injunctive relief without forcing the state to reallocate funds and resources. *Id.*

Nor am I persuaded by *Jeremiah M. v. Crum* where the district court held that the injuries of the putative plaintiff foster children class would be redressed by federal court intervention. 695 F. Supp. 3d 1060, 1088–89 (D. Alaska 2023). The court briefly considered federal action on state government but concluded that federal intervention was necessary to enforce the Constitution despite it being “expensive.” *Id.* at 1089.

court of limited jurisdiction has limitless power to grant Plaintiffs relief.

4. Timely Dismissal for Lack of Standing

I recognize that it is late in litigation to address standing. I now take note of the obvious, neither party has raised standing as an issue.⁹ But here we are. Meeting all three elements of standing must exist “throughout the life of the lawsuit.” *Wittman v. Personhuballah*, 578 U.S. 539, 543 (2016).

If at any point “in the course of litigation a court finds that it can no longer provide a plaintiff with any effectual relief, the case generally is moot.” *Uzuegbunam*, 592 U.S. at 282. And if “the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3); *see also Clendenin v. Persily*, No. 2:23-cv-71, 2024 WL 3625846, at *4 (S.D.W. Va. Aug. 1, 2024) (“[T]he standing doctrine ‘implicates the court’s [limited] subject matter jurisdiction’ under Article III of the United States Constitution.”) (quoting *South Carolina v. United States*, 912 F.3d 720, 726 (4th Cir. 2019)).

Since I have taken over this case, I have been clear about my long-held concern that courts lack the kind of power sought by Plaintiffs in this case. *Jonathan R. v. Justice*, 344 F.R.D. 294, 301 n.1 (“This court, however, remains skeptical of any relief requiring it to assume control of a state agency and direct how that agency

⁹ The parties’ concession of jurisdiction is irrelevant. “[E]very federal appellate court has a special obligation to ‘satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,’ even though the parties are prepared to concede it.” *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986) (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934)).

manages its program and allocates its funds.”); *see also* *Sommerville v. Union Carbide Corporation*, 2024 WL 2139394, at *5 (S.D.W. Va. May 13, 2024) (slip copy) (“Regrettably, growing challenges to the executive and legislative branches of our government are resulting in the forced resolution of policy issues through litigation in the judicial arena.”). Standing has long burdened and sometimes evaded parties and courts. Daryl J. Levinson, *Rights Essentialism and Remedial Equilibration*, 99 Colum. L. Rev. 857, 932 (1999) (“Worries about the legitimacy of less-democratically-accountable judges trumping the political preferences of more-democratically-accountable legislators (and executive officials) . . . have haunted modern constitutional law.”).

The voluminous record in this case shows that West Virginia’s foster care system is a complex administrative system that properly relies on the executive, legislative, and judicial branches of state government. It is burdened by uniquely West Virginia problems. The relief requested requires this court to create state policy. That is not the role of the federal courts. *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 538 (2012) (The courts are “vested with the authority to interpret the law;” but the courts “possess neither the expertise nor the prerogative to make policy judgments.”).

The only request remaining is a declaration that the actions of DHS are unconstitutional. This too fails to redress Plaintiffs’ injuries. *Juliana v. United States*, 947 F.3d 1159, 1170 (9th Cir. 2020) (“But that relief alone is not substantially likely to mitigate the plaintiffs’ asserted concrete injuries.”). “Absent further court action” Plaintiffs would be left with, at most, the “psychic satisfaction” of having DHS declared unconstitutional. *Steel Co. v. Citizens for a Better Environment*, 523 U.S.

83, 107 (1998) (“By the mere ubringing of his suit, *every* plaintiff demonstrates his belief that a favorable judgment will make him happier. But although a suitor may derive great comfort and joy from [that], . . . psychic satisfaction is not an acceptable Article III remedy because it does not redress a cognizable Article III injury.”); *see also Franklin v. Massachusetts*, 505 U.S. 788, 825 (1992) (“If courts may simply assume that everyone . . . will honor the legal rationales that underlie their decrees, then redressability will *always* exist. Redressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power.”) (emphasis in original) (Scalia, J. concurring in part and concurring in judgment).

IV. CONCLUSION

I recognize the constitutional bar to the case is an unsatisfying result to years-long litigation demanding improvement of West Virginia’s foster care system. I know that there are children who deeply suffer in the custody of the State. This compelled dismissal is in no way an endorsement of the system as it remains. But the United States Constitution prohibits this court from assuming control of West Virginia’s foster care agency.

This decision does not leave Plaintiffs without options. The state government retains every tool to improve the foster care system, and elected officials are entrusted and obligated to do so. If they fail, they “can be thrown out of office.” *National Federation of Independent Business*, 567 U.S. at 538. State officials can no longer hide behind this lawsuit to avoid the consequences of their political decisions. *Id.* (“It is not [the court’s] job to protect the people from the consequences of their political choices.”).

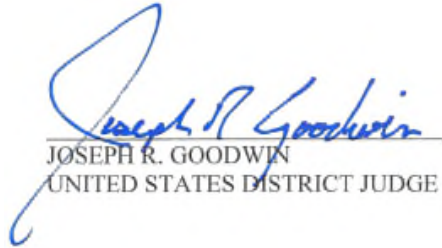
Now the legislature, the governor, and his appointees must do their job.

This court does not have jurisdiction. This case is **DISMISSED**.

The court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to counsel of record and any unrepresented party.

The court further **DIRECTS** the Clerk to post a copy of this published opinion on the court's website, www.wvwd.uscourts.gov.

ENTER: February 28, 2025



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

[Filed June 4, 2026]

No. 25-1232 (L)
(3:19-cv-00710)

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,

Plaintiffs - Appellants,

v.

PATRICK MORRISEY, in his official capacity as the
Governor of West Virginia; ALEX J. MAYER, in his
official capacity as Secretary of the West Virginia
Department of Human Services; CAMMIE CHAPMAN,
in her official capacity as Deputy Secretary of the
Department of Health and Human Resources; LORI

BRAGG, in her official capacity as Interim Commissioner
of the Bureau for Social Service; WEST VIRGINIA
DEPARTMENT OF HUMAN SERVICES,

Defendants - Appellees.

LAW SCHOLARS; THE NATIONAL CENTER FOR
YOUTH LAW AND 32 ADDITIONAL
ORGANIZATIONS; THE ARC OF THE UNITED
STATES; THE CENTER FOR PUBLIC
REPRESENTATION; THE NATIONAL HEALTH
LAW PROGRAM; THE JUDGE DAVID L. BAZELON
CENTER FOR MENTAL HEALTH LAW,

Amici Supporting Appellants.

THE LIBERTY JUSTICE CENTER; STATES OF
ALASKA; ALABAMA; ARKANSAS; DELAWARE;
FLORIDA; GEORGIA; IDAHO; IOWA; KANSAS;
LOUISIANA; MISSISSIPPI; NEBRASKA; NEW
HAMPSHIRE; NORTH DAKOTA; SOUTH
CAROLINA; TEXAS,

Amici Supporting Appellees.

No. 25-1239
(3:19-cv-00710)

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,

Plaintiffs - Appellees,

v.

PATRICK MORRISEY, in his official capacity as the Governor of West Virginia; ALEX J. MAYER, in his official capacity as Secretary of the West Virginia Department of Human Services; LORI BRAGG, in her official capacity as Interim Commissioner of the Bureau for Social Service; CAMMIE CHAPMAN, in her official capacity as Deputy Secretary of the Department of Health and Human Resources; WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES,

Defendants - Appellants.

THE LIBERTY JUSTICE CENTER; STATES OF ALASKA; ALABAMA; ARKANSAS; DELAWARE; FLORIDA; GEORGIA; IDAHO; IOWA; KANSAS; LOUISIANA; MISSISSIPPI; NEBRASKA; NEW HAMPSHIRE; NORTH DAKOTA; SOUTH CAROLINA; TEXAS,

Amici Supporting Appellants.

LAW SCHOLARS; THE NATIONAL CENTER FOR YOUTH LAW AND 32 ADDITIONAL ORGANIZATIONS; THE ARC OF THE UNITED STATES; THE CENTER FOR PUBLIC REPRESENTATION; THE NATIONAL HEALTH LAW PROGRAM; THE JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW,

88a

Amici Supporting Appellees.

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is reversed. This case is remanded to the district court for further proceedings consistent with the court's decision.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

APPENDIX D

28 U.S.C. § 1291**Final Decisions of District Courts**

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

Federal Rule of Civil Procedure 23
Class Actions

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

- (1) prosecuting separate actions by or against individual class members would create a risk of:
 - (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
 - (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) Certification Order.

(A) Time to Issue. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) Defining the Class; Appointing Class Counsel. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) Altering or Amending the Order. An order that grants or denies class certification may be altered or amended before final judgment.

(2) Notice.

(A) For (b)(1) or (b)(2) Classes. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) For (b)(3) Classes. For any class certified under Rule 23(b)(3)--or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)--the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) Judgment. Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) Particular Issues. When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) Subclasses. When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) In General. In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require--to protect class members and fairly conduct the action--giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) Combining and Amending Orders. An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise.

The claims, issues, or defenses of a certified class--or a class proposed to be certified for purposes of settlement--may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) Notice to the Class.

(A) Information That Parties Must Provide to the Court. The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) Grounds for a Decision to Give Notice. The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

(i) approve the proposal under Rule 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.

(2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

(3) Identifying Agreements. The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) New Opportunity to be Excluded. If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Class-Member Objections.

(A) In General. Any class member may object to the proposal if it requires court approval under this subdivision (e). The

objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.

(B) Court Approval Required for Payment in Connection with an Objection. Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:

- (i) forgoing or withdrawing an objection, or
- (ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

(C) Procedure for Approval After an Appeal. If approval under Rule 23(e)(5)(B) has not been obtained before an appeal is docketed in the court of appeals, the procedure of Rule 62.1 applies while the appeal remains pending.

(f) Appeals. A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule, but not from an order under Rule 23(e)(1). A party must file a petition for permission to appeal with the circuit clerk within 14 days after the order is entered, or within 45 days after the order is entered if any party is the United States, a United States agency, or a United States officer or employee sued for an act or omission occurring in connection with duties performed on the United States' behalf. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

(g) Class Counsel.

(1) Appointing Class Counsel. Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) Standard for Appointing Class Counsel. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) Interim Counsel. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) Duty of Class Counsel. Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

Federal Rule of Appellate Procedure 3
Appeal as of Right – How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as “all plaintiffs,” “the defendants,” “the plaintiffs A, B, et al.,” or “all defendants except X”;

(B) designate the judgment--or the appealable order--from which the appeal is taken; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) The notice of appeal encompasses all orders that, for purposes of appeal, merge into the designated judgment or appealable order. It is not necessary to designate those orders in the notice of appeal.

(5) In a civil case, a notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Federal Rule of Civil Procedure 58, if the notice designates:

(A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or

(B) an order described in Rule 4(a)(4)(A).

(6) An appellant may designate only part of a judgment or appealable order by expressly stating that the notice

of appeal is so limited. Without such an express statement, specific designations do not limit the scope of the notice of appeal.

(7) An appeal must not be dismissed for informality of form or title of the notice of appeal, for failure to name a party whose intent to appeal is otherwise clear from the notice, or for failure to properly designate the judgment if the notice of appeal was filed after entry of the judgment and designates an order that merged into that judgment.

(8) Forms 1A and 1B in the Appendix of Forms are suggested forms of notices of appeal.

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by sending a copy to each party's counsel of record--excluding the appellant's--or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries--and any later docket entries--to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk

sends copies, with the date of sending. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees. Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.