No. 24-2144

IN THE

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

A.B., BY NEXT FRIEND BRIAN WILSON, ET AL.,

Plaintiffs-Appellants,

—v.—

ERIC HOLCOMB, ET AL.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION
NO. 3:23-CV-00760-DRL-MGG
HONORABLE DAMON R. LEICHTY

BRIEF FOR *AMICI CURIAE* FEDERAL COURTS SCHOLARS IN SUPPORT OF PLAINTIFFS-APPELLANTS

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October 3, 2024

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 24-2144

Short Caption: A.B., by next friend Brian Wilson, et al. v. Eric Holcomb, et al.

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See Addendum A to this brief.

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(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

None

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

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Attorney's Printed Name: Amit Jain

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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N/A

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Attorney's Printed Name: Joshua Matz

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Attorney's Signature: Alisha Antonia Bruce Date: October 3, 2024

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INTEREST OF *AMICI CURIAE*[1]

The District Court held that *Younger v. Harris*, 401 U.S. 37 (1971), precluded it from exercising jurisdiction. *Amici* are federal courts scholars with extensive expertise in the history and scope of federal jurisdiction, including the *Younger* doctrine. They research, write, and teach about federal jurisdiction, federal courts, civil rights, constitutional law, and the intersection of those fields. They have a professional interest in the proper development of jurisdictional rules and are uniquely positioned to inform this Court of legal arguments and precedents that bear on the availability of federal jurisdiction in this case (as well as the federal courts' role in protecting federal constitutional rights). The full list of *amici* is attached as Addendum A.

INTRODUCTION

This Court must reverse the District Court decision below because it failed to abide by the axiomatic principle that "federal courts are obliged to decide cases within the scope of federal jurisdiction." *Sprint*

[1] All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or counsel for *amici* made a monetary contribution to the preparation or submission of this brief.

Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 72 (2013). The District Court did so because it believed that *Ashley W. v. Holcomb*, 34 F.4th 588 (7th Cir. 2022), required it to abstain under the rule established by *Younger v. Harris*, 401 U.S. 37 (1971). As Plaintiffs-Appellants explain, that belief was mistaken, and *Ashley W.* is distinguishable. The case for a narrow reading of *Ashley W.* is bolstered by three additional points: first, *Ashley W.* was wrong under settled Supreme Court precedent; second, *Ashley W.* created a circuit split that this Court should not further entrench, *see Jonathan R. v. Justice*, 41 F.4th 316 (4th Cir. 2022); and third, remedies doctrines afford well calibrated tools to address the comity concerns cited by the District Court. This amicus brief addresses each of those points, with a particular focus on the manifest legal errors committed by the panel opinion in *Ashley W.*

SUMMARY OF ARGUMENT

"Federal courts, it was early and famously said, have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. Jurisdiction existing, … a federal court's obligation to hear and decide a case is virtually unflagging." *Sprint*, 571 U.S. at 77 (cleaned up). While the Supreme Court has recognized caveats to that

principle based on "comity," *Younger*, 401 U.S. at 44, these abstention doctrines are the "exception, not the rule," *Sprint*, 571 U.S. at 82. *See* Part I.A.

The *Younger* abstention doctrine is one such narrow exception. Over decades, the Supreme Court has imposed tight limits on *Younger* abstention: a federal court will abstain *only* where the federal action would unduly interfere with (1) a criminal prosecution; (2) a quasi-criminal civil enforcement proceeding; or (3) a civil proceeding involving enforcement of an order that is central to the administration of the state judiciary. *Sprint*, 571 U.S. at 78. And even if a case falls into one of these categories, a federal court must also consider other factors, including whether the action interferes with the state court proceedings and whether the state court provides the plaintiff with an adequate forum to present the federal claims. Beyond the three "exceptional circumstances" just cited, however, *Younger* categorically does not apply. *See* Part I.B.

The District Court disregarded these guardrails, extending *Younger* far beyond what the Supreme Court has authorized. It did so in reliance on a decision of this Court, *Ashley W. v. Holcomb*, 34 F.4th 588 (7th Cir. 2024), which declared all child-welfare proceedings to fall within

the scope of *Younger*. *Ashley W.*, however, erroneously asserted that *Moore v. Sims*, 442 U.S. 415 (1979)—a Supreme Court case in which child-*removal* proceedings were found to be akin to a criminal prosecution, and thus subject to *Younger* abstention—could be extended to the materially different context of child-*welfare* proceedings. Analyzed properly, the child-welfare proceedings at issue in this litigation do not present the "exceptional circumstances" that can justify (or require) abstention. *See* Part I.C.

Independently, even if *Younger* did cover child-welfare proceedings, the District Court erred in concluding that abstention was required. The minor plaintiffs request relief directed at the Indiana Department of Child Services, *not* the state courts that adjudicate the Child in Need of Supervision ("CHINS") hearings. So this case risks no interference with any ongoing state proceedings. Indeed, the minor plaintiffs cannot obtain the systemic relief they seek in CHINS courts. *See* Part I.D.

Finally, abstaining from a case entirely is not the most effective way for federal courts to address federalism and comity concerns. Traditional remedies doctrines offer more flexible tools for courts to manifest proper

respect for the States without abdicating their duties to hear plaintiffs' federal claims. *See* Part II.

ARGUMENT

I. The District Court's Application of *Younger* Contradicts Precedent and Deepens a Circuit Split

A. Abstention Doctrines Balance Comity Against Courts' Core Duty to Decide Cases Within Their Jurisdiction

Article III of the U.S. Constitution provides that "[t]he judicial Power of the United States[] shall be vested" in federal courts and "shall extend to all Cases … arising under this Constitution [and] the Laws of the United States." For over two centuries, the Supreme Court has been clear that federal courts have an obligation to exercise judicial power over controversies properly before them. In 1821, Chief Justice Marshall held for a unanimous Court that federal courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821); *see also id.* ("It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should."). "With whatever doubts, with whatever difficulties, a case may be attended, [the Court] *must* decide it, if it be brought before [it]"—even if the case raises questions judges "would gladly avoid." *Id.* (emphasis added). To decline

to exercise that Article III power, Chief Justice Marshall explained, "would be treason to the constitution." *Id.*[2] Simply put, if jurisdiction exists, "a federal court's obligation to hear and decide a case is virtually unflagging." *Sprint*, 571 U.S. at 77 (quotations omitted).

The Supreme Court has remained steadfast in that pronouncement, even as it has recognized narrow exceptions that aim to preserve "the comity between the States and the National Government." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11 (1987). These narrow exceptions, known as abstention doctrines, reflect "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger*, 401 U.S. at 44. Abstention doctrines thus "reflect a complex of

[2] *See also Willcox v. Consol. Gas Co. of N.Y.*, 212 U.S. 19, 40 (1909) ("When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction."); *Chicot County v. Sherwood*, 148 U.S. 529, 534 (1893) (federal courts "cannot abdicate their authority or duty in any case in favor of another jurisdiction"); *Hyde v. Stone*, 61 U.S. (20 How.) 170, 175 (1857) (similar).

considerations designed to soften the tensions inherent in a system that contemplates parallel judicial processes." *Pennzoil*, 481 U.S. at 11 n.9.[3]

Still, the Supreme Court has held that comity concerns do not warrant "blind deference to 'States' Rights.'" *Younger*, 401 U.S. at 44. While "there are some classes of cases in which the withholding of authorized equitable relief because of undue interference with state proceedings is the normal thing to do," such abstention "remains the exception, not the rule." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 359 (1989) ("*NOPSI*"). Thus, "only *exceptional* circumstances justify a federal court's refusal to decide a case in deference to the States." *Id.* at 368 (emphasis added); *see also Allegheny County v. Frank Mashuda Co.*, 360 U.S. 185, 188 (1959) ("The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary

[3] These parallel judicial processes play an integral role in our federal system. As Alexander Hamilton explained, "[w]hen … we consider the State governments and the national governments, as they truly are, in the light of kindred systems, and as parts of [one whole], the inference seems to be conclusive, that the State courts would have a concurrent jurisdiction in all cases arising under the laws of the Union, where it was not expressly prohibited." THE FEDERALIST NO. 82, at 493 (C. Rossiter ed. 1961).

and narrow exception to the duty of a District Court to adjudicate a controversy properly before it."); *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992). This holds true "even in the presence of parallel state proceedings." *Sprint*, 571 U.S. at 81-82; *see id.* at 77 ("Parallel state-court proceedings do not detract from [the] obligation" "to hear and decide a case.").

"Extraordinary," "narrow," "limited," "exceptional": this is how the Supreme Court has described abstention doctrines. And that narrowness is important, as it ensures that abstention remains "a doctrine of equitable restraint, instead of inequitable abdication." Fred O. Smith, Jr., *Abstaining Equitably*, 97 Notre Dame L. Rev. 2095, 2097 (2022). The *Rooker-Feldman* doctrine, the Court has explained, "is a narrow doctrine, confined to cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Lance v. Dennis*, 546 U.S. 459, 464 (2006) (cleaned up). *Pullman* abstention, the Court has instructed, "is limited" to cases where a definitive ruling on state issues in the state proceedings would terminate the federal constitutional controversy. *Hawaii Hous. Auth. v.*

Midkiff, 467 U.S. 229, 236 (1984). Similarly, *Burford* abstention, the Court has taught, covers "extraordinary circumstances" where a case "presents difficult questions of state law bearing on policy problems of substantial public import." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 726-27 (1996). And, under *Colorado River* abstention, the Court has specified, only "exceptional circumstances" justify declining jurisdiction where a concurrent state proceeding is underway. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976).

Younger abstention—the doctrine invoked by the District Court to refuse to exercise jurisdiction here—is similarly narrow. As we discuss in this next part, the Supreme Court has held that *Younger* is to be invoked *only* in three "exceptional categories." *Sprint*, 571 U.S. at 78 (quotations omitted). Outside of those three categories, federal courts—including the District Court here—have an obligation to hear and decide a case. In that sense, *Younger* abstention is best understood as the *Younger* exception.

B. Supreme Court Precedent Limits *Younger* Exclusively to Three "Exceptional Circumstances"

The Supreme Court has strictly limited the categories of cases that qualify for *Younger* abstention. These categories involve only state enforcement of criminal laws or enforcement proceedings that are closely

related or akin to criminal proceedings. In recent decades, the Supreme Court has repeatedly made clear that beyond those categories of cases, federal courts—including the District Court here—have a "virtually unflagging" obligation to hear and decide cases, not to abstain from doing so.

Consider *Younger* itself. In that case the Supreme Court held that principles of comity required the federal court to abstain where pending state proceedings involved a criminal prosecution, absent "extraordinary circumstances, where the danger of irreparable loss is both great and immediate." 401 U.S. at 43, 45.

Four years later, in *Huffman v. Pursue, Ltd.*, the Supreme Court held that the *Younger* exception was not strictly limited to criminal proceedings. *See* 420 U.S. 592, 604 (1975). At the same time, the Court insisted that *Younger* requires some similarity to a criminal proceeding. In extending the *Younger* doctrine to civil nuisance proceedings, the Court described such proceedings as "more akin to … criminal prosecution[s] than … most civil cases." *Id.* The Court then highlighted the "critical similarities" between a criminal prosecution and a civil nuisance proceeding: namely, that "[t]he State is a party" and "the

proceeding is both in aid of and closely related to criminal statutes which prohibit the dissemination of obscene materials." *Id.* at 604-05. In such a case, although a federal court injunction would not disrupt an ongoing state criminal prosecution, it would disrupt the "State's efforts to protect the very interests which underlie its criminal laws and to obtain compliance with precisely the standards which are embodied in its criminal laws." *Id.* at 605. The quasi-criminal elements of this "civil counterpart" to *Younger* made abstention appropriate. *Id.* at 611.

Shortly thereafter, in *Juidice v. Vail*, the Supreme Court applied the *Younger* exception to challenges to state civil contempt proceedings. *See* 430 U.S. 327, 335-36 (1977). "The contempt power lies at the core of the administration of a State's judicial system," the Court reasoned, such that federal court interference was "an offense to the State's interest … likely to be every bit as great as it would be were this a criminal proceeding." *Id.* (cleaned up). Abstention under *Younger* was required, therefore, given the centrality of the state civil contempt process to the administration of the state judicial system itself. *See id.*

Two years later, in *Moore v. Sims*, the Court applied the *Younger* exception to proceedings to remove a child from his parents' custody. *See*

442 U.S. 415, 423 (1979). Again, the Court grounded its holding in the similarity between child-removal proceedings and criminal proceedings. Analogizing to *Huffman*, the Supreme Court determined that abstention was warranted not just because "the State here was a party to the state proceedings," but also because "the temporary removal of a child in a child-abuse context is … in aid of and closely related to criminal statutes." *Id.* (quotations omitted). The child-removal proceedings were thus "akin to a criminal prosecution in important respects." *Sprint*, 571 U.S. at 79 (discussing *Moore*) (cleaned up).

Three years after *Moore*, the Supreme Court decided *Middlesex County Ethics Committee v. Garden State Bar Association*, precipitating some confusion regarding the proper scope of *Younger*. *See* 457 U.S. 423 (1982). There, the Court considered whether the *Younger* exception extended to state bar disciplinary proceedings. *Id.* at 432. The Court evaluated three factors, soon to be known as the "*Middlesex* factors," as it considered whether to apply the *Younger* exception: "*first*, do state bar disciplinary hearings within the constitutionally prescribed jurisdiction of the State Supreme Court constitute an ongoing state judicial proceeding; *second*, do the proceedings implicate important state

interests; and *third*, is there an adequate opportunity in the state proceedings to raise constitutional challenges." *Id.* Importantly, under the first factor, the Court concluded that bar ethics committees acted "as the arm of the court in performing the function of receiving and investigating complaints and holding hearings" to make disciplinary decisions about attorneys under investigation. *Id.* at 433. Thus, the bar disciplinary proceedings, like the proceedings at issue in *Huffman* and *Moore*, were quasi-criminal, warranting abstention under *Younger*. *See Sprint*, 571 U.S. at 81 (discussing *Middlesex*).

Rather than focusing on the *Middlesex* Court's finding that the state bar proceedings were akin to criminal proceedings, some lower courts initially interpreted the *Middlesex* factors as expanding the *Younger* exception to apply anytime there was a potential overlap between state and federal proceedings. This broad reading of *Middlesex* eased limits on abstention doctrine considerably.[4]

[4] *See, e.g.*, John H. Giammatteo, *The New Comity Abstention*, 111 Cal. L. Rev. 1705, 1715 (2023); Peter R. O'Neill, Note, Younger *and the Youth: The* Younger *Abstention Doctrine in the Child-Welfare Context*, 76 Stan. L. Rev. 1323, 1335 (2024).

The Supreme Court soon intervened to set the record straight. In *NOPSI*, Justice Scalia explained that the applicability of the *Younger* exception "must stand or fall upon the answer to the question whether the [state] court action is the type of proceeding to which *Younger* applies," a category that includes *only* "state criminal prosecutions," "civil enforcement proceedings," and "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." 491 U.S. at 367-38. Justice Scalia emphasized that the Supreme Court had "never … suggested that *Younger* requires abstention in deference to a state judicial proceeding reviewing legislative or executive action," reasoning that "[s]uch a broad abstention requirement would make a mockery of the rule that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States." *Id.* at 368.

Yet some lower courts still did not get the message. Notwithstanding the unambiguous holding in *NOPSI*, these courts continued to apply *Younger* "whenever an ongoing state judicial proceeding … implicates important state interests, and … the state

proceedings provide an adequate opportunity to raise federal challenges." *Sprint*, 571 U.S. at 75 (cleaned up) (describing the decision under review).

Again, the Supreme Court unequivocally rejected that reading of its precedent. Instead, a unanimous Supreme Court explained that the three "exceptional circumstances" identified in *NOPSI* strictly "define *Younger*'s scope":

> First, *Younger* precluded federal intrusion into ongoing state criminal prosecutions. Second, certain civil enforcement proceedings warranted abstention. Finally, federal courts refrained from interfering with pending civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions.

Id. at 78, 82 (quotations, citations, and ellipses omitted). *Younger* extends "no further." *Id.* at 82. And absent these "exceptional circumstances," "the general rule governs: '[T]he pendency of an action in [a] state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction.'" *Id.* at 73 (quoting *Colorado River*, 424 U.S. at 817).

Expounding on the types of "civil enforcement proceedings" that fall into the second "exceptional circumstance" under *Younger*, the *Sprint* Court explained that (1) they consist of "state proceedings akin to a criminal prosecution in important respects," (2) they "are characteristically initiated to sanction the federal plaintiff, *i.e.,* the party

challenging the state action, for some wrongful act," (3) "a state actor is routinely a party to the state proceeding and often initiates the action," and (4) they commonly involve investigations "culminating in the filing of a formal complaint or charges." *Id.* at 79-80 (quotations omitted). The Supreme Court added that the *Middlesex* factors "were not dispositive; they were, instead, *additional* factors appropriately considered by the federal court before invoking *Younger*." *Id.* at 81. As the Supreme Court warned, "[d]ivorced from their quasi-criminal context, the three *Middlesex* conditions would extend *Younger* to virtually all parallel state and federal proceedings." *Id.* at 81. This is "irreconcilable with our dominant instruction that, even in the presence of parallel state proceedings, abstention … is the exception, not the rule." *Id.* at 81-82 (quotations omitted).

This Court shared that understanding and correctly applied *Younger*—as clarified by *NOPSI* and *Sprint*—in *Mulholland v. Marion County Election Bd.*, 746 F.3d 811, 816 (7th Cir. 2014). There, the plaintiff sought to enjoin the Marion County Election Board from enforcing an anti-slating statute and holding a meeting to determine his fate under said statute. *Id.* at 815. The district court abstained under

Younger, but this Court reversed, concluding that the planned Election Board meeting was "not the type of quasi-criminal proceeding that would warrant *Younger* abstention." *Id.* at 816-17. This Court correctly noted that this finding was "enough to defeat *Younger* abstention," and went on to find that there were no extraordinary circumstances that warranted deviation from this conclusion. *Id.* at 818.[5]

Unfortunately, the same cannot be said for this Court's more recent decision in *Ashley W. v. Holcomb*, on which the District Court here relied. As we explain next, *Ashley W.* reflected a return to the pre-*Sprint* status quo, where lower courts failed to adhere to the admonition that *Younger* extends "no further" than the three narrow "exceptional circumstances."

[5] Similarly, other circuits have described the analytic steps *Younger* abstention analysis requires in exactly the terms we do here. *E.g.*, *375 Slane Chapel Rd., LLC v. Stone County, Missouri*, 53 F.4th 1122, 1125-27 (8th Cir. 2022) (describing *Younger* to require first a determination of whether the case falls under the three "exceptional circumstances," and only then applying the *Middlesex* factors); *Jonathan R. v. Justice*, 41 F.4th 316, 331 (4th Cir. 2022) ("*Sprint* directs courts to a rule of thumb: if the case falls into one of the three settled categories, courts should go on to determine if federal involvement will in fact put comity at risk, but if the case does not, courts need go no further, they can properly entertain their federal-question jurisdiction without worrying about stepping on state toes.").

C. *Ashley W.* Erred Under Supreme Court Precedent Governing Where *Younger* Applies

The plaintiffs in *Ashley W.* brought a federal court action seeking injunctive relief against the Indiana Department of Child Services ("DCS"), its director, and the Indiana governor. *See* 34 F.4th at 591. Because they were under the care of DCS, all of the minor children involved in such litigation have ongoing proceedings in the Indiana Child in Need of Services ("CHINS") court. *See Ashley W.*, 34 F.4th at 590. And given those ongoing CHINS proceedings, Indiana argued that the federal court must abstain under *Younger*. *See Ashley W.*, 34 F.4th at 592.

Under *NOPSI* and *Sprint*, the resolution of that argument should have depended "upon the answer to the question whether the [Indiana] court action is the type of proceeding to which *Younger* applies." *NOPSI*, 491 U.S. at 367. And as *Sprint* clarified, there are only three types of such state proceeding: (1) "state prosecution[s]," (2) "civil proceedings that are akin to criminal prosecutions," and (3) proceedings that "implicate a State's interest in enforcing the orders and judgments of its courts." 571 U.S. at 72-73. But *Ashley W.* skipped this crucial first step of the

analysis.[6] Failing to even cite *Sprint* or *NOPSI*, the panel instead invoked *Moore* as somehow having held that *Younger* extends to *all* child-welfare proceedings. *See Ashley W.*, 34 F.4th at 591 ("We know from *Moore* … that *Younger* applies to state-initiated child-welfare litigation.").

This was error. *Moore* affords no basis to sidestep *NOPSI* and *Sprint* and automatically extend *Younger* to all child-welfare matters. In fact, *Moore* involved a meaningfully different aspect of the child-welfare system: child-*removal* proceedings. In *Moore*, the federal plaintiffs were parents accused of child abuse who had their children removed from their care pending a state agency investigation. 442 U.S. at 418-19. The Supreme Court refused to enjoin the state proceedings because, it reasoned, "the temporary removal of a child in a child-abuse context is … in aid of and closely related to criminal statutes." *Id.* at 423 (quotations omitted). To be sure, some of *Moore*'s language might be read to suggest that *Younger* is "applicable to civil proceedings in which important state interests are involved." *Id.* But in *Sprint*, a unanimous Supreme Court

[6] This Court laid the groundwork for that error in its earlier decision in *Nicole K. v. Stigdon*, where in analyzing the question of *Younger* abstention, it suggested that it "does not matter whether *Younger* applies to all CHINS proceedings." 990 F.3d 534, 537 (7th Cir. 2021). Like *Ashley W.*, *Nicole K.* made no mention of either *Sprint* or *NOPSI*.

dispelled any ambiguity stemming from that language and explicitly cabined *Moore*. The *Sprint* Court categorized *Moore* as concerning civil enforcement cases "akin to criminal prosecution" where "the state [had] initiated proceeding[s] to gain custody of children allegedly abused by their parents." *Sprint*, 571 U.S. at 79 (quotations omitted). The quasi-criminal attribute of *Moore* justified *Younger* abstention, not some amorphous "important state interest." *Id.* at 81.[7]

But those quasi-criminal attributes were absent in the child-*welfare* proceedings at issue in *Ashley W.* To start, the federal plaintiffs in *Ashley W.* were not parents accused of abuse, but minor children who were under the care of the Indiana foster care system. In no sense were these proceedings "initiated to sanction" Indiana children "for some wrongful act"—the *Sprint* criterion for identifying which quasi-criminal state proceedings qualify for *Younger* abstention. 571 U.S. at 79. It "would turn decades of Supreme Court jurisprudence—and logic—on its head to put

[7] *Ashley W.* cited two other cases, along with *Moore*, in support of its declaration that *Younger* extends to child-welfare proceedings. *See* 34 F.4th at 591-92. Both cases, like *Moore*, involved quasi-criminal child-removal and parental termination proceedings. *See Brunken v. Lance*, 807 F.2d 1325, 1330-31 (7th Cir. 1986); *Milchtein v. Chisholm*, 880 F.3d 895 (7th Cir. 2018).

these foster children in the shoes of the abusive parents in *Moore*." *Jonathan R. v. Justice*, 41 F.4th 316, 330 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 310 (2022). Moreover, unlike the quasi-criminal inquiry in *Moore* into child abuse allegations, the proceedings at issue in *Ashley W.* concerned the continuing care of children who had been placed under state supervision. *See* 34 F.4th at 590-91. In that respect, the minor plaintiffs did not challenge any removal determinations; they disputed only whether Indiana was complying with federal law when it came to their continuing care.

For precisely these reasons, other courts have properly held that *Younger* abstention has no place in the context of challenges to child-welfare proceedings.[8] Most notably, the Fourth Circuit explicitly split from *Ashley W.* and "easily reject[ed]" the notion that *Moore* justified abstention in child-*welfare* (as opposed to child-*removal*) proceedings. *Jonathan R.*, 41 F.4th at 329, 332 & n.7 ("We are not persuaded [by

[8] The understanding that *Younger* has no place in the child-welfare context is consistent with the view of some scholars that, when "the elements of the *Younger* doctrine are considered together," abstention is inappropriate unless the federal plaintiff "arguably has violated state law." Barry Friedman, *Under the Law of Federal Jurisdiction: Allocating Cases Between Federal and State Courts*, 104 Colum. L. Rev. 1211, 1249-50 (2004).

Ashley W.], and the Seventh Circuit evinces no authority for such a sweeping proposition."); *see also id.* at 329 (declining to abstain because "*Moore* concerned the other side of the foster-care process: parental rights").

District courts, too, have recognized that because "[t]he animating purpose of … dependency proceedings … is to plan for and monitor the development and well-being of children, not to investigate or penalize those who might have contributed to their dependency," such proceedings "differ from emergency removals like the one at issue in *Moore*" and therefore "do not qualify as quasi-criminal for purposes of *Younger*." *Tinsley v. McKay*, 156 F. Supp. 3d 1024, 1034 (D. Ariz. 2015). Indeed, "an expansion of *Younger* into this [child-welfare] realm bloats the meaning of quasi in quasi-criminal." *Jeremiah M. v. Crum*, 695 F. Supp. 3d 1060, 1079 (D. Alaska 2023) (quotations omitted).

Nor can *Ashley W.* be justified on the ground that child-welfare proceedings fall into the other two "exceptional circumstances" identified in *Sprint*. They certainly do not qualify as criminal prosecutions, and they do not involve the enforcement of "orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions."

Sprint, 571 U.S. at 73 (quotations omitted); *see also Jonathan R.*, 41 F.4th at 331 ("The foster-care periodic hearings … involve approving foster-care plans, ordering payments for medical or mental-health services, affirming out-of-state transfers, and generally ensuring the children's placements continue to be in their best interest.… Nothing about that implicates 'the administration of [the state's] judiciary.'").

In light of the fact that *Ashley W.* departed from Supreme Court precedent and created a circuit split, it should be read very narrowly—or, if required to achieve a proper outcome here, reconsidered *en banc*.

D. *Ashley W.* Independently Erred Under Supreme Court Precedent Governing Additional Limitations on *Younger*

Independently, *Ashley W.* erred in applying the *Middlesex* factors, which are "*additional* factors appropriately considered by the federal court before invoking *Younger*." *Sprint*, 571 U.S. at 81. Under these "*additional* factors," *Younger* requires abstention for a case that fits within one of the three categories only if there is (1) interference with an ongoing state proceeding, (2) that implicates important state interests, and (3) that provides the federal plaintiff with an adequate opportunity to present her federal claims. *Id.* To be sure, CHINS proceedings

undoubtedly implicate important state interests under the second *Middlesex* factor. But *Ashley W.* failed to ask whether the requested relief would interfere with ongoing state proceedings under the first *Middlesex* factor. And under the third factor, when concluding that the CHINS proceedings provided the minor plaintiffs an adequate opportunity to press their federal claims, it misunderstood the form of relief requested. Thus, under a proper analysis of the *Middlesex* factors, *Younger* is inapplicable *even if* child-welfare proceedings could somehow be characterized as quasi-criminal. These are additional reasons why this Court should take a narrow view of *Ashley W.*, distinguish it, or consider ultimately overturning it—instead of extending and compounding that decision's errors, as the District Court did here.

Ashley W. did not ask whether the injunction that the minor plaintiffs sought would *interfere* with the ongoing CHINS proceedings, as the first *Middlesex* factor requires. Instead, *Ashley W.* merely noted the *existence* of parallel CHINS proceedings and believed the key question to be: "what can a federal court do about these things that a CHINS judge could not?" *Ashley W.*, 34 F.4th at 593-94; *see also* Short App. 9 (quoting this *Ashley W.* language as the "prevailing question"). But that is not the

test—"there is no doctrine that the availability or even the pendency of state judicial proceeding excludes the federal courts." *NOPSI*, 491 U.S. at 373. The Supreme Court has been clear: "Abstention is not in order simply because a pending state-court proceeding involves the same subject matter." *Sprint*, 571 U.S. at 72. *Younger* is concerned with "undue *interference*" with state proceedings, not mere parallel proceedings. *Id.* (emphasis added); *see also NOPSI*, 491 U.S. at 359.

Even if *Ashley W.*'s answer to the supposed "prevailing question" was that the minor plaintiffs could obtain the same relief in the CHINS courts (which, as we explain below, they could not), that does not equate to interference with the state proceedings such that abstention would be justified. The minor plaintiffs chose the federal court as their forum, and "[t]he right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied." *Willcox*, 212 U.S. at 40; *see also NOPSI*, 491 U.S. at 358-59, 373. Equally important, just because another forum exists does not mean that a court is free to "abdicate [its] authority or duty … in favor of another jurisdiction." *Chicot County*, 148 U.S. at 534. To the contrary, even if a federal court "would gladly avoid"

answering questions about the legality of a state system, it must do just that. *Cohens*, 19 U.S. at 404.

In this case, the District Court replicated (and extended) *Ashley W.*'s error. Indeed, the relief the minor plaintiffs seek ensures no risk of interference with court proceedings. The minor plaintiffs do not seek to pause, end, or reverse the *CHINS proceedings*. They ask the District Court to order the *Indiana Department of Child Services* to "ensure that all children in the custody of DCS receive timely and appropriate services," "that DCS recruit and retain an adequate number of … caseworkers," "that DCS establish a recordkeeping system sufficient to maintain and update medical records for all children," and so on. App. 74-75. None of this relief runs against or even involves the CHINS court. The relief solely targets Indiana's executive branch, not its judiciary. In short, the minor plaintiffs merely "ask the district court to bring the inner workings of the *executive branch* in compliance with federal law." *Jonathan R.*, 41 F.4th at 333 (emphasis added); *see also id.* at 332 ("Federal orders going to the Department simply do not interfere with how *the courts* conduct individual periodic hearings…."). Nothing threatens interference with the CHINS proceedings, and certainly

"nothing … risks the kind of interference *Younger* seeks to forestall: an interruption, an injunction, an end to the pending state proceedings." *Id.* at 334. Under the first *Middlesex* factor, therefore, no abstention is justified.

Applying the third *Middlesex* factor, *Ashley W.* concluded—with only cursory analysis—that the CHINS court in the individual plaintiffs' cases could address any allegations in the complaint concerning the interval of hearings, the recruitment of foster care placements, or caseworker caseloads. *See* 34 F.4th at 593-94. But the plaintiffs in *Ashley W.* actually "brought a far broader challenge to the child welfare regime."[9] The panel, however, misunderstood that challenge as raising nothing more than individual complaints about individual cases.

Here again, instead of appropriately cabining *Ashley W.*'s error on this *Middlesex* factor, the District Court extended it. For example, the District Court reasoned that a CHINS court could "address caseloads … by … requiring a new caseworker" and resolve issues of "faster placements or more detailed medical records" for children "within the context of the needs and interests of these children." Short App. 11. But,

[9] O'Neill, Younger *and the Youth*, at 1350.

as the minor plaintiffs explain in their opening brief, this misreads their complaint and reflects confusion about the type of relief they seek. Op. Br. 29-32. The minor plaintiffs do not seek an order concerning a particular caseworker assignment or one failure to provide detailed medical records. Instead, they challenge the *systemic* failures in the system that put them, and other foster children, at risk of future harm. Even if a CHINS court could require a new caseworker be assigned to a case, the failure of DCS to address the way it recruits, trains, and retains caseworkers still put that same child, and other children, at risk of harm in the future. A CHINS court cannot address *that* system-wide deficiency. *See* Op. Br. 29-35; *see generally* Br. of Child Advocates, Inc. as *Amicus Curiae* in Support of Plaintiffs-Appellants; *see also Jonathan R.*, 41 F.4th at 336 ("Plaintiffs assert wide-reaching, intertwined, and 'systemic' failures that cannot be remedied through piecemeal orders.").[10]

[10] *See also* David Marcus, *Groups and Rights in Institutional Reform Litigation*, 97 Notre Dame L. Rev. 619, 672 (2022) (arguing that various doctrines applicable in federal foster care reform litigation distinguish between rights vindicated on behalf of groups and rights vindicated individually, and thus that "*Younger* is irrelevant" because "the plaintiff[s] assert[] a right" in federal court "that differs from" the individual rights that "the state proceeding adjudicates").

The District Court also appeared to suggest that, absent some clear statement in an Indiana statute barring systemic relief, the CHINS court must be *assumed* to have the authority to handle the federal claims that the minor plaintiffs assert. Short App. 9. But this is not the law. The District Court cited no authority for imposing this requirement on the minor plaintiffs here. Indeed, the Supreme Court has explained that a state forum is inadequate for purposes of the *Middlesex* factors whenever state law and its construction "make it *unlikely* that [the state] courts would ever address plaintiffs' constitutional claim." *Hernandez v. Finley*, 471 F. Supp. 516, 520 (N.D. Ill. 1978) (three-judge court) (emphasis added), *summarily aff'd sub nom. Quern v. Hernandez*, 440 U.S. 951 (1979); *see Moore*, 442 U.S. at 425 n.9 (citing to *Hernandez* favorably in its conclusion "that the applicable state procedures did not permit the defendant to raise a constitutional challenge" and contrasting it with the state law in that case which had explicitly held that the federal claims could be heard in the state court). Thus, under *Moore*, the minor plaintiffs did not need to show that the state law contained a clear statement that explicitly barred them from raising their federal claims; instead, it is enough that relief on those claims in the CHINS court is "unlikely."

Even if the CHINS court could *theoretically* grant such relief, the minor plaintiffs face a multitude of obstacles to presenting the federal claims and obtaining the relief requested. Take, to start, standing. Given the system-wide relief sought in the instant action, "an individual foster child is unlikely to have standing to ask for systemic changes not tied directly to her own maltreatment." *Jonathan R.*, 41 F.4th at 336. In fact, here, the District Court dismissed two of the minor plaintiffs' claims for lack of standing. Short App. 12. Mootness follows as another barrier: "individual cases will be mooted out long before a state court issues any orders." *Jonathan R.*, 41 F.4th at 336. The circumstances in *Ashley W.* prove the point: eight of the ten original plaintiffs aged out of the system before the case reached this Court, mooting their complaints. *See* 34 F.4th at 592. Next comes the question of exactly how an individual child can put together the type of case needed to prove systemic violations. *See Jonathan R.*, 41 F.4th at 337 (noting that "it is far from clear [individual foster children] could mount sufficient evidence to secure systemic relief" or secure the funding needed to do so).

Simply put, asking (sometimes unrepresented) minor children who are the victims of abuse or neglect to litigate their systemic relief claims

in CHINS court is tantamount to asking for the impossible. "Reforming foster care case-by-case would be like patching up holes in a sinking ship by tearing off the floorboards." *Id.* at 336. The CHINS court does not afford any meaningful—much less adequate—forum for these children to present their claims. And as such, this third *Middlesex* factor, like the first, demands that the federal court exercise its jurisdiction and hear the minor plaintiffs' case.

* * *

Ashley W. and the District Court stretched the *Younger* exception way past the strict limit set by the Supreme Court in *Sprint*—and in doing so, abdicated their responsibility to hear the minor plaintiffs' federal case. Child-welfare proceedings simply do not resemble any of the three "exceptional circumstances" that will justify *Younger* abstention. Even if they did, the relief the minor plaintiffs seek—which cannot be afforded by the CHINS court—would not interfere with the CHINS proceedings in any event. Because *Ashley W.* erred in its application of decades of Supreme Court precedent concerning *Younger* abstention, this Court should take a narrow view of that decision, distinguish it, or consider ultimately overturning it *en banc*.

II. Any Federalism Concerns Voiced in *Ashley W.* are Better Addressed as a Matter of Remedial Law, Not of Jurisdiction

Ashley W. (and the District Court) raised concerns about the federalism implications of some of the potential relief that could come out of the litigation. *See* 34 F.4th at 593-94 (discussing whether a federal court can order a state agency to spend more money); Short App. 9-12 (similar). These concerns about the types of remedies available, the courts reasoned, supported federal court abstention under *Younger*.

For the reasons explained above, both courts erred. At the same time, *amici* acknowledge that Indiana has a strong interest in the operation of its child welfare system. But withholding jurisdiction at the start of a case is too blunt a response to this federalism concern. Remedies doctrines offer far more flexible, much less "all-or-nothing" tools to address federalism concerns. At the remedial stage courts can design their way around federalism problems while still vindicating federal constitutional and statutory rights.

In the child welfare context, courts have addressed federalism concerns when they determine if an institutional reform plaintiff has met the requirements for injunctive relief. *See Connor B. ex rel. Vigurs v. Patrick*, 774 F.3d 45, 57 (1st Cir. 2014) (declining injunctive relief,

"especially in light of the 'sensitive federalism concerns' at play in institutional reform litigation," where state executive branch made "concrete, good faith improvements" to child services) (cleaned up). Courts have also addressed federalism concerns when determining the scope of an injunction they issue to reform an institution. *See M.D. ex rel. Stukenberg v. Abbott*, 907 F.3d 237, 271 (5th Cir. 2018) (striking portions of an overbroad injunction that would commit the court to "near-perpetual oversight of an already-complex child-welfare regime"). Furthermore, courts have accounted for federalism concerns when deciding whether to modify or terminate injunctions under Rule 60. *See Horne v. Flores*, 557 U.S. 433, 448-50 (2009) (noting that "sensitive federalism concerns" require courts considering Rule 60 motions to take a "flexible approach" that "allows courts to ensure 'that responsibility for discharging the State's obligations is returned promptly to the State' … when the circumstances warrant") (cleaned up).

Remedies doctrines thus meaningfully constrain the impact of a federal court injunction on state operations, while enabling federal courts to vindicate federal rights. Fashioning remedies offers federal courts ample opportunities to "take into account the interests of state and local

authorities in managing their own affairs." *Milliken v. Bradley*, 433 U.S. 267, 280-81 (1977).[11] As federal courts have done in the past, the District Court here can address any federalism and comity concerns that arise at the remedial stage of the case and conduct a "provision-by-provision" analysis of the relief requested. This approach shows due respect for federalism and comity, avoids a doctrinally unsound abdication of the District Court's duty, and ensures that all plaintiffs, including vulnerable children in Indiana, have an appropriate opportunity to vindicate important federal rights.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below and direct the District Court to exercise jurisdiction over Plaintiffs-Appellants' case.

[11] Moreover, even when *Younger* concerns arise, courts can apply the doctrine claim-by-claim. *See, e.g.*, *Joseph A. ex rel. Wolfe v. Ingram*, 275 F.3d 1253, 1272 (10th Cir. 2002) (finding that "a provision-by-provision *Younger* analysis [of a consent decree] appears prudent … for the fact that a provision may not be enforceable in light of *Younger* does not necessarily warrant voiding the entire consent decree").

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Respectfully submitted,

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ADDENDUM A

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Circuit Rule 29 because this brief contains 6,999 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac in 14-point Century Schoolbook.

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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