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NOTE

Younger and the Youth: The *Younger* Abstention Doctrine in the Child-Welfare Context

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Abstract. In 2021, over three million children interacted with the child welfare system and over six hundred thousand were in foster care. These child welfare systems, striving as they may to help children and families in crisis, are themselves in crisis. Seeking relief from these dysfunctional state systems, children and advocacy groups have turned to the federal courts for relief. These plaintiffs have challenged almost every aspect of state child welfare systems, from initial investigation to discharge, and have asked federal courts to mandate everything from targeted reforms to complete overhauls of state systems. But because child welfare systems are often run by, through, and with the oversight of state courts, the *Younger* abstention doctrine has posed an early obstacle to some of these suits. Courts considering whether to abstain have split on almost every point of *Younger*'s analysis: whether state courts provide an adequate opportunity to raise federal claims, whether a federal challenge would interfere with the state court proceedings, and whether child welfare proceedings are the kind of proceedings to which *Younger* applies.

While the literature on *Younger* abstention is expansive, this last question—whether child welfare proceedings are the kind of proceedings to which *Younger* applies—has largely been ignored by scholars. This Note fills that gap. Part I details the development of the *Younger* doctrine. Part II introduces the child welfare system and explores how courts have applied *Younger* in this context, beginning with an overview of child welfare systems and concluding with an in-depth look at recent decisions by the Seventh and Fourth Circuits. Part III analyzes child welfare proceedings within the *Younger*/*Sprint* framework. It argues that certain portions of child welfare proceedings are quasi-criminal, that the extent to which a proceeding is quasi-criminal varies across and within cases, and that neither the Seventh nor the Fourth Circuit has adequately accounted for this heterogeneity. Finally,

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Part IV offers a solution, proposing that courts should take a piecemeal approach to *Younger* in the child welfare space.

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Introduction

In 2021, over three million children interacted with the child welfare system and over six hundred thousand were in foster care.[1] Over the past several decades, coalitions of children, parents, and advocacy groups have challenged almost every aspect of state child welfare regimes—from initial investigations[2] and removal hearings[3] to the treatment of children in state custody[4] and the failure to discharge children in a timely manner.[5] These plaintiffs allege shocking failures: children unnecessarily prevented from seeing their their parents and siblings,[6] over-prescription of psychotropic medications,[7] and children left sleeping on bare mattresses on concrete floors.[8] But because child welfare systems are run by, through, or with the oversight of state courts, the *Younger* abstention doctrine has posed an early obstacle to some of these lawsuits.[9]

In the 1971 case *Younger v. Harris*, the Supreme Court held that the principles of equity and federalism require federal courts to abstain where the relief sought would enjoin an ongoing state criminal prosecution.[10] In the subsequent decades, the doctrine expanded far beyond state criminal proceedings, requiring federal courts to abstain where hearing a federal challenge would interfere with certain

1. U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT 2021, at ii (2023), https://perma.cc/LR58-TY6L; U.S. DEP'T OF HEALTH & HUM. SERVS., THE AFCARS REPORT: PRELIMINARY ESTIMATES FOR FY 2021 AS OF JUNE 28, 2022—NO. 29, at 1 (2022), https://perma.cc/UN77-5NWU.

2. Tinsley v. McKay, 156 F. Supp. 3d 1024, 1026 (D. Ariz. 2015) (alleging "widespread failure to conduct timely investigations of reports that children have been maltreated while in state foster care").

3. Oglala Sioux Tribe v. Fleming, 904 F.3d 603, 608 (8th Cir. 2018).

4. Bryan C. v. Lambrew, 340 F.R.D. 501, 505 (D. Me. 2021); M.B. *ex rel.* Eggemeyer v. Corsi, 327 F.R.D. 271, 274 (W.D. Mo. 2018); M.D. v. Perry, 799 F. Supp. 2d 712, 714-15 (S.D. Tex. 2011).

5. Class Action Complaint ¶¶ 138-39, Ashley W. *ex rel.* Durnell v. Holcomb, 467 F. Supp. 3d 644 (S.D. Ind. 2020) (No. 19-cv-00129), *rev'd sub nom.* Ashley W. v. Holcomb, 34 F.4th 588, 594 (7th Cir. 2022) [hereinafter Ashley W. Complaint].

6. Second Amended Complaint for Injunctive & Declaratory Relief & Request for Class Action ¶ 12, *Tinsley*, 156 F. Supp. 3d 1024 (No. 15-cv-00185).

7. First Amended Complaint for Injunctive & Declaratory Relief & Request for Class Action ¶¶ 1, 88, 95, 138-39, *M.B.*, 327 F.R.D. 271 (No. 17-cv-4102).

8. *See* Jonathan R. *ex rel.* Dixon v. Justice, 41 F.4th 316, 322 (4th Cir.), *cert. denied sub nom.* Justice v. Jonathan R., 143 S. Ct. 310 (2022).

9. *E.g.*, *Ashley W.*, 34 F.4th at 594; Oglala Sioux Tribe v. Fleming, 904 F.3d 603, 613-14 (8th Cir. 2018). *But see Jonathan R.*, 41 F.4th at 332 (holding that *Younger* does not require dismissal); Wyatt B. *ex rel.* McAllister v. Brown, No. 19-cv-00556, 2021 WL 4434011, at *6 (D. Or. Sept. 27, 2021) (same); Bryan C. v. Lambrew, 340 F.R.D. 501, 511 (D. Me. 2021) (same).

10. 401 U.S. 37, 53-54 (1971).

state civil proceedings.[11] Then, beginning with the 1989 case *New Orleans Public Service, Inc. v. Council of the City of New Orleans*, the doctrine's reach began to contract.[12] Most recently, in *Sprint Communications, Inc. v. Jacobs*, the Supreme Court held that *Younger* abstention applied only in "exceptional" circumstances.[13] Read through *Sprint*, the *Younger* doctrine requires federal courts to abstain where a federal lawsuit would interfere with state criminal prosecutions, quasi-criminal "civil enforcement proceedings," or "civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions."[14] Interference with such proceedings is inappropriate as long as the federal plaintiff has an adequate opportunity to raise the federal challenges in state court and denying federal relief would not cause the plaintiff irreparable harm.[15]

The courts that have addressed whether *Younger* requires abstention from challenges to state child welfare systems have split on almost every point of analysis: whether the pending state court proceedings provided an adequate

11. Huffman v. Pursue, Ltd., 420 U.S. 592, 611 (1975) (abstaining where the federal lawsuit would interfere with a civil nuisance action); Juidice v. Vail, 430 U.S. 327, 338-39 (1977) (civil contempt proceeding); Trainor v. Hernandez, 431 U.S. 434, 444 (1977) (civil attachment action); Moore v. Sims, 442 U.S. 415, 434-35 (1979) (child removal action); *see* Ohio Civ. Rts. Comm'n v. Dayton Christian Schs., Inc., 477 U.S. 619, 622, 627-28 (1986) (administrative proceedings that were judicial in nature); John Harland Giammatteo, *The New Comity Abstention*, 110 CALIF. L. REV. 1705, 1714-15 (2023).

12. 491 U.S. 350, 367-68 (1989) [hereinafter *NOPSI*]; *see* Giammatteo, *supra* note 11, at 1715.

13. 571 U.S. 69, 73 (2013) (quoting *NOPSI*, 491 U.S. at 368).

14. *Id.* at 78 (alteration in original) (quoting *NOPSI*, 491 U.S. at 368).

15. *See id.* at 77 (quoting Younger v. Harris, 401 U.S. 37, 43-44 (1971)). Though *Younger* spoke of "adequate remedy at law," Younger v. Harris, 401 U.S. 43-44, later decisions have clarified that the would-be federal plaintiffs must have an opportunity to raise their federal claims in the underlying state proceedings in order for abstention to be proper. *See* Middlesex Cnty. Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982). Courts have narrowly defined what constitutes irreparable harm in the *Younger* context, finding it present where the plaintiff has demonstrated "bad faith, harassment, or a patently invalid state statute." *Sprint*, 571 U.S. at 77 (citing *Younger*, 401 U.S. at 53-54); *see* RICHARD H. FALLON, JR., JOHN F. MANNING, DANIEL J. MELTZER & DAVID L. SHAPIRO, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1141 (7th ed. 2015) ("Subsequent decisions have stressed the narrowness of the possible openings."). For further discussion of the concept of irreparable harm limiting the application of the *Younger* abstention doctrine, see Fred O. Smith, Jr., *Abstention in the Time of Ferguson*, 131 HARV. L. REV. 2283, 2296-2303 (2018) (quoting *Younger*, 401 U.S. at 53) ("*Younger* itself acknowledged that irreparable harm or 'extraordinary circumstances' would sometimes require federal intervention in state criminal proceedings. And throughout the 1970s, the Court reaffirmed and refined these principles, holding that courts should not block a suit when state officials are acting in bad faith or engaging in harassment, when state adjudicators have a real or reasonable perceived financial stake in the outcome, when there is no timely forum in which to raise constitutional claims, and when state officials are attempting to wield a patently unconstitutional law.").

opportunity to address the plaintiffs' federal claims,[16] whether the federal challenge would have interfered with the state court proceedings,[17] and whether the child welfare proceedings were the kind of proceedings to which *Younger* applies.[18]

While the literature on *Younger* abstention is expansive,[19] this last question—whether child welfare proceedings are the kind of proceedings to which *Younger* applies—has remained largely ignored by scholars. Scholarship since *Sprint* has addressed the application of *Younger* in the child welfare context only briefly. David Marcus surveyed the "mess of contradictory decisions" *Younger* motions have produced in child welfare reform litigation before proposing that a group-rights framework would enable plaintiffs to avoid abstention.[20] In his 2017 article *Abstention in the Time of Ferguson*, Fred Smith, Jr., cites *M.D. v. Perry*[21] and *Tinsley v. McKay*[22]—cases in which district courts declined to abstain from class action challenges to child welfare systems—as evidence of an emerging exception to *Younger* for "systemic, widespread constitutional violations."[23] In his 2022 article *Abstaining Equitably*,

16. *Compare* 31 Foster Child. v. Bush, 329 F.3d 1255, 1281 (11th Cir. 2003) (finding that state proceedings provided an adequate opportunity), *with* M.D. v. Perry, 799 F. Supp. 2d 712, 721-22 (S.D. Tex. 2011) (finding that state proceedings did not provide an adequate opportunity), *and* People United for Child., Inc. v. City of New York, 108 F. Supp. 2d 275, 290 (S.D.N.Y. 2000) (same).

17. *Compare* J.B. *ex rel.* Hart v. Valdez, 186 F.3d 1280, 1291-92 (10th Cir. 1999) (finding that a federal lawsuit would interfere), *with* Brian A. *ex rel.* Brooks v. Sundquist, 149 F. Supp. 2d 941, 957 (M.D. Tenn. 2000) (finding that a federal lawsuit would not interfere).

18. *Compare* Jonathan R. *ex rel.* Dixon v. Justice, 41 F.4th 316, 329-30, 332 (4th Cir. 2022) (concluding that child welfare proceedings do not fall within the *Sprint* categories), *cert. denied sub nom.* Justice v. Jonathan R., 143 S. Ct. 310 (2022), *with* Ashley W. v. Holcomb, 34 F.4th 588, 591-92, 594 (7th Cir. 2022) (concluding that child welfare proceedings fall within the *Sprint* categories).

19. Scholars have debated the doctrine's legitimacy. *E.g.*, Martin H. Redish, *Abstention, Separation of Powers, and the Limits of the Judicial Function*, 94 YALE L.J. 71, 72 (1984); David L. Shapiro, *Jurisdiction and Discretion*, 60 N.Y.U. L. REV. 543, 544-45 (1985); Michael Wells, *Why Professor Redish Is Wrong About Abstention*, 19 GA. L. REV. 1097, 1097-98 (1985). Scholars have described and critiqued its development. *E.g.*, Ann Althouse, *The Misguided Search for State Interest in Abstention Cases: Observations on the Occasion of* Pennzoil v. Texaco, 63 N.Y.U. L. REV. 1051, 1075-90 (1988); Fred O. Smith, Jr., *Abstaining Equitably*, 97 NOTRE DAME L. REV. 2095, 2108-09 (2022); Giammatteo, *supra* note 11, at 1708-09. Others have offered proposals for its transformation or reform. *E.g.*, James C. Rehnquist, *Taking Comity Seriously: How to Neutralize the Abstention Doctrine*, 46 STAN. L. REV. 1049, 1052-53 (1994); Smith, *supra* note 15, at 2303-05; Anne Rachel Traum, *Distributed Federalism: The Transformation of* Younger, 106 CORNELL L. REV. 1759, 1763-65 (2021).

20. David Marcus, *Groups and Rights in Institutional Reform Litigation*, 97 NOTRE DAME L. REV. 619, 624-25, 672 (2022).

21. 799 F. Supp. 2d 712 (S.D. Tex. 2011).

22. 156 F. Supp. 3d 1024 (D. Ariz. 2015).

23. Smith, *supra* note 15, at 2303-04.

Smith cites to *Oglala Sioux Tribe v. Fleming*,[24] another child welfare class action, as evidence that the trend towards a systemic exception was "cracking."[25] And in his recent article *The New Comity Abstention*, John Giammatteo argues that lower courts are developing a "new comity abstention" doctrine and deploys child welfare cases as examples of this trend.[26] But none of these works meaningfully analyze whether child welfare proceedings fall within the three *Sprint* categories.[27]

This Note aims to fill this gap in the literature. This Note argues that child welfare proceedings are multi-purposed and defy characterization as either entirely within *Sprint*'s categories or entirely without and that courts' application of *Younger* in the child welfare context should account for this duality. Where *Younger*'s other requirements are met, federal courts should abstain from hearing *those aspects* of challenges that would interfere with the "quasi-criminal" or "civil enforcement" aspects of child welfare proceedings while permitting other aspects of the challenges to proceed.

This Note proceeds in four parts. Part I details the development of the *Younger* doctrine. It shines new light on the facts underlying *Younger v. Harris* and traces the doctrine's development up until the present. Part II introduces the child welfare system and explores how courts have applied *Younger* in this context, beginning with an overview of child welfare systems and concluding with an in-depth look at recent decisions by the Seventh and Fourth Circuits. Part III analyzes child welfare proceedings within the *Younger*/*Sprint* framework. It argues that certain portions of child welfare proceedings are quasi-criminal, that the extent to which a proceeding is quasi-criminal varies across and within cases, and that neither the Seventh nor the Fourth Circuits have adequately accounted for this heterogeneity. Finally, Part IV offers a solution. It proposes that courts should take a piecemeal approach to *Younger* in the child welfare space, abstaining from those claims and prayers for relief that would interfere with the quasi-criminal aspects of child welfare

24. Oglala Sioux Tribe v. Fleming, 904 F.3d 603 (8th Cir. 2018).

25. Smith, *supra* note 19, at 2098-99.

26. Giammatteo, *supra* note 11, at 1708. As Giammatteo defines it, the new comity abstention doctrine, if fully accepted, would require federal courts to abstain "anytime enforcement could affect state court proceedings or procedure, no matter how attenuated the risk or the degree of potential interference." *Id.* at 1722.

27. A few earlier works address in more depth whether *Younger* applies to child welfare proceedings, but all of these works significantly pre-date *Sprint*. *See* Nora Meltzer, Note, *Dismissing the Foster Children: The Eleventh Circuit's Misapplication and Improper Expansion of the Younger Abstention Doctrine in* Bonnie L. v. Bush, 70 BROOK. L. REV. 635, 637 (2005); Michael B. Mushlin, *Unsafe Havens: The Case for Constitutional Protection of Foster Children from Abuse and Neglect*, 23 HARV. C.R.-C.L. L. REV. 199, 259-67 (1988); Mary Gwen Hynes, Note, *Avoiding Abstention in Systemic Federal Child Welfare Litigation*, 18 COLUM. HUM. RTS. L. REV. 333, 333-35 (1987).

proceedings and hearing those that would not. The Part evaluates how this solution might have been deployed by the Seventh and Fourth Circuits and highlights the benefits of this proposed approach.

I. *Younger*, Generally

A. *Younger v. Harris*

On May 7, 1966, Leonard Deadwyler, a 25-year-old Black man, was shot and killed by an officer of the Los Angeles Police Department as Deadwyler drove his pregnant wife to the hospital.[28] Less than a year after the Watts Riots had roiled Los Angeles, Deadwyler's killing threatened to reignite the city.[29] Civil rights leaders, activist groups, and more radical groups organized rallies and protests.[30] Speaking at the press conference after Deadwyler's funeral, one minister predicted it would be a "long hot summer."[31] Over a thousand activists and community members packed the courthouse when the coroner's inquest into Deadwyler's killing began on May 19, forcing the hearing into a different building and then into adjournment.[32]

Enter John Harris. Harris was a twenty-two-year-old organizer from the Progressive Labor Party.[33] He had moved to Los Angeles sometime around

28. Philip Fradkin, *Bitter Negroes Mourn Man Killed by Policeman's Bullet*, L.A. TIMES, May 17, 1966, at 3 (ProQuest); Thomas A. Johnson, *Watts: Anger, Fright and Shame in Tense Ghetto*, N.Y. TIMES, May 22, 1966, at 70, perma.cc/8J5N-2KVV.

29. *See* Johnson, *supra* note 28; Paul Harris, Comment, *Black Power Advocacy: Criminal Anarchy or Free Speech*, 56 CALIF. L. REV. 702, 722 (1968); *Subversive Influences in Riots, Looting, and Burning: Hearing Before the H. Comm. on Un-American Activities*, 90th Cong. 1238 (1967) (testimony of Clayton R. Anderson); *Black Communities Aroused Over: Storm-Trooper Killing of LA Youth*, MUHAMMAD SPEAKS, May 27, 1966, at 3 ("[T]he Deadwyler killing is rapidly being regarded as the last straw on the backs of millions of black peoples throughout the nation.").

30. *See* Bob Lucas, *Hundreds in Killing Protest; South L.A. Violence Renewed: Funeral—Memorial to Slain Deadwyler*, L.A. SENTINEL, May 19, 1966, at A1 (noting that the Watts Equal Rights Council organized a protest meeting on May 22); *Flashpoint in Watts?*, NEWSWEEK, May 30, 1966, at 30 (noting that the Committee to End Legalized Murder by Cops organized a "less temperate" rally); *Subversive Influences in Riots, Looting, and Burning: Hearing Before the H. Comm. on Un-American Activities*, 90th Cong. 1238 (1967) (statement of Clayton R. Anderson) (noting that Students for a Democratic Society organized a rally on May 13).

31. Kimmis Hendrick, *Protests Mount in Watts Area*, CHRISTIAN SCI. MONITOR, May 19, 1966, at 4 (ProQuest).

32. *Inquest Security: Police Will Search Spectators: First Hearing Disrupted by Unruly Crowd*, L.A. TIMES, May 20, 1966, at 1 (ProQuest).

33. Ron Einstoss & Art Berman, *Negro Arraigned as 'Revolutionist': Rarely Used Law Invoked to Hold Deadwyler Inquest Leaflet Passer*, L.A. TIMES, Sept. 22, 1966, at 3 (ProQuest).

the Watts Riots of 1965,[34] and police intelligence sources "reportedly" considered him an "agitator" of the 1965 riots.[35] As the Deadwyler inquest neared the end of its first week, Harris stood on the courthouse steps, distributing leaflets denouncing police violence and advocating for political and economic revolution.[36] The flyer he distributed on May 25 read: "[The police] must all be wiped out before there is complete freedom."[37] The May 26 flyer read: "REVOLUTION IS NECESSARY. They must be totally replaced. Revolution means a complete *overthrow* of the system. NO ACCOMMODATION!! NO COMPROMISE."[38]

Months later, in September 1966, a grand jury indicted Harris for two counts of criminal syndicalism.[39] The indictment accused Harris of "advocating terrorism and advising the commission of . . . unlawful acts of force and violence and unlawful methods of terrorism."[40] After unsuccessfully seeking dismissal of the indictment in state court, Harris filed suit in federal district court, arguing that California's criminal syndicalism law was unconstitutional.[41] A three-judge panel of the federal district court agreed with Harris, finding the California law vague and overbroad.[42] The panel declared the law facially unconstitutional and enjoined its enforcement.[43]

On appeal, the Supreme Court reversed. The district court's decision, the Supreme Court held, "violat[ed] the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances."[44] This national policy against federal interference was grounded in "the basic doctrine of equity jurisprudence that courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will

34. *Subversive Influences in Riots, Looting, and Burning: Hearing Before the H. Comm. on Un-American Activities*, 90th Cong. 1310 (1967) (Wheeler Exhibit No. 53); Einstoss & Berman, *supra* note 33.

35. Einstoss & Berman, *supra* note 33.

36. Appendix to Appellees' Supplemental Brief on Reargument, Younger v. Harris, 401 U.S. 37 (1971) (No. 2), 1969 WL 100912, at *6-8. Harris was also apparently present at the courthouse and distributing leaflets on May 20 and 23, though the grand jury materials do not reveal the content of those handbills. *Id.* at *13-14, *24-25.

37. Appendix to Appellees' Supplemental Brief on Reargument, *supra* note 36, at *4.

38. *Id.* at *7-8.

39. *Id.* at *3-6; Einstoss & Berman, *supra* note 33.

40. Appendix to Appellees' Supplemental Brief on Reargument, *supra* note 36, at 3.

41. Harris v. Younger, 281 F. Supp. 507, 508-09 (C.D. Cal. 1968), *rev'd* 401 U.S. 37 (1971).

42. *Id.* at 508, 514-17.

43. *Id.*

44. Younger v. Harris, 401 U.S. 37, 41 (1971).

not suffer irreparable injury . . . ."[45] The policy was "reinforced," the Court said, "by an even more vital consideration, the notion of 'comity,' that is, a proper respect for state functions."[46] "[A]nxious though [the federal courts] may be to vindicate and protect federal rights and federal interests," they must "always endeavor[] to do so in ways that will not unduly interfere with the legitimate activities of the States."[47] Against this backdrop, the Court found that abstention was required, leaving Harris to appeal in state court.

The facts of *Younger* provided a few possible limitations for the new doctrine. Read narrowly, *Younger* might have precluded relief directed against *pending* state *criminal* prosecutions.[48] Indeed, *Younger* could plausibly have been read as primarily concerned with the distinctive federalism problems arising from federal judicial interference with state *criminal* adjudication. A federal injunction commanding state officers to discontinue an ongoing criminal prosecution prevents the state from exercising its police power—a core sovereign interest.[49] And, as Justice Stewart wrote in his concurrence in *Younger*: "A State's decision to classify conduct as criminal provides some indication of the importance it has ascribed to prompt and unencumbered enforcement of its law."[50]

But the *Younger* Court expressly declined to define the reach of its holding[51] and, as the next Part describes, this narrow reading did not win the day.[52]

B. Expansion of *Younger*

The same day that the Court decided *Younger*, it held in *Samuels v. Mackell* that those same principles of equity and federalism also required abstention

45. *Id.* at 43-44.

46. *Id.* at 44.

47. *Id.*

48. *Id.* at 55 (Stewart, J., concurring) ("[S]ince all these cases involve state criminal prosecutions, we do not deal with the considerations that should govern a federal court when it is asked to intervene in state civil proceedings."). "Finally," Justice Stewart continued, "the Court today does not resolve the problems involved when a federal court is asked to give injunctive or declaratory relief from *future* state criminal prosecutions." *Id.*

49. *See* Stefanelli v. Minard, 342 U.S. 117, 120 (1951) (describing "the active intrusion of the federal courts in the administration of the criminal law for the prosecution of crimes solely within the power of the States" as "perhaps the most sensitive source of friction between States and Nation").

50. *Younger*, 401 U.S. at 55 n.2 (Stewart, J., concurring).

51. *Id.* at 41 (majority opinion) ("We express no view about the circumstances under which federal courts may act when there is no prosecution pending in state courts at the time the federal proceeding is begun.").

52. *See* Meltzer, *supra* note 27, at 644-45; Giammatteo, *supra* note 11, at 1712-15; Smith, *supra* note 15, at 2295-96.

where the plaintiffs sought declaratory relief.[53] Four years later, the Court loosened the pending case requirement in *Hicks v. Miranda*.[54] According to *Hicks*, abstention may be proper so long as the state criminal prosecution begins before "proceedings of substance on the merits" take place in federal court.[55] And in a line of cases in the 1970s and 1980s, the Supreme Court expanded *Younger* to civil proceedings that have state enforcement elements parallel to criminal prosecution or that uniquely implicate the functioning of the state's judicial system.[56]

The first such expansion came in *Huffman v. Pursue, Ltd.*[57] In *Huffman*, the sheriff and prosecuting attorney of Allen County, Ohio, initiated civil nuisance proceedings to close a theater that showed obscene films.[58] After a state court ordered the theater closed, rather than appeal, the operator went to federal court.[59] The district court partially enjoined the statute's enforcement but, on appeal, the Supreme Court vacated on *Younger* grounds.[60]

Explaining why *Younger* applied to civil nuisance proceedings, the Court wrote: "The component of *Younger* which rests upon the threat to our federal system," which according to *Younger* is the "more vital" component,[61] is "applicable to a civil proceeding such as this quite as much as it is to a criminal proceeding."[62] As for the portion of *Younger* that relied on the equitable doctrine of avoiding interference with state prosecutions, the Court emphasized the close relationship between the nuisance proceeding and Ohio's criminal law: The state initiated and prosecuted the action and the proceeding was "both in aid of and closely related to criminal statutes which prohibit the dissemination of obscene materials."[63] While the relief sought by plaintiffs would not "directly disrupt[] Ohio's criminal justice system," it would interfere with the "State's efforts to protect the very interests which underlie its

53. 401 U.S. 66, 73 (1971) ("We therefore hold that, in cases where the state criminal prosecution was begun prior to the federal suit, the same equitable principles relevant to the propriety of an injunction must be taken into consideration by federal district courts in determining whether to issue a declaratory judgment, and that where an injunction would be impermissible under these principles, declaratory relief should ordinarily be denied as well."). *See also* Smith, *supra* note 15, at 2295.

54. 422 U.S. 332, 349 (1975).

55. *Id.*

56. *See infra* notes 57-78 and accompanying text.

57. 420 U.S. 592 (1975).

58. *Id.* at 595.

59. *Id.* at 598.

60. *Id.* at 599, 612.

61. Younger v. Harris, 401 U.S. 37, 44 (1971).

62. *Huffman*, 420 U.S. at 604.

63. *Id.*

criminal laws and to obtain compliance with precisely the standards which are embodied in its criminal laws."[64] The definition of obscenity for the purposes of the civil nuisance statute was identical to that contained in Ohio's criminal statutes.[65] Both statutes, civil and criminal, proscribed the same conduct.

Put another way, the civil nuisance proceedings—which were initiated by the prosecuting attorney, the very official responsible for enforcing the criminal laws—were merely a "civil technique" for enforcing the state's criminal prohibition against disseminating obscene materials.[66] So while the proceeding was classified as civil, the state interest at stake was "every bit as great as it would be were this a criminal proceeding."[67]

The Court next expanded *Younger*'s reach in *Juidice v. Vail*.[68] Holding that federal courts must abstain from challenges to civil contempt proceedings, the Court wrote that "the principles of *Younger* and *Huffman* are not confined solely to the types of state actions which were sought to be enjoined in those cases."[69] "The contempt power lies at the core of the administration of a State's judicial system," so while not as great as the state's interest in the enforcement of its criminal laws, a state's interest in the contempt process is "of sufficiently great import to require application of the principles of those cases."[70]

Just three months later in *Trainor v. Hernandez*, the Court held that *Younger* applied to civil proceedings to recover fraudulently obtained welfare benefits.[71] Like in *Huffman*, the Court emphasized that the suit was "brought by the State in its sovereign capacity" to "vindicate important state policies," and that the state "had the option of vindicating these policies through criminal prosecutions."[72]

Over the next decade, the Court continued to expand *Younger*, reaching farther and farther beyond its original criminal context. The Court applied *Younger* to child-removal proceedings in *Moore v. Sims*,[73] to state bar

64. *Id.* at 604-05.

65. *Id.* at 596 n.4 ("As interpreted by the Ohio Supreme Court, . . . the determination of obscenity is to be based on the definition contained in Ohio's criminal statutes."). Under Ohio law, dissemination of obscene materials was punishable by fine up to $5,000, imprisonment for no more than one year, or both for first offenses. OHIO REV. CODE ANN. § 2905.35 (1972). Subsequent offenses were punishable by fines up to $10,000, imprisonment for no less than one year and no more than seven years, or both. *Id.*

66. Duke v. Texas, 477 F.2d 244, 250 (5th Cir. 1973).

67. *Huffman*, 420 U.S. at 604.

68. 430 U.S. 327 (1977).

69. *Id.* at 334.

70. *Id.* at 335.

71. 431 U.S. 434, 444 (1977).

72. *Id.*

73. 442 U.S. 415, 435 (1979).

disciplinary proceedings in *Middlesex County Ethics Committee v. Garden State Bar Association*,[74] to administrative proceedings before a state civil rights commission in *Ohio Civil Rights Commission v. Dayton Christian School, Inc.*,[75] and even to a civil lawsuit between private parties where the state had expressly disclaimed its interest in the underlying proceedings in *Pennzoil Co. v. Texaco, Inc.*[76]

At the close of this period of *Younger* expansion, the three-part test set out in *Middlesex*—the so-called "*Middlesex* factors"—defined *Younger*'s scope. According to this test, federal courts must abstain whenever the federal lawsuit would (1) interfere with ongoing state judicial proceedings that (2) implicated important state interests in which (3) the federal plaintiff had an adequate opportunity to raise their federal claims, so long as doing so would not cause the would-be federal plaintiff irreparable harm.[77] As other scholars have noted, because of the permissiveness of the Court's state-interest analysis, the *Middlesex* factors imposed "no limitation on abstention at all."[78]

C. Period of Contraction

In 1989, the Court began to limit the *Younger* abstention doctrine.[79] In *New Orleans Public Service, Inc. v. Council of New Orleans* (*NOPSI*), the Court

74. 457 U.S. 423, 436-37 (1982).

75. 477 U.S. 619, 628-29 (1986).

76. 481 U.S. 1, 17 (1987); Althouse, *supra* note 19, at 1052-53 (citing *Pennzoil*, 481 U.S. at 19 (Brennan, J., concurring in the judgment)).

77. Middlesex Cnty. Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982) ("The question in this case is threefold: *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."); *see, e.g.*, Bice v. La. Pub. Def. Bd., 677 F.3d 712, 716 (5th Cir. 2012) ("In general, the *Younger* doctrine requires that federal courts decline to exercise jurisdiction over lawsuits when three conditions are met: (1) the federal proceeding would interfere with an 'ongoing state judicial proceeding'; (2) the state has an important interest in regulating the subject matter of the claim; and (3) the plaintiff has 'an adequate opportunity in the state proceedings to raise constitutional challenges.'" (quoting *Middlesex*, 457 U.S. at 321)).

78. Althouse, *supra* note 19, at 1053-54; *see also* Rehnquist, *supra* note 19, at 1090-92; Giammatteo, *supra* note 11, at 1715 ("The Court's methodology also risked offering no meaningful limitation to what could constitute a weighty state interest."). This is not to say, of course, that the *Younger* abstention doctrine was completely without limits. As the *Younger* Court itself mentioned, abstention is inappropriate in certain "extraordinary circumstances" where the denial of equitable relief would lead to irreparable harm. Younger v. Harris, 401 U.S. 37, 45 (1971) (quoting Fenner v. Boykin, 271 U.S. 240, 243-44 (1926)). What constitutes irreparable harm in the *Younger* context has been narrowly defined. *See supra* note 15.

79. *See* Giammatteo, *supra* note 11, at 1715.

considered whether federal courts could hear a dispute between an electrical utility company, the New Orleans Public Service, Inc. (NOPSI), and the New Orleans City Council, the local ratemaking body.[80] After the Council refused to increase rates, NOPSI filed a petition for review in state court and initiated a federal suit arguing that the Council's decision was preempted by federal law.[81] The federal court dismissed, finding abstention proper; the Fifth Circuit affirmed.[82]

The Supreme Court reversed.[83] According to *NOPSI*, the Court's earlier decisions had not authorized abstention wherever an important state interest was involved. Rather, these decisions set out categorical rules about the kinds of proceedings to which *Younger* applies:

> Although our concern for comity and federalism has led us to expand the protection of *Younger* beyond state criminal prosecutions, to civil enforcement proceedings, [citing *Huffman*, *Trainor*, and *Moore*,] and even to civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions, [citing *Juidice* and *Pennzoil*,] it has never been suggested that *Younger* requires abstention in deference to a state judicial proceeding reviewing legislative or executive action.[84]

Even though the state had a "substantial, legitimate interest" in the underlying proceedings and the other *Middlesex* factors were satisfied, the Court held that abstention was improper.[85] According to the Court, the underlying state court action—review of the New Orleans City Council's ratemaking decision—was "plainly" not "the type of proceeding to which *Younger* applies."[86]

After *NOPSI*, lower courts began to focus on the *type* of proceeding and increasingly distinguished between "coercive" and "remedial" civil proceedings. "Coercive" proceedings were those in which "'the federal plaintiff had engaged in misconduct' and the state proceeding 'would ultimately impose punishment for that misconduct.'"[87] "Remedial" proceedings, in contrast, were those voluntarily initiated by the federal plaintiff to remedy wrongdoing by the state.[88] Where other criteria were met, *Younger* applied to coercive proceedings but

80. 491 U.S. 350, 353-55 (1989).

81. *Id.* at 357-58.

82. *Id.* at 356-58.

83. *Id.* at 373.

84. *Id.* at 367-68 (citations omitted).

85. *Id.* at 365.

86. *Id.* at 367.

87. Petition for a Writ of Certiorari at 16, Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69 (2013) (No. 12-815), 2013 WL 51971 (quoting Brown *ex rel.* Brown v. Day, 555 F.3d 882, 892 (10th Cir. 2009)).

88. *Brown*, 555 F.3d at 889.

not to remedial ones. The Eight Circuit thought differently, holding in 2011 and then again in 2012 that "the coercive-remedial distinction" was not "outcome determinative."[89] In 2013, the Supreme Court granted cert to resolve this circuit split.[90]

In the ensuing opinion, *Sprint Communications, Inc. v. Jacobs*, the Supreme Court rejected the coercive-remedial distinction but doubled down on *NOPSI*'s categorical rule. In a unanimous opinion, the Court held abstention was warranted in "exceptional circumstances" and that these exceptional circumstances exist only "in three types of proceedings."[91] The Court elaborated,

> 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." We have not applied *Younger* outside these three "exceptional" categories, and today hold, in accord with *NOPSI*, that they define *Younger*'s scope.[92]

Applying the *Middlesex* factors outside of these three narrow categories, as lower courts had done, "would extend *Younger* to virtually all parallel state and federal proceedings."[93] According to the Court, this approach was "irreconcilable" with the Court's "dominant instruction" that the courts' obligation to hear cases is "virtually unflagging" and that abstention is the "exception, not the rule."[94]

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89. Sprint Commc'ns Co. v. Jacobs, 690 F.3d 864, 868 (8th Cir. 2012) (quoting Hudson v. Campbell, 633 F.3d 985, 987 (8th Cir. 2011)), *rev'd sub nom.* Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69 (2013).

90. Sprint Commc'ns Co. v. Jacobs, 569 U.S. 917, 917 (2013) (granting petition for writ of certiorari). At the time cert was granted, at least the First, Sixth, Seventh, and Tenth circuits distinguished between coercive and remedial proceedings for *Younger* purposes. *See* Guillemard-Ginorio v. Contreras-Gómez, 585 F.3d 508, 522 (1st Cir. 2009) ("[P]roceedings must be coercive, and in most-cases, state-initiated, in order to warrant abstention."); Devlin v. Kalm, 594 F.3d 893, 895 (6th Cir. 2010) (distinguishing between coercive and remedial proceedings); Majors v. Engelbrecht, 149 F.3d 709, 712 (7th Cir. 1998) (holding that proceedings must be coercive for *Younger* to apply); *Brown*, 555 F.3d at 884 (same). The Second and Fourth circuits also appeared to give meaning to the coercive-remedial distinction. *See* Univ. Club v. City of New York, 842 F.2d 37, 41-42 (2d Cir. 1988); Moore v. City of Asheville, 396 F.3d 385, 395 n.4 (4th Cir. 2005).

91. *Sprint*, 571 U.S. 69 at 78, 80 n. 6.

92. *Id.* at 78 (citations omitted) (quoting *NOPSI*, 491 U.S. 350, 368 (1989)).

93. *Id.* at 81.

94. *Id.* at 77, 81-82 (quoting Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 813, 817 (1976)).

Sprint, then, forcefully narrowed *Younger*'s scope.[95] The decision "explicitly rejected the broad state interest inquiry."[96] Reflecting on the effect of *Sprint*, Rachel Traum wrote: "Before *Sprint*, courts favored *Younger* abstention. Today, courts rely on *Sprint* to limit and reject *Younger* abstention."[97]

D. Defining "Certain Civil Enforcement Proceedings"

The *Sprint* Court also elaborated on the kinds of "civil enforcement proceedings" to which *Younger* applies. According to *Sprint*, *Younger* applies to civil proceedings that are "'akin to a criminal prosecution' in 'important respects.'"[98] These civil enforcement proceedings are "characteristically initiated to sanction the federal plaintiff . . . for some wrongful act."[99] The state is "routinely" a party to—and "often" the initiator of—the action.[100] "Investigations are commonly involved, often culminating in the filing of a formal complaint or charges."[101] Because of their similarity to criminal prosecutions, the enforcement actions take on a "quasi-criminal" character.[102] The framework that the Third Circuit articulated in *ACRA Turf Club, LLC v. Zanzuccki* is typical of that used by lower courts:

> In evaluating whether a state proceeding is quasi-criminal, we consider the factors set out in *Sprint*, including whether (1) the action was commenced by the State in its sovereign capacity, (2) the proceeding was initiated to sanction the federal plaintiff for some wrongful act, and (3) there are other similarities to criminal actions, such as a preliminary investigation that culminated with the filing of formal charges. We also consider whether the State could have alternatively sought to enforce a parallel criminal statute.[103]

Though they diverge on the details, lower courts generally engage in analogical reasoning, assessing how similar the state civil proceeding is to

95. *See* Bristol-Myers Squibb Co. v. Connors, 979 F.3d 732, 735 (9th Cir. 2020) ("In *Sprint Communications, Inc. v. Jacobs* . . . , the Court limited that expansion, holding that *Younger* abstention applies to only three categories of state proceedings." (citing *Sprint*, 571 U.S. at 78)).

96. Louis J. Virelli III, *Administrative Abstention*, 67 ALA. L. REV. 1019, 1040 (2016).

97. Traum, *supra* note 19, at 1787; *see also* Maggie Gardner, *Abstention at the Border*, 105 VA. L. REV. 63, 78-79 (2019) ("Abstention, the Court has made clear, is not a blunt instrument to be invoked broadly, but a scalpel to be used rarely, if at all.").

98. *Sprint*, 571 U.S. at 79 (quoting Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975)).

99. *Id.*

100. *Id.*

101. *Id.* at 79-80.

102. *Id.* at 81.

103. 748 F.3d 127, 138 (3d Cir. 2014) (citing *Sprint*, 571 U.S. at 78-80).

criminal prosecution along these dimensions.[104] Applying this reasoning, courts have found that university disciplinary proceedings,[105] professional disciplinary and licensing proceedings,[106] nuisance abatement proceedings,[107] and proceedings to enforce consumer protection laws[108] fall within *Sprint*'s second category.

II. *Younger* and the Child Welfare System

A. The Child Welfare System and Child Welfare Proceedings

The "child welfare system" refers to the collection of laws, legal proceedings, and social services by which states respond to reports of child abuse or neglect, provide services to families, and provide temporary or permanent care for children when it is not safe for them to live at home.[109] States—through state and county agencies—are primarily responsible for administering child welfare systems.[110] States hire caseworkers, recruit and regulate foster care programs, contract with service providers, and implement statewide monitoring systems.[111]

A family's interaction with the child welfare system is moderated through state-court child welfare proceedings. Generically, these proceedings begin

104. Sirva Relocation, LLC v. Richie, 794 F.3d 185, 195 (1st Cir. 2015); Mir v. Shah, 569 F. App'x 48, 51 (2d Cir. 2014); Air Evac EMS, Inc. v. McVey, 37 F.4th 89, 97 (4th Cir. 2022); Doe v. Univ. of Ky., 860 F.3d 365, 370 (6th Cir. 2017); Minn. Living Assistance, Inc. v. Peterson, 899 F.3d 548, 552 (8th Cir. 2018); Citizens for Free Speech, LLC v. Cnty. of Alameda, 953 F.3d 655, 657 (9th Cir. 2020); Hunter v. Hirsig, 660 F. App'x 711, 716 (10th Cir. 2016); Watson v. Fla. Jud. Qualifications Comm'n, 618 F. App'x 487, 490 (11th Cir. 2015).

105. *Univ. of Ky.*, 860 F.3d at 369-70.

106. *See, e.g.*, *Watson*, 618 F. App'x at 489-91; Frelix v. New York, 2015 WL 585857, *2 (S.D.N.Y. 2015).

107. Herrera v. City of Palmdale, 918 F.3d 1037, 1045 (9th Cir. 2019).

108. Bristol-Myers Squibb Co. v. Connors, 979 F.3d 732, 738 (9th Cir. 2020).

109. DOUGLAS NEJAIME, RALPH RICHARD BANKS, JOANNA L. GROSSMAN & SUZANNE A. KIM, FAMILY LAW IN A CHANGING AMERICA 601 (2021); Child Welfare Info. Gateway, How the Child Welfare System Works 3 (2020), https://perma.cc/SES2-XWJX.

110. NEJAIME ET AL., *supra* note 109, at 602.

111. *See, e.g.*, Tinsley v. McKay, 156 F. Supp. 3d 1024, 1028 (D. Ariz. 2015) (observing that Arizona's Department of Children Services is charged "with placing children in safe living environments and coordinating with DHS, AHCCCS, and others to provide children with court-ordered healthcare and other services aimed at promoting the safety and well-being of all children" (citing ARIZ. REV. STAT. §§ 8-451(B)(2), (4), 8-457, 8-512) (West 2023)); W. VA. CODE §§ 49-2-107, -113 (West 2023) (establishing minimum standards and a licensure scheme for foster homes); CAL. WELF. & INST. CODE § 16501.5 (West 2023) (establishing a statewide monitoring system).

with a report of alleged mistreatment.[112] Once a report has been made, child protective services (CPS)—an executive agency—screens the report for relevance.[113] If the report is relevant and contains enough information for CPS to respond, CPS begins an initial investigation.[114] If the investigation substantiates the report, CPS may refer the family for in-home services, remove the child, and/or initiate formal child welfare proceedings.[115]

After formal proceedings have been initiated, the parties—generally, the parent, the child, and CPS—appear before a court for a preliminary hearing at which the court will determine whether the child should be placed in foster care during the pendency of the proceedings.[116] The court next holds an "adjudication" or "fact-finding" hearing to determine whether abuse or neglect did in fact occur.[117] After adjudication, there may be a "disposition hearing" at which the court considers the child's "case plan," including placement and permanency options.[118]

As required by federal law, a state court or agency must review the case every six months to determine, among other things, whether the child is safe, whether the case plan serves the child's needs, the extent to which the parties have complied with the case plan, and the "extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care."[119] At least every twelve months, state courts hold "permanency hearings" to establish a plan to achieve permanent placement of the child (a "permanency plan") that could entail reunification, adoption, legal guardianship, or another planned permanent living arrangement.[120]

Over the course of child welfare proceedings, CPS is responsible for: prosecuting the allegations of abuse and neglect; providing services, treatment, and care to facilitate reunification; and, in certain circumstances, filing a petition to terminate parental rights.[121] Where children have been removed from their homes, CPS is also responsible for the placement and care of children in state custody.[122]

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112. NEJAIME ET AL., *supra* note 109, at 612.

113. *Id.* at 613; U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT 2018, at 6 (2020), https://perma.cc/U343-VDLB [hereinafter CHILD MALTREATMENT 2018].

114. CHILD MALTREATMENT 2018, *supra* note 113, at 6.

115. NEJAIME ET AL., *supra* note 109, at 613-15.

116. *Id.* at 616.

117. *Id.*

118. *Id.*

119. 42 U.S.C. § 675(5)(B).

120. NEJAIME ET AL., *supra* note 109, at 617 (citing 42 U.S.C. § 675(5)(C)).

121. *Id.* at 616-17, 644; *see, e.g.*, W. VA. CODE § 49-2-802 (West 2023).

122. 42 U.S.C. § 672(a)(2)(B).

The courts' role during these proceedings is twofold. First, the courts determine whether a child should be removed from their home. This includes approving the initial removal, adjudicating allegations of abuse and neglect, deciding if, when, and how a child should be returned to their home, and determining whether parental rights should be terminated.[123] Second, the courts oversee CPS's care for children in state custody. The courts approve each child's case plan, verify that CPS is complying with these case plans, and ensure that CPS is making reasonable efforts to achieve permanent placement for each child.[124]

States' implementation of child welfare systems and proceedings vary, but conditions attached to federal funding have standardized some key features.[125] First, CPS must make reasonable efforts to prevent removal from the home.[126] Second, a child's removal must be approved by court order.[127] Third, CPS must provide children with written case plans that include certain information about the child and plans for their care.[128] Fourth, as mentioned above, state courts must periodically review the case of every child in the state's care.[129]

With the general contours of state child welfare systems in mind, we will now turn to the specific application of *Younger* in the child welfare context.

B. *Younger* and Child Welfare Proceedings, Specifically

As mentioned in Part I, *Younger* was first extended to the child welfare context in *Moore v. Sims*.[130] The dispute in *Moore* began in March 1976 after school officials reported that a child named Paul Sims had been abused by his father.[131] After receiving the report, the state child welfare department took custody of Paul and his siblings and filed a suit for emergency protection of the children in juvenile court.[132] The court issued an *ex parte* order granting the

123. NEJAIME ET AL., *supra* note 109, 615-17, 644. This is not to say that these decisions are made by the court alone. For example, the initial removal of a child from their home may be done without prior court approval. *See, e.g.*, W. VA. CODE § 49-4-303 (West 2023). This said, the removal may only continue if there is a judicial determination that removal is in the child's best interests. 45 C.F.R. § 1356.21(b)-(d) (2023).

124. *See* 42 U.S.C. §§ 675(5)(B)-(C).

125. NEJAIME ET AL., *supra* note 109, at 602-04.

126. 45 C.F.R. § 1356.21(b) (2023).

127. *Id.* §§ 1356.21(c)-(d).

128. *Id.* § 1356.21(g).

129. 42 U.S.C. §§ 675(5)(B)-(C).

130. 442 U.S. 415, 435 (1979).

131. *Id.* at 419.

132. *Id.*

Department temporary custody.[133] Weeks later, the father, mother, and children filed a suit in federal court alleging that the Texas child welfare statute "unconstitutionally infringe[d] family integrity."[134] After months of procedural wrangling in state and federal court, the district court issued a preliminary injunction prohibiting enforcement of the statute.[135] And in October 1977, a three-judge panel of the district court declared portions of the law unconstitutional and permanently enjoined their enforcement.[136]

In a five-to-four opinion, the Supreme Court reversed.[137] Drawing on *Huffman* and *Trainor*, the Court held that *Younger*'s basic concern—the "threat to our federal system posed by displacement of state courts by those of the National Government"—is "fully applicable to civil proceedings in which important state interests are involved."[138] The Court emphasized how similar the underlying proceedings were to those in *Huffman*. In both, the state was a party, and the proceedings were "in aid of and closely related to criminal statutes."[139]

After *Moore*, lower courts began to abstain from *individual* challenges to child welfare proceedings.[140] And some lower courts also applied *Moore* and *Younger* to bar class-action challenges addressed to the general mismanagement of state child welfare regimes, although they did so with far less uniformity.[141] These class actions generally sought broad-based reform.[142] The injunctions requested in these cases would have, among other things, required states to

133. *Id.* at 420.

134. *Id.* at 419-21.

135. *Id.* at 419-22.

136. *Id.* at 422.

137. *Id.* at 435.

138. *Id.* at 423.

139. *Id.* (quoting Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975)). The Court also noted that the breadth of the plaintiffs' challenge weighed in favor of abstention: "[B]road facial attacks on state statutes" threaten "needless obstruction to the domestic policy of the states." *See id.* at 429 (quoting Ala. State Fed'n of Lab. v. McAdory, 325 U.S. 450, 471 (1945)).

140. *See, e.g.*, Malachowski v. City of Keene, 787 F.2d 704, 706-07 (1st Cir. 1986) (holding that the district court should have abstained from a suit brought by two parents that would have enjoined abuse and neglect proceedings); DeSpain v. Johnston, 731 F.2d 1171, 1173-74, 1178 (5th Cir. 1984) (holding that the district court should have abstained from a suit brought by two parents and their children challenging Texas's process for investigating child abuse); Brunken v. Lance, 807 F.2d 1325, 1327, 1329, 1331 (7th Cir. 1986) (holding that *Younger* barred a father's Section 1983 suit against the state's Department of Children and Family Services).

141. *See infra* notes 147-52.

142. *See id.*

provide "all necessary services to each child who enters foster care,"[143] to "develop a plan to reduce the rate of child maltreatment,"[144] to appoint neutral monitors to oversee compliance,[145] and to cap caseworker caseload.[146]

In deciding they were required to abstain from these class-action challenges, the lower courts split on almost every point of analysis. First, they split over whether these kinds of federal lawsuits would interfere with the state court proceedings. In *31 Foster Children v. Bush*, for example, the Eleventh Circuit held that the plaintiffs' federal suit—though it targeted only executive officials and executive action—would "interfere with the ongoing state dependency proceedings by placing decisions that are now in the hands of the state courts under the direction of the federal district court."[147] A handful of courts from the Middle District of Tennessee to the Eastern District of New York came to the opposite conclusion, finding that analogous suits would not interfere with the pending judicial proceedings.[148] The court's assessment in *Kenny A. ex rel. Winn v. Perdue*, is representative of this position:

143. *E.g.*, Ashley W. Complaint, *supra* note 5, ¶ IV(e).

144. *E.g.*, Supplemental Complaint for Injunctive & Declaratory Relief & Request for Class Action ¶ 100(d)(i), Sam M. *ex rel.* Elliott v. Chafee, 800 F. Supp. 2d 363 (D.R.I. 2011) (No. 07-241) [hereinafter Sam M. Complaint].

145. *E.g.*, Plaintiffs' Corrected Fourth Amended Complaint for Injunctive & Declaratory Relief & Request for Class Action ¶ 80(j), M.D. v. Abbott, 152 F. Supp. 3d 684 (S.D. Tex. 2015) (No. 11-CV-84) [hereinafter M.D. Fourth Amended Complaint]; Ashley W. Complaint, *supra* note 5, ¶ IV(j).

146. *E.g.*, M.D. Fourth Amended Complaint, *supra* note 145, ¶ 80(d); Sam M. Complaint, *supra* note 144 ¶ 100(d)(iv).

147. 329 F.3d 1255, 1260, 1278 (11th Cir. 2003); *accord* J.B. *ex rel.* Hart v. Valdez, 186 F.3d 1280, 1291-92 (10th Cir. 1999) ("[P]laintiffs' federal action would . . . place[] the federal court in the role of making dispositional decisions such as whether to return the child to his parents in conjunction with state assistance or whether to modify a treatment plan. These are the kind of decisions currently made by the New Mexico Children's Court through the periodic review process."); Laurie Q. v. Contra Costa Cnty., 304 F. Supp. 2d 1185, 1206 (N.D. Cal. 2004) ("In the eyes of *Younger*, plaintiffs are undone by the particularities of their allegation; the remedies they seek cannot be accomplished without substantial interference in affairs otherwise left to the state courts."); Carson P. *ex rel.* Foreman v. Heineman, 240 F.R.D. 456, 530 (D. Neb. 2007) ("Federal court injunctive orders against HHS would undermine and interfere with the Nebraska juvenile court's ability to exercise the full extent of its authority over juvenile court proceedings.").

148. *See, e.g.*, Brian A. *ex rel.* Brooks v. Sundquist, 149 F. Supp. 2d 941, 957 (M.D. Tenn. 2000) ("[N]othing about this litigation seeks to interfere with or enjoin those proceedings. Rather, Plaintiffs seek injunctive relief against the Department of Children's Services, not the courts."); Nicholson v. Williams, 203 F. Supp. 2d 153, 231 (E.D.N.Y. 2002) ("While in the instant case some of the class members are still involved with state proceedings, this court is not being asked to interfere with those cases. Rather, the injunctive relief this court grants targets general ACS practices."); Kenny A. *ex rel.* Winn v. Perdue, 218 F.R.D. 277, 286 (N.D. Ga. 2003) (finding that the plaintiffs' suit would not interfere because "plaintiffs seek relief directed solely at *executive* branch

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> Although plaintiffs all have periodic reviews before the state juvenile courts, the declaratory and injunctive relief plaintiffs seek is not directed at their review hearings, or at Georgia's juvenile courts, juvenile court judges, or juvenile court personnel. Rather, plaintiffs seek relief directed solely at *executive* branch defendants to remedy their alleged failures as plaintiffs' custodians.[149]

Lower courts also split over whether state proceedings provided plaintiffs with an adequate opportunity to adjudicate their federal claims. Some courts took the view that state proceedings provided an adequate forum for federal claims so long as there was no procedural bar to raising their claims.[150] Other courts took the position that, even absent a procedural or jurisdictional bar, ongoing juvenile or family court proceedings were inadequate because they were primarily focused on issues of abuse[151] or because they could not provide class-wide or systemic relief.[152]

More recently, lower courts have split over whether child welfare proceedings fall into one of the three "'exceptional' categories" that "define *Younger*'s scope."[153] For example, in *Tinsley v. McKay*, the district court found

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defendants"); L.H. v. Jamieson, 643 F.2d 1351, 1354 (9th Cir. 1981) (holding that the plaintiffs' desired relief would not impose sufficient interference to warrant abstention).

149. 218 F.R.D. at 286.

150. *E.g.*, *J.B.*, 186 F.3d at 1292-93 ("Plaintiffs bear the burden of proving that state procedural law barred presentation of their claims in the New Mexico Children's Court . . . . 'Certainly, abstention is appropriate unless state law clearly bars the interposition of the [federal statutory] and constitutional claims.'" (quoting Moore v. Sims, 442 U.S. 415, 425-26 (1979)) (citing Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 14-15 (1987); and *Moore*, 442 U.S. at 432)); E.T. v. George, 681 F. Supp. 2d 1151, 1176-77 (E.D. Cal. 2010), *aff'd on other grounds sub nom.* E.T. v. Cantil-Sakauye, 682 F.3d 1121 (9th Cir. 2012); *cf.* Baby Neal v. Casey, 821 F. Supp. 320, 332 (E.D. Pa. 1993) (refusing to abstain where state law barred family courts from hearing claims against the state), *rev'd on other grounds sub nom.* Baby Neal *ex rel.* Kanter v. Casey, 43 F.3d 48 (3d Cir. 1994).

151. *See, e.g.*, People United for Child., Inc. v. City of New York, 108 F. Supp. 2d 275, 291 (S.D.N.Y. 2000) (finding no adequate opportunity because "[i]t would be inappropriate and ineffectual to ask the Family Court to consider matters beyond those which are central to child neglect proceedings"); Nicholson v. Williams, 203 F. Supp. 2d 153, 231-32 (E.D.N.Y. 2002) (finding the forum inadequate because "[a]ny ACS policy or practice that violates a mother's rights is unlikely to be the focus of a Family Court hearing").

152. *See, e.g.*, M.D. v. Perry, 799 F. Supp. 2d 712, 721-22 (S.D. Tex. 2011); Connor B. *ex rel.* Vigurs v. Patrick, 771 F. Supp. 2d 142, 158 (D. Mass. 2011) ("Although Defendants maintain that Plaintiffs in theory can assert federal claims in state juvenile courts, they fail to explain how those courts present an adequate forum for Plaintiffs' claims."); *Brian A.*, 149 F. Supp. 2d at 957 (finding the forum inadequate even though "technically Plaintiffs could raise constitutional questions in their individual juvenile proceedings"); Dwayne B. v. Granholm, No. 06-13548, 2007 WL 1140920, at *6 (E.D. Mich. Apr. 17, 2007) (same).

153. Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 78-79 (2013). *Compare* Tinsley v. McKay, 156 F. Supp. 3d 1024, 1033 (D. Ariz. 2015) (finding that the proceedings were not within *Sprint* categories), *and* Bryan C. v. Lambrew, 340 F.R.D. 501, 510-11 (D. Me. 2021) (same),

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that, while initial removal proceedings like those at issue in *Moore* might be quasi-criminal, the portion of the child welfare proceedings that was pending was not.[154] The court explained that "the animating purpose of the *ongoing* dependency proceedings in this case 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."[155] The district court came to a similar conclusion in *Bryan C. v. Lambrew*.[156]

A circuit split emerged on this question in the summer of 2022. In May 2022, a unanimous Seventh Circuit panel held that *Younger* prevented federal intervention in Indiana's foster care system, declaring: "We know from *Moore v. Sims* that *Younger* applies to state-initiated child-welfare litigation."[157] In July, the Fourth Circuit held that *Younger* did not apply, concluding that the ongoing "state-court hearings are simply not 'of the sort entitled to *Younger* treatment.'"[158]

To understand why the Seventh and Fourth Circuits diverged and to evaluate which court, if either, was correct, it is important to understand how the challenged child welfare systems operate and how courts have dealt with recent challenges to these systems. To this end, the next two Subparts examine the child welfare systems of Indiana and West Virginia—and recent challenges to them—in considerable detail. These two states were chosen first and foremost because they are the states in which the recent circuit split developed. Further, the nature and format of child welfare proceedings in these two states are fairly representative of features that are important for the purposes of this Note's core thesis: that courts address both quasi-criminal and non-quasi-criminal issues in child welfare proceedings and often do so within a single hearing.

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and Jonathan R. *ex rel.* Dixon v. Justice, 41 F.4th 316, 329-30 (4th Cir. 2022) (same), *cert. denied sub nom.* Justice v. Jonathan R., 143 S. Ct. 310 (2022), *with* Ashley W. v. Holcomb, 34 F.4th 588, 591 (7th Cir. 2022) (finding that *Younger* applied to "state-initiated child-welfare litigation").

154. *Tinsley*, 156 F. Supp. 3d at 1034.

155. *Id.* (citing ARIZ. REV. STAT. § 8-847(D) (2015)) (emphasis added).

156. 340 F.R.D. 501, 510 (D. Me. 2021) ("While it is true that a state-initiated proceeding to gain custody of children allegedly abused by their parents could fall into this category, here, the state proceedings are beyond the custody determination and are not attempts to sanction a party by removing parental rights for some wrongful act.").

157. *Ashley W.*, 34 F.4th at 591.

158. *Jonathan R.*, 41 F.4th at 328 (quoting *Sprint*, 571 U.S. at 79).

C. Indiana

1. Indiana's child welfare system

The Indiana Department of Child Services (DCS) is tasked with "lead[ing] the state's response to allegations of child abuse and neglect."[159] But, as in many states, Indiana's child welfare system is administered through the state courts' Child in Need of Services (CHINS) proceedings.

In most instances, the CHINS process begins when a DCS intake officer receives a report of abuse or neglect.[160] An intake officer conducts an investigation[161] and may recommend that DCS initiate formal CHINS proceedings.[162] CHINS proceedings begin when a DCS attorney files a petition with the juvenile court.[163] The petition includes the allegations of abuse and a brief summary of the underlying facts. The petition must include a brief summary of the facts underlying the allegations of abuse.[164] If DCS believes that immediate removal is necessary to protect the child or to ensure the child's appearance for subsequent proceedings, it may file a request that the child be removed along with the petition.[165]

The court must hold an initial hearing within ten days of receiving the petition.[166] During this hearing, the court informs all parties of the nature of the allegations and of the possible consequences of the proceeding.[167] If the

159. *Mission and Vision*, IND. DEP'T OF CHILD SERVS., https://perma.cc/YJ5P-RAZJ (archived Apr. 17, 2024).

160. A good overview of CHINS proceedings can also be found in *Ashley W.*, 34 F.4th at 590-91, and in the Juvenile CHINS Benchbook prepared by the Juvenile Benchbook Committee of the Judicial Conference of Indiana. JUV. BENCHBOOK COMM., JUD. CONF. OF IND., JUVENILE CHINS BENCHBOOK 15 (2022) (on file with author) [hereinafter CHINS BENCHBOOK].

161. IND. CODE ANN. § 31-34-7-1 (West 2023).

162. *Id.* § 31-34-7-2. Informal adjustment is a process through which children and families work with DCS to mitigate the conditions which led to abuse and neglect without the initiation of a CHINS proceeding. Though formal CHINS proceedings are not initiated, juvenile courts are still involved in informal adjustments. Courts approve the informal adjustment plan and can find non-compliant children and parents in contempt. *Id.* §§ 31-34-8-1, -3.

163. In order to file a CHINS petition, the DCS attorney must request authorization to file a petition with the juvenile court. *Id.* § 31-34-9-1. If, after reviewing the information provided by the DCS attorney, the juvenile court determines there is probable cause that the child is in need of services, it will authorize the DCS attorney to file a CHINS petition. *Id.* § 31-34-9-2.

164. *Id.* § 31-34-9-3.

165. *Id.* § 31-34-5-3.

166. *Id.* § 31-34-10-2(a), (j). If the child has been removed, the hearing must occur within forty-eight hours of removal. *Id.* § 31-34-5-1.

167. *Id.* § 31-34-10-4.

child has been removed, the court determines whether DCS made reasonable efforts to prevent removal and whether continued removal is necessary.[168] The court also asks the parents and child to admit or deny the allegations of abuse.[169] If the allegations are admitted, the court enters judgment accordingly and schedules a dispositional hearing.[170] If the allegations are denied, the court schedules a fact-finding hearing.[171]

At the fact-finding hearing, the court hears evidence from the parties. If the court finds that the child is a child in need of services, it (1) enters judgment accordingly; (2) orders DCS to prepare recommendations for services, treatment, and placement for the child; and (3) schedules a dispositional hearing.[172] Otherwise, the court discharges the child, and the court's jurisdiction over the child ends.[173]

At the dispositional hearing, the court considers DCS's recommendations and those offered by other parties—often parents, foster parents, or court-appointed advocate—and issues a dispositional decree.[174] Among other things, the decree may remove the child from their home, require the child to participate in outpatient treatment, and order the parents to engage with certain services.[175] The court may also issue protective and no-contact orders.[176]

Within sixty days of the dispositional decree, DCS must prepare a case plan for the child.[177] The case plan must include a permanency plan (e.g., reunification with family, placement with relatives, adoption, or emancipation), an estimated date for achieving permanency, the appropriate

168. *Id.* § 31-34-5-2, -3.

169. *Id.* § 31-34-10-6.

170. *Id.* § 31-34-10-8.

171. *Id.* § 31-34-11-1(a).

172. *Id.* §§ 31-34-11-2, 31-34-18-1.

173. *Id.* §§ 31-34-11-3, 31-30-2-1(a) (requiring that the juvenile court's jurisdiction end when the court discharges the child.).

174. *Id.* § 31-34-19-6.1(a). The court ordinarily accepts DCS's recommendations. CHINS BENCHBOOK, *supra* note 160, at 205 ("Juvenile Court Shall Accept DCS Recommendations About the Needs of The Child in Most Cases."). If the court accepts DCS's recommendations, it shall enter a dispositional decree adopting them. *Id.* § 31-34-19-6.1(b). If it disagrees, the court must provide its own recommendations and continue the proceedings. During the continuance, DCS considers the court's recommendations, creates a supplementary report, and provides final recommendations. IND. CODE ANN. § 31-34-19-6.1(c) (West 2023). The court must accept DCS's recommendations unless they are "unreasonable" or "contrary to the welfare and best interests of the child." *Id.* § 31-34-19-6.1(d).

175. *Id.* § 31-34-20-1.

176. *Id.* § 31-34-20-2.

177. If the child was removed from their home before the dispositional decree, the case plan would have been prepared within 60 days of the child's removal. *Id.* § 31-34-15-2.

placement for the child, services recommended for the child and their family, and efforts that have been and will be made to provide these services.[178]

The juvenile court's involvement does not end with the dispositional decree. The court can modify the dispositional decree on its own motion or on a party's motion.[179] At least every six months, but usually more often, the court holds a periodic case review hearing.[180] At these hearings, the court determines whether the case plan continues to serve the child's best interests, whether DCS has made reasonable efforts to reunite the child with their parents, and when the child is expected to achieve permanency.[181] In making these determinations, the court must consider whether the parties have complied with the case plan, "[t]he extent to which the parent . . . has enhanced the ability to fulfill parental obligations," and "whether current placement . . . should be continued."[182]

The court may order a change in services, a change in placement, and even, in some instances, reunification of the family and discharge of the case.[183] If certain conditions are met, the juvenile court may also find that reasonable efforts to reunify the family are no longer required, setting in motion separate proceedings to terminate parental rights.[184] These periodic case review hearings continue until the child is discharged and the case is dismissed.[185] With these details in mind, let us turn to two recent challenges to Indiana's child welfare system.

2. Recent challenges: *Nicole K.* and *Ashley W.*

Indiana's child welfare system has faced two major challenges in the past five years. *Younger* prevented them both from making it past the pleadings stage.

a. *Nicole K. ex rel. Linda R. v. Stigdon*

In February 2019, ten foster children sued the Director of DCS and various judicial officials on behalf of all children in CHINS and Termination of

178. *Id.* § 31-34-15-4.

179. *Id.* §§ 31-34-21-1, 31-34-23-1.

180. Telephone Interview with Kristin Bishay, Executive Director, Monroe Cnty. CASA (Mar. 23, 2023); IND. CODE ANN. § 31-34-21-2 (West 2023).

181. IND. CODE ANN. § 31-34-21-5 (West 2023).

182. *Id.*

183. Interview with Kristin Bishay, *supra* note 180; IND. CODE ANN. § 31-34-21-11 (West 2023).

184. IND. CODE ANN. § 31-34-21-5.6 (West 2023).

185. *Id.* §§ 31-34-21-2, -11.

Parental Rights (TPR) proceedings who had not been appointed a lawyer.[186] The children alleged that their non-lawyer advocates were inadequate "substitute[s] for a licensed attorney."[187] According to plaintiffs, DCS's failure to request counsel—and court officials' failure to appoint counsel—deprived the plaintiffs of "fundamental liberty interests without due process of law."[188] Further, the children alleged that the appointment of counsel for some but not all similarly situated students denied them equal protection of the law.[189]

Noting that the plaintiffs were subject to ongoing state court proceedings that could provide adequate relief, the defendants argued that *Younger* required abstention.[190] Attempting to avoid dismissal, the plaintiffs countered that the underlying state proceedings—CHINS and TPR proceedings—did not fall into *Sprint*'s three categories.[191] According to the plaintiffs, these proceedings are "plainly not 'state criminal prosecutions.'"[192] They are not civil enforcement proceedings because they are intended to protect children, not punish parents.[193] And they are not "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions" because they are insufficiently analogous to the other cases in this category, which involve civil contempt and bond requirements.[194]

The district court agreed with the defendants. Contrary to the plaintiffs' contentions, the court found that CHINS proceedings fell squarely within *Sprint*'s second category.[195] The state interests in CHINS proceedings are similar to those that underly criminal prosecution and CHINS proceedings may "implicate a parent in criminal activity."[196] After finding that *Younger*'s other requirements were met, the district court dismissed the case.

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186. First Amended Class Action Complaint ¶ 55, Nicole K. *ex rel.* Linda R. v. Stigdon, No. 19-cv-01521, 2020 WL 1042619 (S.D. Ind. Mar. 3, 2020), 2019 WL 11850747 [hereinafter Nicole K. Complaint]. Appointment of a lawyer is left to DCS's and the court's discretion. IND. CODE ANN. § 31-32-4-2(b).

187. Nicole K. Complaint, *supra* note 186, ¶ 7.

188. *Id.* ¶¶ 116-117.

189. *Id.* ¶ 122.

190. Defendants' Memorandum in Support of Motion to Dismiss at 18-20, *Nicole K*, 2020 WL 1042619 (No. 19-cv-01521), ECF No. 60.

191. Plaintiffs' Opposition to Defendants' Motion to Dismiss at 20-21, *Nicole K.*, 2020 WL 1042619 (No. 19-cv-01521), ECF No. 67.

192. *Id.* at 21.

193. *Id.*

194. *Id.* at 22 (quoting Sprint, 571 U.S. at 73).

195. *Nicole K.*, 2020 WL 1042619, at *2-3, *aff'd on other grounds*, 990 F.3d 534 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 758 (2022).

196. *Id.* (quoting *In re* Ma. H., 134 N.E. 3d 41, 46 (Ind. 2019)).

On appeal, the Seventh Circuit affirmed on different grounds. Turning to the merits, the court concluded that "[u]nless there is a 'civil *Gideon*' principle requiring counsel in every case, the state's procedures suffice,"[197] and dismissal was the proper result.[198] Though the court resolved the question on the merits, it noted in dicta that *Younger* might not apply to all CHINS proceedings: "The variety of goals and outcomes . . . makes us reluctant to decide categorically whether *Younger* does, or does not, apply across the board."[199] Just over a year later, the Seventh Circuit abandoned this nuanced perspective.[200]

b. *Ashley W. v. Holcomb*

Only a few months after the original complaint was filed in *Nicole K.*, another group of children subject to CHINS proceedings brought a far broader challenge to the child welfare regime.[201] According to these plaintiffs,

> DCS has failed to provide safe and appropriate foster care placements; failed to provide appropriate services to the children and their families to allow safe reunification; and, for those for whom safe family reunification is not possible, failed to timely pursue termination of parental rights legal proceedings and failed to seek and secure safe, permanent homes.[202]

To remedy these harms, the plaintiffs sought broad injunctive and declaratory relief that would, among other things, cap caseloads for DCS caseworkers,[203] require DCS to provide "necessary services to the child's parents to ensure speedy reunification,"[204] and "enjoin defendants from failing to file and proceed with a timely petition to free a child for adoption."[205]

197. *Nicole K.*, 990 F.3d 534, 538 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 758 (2022).

198. *Id.* at 539.

199. *Id.* at 537.

200. Ashley W. v. Holcomb, 34 F.4th 588, 591 (7th Cir. 2022) ("We know from *Moore v. Sims* that *Younger* applies to state-initiated child welfare litigation."). Though the *Ashley W.* court maintained that there might be some instances where abstention might be improper where the underlying state-court proceeding was a CHINS proceeding, its analysis focused on whether the juvenile court could provide the relief which the plaintiffs sought. *Id.* at 593 ("[I]t becomes important to know just what relief the two children with live claims want that could not be provided by the judge in a CHINS proceeding."). The court's analysis, then, is best understood as an inquiry into the third *Middlesex* factor (adequate opportunity) and not an inquiry into the threshold question of whether CHINS proceedings fall within the *Sprint* categories.

201. Ashley W. Complaint, *supra* note 5, ¶ 6.

202. *Id.* ¶ 6.

203. *Id.* ¶ IV(a).

204. *Id.* ¶ IV(e) (applying to children with permanency plans of reunification).

205. *Id.* ¶ IV(g) (applying to children with permanency plans of adoption).

The plaintiffs initially avoided dismissal. Concluding that the plaintiffs' suit would not interfere with the ongoing CHINS proceedings and that plaintiffs did not have an adequate opportunity to raise their claims in the state forum, the district court found that the first and third *Middlesex* factors were not met.[206] But on appeal, the Seventh Circuit reversed.[207] Before turning to the district court's holdings regarding the *Middlesex* factors, the Seventh Circuit panel found that *Younger* applies to federal challenges to CHINS proceedings. Without further analysis, the court wrote, "We know from *Moore v. Sims* that *Younger* applies to state-initiated child welfare litigation."[208] Only a few months after the Seventh Circuit decided *Ashley W.*, the Fourth Circuit heard a very similar case dealing with West Virginia's foster care system. It would come to a different conclusion.[209]

D. West Virginia

1. West Virginia's child welfare system

As in Indiana, both West Virginia's executive and judicial branches run the state's child welfare system. An executive agency—the Department of Health and Human Resources—is primarily responsible for administering the system and caring for the children.[210] The state circuit courts—the state courts of general jurisdiction—manage the abuse and neglect proceedings through which children enter the child welfare system and through which the courts oversee the Department's care for children in state custody.[211]

206. Ashley W. *ex rel.* Durnell v. Holcomb, 467 F. Supp. 3d 644, 651-52 (S.D. Ind. 2020) (finding that the relief sought would not interfere with pending proceedings and that the plaintiffs lacked a reasonable opportunity to raise their federal claims in the pending proceedings), *rev'd sub nom.* Ashley W. v. Holcomb, 34 F.4th 588 (7th Cir. 2022); *see supra* note 77 and accompanying text (elaborating the *Middlesex* factors).

207. *Ashley W.*, 34 F.4th at 594.

208. *Id.* at 591. Later in its opinion, the Seventh Circuit notes that abstention might be improper if the state court could not provide the relief that the plaintiffs seek. *Id.* at 593. But as discussed above, *see supra* note 200, this is best understood as an analysis of whether the state proceedings provide an adequate opportunity to adjudicate plaintiffs' federal claims (the third *Middlesex* factor) and not whether CHINS proceedings are the kind of proceeding to which *Younger* applies.

209. Jonathan R. *ex rel.* Dixon v. Justice, 41 F.4th 316, 321 (4th Cir. 2022), *cert. denied sub nom.* Justice v. Jonathan R., 143 S. Ct. 310 (2022).

210. *See* W. VA. CODE §§ 49-2-106, -4-113, -4-408(a)-(c) (West 2023).

211. Children enter the West Virginia foster care system through traditional abuse and neglect proceedings or through juvenile delinquency or status-offense proceedings. *Jonathan R.*, 41 F. 4th at 321. Around 90% of children enter foster care through traditional abuse and neglect proceedings, and these proceedings will be the focus of this Subpart. *Id.*

As in Indiana, upon receiving a report of abuse or neglect, a child protective services (CPS) worker conducts an investigation.[212] If the CPS employee substantiates the report, the Department files a petition with a state circuit court.[213] Under certain emergency circumstances, the CPS worker may also take the child into emergency custody.[214] Upon receiving a petition, the state circuit court issues an initial order that determines whether the Department should be granted temporary custody of the child (either in the first instance or as a continuation of emergency custody), appoints counsel, and sets a date for the first hearing.[215]

At the preliminary hearing, the court determines whether removal was proper and should be continued.[216] The court may also order the Department to provide the child and family with services to promote reunification[217] or order a pre-adjudicatory improvement period.[218]

Next, the court holds an adjudicatory hearing to determine whether the child was abused or neglected and, if so, who is responsible.[219] Parents may

212. W. VA. CODE § 49-2-802(b) (West 2023).

213. *Id.* §§ 49-2-802(d), 49-4-601(a). The petition includes the allegations of abuse or neglect, identifies all parties to the action, and describes the relief sought. *Id.* § 49-4-601(b). West Virginia law also permits "reputable person[s]" to submit petitions to the court. *Id.* § 49-4-601(a). Most often, this occurs when someone like a juvenile probation officer has access to information that the Department lacks. Erica Gunn, *The Basics: Abuse and Neglect Proceedings*, W. VA. STATE BAR, at 09:20 (Mar. 15, 2023), https://perma.cc/BLY5-F76P.

214. W. VA. CODE § 49-4-303 (West 2023). Emergency custody must be ratified by a judge or magistrate immediately after removal and lasts no longer than two judicial days. *Id.*

215. *Id.* § 49-4-602(a).

216. Gunn, *supra* note 213, at 11:20. This involves determining whether the Department had cause to believe the child was in imminent danger, whether remaining in the home would have been contrary to the child's best interests, and whether the Department made reasonable efforts to prevent removal. W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 3(g) (West 2023). Where the child has been removed from home, the court must hold a preliminary hearing within ten days. *Id.* 22(a); W. VA. CODE § 49-4-602 (West 2023).

217. W. VA. CODE § 49-4-602(b)(5) (West 2023); Beth Kravitz, *The Basics: Abuse and Neglect Proceedings*, W. VA. STATE BAR, at 48:40 (Mar. 15, 2023), https://perma.cc/BLY5-F76P.

218. A pre-adjudicatory improvement period is an up to three-month period in which the family may receive services and attempt to remedy the circumstances that led to abuse or neglect. W. VA. CODE § 49-4-610(1) (West 2023); Gunn, *supra* note 213, at 12:55. Because pre-adjudicatory improvement periods are so short and, unlike later improvement periods, cannot be extended, they are disfavored by practitioners. Telephone Interview with Jennifer Stephens, Clinical Supervising Att'y, W. Va. Univ. Coll. of L. (Mar. 22, 2023); Gunn, *supra* note 213, at 12:55.

219. W. VA. CODE § 49-4-601(i) (West 2023). This hearing must occur within thirty days of the temporary custody order, thirty days of the petition if the child was not removed from home, or thirty days of the end of the pre-adjudicatory improvement period. W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 25 (West 2023).

stipulate to all or some of the allegations in the petition.[220] If contested issues of material fact remain, the court hears evidence.[221] If the court determines that abuse did occur, it will enter an order finding as much,[222] direct the multidisciplinary treatment team to create or update the child's case plan, and set a date for a disposition hearing.[223] If the court does not find that abuse or neglect occurred, it will dismiss the petition.[224]

Although practices vary, the initial disposition hearing is commonly used to review and approve the case plan and grant a post-dispositional improvement period.[225] These improvement periods ordinarily last six months but may be extended for an additional three.[226] Every three months that a child remains in the Department's custody, the court holds a "quarterly status review" hearing.[227] According to the relevant statute, at these hearings the court must determine

> the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date [for achieving permanency].[228]

220. W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 26 (West 2023).

221. Emily Mowry, *The Basics: Abuse and Neglect Proceedings*, W. VA. STATE BAR, at 1:05:00 (Mar. 15, 2023), https://perma.cc/BLY5-F76P. *See* W. VA. CODE § 49-4-601(h)-(i) (West 2023); W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 26(d), 27 (West 2023).

222. W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROCS. 27 (West 2023).

223. W. VA. CODE § 49-4-604(a) (West 2023). The court may also grant a post-adjudicatory improvement period, which lasts up to six months, with the option to extend for an additional three. *Id.* §§ 49-4-610(2), (6). The case plans created by the multidisciplinary treatment team should include "comprehensive information about a child and his or her family and . . . plans for addressing the conditions of abuse and neglect." W. VA. DIV. OF CHILD. & FAM. SERVS., WEST VIRGINIA JUDICIAL BENCHBOOK: CHILD ABUSE AND NEGLECT PROCEEDINGS, ch. 3, at 22 (2022) [hereinafter WEST VIRGINIA JUDICIAL BENCHBOOK], https://perma.cc/ZY6J-R2LD. They include details about a child's placement, care, and education, as well as information about any treatment or services that the child must receive. *Id.* at 22-25. Where the court has ordered an improvement period, case plans also include a treatment plan for the adult respondents to help them mitigate the conditions or behaviors that led to the abuse or neglect. *Id.* at 22-24; W. VA. CODE §§ 49-4-408, -604(a) (West 2023); W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 28(a)(2) (West 2023).

224. WEST VIRGINIA JUDICIAL BENCHBOOK, *supra* note 223, ch. 2, at 6.

225. Interview with Jennifer Stephens, *supra* note 218; *see* W. VA. CODE § 49-4-610(3) (West 2023).

226. W. VA. CODE § 49-4-610(3), (6) (West 2023).

227. *Id.* § 49-4-110(a).

228. *Id.*

But in practice, the way courts use these hearings varies greatly from county to county.[229]

Within thirty days of the post-dispositional improvement period ends, the court holds a final disposition hearing.[230] After giving all parties an opportunity to be heard, the court may (1) dismiss the petition, (2) dismiss the petition and refer the child and family to a community agency for services, (3) return the child home under the supervision of the Department, (4) order specific terms of supervision, (5) commit the child to the care and custody of the Department or some other suitable person, or (6) terminate parental rights.[231] Once a case reaches a final disposition hearing, parental rights are most often terminated.[232]

After final disposition, the court continues to hold quarterly review hearings as long as the child remains in the Department's custody, but the focus of these hearings shifts.[233] In most instances, parental rights have been terminated;[234] parents are no longer parties to the proceedings, and the court no longer considers whether reunification might be appropriate.[235] Instead, these hearings focus on the child's ongoing care and the Department's efforts to achieve permanent placement for the child, often through adoption or guardianship.[236]

229. For example, in Monongalia County—which includes Morgantown—the court uses these hearings to conduct all its business in abuse and neglect cases. Interview with Jennifer Stephens, *supra* note 218. Where improvement periods have been granted, the court hears from the parties and the multidisciplinary treatment team about the progress made to ameliorate the conditions of abuse and neglect, and the court hears and decides any motions. *Id.* The court may change the child's placement (including ordering reunification), change the services received by the child or the parents, and may, if appropriate, dismiss the case. *Id.* These hearings often last an hour, if not more. *Id.* In other counties, however, the court's role is far more limited. In Marion County, for example, quarterly status reviews are scheduled in five-minute increments and parties must request separate hearings on substantive motions. *Id.*

230. W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 38 (West 2023). If a post-dispositional improvement period is not granted, the court orders the final disposition at the first disposition hearing, which takes place forty-five days after entry of the adjudication order. *Id.* 32(a).

231. W. VA. CODE § 49-4-604(c) (West 2023). The Department is required to seek termination of parental rights where the child has been in foster care for fifteen of the last twenty-two months, where the child has been abandoned, tortured, chronically or sexually abused, where the parent has committed certain violent crimes against household members, where the parent has had their parental rights terminated involuntarily with regard to another child, and where the child has been removed and the parent has not attempted to contact the child for eighteen months. *Id.* § 49-4-605.

232. Interview with Jennifer Stephens, *supra* note 218.

233. *See* W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 39, 41 (West 2023).

234. Interview with Jennifer Stephens, *supra* note 218.

235. *See* W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 39(b)-(c) (West 2023).

236. Interview with Jennifer Stephens, *supra* note 218.

2. Recent challenge: *Jonathan R. v. Justice*

In September 2019, a group of foster children launched a broad challenge to West Virginia's child welfare system.[237] The challenge was in many respects identical to *Ashley W. v. Holcomb*. The plaintiffs were represented by the same legal advocacy group,[238] and the structure of the complaint was similar.[239] The plaintiffs brought many of the same causes of action, alleging violations of the Fourteenth Amendment's Due Process Clause, the Americans with Disabilities Act, the Adoption Assistance and Child Welfare Act, and the Rehabilitation Act.[240] The relief sought was also similar: Plaintiffs sought broad declaratory and injunctive relief against the Department and the appointment of a neutral monitor to oversee compliance with the court's order.[241]

The district court dismissed the action on *Younger* grounds, finding that West Virginia's abuse and neglect proceedings were "best classified as a hybrid of both the second and third" *Sprint* categories (i.e., a hybrid of quasi-criminal enforcement proceedings and "civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions"[242]).[243] Citing *Huffman*, *Trainor*, and *Moore* for the principle that *Younger* applies to state-initiated civil proceedings that are "in aid of and closely related to criminal statutes"[244] and citing *31 Foster Children v. Bush* and *J.B. ex rel. Hart v. Valdez* for the principle that "*Younger* applies to system-wide challenges to a state's foster care system,"[245] the court concluded: "*Younger* has been found to apply to 'exceptional categories' of cases which present factual issues very similar to the case at hand."[246] After determining abuse and neglect proceedings

237. Complaint ¶ 10, Jonathan R. v. Justice, No. 19-cv-00710, 2021 WL 3195020 (S.D. W. Va. July 28, 2021), 2019 WL 6122829 [hereinafter Jonathan R. Complaint].

238. *Compare id.* ¶ 41, *with* Ashley W. Complaint, *supra* note 5, ¶ 44.

239. *Compare* Jonathan R. Complaint, *supra* note 237, *with* Ashley W. Complaint, *supra* note 5.

240. *Compare* Jonathan R. Complaint, *supra* note 237, ¶¶ 368-402, *with* Ashley W. Complaint, *supra* note 5, ¶¶ 290-313.

241. Jonathan R. Complaint, *supra* note 237, ¶¶ 403-08; Ashley W. Complaint, *supra* note 5, ¶¶ I-VI. This is not to say, of course, that the litigation was identical. Notably absent from the prayer for relief in the West Virginia case was an order to require the Department to free children for adoption in a timely manner and an order requiring the Department to provide parents with services to promote reunification. Jonathan R. Complaint, *supra* note 237, ¶¶ 403-08.

242. Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 78 (2013) (quoting *NOPSI*, 491 U.S. at 368).

243. Jonathan R. v. Justice, No. 19-cv-00710, 2021 WL 3195020, at *9 (S.D. W. Va. July 28, 2021), *aff'd in part, rev'd in part, remanded sub nom.* Jonathan R. *ex rel.* Dixon v. Justice, 41 F.4th 316, 321 (4th Cir. 2022), *cert. denied sub nom.* Justice v. Jonathan R., 143 S. Ct. 310 (2022).

244. *Id.* (quoting Moore v. Sims, 442 U.S. 415, 423 (1974)).

245. *Id.* at *10.

246. *Id.*

fell within the *Sprint* categories, the court applied the *Middlesex* factors and found that plaintiffs' suit would interfere with ongoing state proceedings, that the state proceedings implicated important state interests, and that plaintiffs were not clearly barred from raising their federal claims in state court.[247] Accordingly, the district court dismissed.[248]

On appeal, the Fourth Circuit reversed. The district court had evaluated whether the state's abuse and neglect proceedings generally fell into the *Sprint* categories.[249] But according to the Fourth Circuit, the proper question was whether the portion of those proceedings that remained ongoing, which for the named plaintiffs were the permanency review conferences, could be so classified.[250] The court concluded that they could not be: "Whether we look to their form or their function, the quarterly state-court hearings are simply not 'of the sort entitled to *Younger* treatment.'"[251] While an initial child removal proceeding could be easily analogized to the "public-nuisance adjudication in *Huffman*," the "*ongoing* individual hearings . . . serve to protect the children who would be plaintiffs in federal court."[252] The Fourth Circuit held, therefore, that abstention was improper.[253]

III. The Heterogeneity of Child Welfare Proceedings

In child welfare proceedings, state courts have two distinct yet interrelated responsibilities. First, courts determine whether, when, and on what terms children should be separated from and reunified with their families. Second, courts oversee the placement, treatment, and care of children in state custody. The portions of child welfare proceedings that pertain to child removal and determining whether abuse or neglect did occur have the hallmarks of quasi-criminal, civil enforcement proceedings. But the portions that deal with the ongoing care of children in state custody plainly do not. Complicating attempts to classify child welfare proceedings as quasi-criminal or not, courts often address both child removal and continuing care at the same hearings, and the extent to which a court focuses on one or the other

247. *Id.* at *10-14.

248. *Id.* at *1.

249. *Id.* at *8-10.

250. Jonathan R. *ex rel.* Dixon v. Justice, 41 F.4th 316, 329-30 (4th Cir. 2022), *cert. denied sub nom.* Justice v. Jonathan R., 143 S. Ct. 310 (2022).

251. *Id.* at 327-28 (quoting Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 79 (2013)).

252. *Id.* at 329-30. In September 2022, West Virginia filed a petition for a writ of certiorari, which was denied by the Supreme Court one month later. *Jonathan R.*, 143 S. Ct. 310 (2022).

253. *Jonathan R.*, 41 F.4th at 339.

varies across the life of a case. Unfortunately, neither the Seventh nor the Fourth Circuits adequately accounted for this, each relying on an overly simplistic depiction of child welfare proceedings. As a result, the Seventh Circuit unjustifiably deprived the children-plaintiffs of a federal forum, and the Fourth Circuit infringed upon West Virginia's interests in the quasi-criminal elements of its abuse and neglect proceedings.

In this Part, the Note will return to the definition of quasi-criminal enforcement proceedings and apply it to child welfare proceedings. After establishing that the portions of these proceedings that concern removal, adjudication, and termination of parental rights are quasi-criminal, it will evaluate how the purpose and focus of child welfare proceedings evolves over the life of the case, with the quasi-criminal elements becoming less prominent as the case develops. Using this framework, it will conclude by critiquing the approaches taken by the Seventh and Fourth Circuits.

A. The Quasi-Criminal Aspects of Child Welfare Proceedings

1. Revisiting the definition of quasi-criminal enforcement proceedings

As discussed in above in Part I.D, lower courts generally apply the following framework to determine if proceedings are properly classified as quasi-criminal enforcement actions:

> In evaluating whether a state proceeding is quasi-criminal, we consider the factors set out in *Sprint*, including whether (1) the action was commenced by the State in its sovereign capacity, (2) the proceeding was initiated to sanction the federal plaintiff for some wrongful act, and (3) there are other similarities to criminal actions, such as a preliminary investigation that culminated with the filing of formal charges. We also consider whether the State could have alternatively sought to enforce a parallel criminal statute.[254]

Though the language from *Sprint* has been formalized by some lower courts, these factors should not be treated as a checklist.[255] The *Sprint* Court used absolute language when it wanted to,[256] but when describing the features of quasi-criminal enforcement actions, the Court spoke of characteristic features,

254. ACRA Turf Club, LLC v. Zanzuccki, 748 F.3d 127, 138 (3d Cir. 2014) (citing *Sprint*, 571 U.S. at 80); *see, e.g.*, *supra* note 104 and accompanying text.

255. *See* Bristol-Myers Squibb Co. v. Connors, 979 F.3d 732, 737 (2020) ("Nothing in the Court's opinion suggests that the characteristics it identified should be treated as a checklist, every element of which must be satisfied based on the specific facts of each individual case.").

256. *See Sprint*, 571 U.S. at 82 ("In short, to guide other federal courts, we today clarify and affirm that *Younger* extends to the three 'exceptional circumstances' identified in *NOPSI*, but *no further*." (emphasis added)).

not necessary conditions.[257] As the Ninth Circuit has noted, "[T]he Court used terms such as 'characteristically,' 'routinely,' and 'commonly' to describe the class of enforcement actions entitled to *Younger* abstention."[258]

Applying the first, third, and fourth factors is relatively straightforward. In assessing the first, courts look to whether the state, as opposed to a private party, initiated the action.[259] While, as mentioned above, these criteria should not be applied mechanistically, the absence of state involvement seems almost certainly determinative. Absent a private-enforcement mechanism, state involvement seems necessarily implied by the term "enforcement."[260] In assessing the third feature, courts look generally to similarities between the state proceeding and a criminal action. Among other things, courts have considered whether there was an investigation,[261] whether there was a formal complaint,[262] and what kinds of procedural

257. *See Bristol-Myers Squibb*, 979 F.3d at 737 ("In *Sprint*, the Supreme Court described the characteristics of quasi-criminal enforcement actions in general terms by noting features that are typically present, not in specific terms by prescribing criteria that are always required.").

258. *Id.* (citing *Sprint*, 571 U.S. at 79).

259. *E.g.*, Oglala Sioux Tribe v. Fleming, 904 F.3d 603, 610 (8th Cir. 2018) (noting that "[t]he State is a party to these proceedings and initiates them by filing a petition for temporary custody"); Hunter v. Hirsig, 660 F. App'x 711, 716 (10th Cir. 2016) (noting that the state officials initiated the license revocation proceedings); Doe v. Univ. of Ky., 860 F.3d 365, 370 (6th Cir. 2017) (noting that a state actor "is a party to the proceeding and initiated the action"); Rynearson v. Ferguson, 903 F.3d 920, 925 (9th Cir. 2018) (finding that proceedings initiated by private party were not quasi-criminal); *ACRA*, 748 F.3d at 138-39 (finding that proceedings initiated by private parties were not quasi-criminal); *see* Cath. Healthcare Int'l, Inc. v. Genoa Charter Twp., No. 21-2987, 2021 WL 5277096, at *2 (6th Cir. Nov. 12, 2021) (Thapar, J., concurring) ("Under our precedent, the first factor is met if a state actor is a party to the suit." (citing *Doe*, 860 F.3d at 370; and Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423 (1982))).

260. Whether suits prosecuted under private-enforcement regimes and citizen-suit provisions can constitute quasi-criminal enforcement action for the purposes of *Sprint* and *Younger* is an interesting question. But because abuse and neglect proceedings are almost always initiated by state officials, this question lies outside the scope of this Note.

261. *E.g.*, *Oglala*, 904 F.3d at 610 (noting that two state agencies conduct investigations); Gonzalez v. Waterfront Comm'n of N.Y. Harbor, 755 F.3d 176, 182 (3d Cir. 2014) (noting that a state actor conducted an investigation); Sirva Relocation, LLC v. Richie, 794 F.3d 185, 193 (1st Cir. 2015) (noting that the Massachusetts Commission Against Discrimination conducted an investigation); *ACRA*, 748 F.3d at 138 (noting that "no state actor conducted an investigation"); Herrera v. City of Palmdale, 918 F.3d 1037, 1045 (9th Cir. 2019) (noting that "[t]he City, a state actor, obtained and executed an inspection warrant").

262. *E.g.*, *Oglala*, 904 F.3d at 610 (noting that proceedings begin when the state official files a petition in state court); *ACRA*, 748 F.3d at 138-39 (noting that no formal complaint or charges were filed); *Gonzalez*, 755 F.3d at 182 (noting that a state actor filed "formal Statement of Charges" against the target of state proceedings); *Sirva Relocation*, 794 F.3d

footnote continued on next page

protections the parties are afforded.[263] In assessing the fourth, courts evaluate whether the conduct at issue in the civil proceeding also violated the state's criminal laws.[264] In other words, they consider whether the civil proceeding is "in aid of and closely related to criminal statutes,"[265] whether the proceeding can be described as a "civil technique" for enforcing the state's criminal prohibitions.[266]

The second factor, however, warrants more critical evaluation. Some lower courts have interpreted the second factor ("the proceeding was initiated to sanction the federal plaintiff for some wrongful act") to impose two requirements for proceedings to be classified as quasi-criminal.[267] First, the state court proceeding must be punitive, that is, it must impose a sanction on the subject of the proceedings for the purpose

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at 193 (noting that an investigator's certification of the matter for public hearing was "the functional equivalent of filing a formal complaint" under state law); *Herrera*, 918 F.3d at 1045 (noting that the city, after concluding an investigation, "issued a Notice and Order to Repair or Abate").

263. *E.g.*, *Hunter*, 660 F. App'x at 716 (noting that the state agency "held a contested hearing, received evidence and argument"); *Doe*, 860 F.3d at 370 (evaluating procedures used in university disciplinary proceedings and concluding that "while the proceeding may lack all the formalities found in a trial, it contains enough protections and similarities to qualify as 'akin to criminal prosecutions' for purposes of *Younger* abstention").

264. *E.g.*, Minn. Living Assistance, Inc. v. Peterson, 899 F.3d 548, 553 (8th Cir. 2018) (finding that a proceeding was quasi-criminal and noting that the statute under which the proceedings were initiated "provides for criminal penalties in addition to the civil penalties" pursued in the proceeding); *ACRA*, 748 F.3d at 139 (finding that proceedings were not quasi-criminal and noting that "there is no indication that the policies implicated in the state proceeding could have been vindicated through enforcement of a parallel criminal statute"); *see* Trainor v. Hernandez, 431 U.S. 434, 444 (1977) (noting that "the state authorities also had the option of vindicating these policies through criminal prosecutions"); *Cath. Healthcare Int'l*, 2021 WL 5277096, at *3 (Thapar, J., concurring) (arguing that proceedings were not quasi-criminal and noting the absence of a "criminal-law analogue" to the civil statute being enforced); *cf. Rynearson*, 903 F.3d at 926 ("[T]he mere fact that the protection order law refers to criminal statutes does not mean that protection order proceedings are quasi-criminal.").

265. Moore v. Sims, 442 U.S. 415, 423 (1979) (quoting Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975)); *see Oglala*, 904 F.3d at 610 (noting that child removal proceedings are "closely related to criminal statutes [related to child abuse] and potentially in aid of their enforcement"); *see also Cath. Healthcare Int'l*, 2021 WL 5277096, at *3 (Thapar, J., concurring) (noting that in *Huffman*, *Trainor*, and *Moore*, "the Court explicitly noted that criminal prosecutions were available to the state as an alternative, and that the civil action was 'in aid of and closely related to criminal statutes'" (quoting *Moore*, 442 U.S. at 423)).

266. Duke v. Texas, 477 F.2d 244, 250 (5th Cir. 1973).

267. *ACRA*, 748 F.3d at 138 (citing *Sprint*, 571 U.S. at 79).

of punishment.[268] And second, the party being punished must be the federal plaintiff.[269]

This, however, is not the best reading. Several of the cases *Sprint* cited as examples of quasi-criminal enforcement proceedings were not explicitly punitive.[270] *Huffman* involved nuisance abatement proceedings, the purpose of which was at least as much to protect the public from the continuing harms of the nuisance as it was to punish the nuisance creator.[271] *Trainor* involved civil attachment proceedings that were aimed at "safeguarding the fiscal integrity" of the state's welfare programs.[272] And *Moore* involved emergency custody

268. *See* Tinsley v. McKay, 156 F. Supp. 3d 1024, 1034 (D. Ariz. 2015) (noting that periodic review hearings are not quasi-criminal because they are not primarily intended to "investigate or penalize those who might have contributed to their dependency"); *Rynearson*, 903 F.3d 926 (holding that civil stalking protective order proceedings are not quasi-criminal because "the primary purpose of the order is to protect the petitioner, not punish the respondent"); Applied Underwriters, Inc. v. Lara, 37 F.4th 579, 590 (9th Cir. 2022) (holding that contested conservatorship proceedings, initiated after the insurance company violated the state insurance code, was not quasi-criminal because the conservatorship that these proceedings would impose was not "aimed at 'punishment of a public offense'" but was rather imposed "by the state in the interest of the public" (quoting Carpenter v. Pac. Mut. Life Ins. Co. of Cal., 74 P.2d 761, 773-74 (Cal. 1937), *aff'd sub nom.* Neblett v. Carpenter, 305 U.S. 297 (1938)), *cert. denied*, 143 S. Ct. 748 (2023); *Cath. Healthcare Int'l*, 2021 WL 5277096, at *2 (Thapar, J., concurring) (describing "whether the purpose of the action is punitive" as a "key factor[] guid[ing]" courts' quasi-criminal analyses and distinguishing between sanctions intended to punish and those intended to secure compliance); *see also* Mulholland v. Marion Cnty. Election Bd., 746 F.3d 811, 816-17 (7th Cir. 2014) (holding that an election board hearing was not quasi-criminal because "the Board's authority to sanction offenders is extremely limited—far less than the state proceedings that have warranted *Younger* abstention in other cases").

269. *See, e.g.*, Jeremiah M. v. Crum, No. 22-129, 2023 WL 6316631, at *6 (D. Alaska Sept. 29, 2023) ("Unlike in the majority of cases that Defendants cite . . . parents of the plaintiff foster children are not parties in this suit. The absence of parties against whom criminal statutes would be enforced makes this suit fundamentally dissimilar from others that fall within the quasi-criminal category."); Jonathan R. *ex rel.* Dixon v. Justice, 41 F.4th 316, 330 (4th Cir. 2022) ("It would turn decades of Supreme-Court jurisprudence—and logic—on its head to put these foster children in the shoes of the abusive parents in *Moore*, the obscene-theater director in *Huffman*, or the asset-concealing fraudsters in *Trainor*." (citations omitted)), *cert. denied sub nom.* Justice v. Jonathan R., 143 S. Ct. 310 (2022); *see also Applied Underwriters*, 37 F.4th at 589 ("Here, the complete lack of sanctions being *sought against Appellants* belie any punitive character to the insurance conservatorship action." (emphasis added)).

270. *Cath. Healthcare Int'l*, 2021 WL 5277096, at *3 (Thapar, J., concurring).

271. *See* Huffman v. Pursue, Ltd., 420 U.S. 592 (1975); State *ex rel.* Miller v. Anthony, 647 N.E.2d 1368, 1373 (Ohio 1995) ("Furthermore, we find that the provision requiring the imposition of the closing order acts to restore safety in the area where the drug nuisance is located. The purpose of this provision is to ensure the abatement through non-use of the property for one year. Thus, as the closing order aids in implementing the abatement order, we find it to be preventive, not punitive, in nature.").

272. Trainor v. Hernandez, 431 U.S. 434, 444 (1977).

proceedings, the purpose of which is protecting children, not punishing parents.[273] Even the attorney disciplinary proceedings in *Middlesex* were not, viewed on their own terms, strictly punitive: According to *Middlesex*, the purposes of these disciplinary proceedings were "the protection of the public, the purification of the bar and the prevention of a re-occurrence" of wrongdoing.[274] *Sprint*'s reference to these cases as exemplars of quasi-criminal enforcement proceedings belies the notion that intent to punish is a fundamental attribute of this category of state proceedings.

Further, the proposition that the federal plaintiff must be the target of the state proceedings' sanctions cannot be reconciled with the underlying facts of *Moore* or with the policy rationales that motivate the *Younger* abstention doctrine. In *Moore*, the federal plaintiffs were both parents and children, and the Supreme Court abstained completely, without discriminating between claims brought by the parents and those brought by the children.[275] Had the identity of the federal plaintiff been the central concern, the Court could have abstained from the parents' challenge and heard the children's. Moreover, as discussed in Part I, *Younger* is primarily concerned with avoiding interference with important state court proceedings.[276] In light of this, the plaintiff's identity should not be dispositive. If federal injunction interferes with important state proceedings, the harm to the state's interests in those proceedings is the same regardless of at whose name the injunction is issued.

Therefore, rather than focus on whether the proceeding is punitive with respect to the federal plaintiff, the touchstone of this second factor the *Sprint*

273. *See* Moore v. Sims, 442 U.S. 415, 419 (1979); *Ex parte* Cantu, 913 S.W.2d 701, 706 (Tex. Ct. App. 1995) ("When the State seeks custody of children, it pursues a purely remedial function: the protection of minors. It does not aim to punish the parents or to impose retribution.").

274. Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 434 (1982) (quoting *In re* Baron, 136 A.2d 873, 875 (N.J. 1957)); *see Applied Underwriters*, 37 F.4th at 601 (Nguyen, J., concurring in the result).

275. *Moore*, 442 U.S. at 418, 435; *see* Defendants' Motion to Dismiss & Brief in Support at 19 n.72, Jeremiah M. v. Crum, No. 22-129 (D. Alaska Aug. 26, 2022).

276. *See supra* notes 46-50 and 57-78 and accompanying text; Younger v. Harris, 401 U.S. 37, 44 (1971) (referring to avoiding "undu[e] interfere[nce] with the legitimate activities of the States" as the "more vital consideration"); *see also* Martin H. Redish, *The Doctrine of Younger v. Harris: Deference in Search of a Rationale*, 63 CORNELL L. REV. 463, 465 (1978) ("Thus a fear of unduly impinging upon 'state interests' supports, at least in large part, *Younger* and its progeny."); Donald H. Zeigler, *An Accommodation of the Younger Doctrine and the Duty of the Federal Courts to Enforce Constitutional Safeguards in the State Criminal Process*, 125 U. PA. L. REV. 266, 285-86 (1976) ("The principles of comity, equity, and federalism, which form the basis of the *Younger* doctrine, concern primarily the relationship between the federal and the state courts."); Thomas H. Winslow, Middlesex County Ethics Committee v. Garden State Bar Association*: A Decision on* Younger *Abstention in Perspective*, 10 OHIO N.U. L. REV. 179, 180 (1983) (stating that *Younger* "espouses a strong federal policy against federal court interference").

inquiry should be whether the state judicial proceeding imposes a significantly burden on the party to those state proceedings as a consequence of that party's violation of a legislatively or administratively prescribed standard of conduct.

2. Applying the definition to child welfare proceedings

With all of this in mind, the aspects of child welfare proceeding that are focused on removing children from their homes are property classified as quasi-criminal civil enforcement proceedings. First, child removal proceedings are initiated and prosecuted by the state in its sovereign capacity. In Indiana, CHINS proceedings begin when DCS files a petition in juvenile court, and DCS is a party to all CHINS proceedings.[277] Similarly, in West Virginia, abuse and neglect proceedings begin when the Department of Health and Human Resources (DHHR) files a petition with the circuit court.[278] DHHR remains a party throughout the entirety of the proceeding and is represented by the prosecuting attorney of the county in which the petition was filed.[279]

Second, child removal proceedings share other features with criminal actions. Child removal proceedings involve an investigation that culminates in the filing of formal charges.[280] In both Indiana and West Virginia, the proceedings begin when the state receives a complaint of abuse or neglect.[281] The state investigates these allegations and, if they are substantiated, files a petition with the state court to initiate formal child removal proceedings.[282] The petition includes specific allegations about the circumstances and actions that constitute abuse or neglect.[283] In West Virginia, the petition also must

277. IND. CODE § 31-34-9-7 (West 2023); *see supra* notes 156-62 and accompanying text. Indiana calls its child welfare proceedings "CHINS" proceedings, and West Virginia calls them "abuse and neglect proceedings." W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 1.

278. W. VA. CODE § 49-4-601 (West 2023). West Virginia also permits any "reputable person" to submit an abuse and neglect petition. *Id.* In most instances though, this "reputable person" is another state employee like a juvenile probation officer. Gunn, *supra* note 213, at 09:20.

279. W. VA. CODE § 49-4-501 (West 2023).

280. *See* Joshua Gupta-Kagan, *Filling the Due Process Donut Hole: Abuse and Neglect Cases between Disposition and Permanency*, 10 CONN. PUB. INT. L.J. 13, 15 (2010) ("A case typically begins with the government formally charging a parent with abusing or neglecting his or her child and asking a judge to put the child in the government's custody so it can protect the child from further abuse or neglect.").

281. *See supra* notes 160-65 and 212-15 and accompanying text.

282. *See* IND. CODE §§ 31-34-7-1, -9-1 to -9-3 (West 2023); W. VA. CODE §§ 49-2-802(b), (d), 49-4-601(a) (West 2023).

283. IND. CODE § 31-34-9-3(4)(C) (West 2023); W. VA. CODE § 49-4-601(b) (West 2023).

"state with specificity whether each parent . . . is alleged to have abused or neglected the child."[284]

Third, the child removal proceedings impose a significant burden on a party to the proceedings as a consequence of that party violating a legislatively prescribed standard of conduct. In both Indiana and West Virginia, a child's parents are parties to the abuse and neglect proceeding until parental rights are terminated.[285] Child removal burdens parents' fundamental rights to family integrity.[286] And this burden is imposed because of the parents' conduct, either abusing or neglecting their children, or failing to protect their children from such abuse or neglect. In Indiana, for example, children may be deemed "in need of services" for a variety of reasons, but almost all of have to do with an act or omission by the children's parent or guardian.[287] Moreover, regardless of the specific allegation leveled against the parent or child, all children in CHINS proceedings "need[] care, treatment, or rehabilitation that . . . is unlikely to be

284. W. VA. CODE § 49-4-601(b) (West 2023).

285. IND. CODE ANN. § 31-34-9-7 (West 2023) (parents are parties); W. VA. CODE § 49-4-601(b) (West 2023) (same); *see* IND. CODE ANN. § 31-35-6-4 ("If the juvenile or probate court terminates the parent-child relationship[] . . . all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, parenting time, or support, pertaining to the relationship, are permanently terminated . . . ."); W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 39(c) ("Neither a party whose parental rights have been terminated by the final disposition order nor his or her attorney shall be given notice of or participate in post-disposition proceedings.").

286. Stanley v. Illinois, 405 U.S. 645, 651 (1972) ("The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment." (citing Meyer v. Nebraska, 262 U.S. 390, 399 (1923); Skinner v. State of Okl. *ex rel.* Williamson, 316 U.S., 535, 541 (1942); and Griswold v. Connecticut, 381 U.S. 479, 496 (1965) (Goldberg, J., concurring))); *id.* at 652 (observing that a parent's "interest in retaining custody of his children is cognizable and substantial"); Santosky v. Kramer, 455 U.S. 745, 753 (1982) ("The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents . . . .").

287. *See* IND. CODE § 31-34-1-1 (West 2023) ("Inability, refusal, or neglect of parent, guardian or custodian to supply child with necessary food, clothing, shelter, medical care, education, or supervision"); *id.* § 31-34-1-2 ("Act or omission of parent, guardian or custodian seriously endangering child's physical or mental health"); *id.* § 31-34-1-3.5 ("Victim of human sexual trafficking offense"); *id.* § 31-34-1-4 ("Parent, guardian or custodian allowing child's participation in obscene performance"); *id.* § 31-34-1-5 ("Parent, guardian or custodian allowing child to commit sex offense"); *id.* § 31-34-1-7 ("Parent, guardian or custodian failing to participate in school disciplinary proceeding"); *id.* § 31-34-1-9 ("Disabled child deprived of necessary nutrition or medical or surgical intervention"); *id.* § 31-34-1-10 ("Child born with fetal alcohol syndrome or with controlled substance or legend drug in child's body"); *id.* § 31-34-1-11 ("Risks or injuries arising from use of alcohol, controlled substance, or legend drug by child's mother during pregnancy").

provided . . . without the coercive intervention of the court."[288] Similarly, West Virginia's definitions of abuse and neglect revolve around acts or omissions by the child's parent or guardian.[289] While burdens might not be imposed to "punish" or "sanction" the parent—indeed, many states deny that their child welfare systems have a punitive purpose[290]—the absence of a punitive purpose should not be considered dispositive.[291]

And finally, child removal proceedings are "in aid of and closely related" to criminal laws prohibiting child abuse.[292] The proceedings are based on a course of prohibited conduct that is, in many instances, also prohibited by state criminal law. In Indiana, for example, "neglect of a dependent"—defined as knowingly "plac[ing] the dependent in a situation that endangers the dependent's life or health"—is a felony punishable by up to two and a half years in prison.[293] Indiana's child welfare laws explicitly cross-reference to this

288. IND. CODE §§ 31-34-1-1 to -10 (West 2023).

289. West Virginia defines an "abused child" as one "whose health or welfare is being harmed or threatened by: "(A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment; (B) Sexual abuse or sexual exploitation; (C) The sale or attempted sale of a child by a parent, guardian, or custodian[;] . . . (D) Domestic violence[;] . . . or (E) Human trafficking or attempted human trafficking." W. Va. Code § 49-1-201 (West 2023). A "neglected child" is one: "(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care, or education, when that refusal, failure, or inability is not due primarily to a lack of financial means on the part of the parent, guardian, or custodian; (B) Who is presently without necessary food, clothing, shelter, medical care, education, or supervision because of the disappearance or absence of the child's parent or custodian." *Id.*

290. *See In re* S.D., 2 N.E.3d 1283, 1285 (Ind. 2014) ("Child in need of services (CHINS) cases aim to help families in crisis—to protect children, not punish parents."); W. VA. CODE § 49-1-105 (West 2023) (listing purposes of child welfare system); Hynes, *supra* note 27, at 342 ("Categorizing an action to enforce federal and state law concerning the rights of foster children as 'criminal' totally misapprehends the purpose of both federal law and state laws based on the federal law.").

291. *See supra* notes 270-74 and accompanying text. To the extent that a punitive character is important nonetheless, some scholars have suggested that child welfare systems are punitive, regardless of their stated intent. *See generally* Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474 (2012).

292. Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975); *see* Moore v. Sims, 442 U.S. 415, 423 (1979) ("[T]he temporary removal of a child in a child-abuse context is . . . 'in aid of and closely related to criminal statutes.'" (quoting *Huffman*, 420 U.S. at 604 (1975)); Oglala Sioux Tribe v. Fleming, 904 F.3d 603, 610 (8th Cir. 2018) ("[B]ecause the proceedings are for the purpose of 'protecting the child from abuse or neglect,' they are closely related to criminal statutes and potentially in aid of their enforcement." (quoting S.D. CODIFIED LAWS § 26-7A-6)).

293. IND. CODE §§ 35-46-1-4(a), 35-50-2-7 (West 2023).

section of the criminal code: children who are the victims of criminal neglect at the hands of their parents or guardians are also subject to child welfare proceedings.[294] Indiana's child welfare statutes also cross-reference to a number of other criminal statutes prohibiting, among other things, battery, domestic violence, and certain sex crimes.[295]

Similarly, in West Virginia, parental conduct that would lead to the initiation of abuse and neglect proceedings is often also prohibited by state criminal law. Under West Virginia's child welfare statutes, a child is deemed neglected if their "health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care, or education."[296] Conduct that creates neglect under this standard also meets the definition of neglect found in the state's criminal laws, which defines neglect as "the unreasonable failure by a parent, guardian or custodian of a minor child to exercise a minimum degree of care to assure the minor child's physical safety or health."[297]

The same is true with West Virginia's definition of child abuse. Under West Virginia's child welfare statutes, a child is deemed abused if their welfare is threatened by:

> (A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home . . . ;
>
> (B) Sexual abuse or sexual exploitation;
>
> (C) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of § 61-2-14h of this code;
>
> (D) Domestic violence as defined in § 48-27-202 of this code; or
>
> (E) Human trafficking or attempted human trafficking, in violation of § 61-14-2 of this code.[298]

Each of these provisions has a close analogue in the state criminal laws. Parental conduct that would be covered by subsection (A) would also be prohibited under the state's criminal child abuse statute, which makes it a felony to "inflict[] upon a minor . . . physical injury by other than accidental means."[299] "Sexual abuse or sexual exploitation" is defined elsewhere in the child welfare statutes by reference to the state's criminal laws that prohibit

294. *Id.* § 31-34-1-2.

295. *Id.* §§ 31-34-1-2, -3.

296. W. VA. CODE § 49-1-201 (West 2023).

297. *Id.* § 61-8D-1(7). Child neglect that leads to bodily injury is a felony punishable by up to three years in prison. *Id.* § 61-8D-4.

298. *Id.* § 49-1-201.

299. *Id.* §§ 61-8D-1(1), -3(a).

sexual acts with minors.[300] Subsections (C) and (E) explicitly refer to portions of the state criminal code prohibiting sale of children and human trafficking.[301] And while (D) refers to the state's civil domestic violence statute, this definition has significant overlap with the West Virginia's criminal laws prohibiting domestic violence.[302]

In sum, child removal proceedings have the all the hallmarks of quasi-criminal abuse and neglect proceedings; accordingly, they fall squarely into *Sprint*'s second category, and abstention is proper where *Younger*'s other requirements are met.[303]

Beyond removal proceedings, the aspects of child welfare proceedings that perpetuate the child's removal, that adjudicate the allegations of abuse or neglect, and that terminate parental rights are also properly classified as quasi-criminal. These portions of the proceedings, no less than the removal proceedings, are initiated and prosecuted by the state after investigation and the filing of formal charges.[304] They significantly burden—or threaten to burden—a parent's fundamental constitutional rights. And finally, like

300. *Id.* § 49-1-201.

301. *Id.*

302. *Compare id.* § 48-27-202 ("'Domestic violence' or 'abuse'" means the occurrence of one or more of the following acts between family or household members, as that term is defined in section two hundred four of this article: (1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons; (2) Placing another in reasonable apprehension of physical harm; (3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts; (4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and (5) Holding, confining, detaining or abducting another person against that person's will."), *with id.* § 61-2-28 ("(a) *Domestic battery.* Any person who unlawfully and intentionally makes physical contact of an insulting or provoking nature with his or her family or household member, or unlawfully and intentionally causes physical harm to his or her family or household member, is guilty of a misdemeanor . . . . (b) *Domestic assault.* Any person who unlawfully attempts to commit a violent injury against his or her family or household member, or unlawfully commits an act that places his or her family or household member in reasonable apprehension of immediately receiving a violent injury, is guilty of a misdemeanor.").

303. *See* Moore v. Sims, 442 U.S. 415, 423 (1979) ("[T]he temporary removal of a child in a child-abuse context is . . . 'in aid of and closely related to criminal statutes.' The existence of these conditions . . . determines the applicability of *Younger-Huffman* principles as a bar to the institution of a later federal action." (quoting Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975)); Oglala Sioux Tribe v. Fleming, 904 F.3d 603, 610 (8th Cir. 2018) ("South Dakota's temporary custody proceedings are civil enforcement proceedings to which *Younger* principles apply."); *see also* Jonathan R. *ex rel.* Dixon v. Justice, 41 F.4th 316, 329-30 (4th Cir. 2022) (suggesting that "*initial* child-removal proceeding" are quasi-criminal enforcement proceedings even though ongoing review hearings are not), *cert. denied sub nom.* Justice v. Jonathan R., 143 S. Ct. 310 (2022).

304. *See supra* notes 277-79.

removal decisions, these portions of the proceedings are "in aid of and closely related to" the laws criminalizing child abuse and neglect.[305]

B. Variation Within a Proceeding

Child welfare proceedings can be broken into three phases. The first phase lasts from initial hearing to adjudication. During this phase, the proceedings are predominantly quasi-criminal. The second phase spans from adjudication to either the termination of parental rights or reunification. During this phase, the proceedings are mixed: The court addresses both child removal and ongoing care, often in the same hearing. Finally, the third phase begins with the termination of parental rights and spans until the child achieves permanency. During this phase, the proceedings focus almost exclusively on the child's continuing care and the state's efforts to permanently place the child.

1. Predominantly quasi-criminal phase: initial hearing to adjudication

The first court hearing of a child welfare proceeding is almost entirely quasi-criminal, as the primary focus is on removal. At an initial hearing in Indiana, the juvenile court enters findings about whether the child was properly removed from her home and whether that removal should be continued.[306] The court asks caregivers to admit or deny the allegations detailed in the petition.[307] Beyond determining whether the child should be removed, the court does not address the child's placement or care during the initial hearing.[308]

Similarly, in West Virginia, the circuit court makes findings about the appropriateness of removal and the continued necessity of removal.[309] Unlike in Indiana, the court may order the Department to provide the child and her family with services and may grant a pre-adjudicatory improvement period.[310] Though these determinations go beyond the removal decision, they are closely related to it. The services ordered for a family are intended to mitigate the conditions or behaviors that led to abuse or neglect. Because the persistence of these conditions or behaviors is what justifies continued removal, the court's decision to order

305. *See supra* notes 292-302.

306. IND. CODE §§ 31-34-5-2, -3 (West 2023).

307. *Id.* § 31-34-10-6.

308. CHINS BENCHBOOK, *supra* note 160, at 273.

309. W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 3(g).

310. W. VA. CODE §§ 49-4-602(a)(4)(B), -610(1) (West 2023).

services for a family (and/or to grant an improvement period) bears directly on its future decisions to perpetuate removal or order reunification.[311]

Adjudicatory hearings[312] are exclusively focused on the quasi-criminal element of child welfare proceedings. In both Indiana and West Virginia, the purpose of adjudicatory hearings is to determine whether abuse or neglect did, in fact, occur.[313] At these hearings, the court receives evidence and hears witnesses.[314] At the conclusion of the hearing, the court must determine whether the child is abused or neglected under the relevant portions of state law.[315] Issues pertaining to a child's placement and care are not addressed.

2. Dual-purpose phase: disposition to dismissal or termination of parental rights

After the adjudicatory hearing, the blended nature of child welfare proceedings becomes apparent. The disposition hearings and periodic review hearings during this phase address both child removal, which is quasi-criminal, and the state's care for the children in its custody, which is not.

Returning to the example of Indiana: At the disposition hearing, the court hears recommendations from DCS and other parties regarding the child's placement, treatment, and care.[316] If recommended to do so by DCS, the court inquires into whether out-of-home placement would serve the child's best interests and hears the parents' objections.[317] At the conclusion of the hearing,

311. Decisions ordering services for children, in contrast, are less clearly related to removal decisions. These decisions are better viewed as an extension of the courts' oversight of the Department's care for children in its custody.

312. In Indiana, they are called "factfinding hearings." IND. CODE § 31-34-11-1(a) (West 2023).

313. WEST VIRGINIA JUDICIAL BENCHBOOK, *supra* note 223, ch. 3, at 21 ("The purpose of the adjudicatory hearing is to allow the parties to present evidence to support or refute the allegations of abuse and neglect."); *see* IND. CODE § 31-34-11-1(a) (West 2023); CHINS BENCHBOOK, *supra* note 160, at 143-52 (detailing the procedure of factfinding hearings).

314. *See* CHINS BENCHBOOK, *supra* note 160, at 144-49; WEST VIRGINIA JUDICIAL BENCHBOOK, *supra* note 223, ch. 1, at 7-8; Emily Mowry, *The Basics: Abuse and Neglect Proceedings*, W. VA. STATE BAR, at 1:05:30 (Mar. 15, 2023), https://perma.cc/BLY5-F76P; W. VA. CODE §§ 49-4-601(h)-(i) (West 2023).

315. IND. CODE § 31-34-11-2(a) (West 2023) ("If the court finds that a child is a child in need of services, the court shall . . . enter judgment accordingly . . . ."); W. VA. CODE § 49-4-601(i) (West 2023) ("At the conclusion of the adjudicatory hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether the child is abused or neglected and whether the respondent is abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.").

316. IND. CODE § 31-34-19-6.1(a) (West 2023).

317. *Id.*; CHINS BENCHBOOK, *supra* note 160, at 280-85.

the court issues a dispositional decree that determines the child's placement and any treatment or services that the child is to receive; the court may also order the parents to participate in services aimed at mitigating the conditions of abuse or neglect.[318]

After the disposition hearing, the court continues to review the appropriateness of the child's placement and begins supervising DCS's care of the child in earnest. At periodic case review hearings, the court determines whether the case plan continues to serve the child's best interests and the extent to which parents have mitigated conditions of abuse or neglect.[319] It may reunify the family and dismiss the proceedings, order a change in services, or determine that DCS is no longer required to make efforts to reunify the family, which sets into motion proceedings to terminate parental rights.[320]

This phase of West Virginia's proceedings shares this blended nature. At the disposition hearing, the circuit court reviews the child's case plan. The court hears objections and accepts, rejects, or modifies the proposed case plan.[321] The court also determines a disposition for the case (e.g., dismissal and reunification, termination of parental rights) or may grant an improvement period in lieu of final disposition.[322]

During the improvement period, the court holds review hearings every three months to assess, among other things, the progress made towards "mitigating the causes necessitating placement in foster care."[323] The court may decide that the child should be returned to their home. Alternatively, the court may determine that the improvement period should be terminated and the case set for final disposition, which most often results in termination of parental rights.[324] During these hearings, the court also reviews the Department's care for the child, considering "whether [the] continued placement is necessary and appropriate" and whether the Department has complied with the case plan.[325]

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318. IND. CODE § 31-34-20-1 (West 2023).

319. *Id.* § 31-34-21-5.

320. Interview with Kristin Bishay, *supra* note 180; IND. CODE §§ 31-34-21-5, -5.6, -11 (West 2023). Technically, the court may find that reunification efforts are no longer required only at permanency or permanency review hearings. However, these hearings can be (and often are) held concurrently with periodic review hearings. The practical effect of this is that courts can make reasonable efforts determinations at only a subset of periodic review hearings. Interview with Kristin Bishay, *supra* note 180.

321. W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 34.

322. W. VA. CODE §§ 49-4-604(c), (e), -610(3) (West 2023).

323. *Id.* §§ 49-4-110(a), -610(3).

324. *Id.* § 49-4-610(7); Interview with Jennifer Stephens, *supra* note 218.

325. WEST VIRGINIA JUDICIAL BENCHBOOK, *supra* note 223, ch. 3, at 20 (citing W. VA. CODE § 49-4-110(a) (West 2023)); W. VA. CODE § 49-4-110(a) (West 2023).

Throughout this phase of the proceedings, the court repeatedly assesses whether removal (or continued removal) is in the child's best interests and whether the parents have mitigated the conditions that led to abuse and neglect. Accordingly, during this phase, child welfare proceedings have both a quasi-criminal and an ordinary civil component.

3. Ongoing care phase: post-termination to discharge

The quasi-criminal aspect of child welfare proceedings ends with the termination of parental rights. In Indiana, parental rights are terminated through separate proceedings. After parental rights are terminated, parents are no longer permitted to participate, but periodic case review hearings continue at least once every six months.[326] At this point, the court's sole focus is overseeing the Department's care for the child and ensuring that the Department is making reasonable efforts to secure permanent placement for the child.[327]

In West Virginia, the process is much the same. After parental rights are terminated, which usually occurs at the final disposition hearing, parents cannot participate in the ongoing review hearings.[328] Like in Indiana, the focus of these ongoing review conferences after final disposition is ensuring that the child's placement and care are adequate and that the Department is making efforts to achieve permanent placement.[329] By the time proceedings reach this phase, they are only concerned with the child's continuing care. They no longer have the hallmarks of quasi-criminal enforcement actions, and *Younger* does not require abstention from federal suits that might interfere with child welfare proceedings that have reached this stage.

C. Inadequacy of the Seventh and Fourth Circuits' Approaches

Unfortunately, neither the Seventh nor the Fourth Circuit[330] adequately accounted for the multifaceted nature of child welfare proceedings. In *Ashley W.*, the Seventh Circuit classified all child welfare proceedings as quasi-criminal, disregarding its earlier note of caution that CHINS proceedings "can

326. IND. CODE §§ 31-34-21-2, -11 (West 2023).

327. *Id.* §§ 31-34-21-5, -5.8.

328. Interview with Jennifer Stephens, *supra* note 218.

329. W. VA. RULES OF PROC. FOR CHILD ABUSE & NEGLECT PROC. 41.

330. The Fourth Circuit's approach—distinguishing between the initial removal proceeding and the ongoing review—is essentially the same taken by the courts in *Tinsley v. McKay*, 156 F. Supp. 3d 1024 (D. Ariz. 2015), and *Bryan C. v. Lambrew*, 340 F.R.D. 501 (D. Me. 2021). For the sake of simplicity, this Note refers to the approach as the Fourth Circuit approach.

span a variety of situations and correspondingly a wide range of state interests."[331] By flatly holding, "We know from *Moore v. Sims* that *Younger* applies to state-initiated child welfare litigation," the court expanded *Moore* well beyond its facts.[332] As many have observed, the underlying proceedings in *Moore* were emergency custody proceedings,[333] and, for reasons discussed above, these are properly characterized as quasi-criminal.[334] But *Ashley W.* swept far broader, including even those proceedings that exclusively address ongoing care.[335] In doing so, the *Ashley W.* court would deny relief even in cases where the plaintiffs' challenge has no bearing on the quasi-criminal functions of child welfare proceedings.

Such an expansive approach to abstention is inconsistent with the federal courts' "obligation" to hear cases within their jurisdiction, which is "virtually unflagging,"[336] and ignores the Supreme Court's "dominant instruction" that "abstention . . . is the 'exception, not the rule.'"[337] Moreover, applying *Younger* abstention so broadly is particularly inappropriate, given that Congress has demonstrated a significant federal interest in child welfare regimes,[338] plaintiffs seek to vindicate their constitutional rights under Section 1983,[339] and plaintiffs allege systemic rights violations.[340]

The Fourth Circuit's approach relied on a more accurate depiction of child welfare proceedings. Distinguishing between initial removal proceedings and ongoing reviews, the court attempted to accommodate the heterogeneous

331. Nicole K. *ex rel.* Linda R. v. Stigdon, 990 F.3d 534, 536 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 758 (2022).

332. Ashley W. v. Holcomb, 34 F.4th 588, 591 (7th Cir. 2022).

333. *E.g.*, *Tinsley*, 156 F. Supp. at 1033-34.

334. *See supra* Part III.A.

335. Ashley W. Complaint, *supra* note 5, ¶¶ 81, 100, 132-33, 175. Indeed, for some children subject to CHINS, like all of the named plaintiffs in *Ashley W.*, the proceedings are not quasi-criminal at all, as their parents' parental rights had already been terminated. *Id.*

336. Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 77 (2013) (quoting Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976)).

337. *Sprint*, 571 U.S. at 81-82 (2013) (quoting Haw. Hous. Auth. v. Midkiff, 467 U.S. 229, 236 (1984)).

338. Hynes, *supra* note 27, at 339-41 (arguing that the Adoption Assistance and Child Welfare Act, which imposed federal standards on state child welfare systems, "suggests a powerful federal interest in child welfare both in terms of the national government itself and vis-à-vis the states").

339. People United for Child., Inc. v. City of New York, 108 F. Supp. 2d 275, 288 (S.D.N.Y. 2000) (citing C & A Carbone, Inc. v. Town of Clarkstown, 770 F. Supp. 848, 853 (S.D.N.Y. 1991)) ("Furthermore, abstention in civil rights cases brought under § 1983 is particularly disfavored because such cases are meant to redress inadequate state law remedies.").

340. *See* Smith, *supra* note 15, at 2303-05, 2341-48.

nature of child welfare proceedings.[341] Moreover, the court's account of "quarterly status review hearings" is accurate for the named plaintiffs. In all of the named plaintiffs' cases, parental rights have been terminated or relinquished, and the ongoing hearings focus entirely on ongoing care and the Department's efforts to achieve permanent placement.[342]

But ultimately, the Fourth Circuit's approach was also inadequate. As the Supreme Court instructed in *NOPSI*, courts' *Younger* analysis must focus on "the generic proceeding," not the "particular case."[343] For some children subject to West Virginia's abuse and neglect proceedings, parental rights have not yet been terminated or relinquished. Given the expansive definition of the putative class in *Jonathan R.*, at least some class members are certainly in this situation.[344] For these children, the quarterly review hearings are quasi-criminal, as they still address issues related to removal.[345] Indeed, some of the plaintiffs' allegations directly address the quasi-criminal elements of these ongoing review hearings.[346]

IV. Proposed Solution

How, then, should federal courts approach the decision of whether to abstain from class-action challenges to child welfare systems? This Part outlines the contours of one possible solution, describes how it would have applied in *Nicole K.*, *Ashley W.*, and *Jonathan R.*, and demonstrates its benefits.

A. Prescription: A Piecemeal Approach

Where *Younger*'s other requirements are met, federal courts should abstain from those aspects of child welfare system challenges that would interfere with the quasi-criminal aspects of child welfare proceedings while hearing those that do not. When examining plaintiffs' prayers for relief, courts should determine whether the requested relief would interfere with state-court

341. Jonathan R. *ex rel.* Dixon v. Justice, 41 F.4th 316, 321-22 (4th Cir. 2022), *cert. denied sub nom.* Justice v. Jonathan R., 143 S. Ct. 310 (2022).

342. These plaintiffs are in the "Ongoing Care Phase." *See supra* Part III.B.3; *Jonathan R.*, 41 F.4th at 330 ("By contrast, the *ongoing* individual hearings here serve to protect the children . . . .").

343. 491 U.S. 350, 365 (1989).

344. The putative "General Class" includes "[a]ll children for whom DHHR has or will have legal responsibility and who are or will be in the legal and physical custody of DHHR." Jonathan R. Complaint, *supra* note 237, ¶ 30(a).

345. *See supra* Part III.B.2.

346. The plaintiffs allege, for example, that the Department fails to promote and facilitate reunification and that the state "is quick to terminate parental rights." Jonathan R. Complaint, *supra* note 237, ¶¶ 331, 335.

decisions regarding child removal, adjudication of abuse and neglect, termination of parental rights, and other closely related issues.[347]

Under this approach, federal courts would be free to hear broad challenges to states' management of their child welfare systems. They could hear challenges relating to caseworker recruiting and caseload, foster home recruitment, and the availability and quality of treatment and placement options. Federal courts would also be authorized to hear broad challenges to how states care for children in state custody. For example, courts could hear challenges to a state's failure to adequately assess children's needs, failure to create case plans that meet these needs, failure to provide adequate healthcare, and failure to facilitate sibling visitation. Without question, federal injunctions remedying these harms would interfere with state child welfare proceedings. But, importantly, they would not interfere with the quasi-criminal functions of these proceedings, and it is these quasi-criminal functions that *Younger* is intended to protect.

A piecemeal approach to *Younger* abstention in the child welfare context would not be wholly novel. At least two courts have taken a piece-by-piece approach when assessing whether a federal lawsuit would interfere with state court proceedings. In *Joseph A. ex rel. Wolfe v. Ingram*, the district court was asked to hold state defendants in contempt for violating provisions of the consent decree that regulated New Mexico's foster care system.[348] In response, the defendants moved to dismiss on *Younger* grounds.[349] The district court dismissed the case in its entirety, but on appeal, the Tenth Circuit found that wholesale abstention was improper.[350] The court held that while "some of the [consent decree's] provisions would significantly interfere with state court proceedings," a "provision-by-provision *Younger* analysis appear[ed] prudent."[351] The court reasoned, "[t]he fact that one provision may not be enforceable in light of *Younger* does not necessarily warrant . . . dismissing the entire action."[352] Similarly, in *Sam M. ex rel. Elliott v. Chafee*, the court abstained from some claims, but not others, on the grounds that only some interfered with ongoing state court proceedings.[353]

347. Among other things, this would include state-court decisions perpetuating removal, ordering parents to engage in certain services, setting terms for parental visitation, and issuing no-contact orders.

348. 275 F.3d 1253, 1257 (10th Cir. 2002).

349. *Id.*

350. *Id.*

351. *Id.* at 1267, 1272.

352. *Id.* at 1272.

353. Sam M. *ex rel.* Elliott v. Chafee, 800 F. Supp. 2d 363, 380, 389 (D.R.I. 2011). The *Sam M.* court denied the defendant's request to abstain "with respect to the requested relief of (1) caseload caps for DCYF workers; (2) adequate training of DCYF workers; and

footnote continued on next page

The piecemeal approach proposed here would add a layer of analysis to the approach taken in *Joseph A.* and *Sam M.* Moving provision by provision, courts would ask not only whether the relief sought would interfere with the state court proceeding but also whether it would interfere with those portions of the proceedings that *Younger* aims to protect.

Admittedly, the piecemeal approach would be an innovation in how courts answer the threshold question of the *Younger* analysis. Courts have tended to classify proceedings as wholly outside or wholly within *Younger*'s scope or have distinguished temporally between initial removal proceedings and ongoing review.[354] And admittedly, the piecemeal approach would involve some messiness, as courts parse hundred-page complaints separating claims by requested relief. But courts like those in *Joseph A.* and *Sam M.* have demonstrated that a provision-by-provision approach to abstention is feasible, and this unusual approach is demanded by the unique context of child welfare proceedings, which blend quasi-criminal civil enforcement with state-court review of executive action in a single proceeding. Children's rights should not go unvindicated merely because the state manages its child welfare system through proceedings that have quasi-criminal elements, and states' legitimate and substantial interest in its enforcement function should not be disregarded merely because its courts consider other issues in the same proceedings.

B. Applying the Piecemeal Approach

How would this approach be applied? This next Subpart evaluates how courts might have applied the piecemeal approach in *Nicole K.* ex rel. *Linda R. v. Stigdon*, *Ashley W. v. Holcomb*, and *Jonathan R. v. Justice*—the challenges to Indiana and West Virginia's child welfare systems discussed in Part II.

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(3) increase in the array and type of placements, including foster homes" after finding "the requisite interference . . . has not been established" because these remedies are "not within the province of the Family Court." *Id.* But the court granted the defendant's request to abstain "with respect to the requested relief of (1) decreasing the rate of institutionalization; (2) increasing the rate of adoptions; (3) decreasing the number of placements per child; and (4) decreasing the length of time in foster care" because "such proceedings and related determinations are subject to the continuing jurisdiction of the Family Court." *Id.*

354. *E.g.*, Tinsley v. McKay, 156 F. Supp. 3d 1024, 1033-34 (D. Ariz. 2015) (distinguishing between initial removal proceedings and ongoing review hearings); Jonathan R. *ex rel.* Dixon v. Justice, 41 F.4th 316, 329-30 (4th Cir. 2022) (distinguishing between "initial child-removal proceedings" and "ongoing individual hearings"), *cert. denied sub nom.* Justice v. Jonathan R., 143 S. Ct. 310 (2022).

1. *Nicole K. ex rel. Linda R. v. Stigdon*

In *Nicole K.*, the approach outlined above would lead the court to abstain from the suit as a whole. The plaintiffs in *Nicole K.* challenged Indiana's system of discretionary appointment of counsel for children in CHINS and TPR proceedings.[355] The plaintiffs sought a federal injunction requiring the appointment of counsel for children in "*all* CHINS and TPR proceedings."[356] Unlike other decisions made by the juvenile court, appointing counsel affects the proceedings in their entirety. Because parts of CHINS proceedings and all of TPR proceedings are quasi-criminal, relief that affects the proceedings as a whole necessarily affects the conduct of the quasi-criminal elements of those proceedings.[357] Accordingly, a court applying the piecemeal approach would abstain from the suit as a whole.

2. *Ashley W. v. Holcomb*

In *Ashley W.*, the piecemeal approach would allow almost the entirety of the federal suit to proceed. The *Ashley W.* plaintiffs' allegations centered around DCS's inadequate care for the children in its custody.[358] The plaintiffs alleged that DCS failed to maintain an adequate array of placement options, over-relied on institutional placements, placed children in unsafe facilities, failed to recruit sufficient foster homes, and inadequately trained and supervised caseworkers.[359] Because of the focus of the plaintiffs allegations, most of the relief they sought would have no effect on the quasi-criminal portions of child-welfare proceedings (i.e., those relating to removal, family reunification, adjudication of abuse or neglect, or termination of parental rights).[360] Some of the relief targeted DCS's practices generally, asking the court to impose caseload caps and to modify DCS's intake and evaluation

355. Nicole K. Complaint, *supra* note 186, ¶ 6.

356. *Id.* ¶ (d).

357. Abstention would, of course, only be proper where the other requirements of *Younger* abstention are met. If plaintiffs were unable to raise their claims in the state forum or if one of the irreparable harm exceptions applied, the federal court would not be required to abstain.

358. *See* Ashley W. Complaint, *supra* note 5, ¶¶ 1-13.

359. Some of these allegations have nothing to do with the juvenile courts' decisions in CHINS cases (e.g., inadequate placement array, excessive caseloads, and inadequate training and supervision of caseworkers). Some of these allegations are related to decisions of the juvenile courts in CHINS proceedings (e.g., overreliance on institutional placements, placing children in unsafe homes), but these decisions are unrelated to the quasi-criminal aspects of CHINS proceedings. Decisions to remove children are quasi-criminal, but decisions regarding children's placement, treatment, and care are not. *See supra* Parts III.A-.B.

360. *See supra* Parts III.A-.B.

process.[361] Other parts of requested relief concerned child placement, asking the court to prevent DCS from separating siblings and placing children in congregate care settings unless absolutely necessary.[362] And still other parts targeted the state's care for children in state custody and the state's efforts to achieve permanency for the child.[363] Because none of this relief would affect state-court decisions regarding child removal, family reunification, adjudication of abuse or neglect, or termination of parental rights—which are the quasi-criminal portions of child welfare proceedings—a court applying the piecemeal approach would not abstain from these portions of the lawsuit.[364]

A court applying the piecemeal approach would, however, abstain from two parts of the plaintiffs' challenge. In addition to the requested relief described above, the plaintiffs asked the federal court to require DCS to "file and proceed with a timely petition to free a child for adoption" and require DCS to provide "services to the child's parents to ensure a speedy reunification."[365] The former request would interfere directly with state-court decisions regarding the termination of parental rights by regulating DCS attorneys' conduct in TPR proceedings.[366] The latter would interfere, albeit indirectly, with state-court decisions regarding child removal and reunification.[367] Because this relief bears directly on two quasi-criminal aspects of child welfare proceedings—namely, removal and termination of parental rights—under the piecemeal approach, a court applying the piecemeal approach would abstain with respect to these requests for relief.

Though the court would abstain from the claims related to these specific requests, to the extent that DCS's failures in these areas share common causes

361. Ashley W. Complaint, *supra* note 5, at 78-79 (Prayer for Relief ¶ IV(a)-(c)).

362. *Id.* at 79 (Prayer for Relief ¶ IV(d), (f)).

363. *Id.* at 79 (Prayer for Relief ¶ IV(e)) ("Enjoin defendants from failing to provide all necessary services to each child who enters foster care . . . ."); *id.* at 80 (Prayer for Relief ¶ IV(h)) ("Enjoin defendants from failing to take all necessary steps to seek and secure an appropriate adoptive placement for a child when the child's plan is adoption.").

364. See *supra* Part III.A.

365. Ashley W. Complaint, *supra* note 5, at 78-79 (Prayer for Relief ¶ IV(e), (g)).

366. *See* Joseph A. *ex rel.* Wolfe v. Ingram, 275 F.3d 1253, 1268 (10th Cir. 2002) ("[T]he SEP expressly prevents the Department's employees from recommending a range of planning options for children who are in the Department's custody."). The court noted that "[t]his limitation has an effect not unlike that of an injunction or declaratory judgment because the Department is precluded ever from presenting certain options to the Children's Court. Therefore, the state court is, for all practical purposes, precluded from considering these options." *Id.* at 1268-69.

367. State courts can order DCS to provide parents with certain services to promote reunification. CHINS BENCHBOOK, *supra* note 160, at 163. The court's decision to do so (or not) is intimately intertwined with its decisions regarding removal, reunification, and termination. *See supra* note 305 and accompanying text.

with DCS's failures in the provision of placement and care, the court's intervention might ultimately address plaintiffs' concerns in their entirety. For example, if DCS's failure to free children for adoption or provide parents with services is caused by overburdened caseworkers, the court's grant of caseload-caps might lead DCS to free children for adoption in a timelier manner and provide more services to parents. This, however, should be seen as a strength of the piecemeal approach, not a shortcoming: Plaintiffs are able to achieve their desired outcomes with more limited federal intervention and less interference in state-court proceedings.

3. *Jonathan R. v. Justice*

The result would be similar in *Jonathan R. v. Justice*. As in *Ashley W.*, the vast majority of the plaintiffs' allegations and prayers for relief have nothing to do with the quasi-criminal aspects of child welfare proceedings. The plaintiffs alleged that the defendants failed to develop an adequate array of placement options, employ and train sufficient caseworkers, adequately assess children's needs, provide adequate mental health services, or engage in adequate transition planning.[368] The relief sought is aimed at remedying these harms. The plaintiffs sought an injunction that would, among other things, require DHHR to place children in the "least-restrictive, most-family [sic] like setting," develop an adequate array of appropriate placement options and services, assess children's needs within thirty days, and hire and train an adequate number of caseworkers.[369] None of this relief would affect state-court decisions regarding removal, adjudication, or termination.

Of plaintiffs' eighteen requests for injunctive relief, only one has the potential to interfere with the quasi-criminal aspects of child welfare proceedings. The plaintiffs' requested injunction would require DHHR to create a case plan that "describe[s] a plan for reunification with the child's parents, for adoption, or for another permanent, family-like setting."[370] To the extent that it thought this relief would interfere with the state court proceedings, a court applying the piecemeal approach would abstain from hearing claims related to case planning and allow the remainder of the case to proceed.

C. Benefits of a Piecemeal Approach

This piecemeal approach has two principal benefits. First, and most basically, the piecemeal approach permits a more accurate account of child welfare proceedings. Treating all state-initiated child welfare proceedings as a

368. Jonathan R. Complaint, *supra* note 237, ¶¶ 228-350.

369. *Id.* ¶ 405.

370. *Id.* ¶ 405(a)(iii).

homogenous bunch, as the Seventh Circuit did in *Ashley W.*, is lazy at best and disingenuous at worst. And while the Fourth Circuit's approach was better—distinguishing between initial removal proceedings and ongoing review—it too relied on an overly simplistic view of child welfare proceedings. Beyond an abstract interest in correctness, providing an accurate description of child welfare proceedings bolsters trust in federal courts' sensitivity to local issues and their competency to handle institutional reform. If federal courts cannot accurately describe child welfare proceedings, how can they oversee reform of entire child welfare systems?[371]

Second, and more fundamentally, the proposed approach is consistent with the conception of federalism that lies at the heart of the *Younger* abstention doctrine. As the *Younger* Court conceived it, "Our Federalism" is a "system in which there is sensitivity to the legitimate interests of both State and National Governments."[372] It "does not mean blind deference to 'States' Rights' any more than it means centralization of control over every important issue in our National Government and its courts."[373] *Younger*'s federalism is a balance, and applying it requires balancing state and federal interests, not abandoning one in favor of the other. Sometimes this balancing act requires federal courts to stay their hand, at least temporarily, where federal action would interfere with state proceedings that lie at the heart of the police power. This may be true even where federal rights are at stake.

But other times, "Our Federalism" *requires* federal intervention. The federal government has a strong interest—grounded in the Supremacy Clause and reinforced by Section 1983—in providing a federal forum to ensure the vindication of federal constitutional rights.[374] And while, in some circumstances, this interest may be outweighed by other considerations, "Our Federalism" is not served where federal rights go un- or under-enforced merely because the institutions that violate these rights are managed alongside state enforcement actions. The piecemeal approach proposed here strikes the right

371. There is also the concern that, faced with the decision of abstaining from a lawsuit in its entirety, a court might shade its description of the underlying proceeding. The approach offered here reduces a court's incentive to do so.

372. Younger v. Harris, 401 U.S. 37, 44 (1971).

373. *Id.*

374. *See* Mitchum v. Foster, 407 U.S. 225, 242 (1972) ("The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights."); Younger v. Harris, 401 U.S. 37, 63 (1971) (Douglas, J., dissenting) (quoting Landry v. Daley, 288 F. Supp. 200, 223 (N.D. Ill. 1968)) ("Section 1983 is, therefore, not only an expression of the importance of protecting federal rights from infringement by the states but also, where necessary, the desire to place the national government between the state and its citizens."). *See also* Burt Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105, 1105-06 (arguing that federal courts are superior forums for the vindication of federal rights).

balance between state and federal interests, protecting state enforcement actions while ensuring that federal Supremacy Clause interests are not neglected.

Critics might argue that the piecemeal approach, by permitting large portions of these lawsuits to proceed, fails to adequately protect state interests. But these critics would do well to remember two things. First, *Younger* does not and is not intended to protect all state interests. The Supreme Court made this clear in *New Orleans Public Service, Inc.* when it held that abstention was improper even though the state had a "substantial, legitimate interest" in the underlying proceedings.[375] Rather, *Younger* protects only core state interests in its police power—and only in certain situations at that.[376] Second, abstention is not the only way that federal courts can protect state interests and mitigate federalism concerns. As Professor Rachel Traum discusses in "Distributed Federalism," courts can consider federalism at all stages of litigation.[377] At the front end, courts may give state and local officials the time to adopt reforms that would remove the need for federal intervention.[378] At the back end, courts can craft relief that affords state actors latitude in achieving compliance.[379] Courts may also choose to adopt what Professors Charles Sabel and William Simon call "experimentalist remedies," remedies that are negotiated by the parties and are continuously updated.[380] Sabel and Simon praise experimentalist remedies for their effectiveness and mitigation of horizontal separation of powers concerns, but the experimentalist approach also mitigates federalism concerns[381]: When state and local actors participate in creating and implementing the remedy, they can give voice to local concerns and interests and shape the remedy in a way that accommodates these interests.

Conclusion

In 2021, over three million children interacted with state child welfare systems, and over six hundred thousand children were in foster care. These child welfare systems, strive as they may to help children and families in crisis, are themselves in crisis. Seeking relief from these dysfunctional state systems, children and advocacy groups have turned to the federal courts. Faced with these pleas, some courts shrank from the task, finding cover behind a bloated

375. *NOPSI*, 491 U.S. 350, 365 (1989).

376. *See supra* Part I.C.

377. Traum, *supra* note 19, at 1814-17.

378. *Id.* at 1814-15.

379. *See id.* at 1803-04.

380. Charles F. Sabel & William H. Simon, *Destabilization Rights: How Public Law Litigation Succeeds*, 117 HARV. L. REV. 1015, 1067-69, 1071-72 (2004).

381. *Id.* at 1073-82, 1100-01.

version of the *Younger* abstention doctrine that is out of step with recent jurisprudence. Other courts stepped up to the plate but, in the process, offered imprecise accounts of the child welfare systems that they set out to reform. Neither approach is satisfactory.

In the coming years, plaintiffs will continue to bring challenges like *Ashley W.* and *Jonathan R.*, and defendants will continue to seek dismissal on *Younger* grounds. In May 2023, the advocacy group responsible for *Jonathan R.* and *Ashley W.* filed a suit against California's child welfare agency.[382] And in October 2023, a judge in the District of Alaska found that *Younger* did not bar a class-action challenge to Alaska's child welfare system but certified the order for interlocutory appeal.[383] As courts consider whether *Younger* bars these suits, they must strike the right balance between vindicating federal rights and protecting core state interests in the enforcement power, all the while accurately describing child welfare proceedings. "Our Federalism" and millions of our children depend on it.

382. Class Action Complaint ¶¶ 40-42, Gary G. *ex rel.* Downey v. Newsom, No. 23-cv-00947 (C.D. Cal. May 25, 2023), ECF No. 1.

383. Jeremiah M. *ex rel.* Nicolai v. Crum, No. 22-cv-00129, 2023 WL 6316631, at *29 (D. Alaska Sept. 28, 2023). The Ninth Circuit has since denied Alaska's petition for interlocutory appeal. Order, Jeremiah M. v. Kovol, No. 23-2726 (9th Cir. Dec. 18, 2023), ECF No. 11.