

No. 21-3028

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

ASHLEY W., ET AL.,

Plaintiffs/Appellees,

v.

ERIC HOLCOMB, IN HIS CAPACITY AS
GOVERNOR OF THE STATE OF INDIANA, ET AL.,

Defendants/Appellants.

On Appeal from the United States District Court
for the Southern District of Indiana
Case No. 3:19-cv-00129-RLY-MPB
Honorable Richard L. Young

**BRIEF OF *AMICI CURIAE* NONPROFIT CHILD ADVOCACY
ORGANIZATIONS IN SUPPORT OF
APPELLEES AND AFFIRMANCE**

John L. Gibbons
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Tel.: (202) 736-8000
Fax: (202) 736-8711

David R. Carpenter
Collin P. Wedel
Monique M. Candiff
SIDLEY AUSTIN LLP
555 West Fifth Street
Suite 4000
Los Angeles, CA 90013
Tel.: (213) 898-6000
Fax: (213) 896-6600
drcarpenter@sidley.com

Counsel for Amici Curiae

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 21-3028

Short Caption: Ashley W. et al. v. Eric Holcomb et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
See attachment.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Sidley Austin LLP

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

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

None

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

None

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

n/a

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

n/a

Attorney's Signature: /s/ David R. Carpenter Date: February 2, 2022

Attorney's Printed Name: David R. Carpenter

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

Address: Sidley Austin LLP, 555 West Fifth Street, Suite 4000, Los Angeles, CA 90013

Phone Number: (213) 896-6000 Fax Number: (213) 896-6600

E-Mail Address: drcarpenter@sidley.com

**ATTACHMENT TO
APPEARANCE & CIRCUIT RULE 26.1
DISCLOSURE STATEMENT**

- (1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
- Advokids
 - Child Advocates
 - Equip for Equality
 - The Harvard Law School Child Advocacy Program
 - Juvenile Law Center
 - The National Association on Counsel for Children
 - The National Center on Adoption & Permanency
 - The National Center for Youth Law
 - The National Disability Rights Network
 - The National Health Law Program
 - The North American Council on Adoptable Children
 - The Washington Lawyers' Committee for Civil Rights and Urban Affairs
 - The Youth Law Center

TABLE OF CONTENTS

STATEMENT OF INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	8
ARGUMENT	11
I. This Action Does Not Implicate the Sort of Undue Interference with State-Court Proceedings that Justifies <i>Younger</i> Abstention.	11
A. Appellees’ Relief Is Directed at Addressing DCS’s Systemic Conduct, Not at Specific State-Court Proceedings.	11
B. State Courts’ Limited Disposition Options Cannot Effectuate Appellees’ Requested Relief.....	15
C. Indiana’s Expansive View of <i>Younger</i> Would Require Abstention in Virtually Every Case.....	19
II. Indiana’s Overbroad Application of <i>Younger</i> Threatens to Impair Enforcement of Civil Rights on Behalf of Populations Most in Need in a Variety of Contexts.....	23
A. Expansion of <i>Younger</i> Abstention Beyond Its Appropriate Scope Obstructs Federal Courts’ Historical Function as Protectors of Constitutional and Civil Rights.	23
B. Inappropriate Restriction of the Federal Courts’ Protective Functions Disproportionately Affects Black and Brown Children, LGBTQ+ Youth, and Children with Disabilities.....	25
CONCLUSION	32

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>31 Foster Children v. Bush</i> , 329 F.3d 1255 (11th Cir. 2003).....	17
<i>Arevalo v. Hennessy</i> , 882 F.3d 763 (9th Cir. 2018).....	20, 21
<i>Brian A. ex rel. Brooks v. Sundquist</i> , 149 F. Supp. 2d 941 (M.D. Tenn. 2000)	31
<i>Brokaw v. Weaver</i> , 305 F.3d 660 (7th Cir. 2002).....	17
<i>Connor B. ex rel. Vigurs v. Patrick</i> , 771 F. Supp. 2d 142 (D. Mass. 2011).....	17, 18
<i>Dwayne B. v. Granholm</i> , No. 06–13548, 2007 WL 1140920 (E.D. Mich. Apr. 17, 2007)	19
<i>Ex Parte Young</i> , 209 U.S. 123 (1908).....	23
<i>Gerstein v. Pugh</i> , 420 U.S. 103 (1975).....	20, 21, 32
<i>Huffman v. Pursue, Ltd.</i> , 420 U.S. 592 (1975).....	12
<i>Kenny A. ex rel. Winn v. Perdue</i> , 218 F.R.D. 277 (N.D. Ga. 2003).....	19
<i>M.B. by Eggemeyer v. Corsi</i> , No. 2:17-cv-04102-NKL, 2018 WL 327767 (W.D. Mo. Jan. 8, 2018)	22, 24

<i>Marisol A. by Forbes v. Giuliani</i> , 929 F. Supp. 662 (S.D.N.Y. 1996).....	31
<i>Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n</i> , 457 U.S. 423 (1982)	12
<i>Milchtein v. Chisholm</i> , 880 F.3d 895 (7th Cir. 2018).....	21
<i>Mulholland v. Marion Cnty. Election Bd.</i> , 746 F.3d 811 (7th Cir. 2014).....	12
<i>New Orleans Pub. Serv., Inc. v. Council of City of New Orleans</i> , 491 U.S. 350 (1989).....	11, 12, 22
<i>Nicole K. v. Stigdon</i> , 990 F.3d 534 (7th Cir. 2021).....	13
<i>O’Donnell v. Harris Cnty.</i> , 892 F.3d 147 (5th Cir. 2018).....	20, 21, 32
<i>Sprint Communications, Inc. v. Jacobs</i> , 571 U.S. 69 (2013).....	<i>passim</i>
<i>Sam M. ex rel. Elliott v. Chafee</i> , 800 F. Supp. 2d 363 (D.R.I. 2011)	31
<i>Tinsley v. McKay</i> , 156 F. Supp. 3d 1024 (D. Ariz. 2015)	31
<i>Younger v. Harris</i> , 401 U.S. 37 (1971).....	<i>passim</i>
Statutes	
42 U.S.C. § 671(a)(2)	16
42 U.S.C. § 671(a)(7).....	20
Ind. Code § 31-25-2-5.....	14, 20

Ind. Code § 31-25-2-7(a)(1)	14
Ind. Code § 31-25-2-7(a)(2)	14
Ind. Code § 31-25-2-7(a)(3)	14
Ind. Code § 31-25-2-7(a)(4)	14
Ind. Code § 31-25-2-7(a)(5)	14
Ind. Code § 31-25-2-7(a)(6)	15
Ind. Code § 31-25-2-11	13
Ind. Code § 31-25-2-11(a)	14
Ind. Code § 31-25-2-11(b)	15
Ind. Code § 31-26-3.5-5	15
Ind. Code § 31-27-2-1(1)	15
Ind. Code § 31-27-2-1(3)	15
Ind. Code § 31-27-2-1(4)	15
Ind. Code § 31-33-7-3	13
Ind. Code § 31-33-8-1	13
Ind. Code § 31-33-8-8	13
Ind. Code § 31-34-4-7	13
Ind. Code § 31-34-5-3	13
Ind. Code § 31-34-9-1	13
Ind. Code § 31-34-9-5	13
Ind. Code § 31-34-20-1	16, 18
Ind. Code § 31-34-20-1(a)(1)	13

Ind. Code § 31-34-20-1(a)(3) 13

Ind. Code § 31-34-20-1(a)(4) 13

Ind. Code § 31-34-21-1..... 16

Ind. Code § 31-34-21-2..... 16

Ind. Code § 31-34-21-7..... 14

Ind. Code § 31-34-22-1..... 16

Ind. Code § 31-35-6-1..... 13

Other Authorities

Annie E. Casey Found. Kids Count Data Ctr., *Black Children Continue to Be Disproportionately Represented in Foster Care* (Apr. 13, 2020), <https://bit.ly/3n5kvNu>..... 26

Bryan Samuels, *Family and Child Well-Being: An Urgent Call to Action*, Children’s Bureau Express (Aug./Sep. 2020), <https://bit.ly/3Fqpgat> 26

Child Trends, *Child Welfare Agency Spending in Indiana* (2018) https://www.childtrends.org/wp-content/uploads/2018/12/Indiana_SF2016-CWFS_12.13.2018.pdf..... 16

David Crary, *Many Say Now Is the Time to Fight Racial Bias in Foster Care*, Assoc. Press (Apr. 14, 2021), <https://bit.ly/3C8MgJs>..... 26, 27

Fred O. Smith, Jr., *Abstention in the Time of Ferguson*, 131 Harv. L. Rev. 2283 (2018)..... 23

Indiana Continues to Rank 29th Nationally for Child Well-Being, Ind. Youth Inst. (Jan. 26, 2021), <https://bit.ly/3Gsi9zA> 27

Joshua Kay, *Advocating for Children with Disabilities in Child Protection Cases*, 35 Touro L. Rev. 345, 348 (2019) 28

Marisa Kwiatkowski, *DCS director resigns over Indiana kids being placed at risk*, *The Indianapolis Star* (Dec. 18, 2017), <https://bit.ly/33uzZ6Z>..... 18

Nikki DeMentri, *The Need for Foster Families is Growing in Central Indiana*, *WRTV* (May 19, 2021), <https://bit.ly/3I7C0EL> 30

Patrick W. Lawler, *Learnings for Children’s Services From the COVID-19 Pandemic*, *Children’s Bureau Express* (Aug./Sep. 2020), <https://bit.ly/3zUaHuJ> 31

Sarah Fathallah & Sarah Sullivan, *Think of US, Away From Home: Youth Experiences of Institutional Placements in Foster Care* (July 21, 2021), <https://bit.ly/3H6WaPk> 25, 26, 27, 28, 30

Sarah Font, *The Impact of the COVID-19 Pandemic on Children in Foster Care: Exploring the Issues and Potential Solutions*, PennState Social Science Research Institute COVID-19 Resources (July 29, 2020), <https://ti-nyurl.com/yy9t27vc> 29, 30

Shayla Stogsdill, *Orphans and Vulnerable Children Student Scholarship*, *Children with Disabilities in the Foster Care System*, Taylor Univ. (2019), <https://ti-nyurl.com/bdd9em7v> 29

Univ. Md. Sch. of Social Work, *Study Finds Overrepresentation of LGBTQ+ Youth in Midwest Foster Care System*, <https://bit.ly/3c5ENjz> (last visited Jan. 20, 2022) 28

Youth.gov, *Child Welfare*, <https://bit.ly/3CbjebY> (last visited Jan. 20, 2022) 28.

STATEMENT OF *AMICI CURIAE*

Advokids is a California-based nonprofit organization that advocates for the child welfare system to provide the legal rights and protections to which every foster child is entitled under law, including each child's right to safety, security, and a permanent home. Advokids was formed in 1992 and now operates several different programs intended to promote the well-being of foster children and to try to protect from them the additional traumas often inflicted upon foster children by the child welfare system itself. Advokids' programs include a website and a statewide telephone hotline offering information and assistance to anyone concerned about the well-being of a child in California's foster care system, state-bar approved continuing education programs for attorneys on various aspects of child welfare law, educational programs for social workers, foster caregivers, mental health professionals, foster family agencies, and court-appointed special advocates ("CASAs") on child welfare law and the social science and neuroscience research on child development, and policy work, which includes filing and participating in amicus briefs on issues that directly affect the rights and well-being of foster children.

Child Advocates is an Indiana-based nonprofit organization founded in 1982. Child Advocates serves children and youth in the child welfare system who have experienced abuse and neglect, and advocates for racial equity in child welfare and our communities to help build a better future for all children. The mission of Child Advocates is fulfilled through four key programs: Interrupting Racism for Children, Mediation and Facilitation, Direct Representation, and Legal Services. Since its inception, Child Advocates has represented the best interests of more than 100,000 children in the child welfare system and, every day, it remains committed to building a better future for children in need.

Equip for Equality, founded in 1985, is an independent, not-for-profit organization that administers the federally mandated Protection and Advocacy system in Illinois. Its mission is to advance the human and civil rights of children and adults with physical and mental disabilities in Illinois. It is a statewide, cross-disability, comprehensive legal advocacy organization serving as a catalyst for social change, breaking down barriers that prevent people with disabilities from fully participating in all aspects of community living, including children with disabilities in foster care. Equip for Equality is particularly interested in this case since

studies have shown abuse is more likely to occur in foster care for children with disabilities than children without disabilities.

The Harvard Law School Child Advocacy Program (“CAP”) is a premier academic program focused on children's rights, primarily in the areas child welfare (abuse and neglect, foster care, and adoption), education, and juvenile justice. CAP trains students to contribute in their future careers to a better understanding of the rights of children, and to law and policy reform promoting children's rights in the United States and around the world.

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first nonprofit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children’s unique developmental characteristics, and reflective of international human rights values.

The National Association on Counsel for Children (“NACC”) founded in 1977, is a 501(c)(3) nonprofit child advocacy and membership association dedicated to advancing the rights, wellbeing, and opportunities of youth in the child welfare system through access to high-quality legal representation. NACC is a multidisciplinary organization, and its members include child welfare attorneys, judges, and professionals from the fields of medicine, social work, mental health, and education. NACC’s work includes federal and state policy advocacy, the Child Welfare Law Specialist attorney certification program, a robust training and technical-assistance arm, and the amicus curiae program.

The National Center on Adoption & Permanency (“NCAP”) is a nonprofit organization whose mission is to transform child welfare policy and practice from “child placement” to “family success.” NCAP’s multidisciplinary team advances this fundamental change by providing research and expertise that enables public and private agencies, organizational leaders, advocacy groups and other professionals to empower, strength and support all families.

The National Center for Youth Law (“NCYL”) is a nonprofit organization that works to build a future in which every child thrives and

has a full and fair opportunity to achieve the future they envision for themselves. For five decades, NCYL has worked to protect the rights on low-income children and to ensure that they have the resources, support, and opportunities they need. Among other advocacy tools, NCYL often utilizes litigation to further these goals, and it is important to NCYL that federal courts remain an available avenue for protecting the rights and safety of children.

The National Disability Rights Network (“NDRN”) is the non-profit membership organization for the federally mandated Protection and Advocacy (“P&A”) and Client Assistance Program (“CAP”) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP

agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

The National Health Law Program (“NHeLP”) is a 50-year-old public interest law organization that engages in education, litigation, and policy analysis to advance access to quality health care and protect the legal rights of low-income and underserved people, including children in the foster care system and with disabilities. NHeLP focuses on ensuring access and coverage for Medicaid beneficiaries and has represented thousands of low-income children and youth in institutional reform litigation across the United States.

The North American Council on Adoptable Children (“NACAC”), founded in 1975, is nonprofit organization working in the US and Canada to ensure that every child in foster care has a permanent, loving family. NACAC highlights and advocates for child welfare best practices to ensure children have a supported family; supports adoptive, foster, kinship families; educates parents and professionals; and develops youth and parent leaders.

The Washington Lawyers’ Committee for Civil Rights and Urban Affairs is a nonprofit civil rights organization established to

eradicate discrimination and poverty by enforcing civil rights laws through litigation and public policy advocacy. To advance this mission, the Committee represents some of the most vulnerable persons and populations.

The Youth Law Center (“YLC”) is a national organization, founded in 1978, that advocates to transform the foster care and juvenile justice systems so that children and youth can thrive. Through legal, legislative, and policy advocacy, YLC works to advance the rights of young people who come into contact with the juvenile justice and child welfare systems and to strengthen the supports available to them so they can transition successfully to adulthood and thrive. YLC believes that young people in foster care must have access to a full range of legal remedies in order to ensure that their rights are protected and that systems can be held accountable to meeting their needs.

All parties have consented to the filing of this brief. No party’s counsel authored the brief in whole or in part; no party or party’s counsel contributed money intended to fund preparing or submitting the brief; and no other person other than *amici*, their members, or their counsel contributed money intended to fund preparing or submitting the brief.

SUMMARY OF ARGUMENT

The district court properly exercised jurisdiction by refusing to abstain under *Younger v. Harris*, 401 U.S. 37 (1971). The Supreme Court has made clear—most recently in *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013)—that *Younger*'s exception to federal courts' obligation to exercise jurisdiction is narrow, principally concerned with preventing interference with certain state-court proceedings. Appellees' requested relief is directed at Indiana's executive branch, and so does not fall within *Younger*'s narrow exception. Adopting Indiana's theory would expand *Younger* far beyond its proper bounds—and would threaten to close federal courts' doors to many people with meritorious claims to vindicate their civil rights, like the children in foster care who are Appellees here, as well as plaintiffs in cases beyond the foster care context.

Although Appellees' Brief provides a range of reasons to affirm, *amici*, based on their experience with and knowledge of the foster care context, write to reinforce Appellees' arguments for affirmance by highlighting (i) features about Indiana's foster-care system that distinguish this case from those involving actual interference with state proceedings,

and (ii) the broader, unworkable implications of Indiana's theory with respect to children in foster care and other populations most in need.

I. The district court's order correctly applied *Younger*, which carved out a limited exception to federal courts' otherwise-unflagging obligation to hear cases within their jurisdiction. It applies only rarely, when failing to abstain from a case would interfere with state-court proceedings that implicate uniquely state interests.

Any paths to expanding *Younger* beyond its narrow application were definitively foreclosed by *Sprint*. 571 U.S. at 73. *Sprint* limited *Younger* to three exceptional instances where a plaintiff's requested relief directly interferes with a state court. None is at play here. Appellees' requested relief—more caseworkers, adequate planning, monitoring, and agency services—would not interfere with any state court proceedings. It is not directed to any court proceedings, including any child in need of services (“CHINS”) proceedings, and Indiana judges are not responsible for Department of Child Services' (“DCS”) hiring or operational decisions. In other words, Appellees do not ask the federal courts to superintend state-court decisions.

Indiana nonetheless tries to fit this case within *Younger* by arguing it might eventually impact state proceedings “in one way or another.” Appellants’ Br. 22. But such a broad reframing of *Younger* would make its exception the rule, as there are few civil rights cases that do not affect states “in one way or another.”

II. There are also practical and equitable reasons to affirm. Adopting Indiana’s sweeping interpretation of *Younger* would close the courthouse doors to individuals seeking to vindicate their rights, both in and outside of the foster care context. Black and Brown children, children with disabilities, and LGBTQ+ youth are significantly overrepresented in the child welfare population. It is vital they be able to bring claims to the federal courts. So too for others in need of vindicating their civil rights, like people in pretrial detention, whose claims would be foreclosed by Indiana’s sweeping position here.

ARGUMENT

I. This Action Does Not Implicate the Sort of Undue Interference with State-Court Proceedings that Justifies *Younger* Abstention.

A. Appellees' Relief Is Directed at Addressing Systemic Conduct, Not at Specific State-Court Proceedings.

The district court correctly permitted this litigation to proceed because, regardless of whether this case implicates *Sprint's* three exceptional categories, Appellees' requested relief will not interfere with any ongoing state-court proceedings. Instead, it is directed at the state's executive, which bears a legal responsibility for children in foster care; it would not disrupt Indiana courts' CHINS proceedings.

A "federal court's obligation to hear and decide a case" within its jurisdiction "is virtually unflagging. Parallel state-court proceedings do not detract from that obligation." *Sprint*, 571 U.S. at 77 (citation omitted). Indeed, "there is no doctrine that the availability or even the pendency of state judicial proceedings" justifies abstention. *New Orleans Pub. Serv. v. Council of City of New Orleans*, 491 U.S. 350, 373 (1989) ("*NOPSI*"). Rather, "federal courts ordinarily should entertain and resolve on the merits an action within the scope of a jurisdictional grant, and should not 'refus[e] to decide a case in deference to the States.'"

Sprint, 571 U.S. at 73; see also *Mulholland v. Marion Cnty. Election Bd.*, 746 F.3d 811, 815 (7th Cir. 2014) (reiterating *Younger* is only a narrow “exception to the general rule that federal courts must hear and decide cases within their jurisdiction”). That is true even if the case “may well affect” a future or pending “state-court action.” *NOPSI*, 491 U.S. at 373. Thus, *Younger* abstention is proper only if (among other requirements) the state proceeding fits within one of three “exceptional” categories and the requested relief would cause “undue interference” with that proceeding. *Sprint*, 571 U.S. at 72-73.

As Appellees explained below, the first condition is not met here. This case does not implicate any of *Sprint*’s three “exceptional” categories. S.D. Ind. ECF No. 61 at 13-14. But this Court may affirm for another simple reason: Appellees’ requested relief would not cause any “undue interference” with state-court proceedings, even if they “involve[] the same subject matter.” *Sprint*, 571 U.S. at 72; see also *Younger*, 401 U.S. at 43; *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 601-02 & n.16 (1975). Applying this rule in a similar context last year, this Court declined to categorically apply *Younger* to CHINS proceedings in

acknowledgment of “the variety of goals and outcomes in this kind of proceeding.” *Nicole K. v. Stigdon*, 990 F.3d 534, 537 (7th Cir. 2021). And while this Court acknowledged state tribunals normally handle every aspect of CHINS proceedings, “urgent need for federal intervention” overrides that norm. *Id.* at 538. The same is true here: federal review is urgently needed to address systemic rights violations that Indiana’s courts cannot adequately address. As the district court correctly held, “the resolution of [Appellees’] claims . . . would not interfere with the state court litigation” because they “are challenging Defendants’ conduct,” not the proceedings themselves, and would “only require DCS to make changes,” without “seeking to enjoin the state court CHINS cases.”¹ Short App. 9-10.

¹ DCS “is the primary public agency responsible for receiving, assessing or arranging assessment of, and coordinating the assessment of all reports” of child abuse or neglect. Ind. Code § 31-25-2-11. Child-abuse or neglect allegations are submitted directly to DCS. *Id.* § 31-33-7-3. DCS must promptly act to determine if immediate removal is necessary. *Id.* §§ 31-33-8-1, 31-33-8-8. DCS decides whether to request court authorization to file a “child in need of services,” or CHINS, petition. *Id.* § 31-34-9-1. Once a petition is filed, the court evaluates its merits and may dispose of it in a small number of ways: by granting temporary custody to DCS; releasing a child in temporary custody to a parent or guardian; ordering placement; ordering DCS supervision; removing the child from her home and authorizing DCS to implement out-of-home placement; ordering a DCS wardship; and, ultimately, terminating parental rights and

While Appellees' Brief more than adequately details the justifications for federal jurisdiction here, *amici* offer the following, additional insights into why, given DCS's distinct role in administering children's services in Indiana, enforcing Appellees' injunction will not unduly interfere with any individual state judicial proceeding. DCS—not Indiana's judiciary—is statutorily charged with providing child protection services and family preservation services, Ind. Code § 31-25-2-7(a)(1), (5); with providing and administering child abuse and neglect prevention services, *id.* § 31-25-2-7(a)(2); and with providing and administering child and family services, *id.* § 31-25-2-7(a)(3), (4). DCS alone ensures that it employs sufficient family case managers to prevent impermissibly heavy caseloads under § 31-25-2-5. DCS "is the primary public agency responsible for: (1) receiving; (2) assessing or arranging for assessment of; and (3) coordinating the assessment of[] all reports of . . . known or suspected child abuse or neglect." *Id.* § 31-25-2-11(a). Likewise DCS, not the courts, is charged with "provid[ing] protection services to prevent . . . further

referring the matter to probate court for adoption. *Id.* §§ 31-34-9-5, 31-34-5-3, 31-34-4-7, 31-34-20-1(a)(1), 31-34-20-1(a)(3), 31-34-20-1(a)(4), 31-35-6-1. The court also conducts periodic hearings regarding the child's permanency plan. *Id.* § 31-34-21-7.

child abuse or neglect[,] and . . . ensure the safety of children.” *Id.* § 31-25-2-11(b).

In addition to DCS’s role as a provider of children’s services, it is also solely responsible for regulating childcare institutions. Courts do not “administer the licensing and monitoring of child caring institutions, foster family homes, group homes, and child placing agencies”; DCS does. *Id.* §§ 31-25-2-7(a)(6), 31-27-2-1(1). DCS must “provide for the issuance, denial, and revocation of licenses [and] [c]ooperate with governing bodies of child caring institutions, foster family homes, group homes, and child placing agencies and their staffs to improve standards of child care.” *Id.* § 31-27-2-1(3), (4). And the Indiana Code directs DCS, not the courts, to “establish policies and procedures for periodic review and evaluation of approved child welfare programs, including evaluation of the effectiveness and results of the program activities.” *Id.* § 31-26-3.5-5.

B. State Courts’ Limited Disposition Options Cannot Effectuate Appellees’ Requested Relief.

State courts are not responsible for administering or regulating services for foster children, and their determinations in these proceedings cannot address systemic failures in these DCS functions. State courts cannot grant the sort of systemic relief Appellees seek in a CHINS

proceeding. While courts retain ongoing jurisdiction over individual cases, and DCS periodically updates the court on the child, *e.g.*, Ind. Code §§ 31-34-21-1, 31-34-21-2, 31-34-22-1, a court's ultimate disposition is limited to the options listed in the statute. *Id.* § 31-34-20-1. These options do not extend to the kind of systemic relief Appellees seek, which is exclusively directed at DCS's statutory functions as custodian.²

Appellees seek an order requiring DCS to hire more qualified caseworkers, maintain a maximum child-caseworker ratio, develop an adequate plan to recruit and retain providers, ensure all placements satisfy federal standards, and provide an adequate array of therapeutic services to children with disabilities. App.82-84. This relief is directed solely at DCS in its regulatory, administrative, and custodial capacities; a state court's limited disposition cannot correct these shortcomings.

DCS's compliance with an injunction would not hinder state courts' jurisdiction over these children, nor would it affect the proceedings'

² Ultimately, federal law requires that children be placed in DCS custody to receive Social Security Act funds. 42 U.S.C. § 671(a)(2). Title IV-E of the Social Security Act is Indiana's largest child welfare federal funding source. Child Trends, *Child Welfare Agency Spending in Indiana* (2018), <https://bit.ly/3GAi0JP>

adjudication of those proceedings. Appellees “are not asking the court to regulate the day-to-day conduct of state-court CHINS proceedings,” “evaluate the[ir] constitutionality,” or “assess the[ir] merits.” Short App. 27. Rather, the Appellees challenge DCS’s conduct as it pertains to children who enter DCS’s care *after* a court has made a CHINS determination. In this way, Appellees’ “claims do not implicate the proceedings themselves, only the aftermath of the proceedings,” and are not fit for abstention. *Connor B. ex rel. Vigurs v. Patrick*, 771 F. Supp. 2d 142, 155 (D. Mass. 2011); *see also 31 Foster Children v. Bush*, 329 F.3d 1255, 1276 (11th Cir. 2003) (a court must look “to the relief requested and the effect it would have on the state proceedings”).

Furthermore, although children theoretically can raise individual constitutional claims in their own cases,³ state courts do not and cannot

³ As the district court correctly concluded, CHINS proceedings are not meaningful opportunities for children to raise these claims. Short App. 10-12. Abstention is therefore inappropriate on this ground as well. *See Brokaw v. Weaver*, 305 F.3d 660, 668 (7th Cir. 2002) (abstention inappropriate where federal plaintiff did not have reasonable opportunity to raise claims). While parties may bring constitutional claims in CHINS proceedings, these claims are limited, and children are not entitled to legal representation during such proceedings. Short App. 10-11. Court-appointed special advocates or guardians ad litem are often non-lawyers

address *systemic* issues in individual CHINS proceedings. State law does not authorize statewide remedies against the executive agency. *See* Ind. Code. § 31-34-20-1.⁴

The request to enjoin DCS “from separating siblings when they enter foster care together,” App.83, does not change this analysis, because such an order “relate[s] only to alleged injuries suffered while in [DCS] custody.” *Connor B.*, 771 F. Supp. 2d at 154. A child “enters” foster care by court order. If a court orders siblings be placed in a foster home together, DCS’s compliance with an injunction regarding that placement thereafter would not impede on the court’s ability to make an initial placement determination. Appellees’ requested relief applies only to siblings who have already been placed in foster care together by court order. State courts remain bound by law to consider the child’s best interests,

and certainly are neither qualified nor equipped to litigate systemwide deficiencies. *See* Short App. 10-11.

⁴ Amici have been unable to locate any Indiana cases in which a minor child asserted DCS violated her constitutional rights. Given the highly publicized and serious problems plaguing Indiana’s child-welfare agency, *see* Marisa Kwiatkowski, *DCS director resigns over Indiana kids being placed at risk*, Indianapolis Star (Dec. 18, 2017), <https://bit.ly/33uzZ6Z>, one would expect these issues would arise frequently in juvenile court if doing so is as easy as Indiana now claims. Tellingly, they do not.

and would still determine whether to grant custody, adjudicate a child as a CHINS, and terminate parental rights.⁵

C. Indiana’s Expansive View of *Younger* Would Require Abstention in Virtually Every Case.

Unable to point to an actual instance of interference with a specific state-court proceeding, Indiana argues for a sweeping expansion of *Younger*, reasoning that “[a]ll relief [Appellees] seek would, in one way or another, interfere with state court CHINS proceedings.” Appellants’ Br. 22. But this overbroad view of *Younger* would turn the exception into the rule. The relevant test is *not* whether Appellees’ requested relief would interfere “in one way or another” with CHINS proceedings at some level of abstraction; it is whether they would “undu[ly] interfere[.]”

⁵ See also *Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277, 286 (N.D. Ga. 2003) (“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.”) ; *Dwayne B. v. Granholm*, No. 06–13548, 2007 WL 1140920, at *6 (E.D. Mich. Apr. 17, 2007) (“While it is true that Michigan has in place a juvenile court system that sets out procedures for bringing and maintaining a child under that court’s jurisdiction and there may be some ongoing juvenile court proceedings for individual foster care children, this lawsuit does not seek to interfere with any such proceedings. The relief sought here is not directed at the juvenile courts. It is directed at the executive branch.”).

Sprint, 571 U.S. at 72-73. Appellees seek lower caseloads, Ind. Code. § 31-25-2-5, more timely evaluations, and case reviews, 42 U.S.C. § 671(a)(7), because the failure to provide such protections violate constitutional and federal standards, and because of the positive effect they would have on children’s lives (including their CHINS cases). DCS’s compliance with an injunction to conduct day-to-day operations in accord with federal law would not “undu[ly] interfere[]” with ongoing CHINS proceedings, because it would not prejudice the state courts’ merits determinations.

Indiana’s arguments here also fail to distinguish between relief that would affect the *participants* in ongoing proceedings and relief that would interfere with the proceedings themselves. Pretrial-detention cases illustrate this error. *Younger* abstention does not apply to claims challenging “the conditions of pretrial detention in state court,” *Arevalo v. Hennessy*, 882 F.3d 763, 764 (9th Cir. 2018), like “the legality of pretrial detention without a judicial hearing,” *Gerstein v. Pugh*, 420 U.S. 103, 108 n.9 (1975), or a state court’s “system of setting bail for indigent misdemeanor arrestees,” *O’Donnell v. Harris Cnty.*, 892 F.3d 147, 152 (5th Cir. 2018). Although such claims are plainly intertwined with—and may

actually affect—criminal prosecutions, abstention is improper because the relief sought will “not prejudice the conduct of the trial on the merits,” *Gerstein*, 420 U.S. at 108 n.9, and “will not require federal intrusion into pre-trial decisions on a case-by-case basis,” *O’Donnell*, 892 F.3d at 156. This kind of claim is “distinct from the underlying criminal prosecution and would not interfere with it.” *Arevalo*, 882 F.3d at 766.

Likewise, although Appellees’ requested relief may affect the participants in a proceeding, it does not interfere with the proceedings themselves. Just as ordering a jail to hire more guards or provide training did not interfere with criminal prosecutions—even though criminal defendants are in the jail’s custody—an order requiring DCS to provide adequate care for children in its custody would not interfere with CHINS proceedings or require federal intrusion in individual cases.⁶

⁶ *Milchstein v. Chisholm*, 880 F.3d 895 (7th Cir. 2018), is not to the contrary, as the district court correctly concluded. There, parents argued the state discriminated against them because it failed to accommodate their religious views in their children’s foster placements. The Seventh Circuit determined abstention was proper because the parents wanted to affect the disposition of specific child-safety proceedings. *Id.* at 899. Further, Appellees “did not have the same opportunity as the plaintiffs in *Milchstein* to present their claims in state court.” Short App. 12.

Because Appellees' requested relief will not unduly interfere with state-court proceedings, it does not matter that each plaintiff and potential class member is subject to state courts' continuing jurisdiction. Abstaining on that basis would explode *Younger*'s limits, effectively requiring a federal court "to abstain on any dispute related to a foster child because the juvenile court has continuing jurisdiction over the child." *M.B. by Eggemeyer v. Corsi*, No. 2:17-cv-04102-NKL, 2018 WL 327767, at *7 (W.D. Mo. Jan. 8, 2018). This would make "a 'mockery of the rule that only exceptional circumstances justify' *Younger* abstention." *Id.* (quoting *NOPSI*, 491 U.S. at 368).

The impact of such an overbroad extension of *Younger* is substantial. It would mean no child could challenge systemic rights violations in a foster-care system in federal court. The same would be true for criminal defendants, civilly committed people, and youth defendants who remain subject to state courts' continuing jurisdiction. A rule that state-court jurisdiction always ousts the federal courts would enable myriad mischief; states could insulate any number of state actions from federal review just by appointing state courts to "oversee" them. That is not the law, as to children in foster care or otherwise. *See NOPSI*, 491 U.S. at 373.

In sum, *Younger*'s ultimate touchstone is non-interference. Because Appellees' requested relief would not prejudice merits determinations or entail federal intrusion in individual cases, abstention is improper. This is so regardless of whether this case falls within one of *Sprint*'s three "exceptional" categories. For these reasons, this Court should affirm.

II. Indiana's Overbroad Application of *Younger* Threatens to Impair Enforcement of Civil Rights on Behalf of Populations Most in Need in Many Contexts.

A. Expansion of *Younger* Abstention Beyond Its Appropriate Scope Obstructs Federal Courts' Historical Function as Protectors of Constitutional and Civil Rights.

In addition to maintaining the proper application of *Sprint*, there are practical and equitable reasons to carefully limit the expansion of *Younger*'s scope. The district court correctly understood the importance of a circumscribed approach to abstention in civil rights cases like this one. Federal courts have historically played a vital role in protecting plaintiffs' constitutional and civil rights. Since *Ex Parte Young*, 209 U.S. 123 (1908), federal courts have been empowered to enjoin state officials from enforcing unlawful or unconstitutional policies. Applying abstention doctrines too broadly, as Indiana urges here, would thwart that function. *Cf.* Fred O. Smith, Jr., *Abstention in the Time of Ferguson*, 131 Harv. L.

Rev. 2283, 2295-96 (2018) (describing the abstention doctrine’s evolution in the mid-twentieth century to allow federal courts to hear civil-rights claims involving state prosecutions). Constraining *Younger* within its proper sphere, as the district court did, is thus essential to ensuring these children, and other similarly disadvantaged plaintiffs, may vindicate their federal rights.

By contrast, Indiana’s approach would mean that federal courts “always have to abstain” in cases involving children in foster care and others who remain subject to related state-court litigation. *See M.B.*, 2018 WL 327767, at *7. That would harm potential plaintiffs experiencing violations of their constitutional rights by closing the courthouse doors to meritorious claims.

That danger is obvious in this case. Abstaining here risks depriving children in foster care—especially those who already confront systemic and functional discrimination—of effective recourse for violations of federal rights that threaten their health and safety. Many children enter the foster-care system because of neglect or abuse, only to face neglect or abuse again while nominally under the care of the state. *See Sarah Fathallah & Sarah Sullivan, Away From Home: Youth Experiences of*

Institutional Placements in Foster Care 40 (July 21, 2021), <https://bit.ly/3H6WaPk>. Appellees challenge DCS's failure to appropriately regulate and administer services for children in foster care as a systemic cause of neglect and abuse experienced under DCS's care. Improperly expanding the bounds of *Younger* abstention acquiesces in that abuse's continuation.

B. Restricting Federal Courts' Protective Functions Disproportionately Affects Black and Brown Children, LGBTQ+ Youth, and Children with Disabilities.

Federal courts play a vital role in protecting the constitutional and civil rights of children in the foster care system—particularly when considering these children's disparate experiences in foster care. Given the demographic makeup of the foster care population, this ruling would significantly impact Black and Brown children, children with disabilities, and LGBTQ+ youth, and would limit their access to federal courts.

Black and Brown children, children with disabilities, and LGBTQ+ youth enter the child welfare system at higher rates than their peers and are more likely to suffer further abuse or neglect once they are placed in foster care. Black children are overrepresented in foster-care systems nationwide. Annie E. Casey Found. Kids Count Data Ctr., *Black Children*

Continue to Be Disproportionately Represented in Foster Care (Apr. 13, 2020), <https://bit.ly/3n5kvNu>. They also stay in the system longer than White children. David Crary, *Many Say Now Is the Time to Fight Racial Bias in Foster Care*, Assoc. Press (Apr. 14, 2021), <https://bit.ly/3C8MgJs>.

Compounding the effects of that overrepresentation, Black youth spend an average of 29 months in out-of-home placements, 11 months longer than the average for White children (18 months), and 6 months longer than Latinos (23 months). Fathallah & Sullivan, *supra*, at 19. Black youth over age 10 are significantly less likely to be reunited with family than White youth. *Id.*

Further, the broader issues that Black and Brown children face outside of the foster care system persist at staggering rates when they enter. Once placed in foster care, “children of color experience higher rates of placement disruptions, longer times to permanency, and more frequent reentry than their White counterparts. Yet the most common allegation among their cases is neglect, which is inextricably linked to poverty.” Bryan Samuels, *Family and Child Well-Being: An Urgent Call to Action*, Children’s Bureau Express (Aug./Sep. 2020), <https://bit.ly/3Fqpgat> (citation omitted). Thus, “more than half (53 percent) of all Black children and

their parents will experience a child abuse or neglect investigation before the child's 18th birthday." *Id.* In Indiana specifically, Black and Brown children experience poverty at a higher rate than the state average, and at a disproportionate percentage relative to their representation in the total child population. *Indiana Continues to Rank 29th Nationally for Child Well-Being*, Ind. Youth Inst. (Jan. 26, 2021), <https://bit.ly/3Gsi9zA>. Black and Brown children bear the brunt of statutory and constitutional problems resulting from systemic deficiencies.

Unfortunately, racial discrimination in foster care is pervasive. Black and Brown children regularly experience disparate treatment in foster care, ranging from outright discriminatory behavior to a lack of sensitivity and consideration for their individual needs. Crary, *supra*; Fathallah & Sullivan, *supra*, at 43 ("Youth . . . recounted incidences of discrimination based on race and ethnicity and recounted how staff displayed discriminatory behavior towards their peers."); Fathallah & Sullivan, *supra*, at 33 ("[O]ther participants, especially youth of color, shared that institutional placements displayed no cultural sensitivity when it came to the hair and skin care needs of the youth.").

LGBTQ+ youth are similarly overrepresented in foster care, and overwhelmingly encounter discrimination there. Univ. Md. Sch. of Social Work, *Study Finds Overrepresentation of LGBTQ+ Youth in Midwest Foster Care System*, <https://bit.ly/3c5ENjz> (last visited Jan. 20, 2022); Youth.gov, *Child Welfare*, <https://bit.ly/3CbjebY> (last visited Jan. 20, 2022). A staggering “100% of LGBTQ youth in group homes report abuse,” suggesting “abuse against LGBTQIA+ youth in group care is not just prevalent; it’s ubiquitous.” Fathallah & Sullivan, *supra*, at 43.

Likewise, for children with physical and mental disabilities, entering foster care can be catastrophic. “[A]pproximately one-third of children . . . who are at all involved in the child welfare system have special health care needs, nearly three times the rate found in the general population. Research consistently yields disability rates amongst foster children of 30% to 80%.” Joshua Kay, *Advocating for Children with Disabilities in Child Protection Cases*, 35 *Touro L. Rev.* 345, 348 (2019). “Having a disability in the welfare system is a risk factor in and of itself,” but when combined with inadequate services, children with disabilities tend to experience higher rates of abuse and neglect over longer periods of time, as well as shortcomings in their mental, emotional, and physical

health. Shayla Stogsdill, *Children with Disabilities in the Foster Care System*, Taylor Univ., 2 (2019), <https://tinyurl.com/bdd9em7v>. Abuse is also more likely for children with disabilities in the foster care system as these children “often cannot advocate for themselves and certain forms of abuse . . . cannot be seen,” such as emotional abuse. Stogsdill, *supra*, at 3. A 2009 study found that “CPS investigators were more empathetic to abusive guardians of children with disabilities, specifically mental disabilities, because the children were stated to have characteristics that contribute [to] or provoke abuse.” *Id.*

Additionally, because “children in foster care have high rates of chronic health conditions,” they “may be especially vulnerable to medical complications of COVID-19.” Sarah Font, *The Impact of the COVID-19 Pandemic on Children in Foster Care: Exploring the Issues and Potential Solutions* PennState Social Science Research Institute COVID-19 Resources (July 29, 2020), <https://tinyurl.com/yy9t27vc> (emphasis omitted). Their foster parents are often older adults and may also be more vulnerable. *Id.* Foster-care agencies have had to pause or delay in-person parent-child visitation, making it more difficult for parents to meet family-reunification requirements. *Id.*

COVID-19 has only exacerbated pre-existing strains on the foster care system. Since the beginning of the pandemic, “the need increases [for foster parents] almost double[d].” Nikki DeMentri, *The Need for Foster Families is Growing in Central Indiana*, WRTV (May 19, 2021), <https://bit.ly/3I7C0EL>. Teachers are required to report questionable or suspicious situations, but because students are not attending school in person, the pandemic has made it harder to detect neglect. *Id.* With online schooling, warning signs go undetected, leading to “a lot more intense situations of neglect and abuse.” *Id.* Additionally, many children “enter foster care substantially academically delayed,” and they are “more likely to have learning disabilities or attention problems than children who have not experienced abuse or neglect.” Consequently, children in foster care who have disabilities are especially harmed by the loss of in-person instruction as they “may lose access to [necessary] educational supports.” Font, *supra*.

COVID-19 spreads more rapidly in congregate settings, like the group homes where these children are often placed. Fathallah & Sullivan, *supra*, at 18. Older youth in foster care or transitioning to adulthood have faced unique hardships related to the pandemic “as they are more

likely to be disconnected from supportive adults,” and struggle to afford dependable housing. Patrick W. Lawler, *Learnings for Children’s Services from the COVID-19 Pandemic*, Children’s Bureau Express (Aug./Sep. 2020), <https://bit.ly/3zUaHuJ>.

Adopting Indiana’s catch-all abstention theory will preclude these children from effectively asserting their constitutional and civil rights. The children here, for example, bring claims under the First, Ninth, and Fourteenth Amendments, the Adoption Assistance and Child Welfare Act of 1980, Americans with Disabilities Act, and Rehabilitation Act. App.82. Elsewhere, children in foster care have sued to reform statewide operations under the Medicaid Act, *Tinsley v. McKay*, 156 F. Supp. 3d 1024, 1026 (D. Ariz. 2015), the Social Security Act, *Sam M. ex rel. Elliott v. Chafee*, 800 F. Supp. 2d 363, 370 (D.R.I. 2011), Title VI of the Civil Rights Act of 1964, *Brian A. ex rel. Brooks v. Sundquist*, 149 F. Supp. 2d 941, 944 (M.D. Tenn. 2000), and the Child Abuse Prevention and Treatment Act, *Marisol A. by Forbes v. Giuliani*, 929 F. Supp. 662, 669 (S.D.N.Y. 1996). Indiana’s approach would foreclose all of them.

Nor is foster care the only context where Indiana’s all-encompassing approach would prove harmful. As explained above, *Younger*

abstention is often litigated in cases involving bail and pretrial detention. *Supra* p.20. Other courts correctly recognize that abstention is improper in these situations because those claims will not interfere with the merits of individual state prosecutions. *Gerstein*, 420 U.S. at 108 n.9; *O'Donnell*, 892 F.3d at 156-57. Indiana's approach would effectively give rise to a presumption of abstention in pretrial-detention cases. After all, state courts are heavily involved in criminal prosecutions. Yet whether federal litigation might affect a state court "in one way or another" is not the relevant test; only undue interference with a state court proceeding can justify restricting federal courts' jurisdiction. The disproportionate impact of Indiana's approach demonstrates an urgent need for federal intervention to vindicate Appellees' constitutional and civil rights.

CONCLUSION

For these reasons and those in the Appellees' brief, the Court should affirm the decision below.

Dated: February 2, 2022

Respectfully submitted,

/s/ David R. Carpenter

David R. Carpenter

John L. Gibbons
SIDLEY AUSTIN LLP

David R. Carpenter
Collin P. Wedel

1501 K Street, N.W.
Washington, D.C. 20005
Tel.: (202) 736-8000
Fax: (202) 736-8711

Monique M. Candiff
SIDLEY AUSTIN LLP
555 West Fifth Street
Suite 4000
Los Angeles, CA 90013
Tel.: (213) 898-6000
Fax: (213) 896-6600
drcarpenter@sidley.com

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

1. This amicus brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and Circuit Rule 29 because this brief contains 6,287 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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

/s/ David R. Carpenter
David R. Carpenter

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2022, I caused the foregoing to be electronically filed with the U.S. Court of Appeals for the Seventh Circuit via the CM/ECF system, which will automatically send email notifications of such filing to all attorneys of record.

/s/ David R. Carpenter

David R. Carpenter