CHILDREN'S ADVOCACY INSTITUTE
University of San Diego School of Law
Robert C. Fellmeth (SBN 49897)
Edward Howard (SBN 151936)
Christina McClurg Riehl (SBN 216565)
5998 Alcala Park
San Diego, California 92110
Telephone: (619) 260-4806
Facsimile: (619) 260-4753

WINSTON & STRAWN, LLP
Jonathan M. Cohen (SBN: 168207)
Robyn Callahan (SBN: 225472)
101 California Street, 39th Floor
San Francisco, CA 94111-5894
Telephone: (415) 591-1000
Facsimile: (415) 591-1400

Attorneys for Plaintiffs

101 California Street
San Francisco, CA 94111-5802

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

E.T., K.R., C.B. and G.S., by their next friend, Frank Dougherty, on their behalf and on behalf of all those similarly situated,

Plaintiffs,

v.

RONALD M. GEORGE, Chair of the Judicial Council of California, in his official capacity; WILLIAM C. VICKREY, Administrative Director of the Administrative Office of the Courts of the Judicial Council, in his official capacity; and JAMES M. MIZE, Presiding Judge of the Superior Court of the County of Sacramento, in his official capacity,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTIVE RELIEF**

42 U.S.C. § 1983 and Pendent State Law Claims

CLASS ACTION

Plaintiffs E.T., K.R., C.B. and G.S. ("Plaintiffs"), on behalf of themselves and others similarly situated, allege the following claims against the Honorable Ronald M. George, William C. Vickrey, and the Honorable James M. Mize, in their official capacity ("Defendants").

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## I. JURISDICTION AND VENUE

1. This action arises under Title 42 of the United States Code, § 1983, as Plaintiffs allege they have been deprived of their rights under the federal Constitution and federal statutes. This Court has jurisdiction over the action under 28 U.S.C. §§ 1331 and 1343.

2. The pendent state claims alleged in this action arise from the same facts as the federal claims, such that all claims alleged would ordinarily be prosecuted in a single action. This Court therefore has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a).

3. All events alleged in this action occurred in the County of Sacramento, California. Venue therefore lies in this Court under 28 U.S.C. § 1391(b)(2).

## II. SUMMARY OF CASE

4. This lawsuit seeks a Dependency Court for Sacramento's abused and neglected children that comports with basic Due Process and the effective, adequate, and competent assistance of counsel for the children of Sacramento County in dependency proceedings.

## III. PARTIES

### A. The Plaintiffs

5. Plaintiff E.T. is a resident of the County of Sacramento. She is presently in foster care and is 14 years old. At all times relevant to this lawsuit, E.T. was a resident of the County of Sacramento.

6. Plaintiff K.R. is a resident of the County of Sacramento. She is presently in foster care and is 13 years old. At all relevant times to this lawsuit, K.R. was a resident of the County of Sacramento.

7. Plaintiff C.B. is a resident of the County of Sacramento. She is presently in foster care and is 17 years old. At all times relevant to this lawsuit, C.B. was a resident of the County of Sacramento.

8. Plaintiff G. S. is a resident of the County of Sacramento. He is presently a ward of the court and is 18 years old. At all times relevant to this lawsuit, G.S. was a resident of the County of Sacramento.

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**B. The Defendants**

9. The Honorable Ronald M. George ("Chief Justice George") is Chair of the Judicial Council, the body responsible for overseeing the statewide administration of justice in the California courts. Chief Justice George is responsible, in his official capacity, for the administration of the Judicial Council, including the allocation of the judicial branch budget (and allocation of relevant funds for courts and court-appointed child representation in Dependency Court proceedings); the promulgation of rules of court administration, practice, and procedure; and establishing the direction and setting priorities for the continual improvement of the court system. Chief Justice George is sued only in his official capacity.

10. Defendant William C. Vickrey ("Mr. Vickrey") is the Administrative Director of the Administrative Office of the Courts of the Judicial Counsel (the "AOC"). The AOC is the staff agency of the Judicial Council and is responsible for a variety of programs and services to improve access to a fair and impartial judicial system. The Center for Families, Children, and the Courts, a division of the AOC, has implemented a program called "DRAFT" (as described below), which provides court funding to participating California counties. The children's court-appointed counsel are paid for through funding from DRAFT by virtue of the County of Sacramento's participation in the program. Mr. Vickrey is responsible, in his official capacity, for the administration of the AOC. Mr. Vickrey is sued only in his official capacity.

11. The Honorable James M. Mize ("Judge Mize") is the Presiding Judge of the Superior Court of the County of Sacramento ("Sacramento County Superior Court"). Judge Mize is responsible, in his official capacity, for leading the court, establishing policies, and allocating resources in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of judicial and other resources, increases efficiency in court operations, and enhances service to the public. Cal. R. Ct Rule 10.603. He has the authority to assign judges to departments, such as Sacramento County Superior Court's Dependency Court. *Id.* Rule 10.603(b)(1)(A). He also has a duty to approve the allocation of funds in a manner that promotes the implementation of state and local budget priorities and that ensures equal access to justice and the ability of the court to carry out its functions effectively. *Id.* Rule

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10.603(b)(6)(C). His duties also include implementing the legislative mandate requiring the appointment of counsel to children in dependency proceedings pursuant to Section 317 of the California Welfare and Institutions Code. Judge Mize is sued only in his official capacity.

## IV. CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this suit as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and all other similarly-situated persons as members of a Class initially defined as follows:

> All children currently and hereafter represented by court-appointed counsel in juvenile dependency proceedings in the Sacramento County Superior Court.

13. Numerosity. The proposed Class is sufficiently numerous, as approximately 5,100 children are currently represented by court-appointed counsel in dependency proceedings in the County of Sacramento. Class Members are so numerous that joinder of all members is impracticable. Class Members can be identified by records maintained by the court-appointed attorneys and Defendant Judge Mize.

14. Typicality. Plaintiffs' claims are typical of the claims of members of the Class because Plaintiffs and Class Members have been, and currently are, being harmed by Defendants' wrongful conduct as detailed herein. Specifically, Plaintiffs' and Class Members' claims arise from Defendants' inadequate provision of Dependency Courts and counsel. This, in turn, causes the following harms to Plaintiffs; harms typical of the harms suffered by members of the Class:

a. Class Members, including Plaintiffs, are not, or are not adequately, represented by their counsel;

b. Class Members, including Plaintiffs, are not meaningfully interviewed by their counsel nor do they meet regularly with them such that counsel cannot effectively represent the child's desires or best interests, nor assess the child's well-being or the child's wishes on such issues as placement, reunification, and eligibility for, and enrollment in, programs, services, or the refusal to enroll in such services;

c. Class Members, including Plaintiffs, do not benefit from counsel engaging in further investigations, whether beyond the scope of the dependency proceeding or not, as may be

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reasonably necessary to ascertain facts about the child's best interests and needs;

d. Class Members, including Plaintiffs, do not benefit from witnesses that, but for the overwhelming caseloads of the children's appointed attorneys, would be interviewed, called to testify, or effectively examined on either direct or cross, resulting in a situation where the child and the court are deprived of facts which, if known by the court or the child's counsel, may alter the outcomes in Dependency Court;

e. Class Members, including Plaintiffs, are, through their counsel, denied contact with social workers and other professionals associated with their case and denied the ability to work with other counsel and the court to resolve disputed aspects of a case without contested hearing;

f. Class Members, including Plaintiffs, do not have sufficient contact with their counsel to establish and maintain an adequate and professional attorney-client relationship;

g. Class Members, including Plaintiffs, through their counsel, are not able to obtain copies of all pleadings and relevant notices; not able to participate in depositions, negotiations, discovery, pre-trial conferences, and hearings; not able to inform other parties and their representatives that their counsel is representing the Class Member and obtain reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the Class Member and their family; not able to attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child; unable to counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process; unable to develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and unable to identify appropriate family and professional resources for the child;

h. Class Members, including Plaintiffs, are denied the right to have their individual rights adjudicated by a neutral tribunal because (1) the caseloads of the hearing officers for the Dependency Court are too large to permit the children and their counsel a meaningful opportunity to be heard, and (2) the caseloads of the judicial officers are too large to permit the officers to obtain and evaluate the sufficiency of the information provided to them in and of itself and proportional to the liberty interest and other constitutional-level interest at stake for the children.

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i. Class Members, including Plaintiffs, as a result of the aforementioned, are denied full and fair hearings on determining every facet of Dependency Court, including, but not limited to, placement; termination of parental rights; reunification; relationships with relatives and siblings; educational needs; emotional, physical, and mental well-being; medical needs; and eligibility for and enrollment in various programs, particularly when they age out of the system at eighteen years old.

j. Accordingly, and due to the effects enumerated above, Class Members, including Plaintiffs, are deprived of their due process rights under the federal and California Constitutions, and their rights under federal and state statutes.

15. Common Questions of Law and Fact. There are questions of law and fact common to the Class, pursuant to Rule 23(a)(2) of the Federal Rules of Civil Procedure as the claims of every Class Member are based upon the excessive caseloads shouldered by court-appointed counsel and the Dependency Courts of the County of Sacramento. Among these common questions of law and fact are:

A. Whether Plaintiffs and Class Members have a right under the federal and California Constitutions to adequate and effective legal representation in dependency proceedings and related appeals;

B. Whether Plaintiffs and Class Members have a state law entitlement to competent assistance of counsel with a caseload that ensures adequate representation and federal law entitlements under the Child Welfare Act and Child Abuse Prevention and Treatment and Adoption Reform Act;

C. Whether the caseloads of court-appointed dependency counsel in the County of Sacramento are so excessive that federal and state constitutional rights are abridged in violation of 42 U.S.C. § 1983, and state and federal statutory standards are breached, in that:

i. Counsel cannot provide adequate or effective legal assistance to Plaintiffs and Class Members;

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ii. Defendants have not protected Plaintiffs' and Class Members' health and safety under 42 U.S.C. § 671(a)(22) of the Child Welfare Act;

iii. Defendants have not provided Plaintiffs and Class Members with guardians ad litem who can meet the obligations set forth in 42 U.S.C. § 5106a(b)(2)(A)(ix) of the Child Abuse Prevention and Treatment and Adoption Reform Act;

iv. Defendants have not provided counsel with caseloads that ensure adequate representation as required by CAL. WELF. & INST. CODE § 317(c); and

v. Counsel cannot provide competent legal representation as required by CAL. WELF. & INST. CODE § 317.5;

D. Whether the Dependency Courts of the County of Sacramento are so overburdened with cases that they cannot provide a fair and adequate tribunal to hear the dependency proceedings to which Plaintiffs and Class Members are subject, thus depriving Plaintiffs and Class Members of their due process rights under the Federal and California Constitutions; and

E. Whether injunctive relief and a declaratory judgment is appropriate.

16. Adequacy. Plaintiffs, through their next friend, Frank Dougherty, will fairly and adequately protect the interests of Class Members and have retained counsel competent and experienced in complex class actions and civil rights litigation. Plaintiffs, through their next friend, Frank Dougherty, are committed to vigorous prosecution of this action and have no interests antagonistic to or in conflict with those of Class Members.

17. Certification under Rule 23(b)(2): Certification is appropriate under Fed. R. Civ. P. 23 (b)(2) because:

18. The prosecution of separate actions by individual Class Members is likely and would create a risk of inconsistent or varying adjudications with respect to individual Class Members, which would establish incompatible standards of conduct for Defendants to ensure that they provide court-appointed counsel and Dependency Courts that comply with legal requirements;

19. Defendants are obligated by law to treat all Class Members alike with respect to the due process rights afforded to each Class Member under the federal and state constitutions, the Federal Child Welfare Act, the Child Abuse Prevention an Treatment and Adoption Reform Act and

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the California Welfare and Institutions Code. The prosecution of separate actions by individual Class Members as to the caseloads of Dependency Courts and court-appointed counsel in the County of Sacramento would create a risk of adjudications that would, as a practical matter, be dispositive of the interests of other Class Members who are not parties to the individual adjudications, or substantially impair or impede their ability to protect their interests; and

20. By failing to provide sufficient Dependency Courts and court-appointed counsel, Defendants have acted, or refused to act, on grounds generally applicable to the Class, thereby making final injunctive relief and declaratory relief appropriate as to the Class as a whole.

21. Notice. Plaintiffs will provide notice to the Class if the Court, in its discretion, requests that notice be given pursuant to Rules 23(b)(1) and 23(b)(2) of the Federal Rules of Civil Procedure.

## V. FACTS CONCERNING DEFENDANTS' LEGAL VIOLATIONS

### A. Preliminary Background Facts

22. In Sacramento County, crushing and unlawful caseloads are illegally frustrating both the ability for Dependency Courts to adjudicate and provide children with a meaningful opportunity to be heard, as well as the effective, adequate and competent assistance of counsel, to the enduring harm of Sacramento's abused and neglected children.

23. Dependency Court and, by extension, foster care, fundamentally is a legal process. In this legal process, the Dependency Court judge acts as the State, which is *in loco parentis* (standing in place of the parents). The judge decides whether the child will be removed from the care of his parents and whether, and under what circumstances, the child will be reunited with them. Dependency proceedings, therefore, are usually life-altering for the child. The judge determines not only if a right to an existing parent will be abridged, but all of the building blocks of the child's life: whether the child will have contact with a previous parent, who will actually serve as parent, where the child will live, whether siblings will be in the household or never seen again, what school the child will attend, and even what medicines the child will be given.

24. The legal system within which the judge makes these decisions remains, at its core, an adversarial one. As with any other adversarial legal proceeding, the ability of the Dependency Court

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judge to render sensible and informed decisions is contingent upon both the information brought to him or her by counsel, and a judicial caseload that permits the judge to consider carefully what he has been provided.

25. Both state and federal statutes and the state and federal constitutions provide that children in dependency proceedings have a right to counsel. And as with any right to counsel, the right must be a meaningful one. The child is guaranteed the right to assistance of counsel that is – as a real-world, practical matter – effective, competent, and adequate.

26. Plaintiffs are informed and believe, and on the basis of such information and belief allege that caseloads currently carried by counsel for children in dependency proceedings in the County of Sacramento are so large that such counsel are not able to effectively, adequately, or competently represent their clients, violating state and federal statutes and the state and federal constitutions.

27. For these reasons and those detailed herein, children subject to dependency proceedings in the County of Sacramento – one of the most important legal proceedings of their lives – are denied their guaranteed rights under state and federal law to effective, adequate, and competent assistance of counsel, and to a fair and adequate tribunal to hear and decide the dependency proceedings to which they are subject.

**B. Dependency Proceedings**

28. Dependency proceedings are conducted to protect the safety and well-being of an abused or neglected child whose parents or guardians either cannot or will not do so, or who themselves pose a threat to the child. During removal from parental custody, the State holds a "jurisdictional" hearing and thereafter may take parental jurisdiction of the child. The State then decides the child's placement pending the litigation. That placement may be in family foster care, with a family foster agency, with relatives, or in an institutional foster care. After a child is removed from his or her parents, subsequent court proceedings and reviews are required to determine whether to reunite the child with his or her parents, or to focus instead on finding a permanent and stable placement for the child. If reunification services are terminated, the State takes permanent jurisdiction of the child under a permanent placement plan. That plan may include adoption,

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guardianship, or continued foster care custody. While in foster care, the child depends upon the court, and therefore also his or her counsel, for decisions pertaining to everything from extra-curricular activities to visitation to clothing allowances to whether the child should be administered certain drugs. A child is entitled to appeal and seek writs from the various judgments of the Dependency Court.

**C. An Overburdened Dependency Court System**

29. Plaintiffs are informed and believe, and on the basis of such information and belief allege that California's Dependency Courts and foster care system are similarly overwhelmed and unreasonable. In the words of the Blue Ribbon Commission on Children in Foster Care (the "Blue Ribbon Commission"), headed by California Supreme Court Justice Carlos Moreno, "California's Dependency Court system is overstressed and under-resourced," with "[f]ull-time judicial officials in California carry[ing] an average of 1,000 cases, which has a direct impact on the level of time and attention any one case receives." Administrative Office of the Courts of the Judicial Council of California, CHILDREN IN FOSTER CARE: FINAL RECOMMENDATIONS OF THE BLUE RIBBON COMMISSION ON CHILDREN IN FOSTER CARE TO IMPROVE THE JUVENILE DEPENDENCY COURTS AND FOSTER CARE SYSTEM IN CALIFORNIA 13, 16 (2008) (hereinafter Blue Ribbon Commission Report). These statistics are borne out in the caseloads of the Sacramento Dependency Courts. The County of Sacramento presently has only 5 judicial referees (who preside over dependency proceedings) responsible for approximately 5,100 active dependency cases. A former lead dependency referee from Sacramento estimates that such caseload affords referees roughly two minutes of courtroom time per case. A foster child appearing in a Sacramento Dependency Court with ineffective counsel therefore cannot reasonably expect the judicial referee to serve as a backstop and look out for his or her best interests. The referee is just as overburdened as counsel.

30. Plaintiffs are informed and believe, and on the basis of such information and belief allege that Courts saddled with such workloads cannot afford to give sufficient attention to these life-changing proceedings proportionate to their importance to the liberty and other constitutional-level interests of Sacramento County's abused and neglected children. Former Sacramento County Lead

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Dependency Referee Carol Chrisman has observed, "When you calculate it out, it's two minutes per case – enough time for everyone to say submit or object, but not much more." Karen de Sá, Broken Families, Broken Courts, San Jose Mercury News, Feb. 8, 2008. This is certainly not enough time to make the appropriate parental decisions for the children under the court's care.

31. Plaintiffs are informed and believe, and on the basis of such information and belief allege that the Judicial Council is well aware of this problem. The Blue Ribbon Commission recommended that the Judicial Council undertake a new judicial caseload study focused specifically on juvenile dependency courts and, pending completion of the study, that presiding judges evaluate their current allocation of judgeships and resources and make adjustments as necessary. Blue Ribbon Commission Report, at 22. The Judicial Council accepted this recommendation in full but has not yet released any guidelines or made any institutional changes.

32. Plaintiffs are informed and believe, and on the basis of such information and belief allege that while social workers serve as an arm of the judicial court, they are in no position to take up the slack to protect foster children given their own heavy workloads, executive and Board level mismanagement, and CPS's failure to follow through on oversight by the Board of Supervisors. A study commissioned by the California Department of Social Services concluded that the optimal, per-week caseload for social workers, by program, is as follows: 9.88 emergency response cases, 10.15 family maintenance cases, 11.94 family reunification cases, and 16.42 permanent placement cases. American Humane Association, SB2030: CHILD WELFARE SERVICES WORKLOAD STUDY iii (2000). But some Sacramento social workers carry caseloads that are more than double these recommended levels. See MGT of America, Inc., REVIEW OF THE SACRAMENTO CHILD PROTECTIVE SERVICES DIVISION, FINAL REPORT (March 23, 2009) ("MGT Report"). Moreover, they do so while laboring under long-standing policies that "plac[e] more emphasis and focus on documentation and desk-work activities than . . . on meeting with children and families and performing out-of-office fieldwork." *Id.* at 6. Against this backdrop, the ability of the children's appointed attorneys to conduct thorough and independent investigations are all the more critical.

33. With the courts and social workers incapable of protecting their wards, the last remaining guardian for a child in Dependency Court is his or her attorney.

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**C. Court-Appointed Counsel In Dependency Proceedings**

34. Section 317 of the California Welfare and Institutions Code requires that (1) counsel be appointed for children in almost all dependency cases, and (2) appointed counsel have caseloads and training that ensure adequate representation. CAL. WELF. & INST. CODE § 317(c). Section 317.5 further mandates that all parties who are represented by counsel in dependency proceedings, including minors who are the subject of dependency proceedings, are entitled to competent counsel. CAL. WELF. & INST. CODE § 317.5.

35. Section 317(c) states the primary responsibility of counsel for children in Dependency Court:

> "shall be to advocate for the protection, safety, and physical and emotional well-being of the child." Cal. Welf.. & Inst. Code § 317(c).

36. Section 317(e) imposes specific mandatory, minimum duties of counsel for children in dependency proceedings:

37. The counsel for the child shall be charged in general with the representation of the child's interests. To that end, the counsel shall make, or cause to have made, any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. He or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. In any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child. In addition, counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. The attorney representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker and is not expected to provide

nonlegal services to the child. The court shall take whatever appropriate action is necessary to fully protect the interests of the child. CAL. WELF. & INST. CODE § 317(e) (emphasis added).

38. State law recognizes the nexus between effective representation of children in dependency proceedings and caseloads for their lawyers. Section 317(c) provides that:

> The appointed counsel shall have a caseload and training that ensures adequate representation of the child. The Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel for children and shall adopt rules as required by Section 326.5 no later than July 1, 2001.
>
> CAL. WELF. & INST. CODE § 317(c) (emphasis added).

39. The California Rules of Court expand upon these standards. California Rule of Court 5.660(d) provides in pertinent part:

> (4) Standards of representation
>
> Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child's legal representation.
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> * * * *
>
> (6) Caseloads for children's attorneys
>
> The attorney for a child must have a caseload that allows the attorney to perform the duties required by section 317(e) and this rule, and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet the requirements stated in (3), (4), and (5). Cal. R. Ct. Rule. 5.660(d)(4) & (6) (emphasis added).

40. The ABA also has prescribed the basic obligations of dependency counsel. Counsel must, at a minimum:

A. Obtain copies of all pleadings and relevant notices;

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B. Participate in depositions, negotiations, discovery, pre-trial conferences, and hearings;

C. Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;

D. Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;

E. Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;

F. Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and

G. Identify appropriate family and professional resources for the child.

American Bar Association, STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996). Discharging just these basic obligations is necessarily time-consuming.

41. As stated above, California law requires the Judicial Council to "promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel." CAL. WELF. & INST. CODE § 317(c). In October 2007, the Judicial Council adopted a caseload standard of 188 clients per attorney, assuming that each full-time attorney is aided by one-half of the time of a full-time investigator or social worker. While the Judicial Council's standard would help to mitigate inadequate representation, even that number may not go far enough. NACC, for instance, recommends that a full-time attorney represent no more than 100 clients at a time.

**D. Federal and State Rights Implicated By Excessive Court and Attorney Caseloads**

42. Children subject to dependency proceedings or in foster care are entitled to due process under both the Fourteenth Amendment of the Federal Constitution and Article I, § 7 of the California Constitution. In proceedings to terminate parental rights, these children have, at the very least, a fundamental liberty interest in their own safety, health, and well-being, as well as an interest in maintaining the integrity of their family units and relationships with their biological parents or subsequent caregivers. These interests continue to be at stake even after these children are placed in state custody because a "special relationship" is created that gives rise to rights to reasonably safe living conditions and services necessary to ensure protection from physical, psychological, and

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emotional harm. As a result of these interests, these children are constitutionally entitled to adequate and effective assistance of counsel under the Due Process Clauses of the State and Federal Constitutions in both dependency proceedings and ensuing appeals. Their overworked, court-appointed lawyers are unable to meet this constitutional standard.

43. Children in dependency proceedings also are entitled under the Due Process Clauses of the State and Federal Constitutions to a fair and adequate tribunal to hear and decide their case so that they have a meaningful opportunity to be heard; thus, Dependency Court hearing officers are routinely unable to obtain and evaluate the sufficiency of the information provided to them in and of itself, and proportional to the liberty interests and other constitutional-level interests at stake for the children. Because of their excessive caseloads, the Dependency Courts of the County of Sacramento are unable to meet this constitutional standard.

44. As set forth above, Sections 317 and 317(c) of the California Welfare and Institutions Code afford children in dependency proceedings with a state law entitlement to competent assistance of counsel with a caseload that ensures adequate representation. These children also have federal law entitlements arising from the Child Welfare Act, 42 U.S.C. §§ 670 et seq., and the Child Abuse Prevention and Treatment and Adoption Reform Act ("CAPTA"), 42 U.S.C. § 5101 et seq. These entitlements are cognizable property interests under the Due Process Clauses of the State and Federal Constitutions. Children in dependency proceedings are unconstitutionally deprived of these property interests when they are provided with court-appointed counsel that cannot provide competent or adequate representation.

45. Moreover, the actions and inactions of the Defendants have resulted in the deprivation of the substantive due process rights conferred upon these children by the Fourteenth Amendment of the United States Constitution.

46. Article I, § 1 of the California Constitution ensures that "[a]ll people are by nature free and independent and have inalienable rights. Among these are . . . pursuing and obtaining safety." Because children in dependency proceedings are subject to overloaded tribunals and have court-appointed counsel that are unable to safeguard their protection, safety, and physical and emotional well-being, Defendants' actions and inactions violate this inalienable right.

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47. For all periods relevant to this Complaint, California has agreed to administer its foster care program pursuant to the Child Welfare Act, related regulations, and policies promulgated by the Secretary of the United States Department of Health and Human Services. 42 U.S.C. § 671(a)(22) of the Child Welfare Act provides that "the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children." The systemic failings of dependency proceedings caused by Defendants' actions and inactions violate § 671(a)(22) of the Child Welfare Act in at least two ways: (1) in the County of Sacramento, children in dependency proceedings are, in and of themselves, not "quality services that protect the health and safety of children"; and (2) because attorneys for children cannot and do not provide effective representation, which means that children are not able to obtain access to health and safety programs that they are eligible for, have no safety net, and are not adequately protected given the excessive caseloads of their court-appointed counsel and court referees. Court-appointed counsel are, among other things, unable to "investigate their [child clients'] interests beyond the scope of the juvenile proceeding" or "report to the courts other interests of the children that may need to be protected by the institution of other administrative or judicial proceedings," as required by CAL. WELF. & INST. CODE § 317(e).

48. Plaintiffs are informed and believe, and on the basis of such information and belief allege that for all periods relevant to this Complaint, the State of California has received federal funding pursuant to CAPTA to assist California in supporting its programs for abused and neglected children. To receive federal money under CAPTA, a state must submit a State Plan outlining the areas of child protective services the state intends to address with the funding, and it must ensure that it is complying with the statutory provisions. See 42 U.S.C. § 5106a(b)(1)(A), (b)(2)(A)(ix). CAPTA specifically requires:

> [T]hat in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—
>
> (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and

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(II) to make recommendations to the court concerning the best interests of the child.

42 U.S.C. § 5106a(b)(2)(A)(ix) (emphasis added).

49. Accordingly, every child who is subject to dependency proceedings in the County of Sacramento must be represented by a properly trained guardian ad litem who is charged with representing the child in those proceedings for these purposes. Court-appointed counsel serve as guardians ad litem for these children. For all the reasons given above, these children are deprived of their federal rights under 42 U.S.C. § 5106a(b)(2)(A)(ix) because their guardians ad litem can neither obtain a first-hand, clear understanding of a child's situation and needs, nor make recommendations to the court concerning the best interests of the child.

### E. The Caseloads of the Court-Appointed Attorneys Prevent Them from Providing Adequate, Effective, or Competent Legal Assistance to Their Clients

50. Pursuant to a Standing Order of the Superior Court of the County of Sacramento, third party, court-appointed attorneys are automatically appointed to represent each child who is the subject of dependency proceedings in that county, and are also appointed as the child's guardian ad litem.

51. Plaintiffs are informed and believe, and on the basis of such information and belief allege that the staff attorneys for the non-profit agency, who serve as court-appointed counsel for the approximately 5,100 children subject to dependency proceedings in the County of Sacramento, carry as many as 395 cases at a time – more than double the 188 caseload standard established by the Judicial Council of California ("Judicial Council"), and nearly four times the number promulgated by the National Association of Counsel for Children ("NACC"). And, their caseloads are growing dramatically. By the end of 2008, these court-appointed attorneys handled over 235 new cases per month. By contrast, they handled around 175 new cases per month one year earlier.

As a consequence, the appointed lawyers for these children are unable to adequately perform even the minimum tasks required of such counsel under law and in accordance with the American Bar Association's ("ABA") standards. The overloaded lawyers rarely meet with their child clients in their foster care placements, rely on brief telephone contact or courtroom exchanges to communicate,

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have no time to conduct complete case investigations or client-specific legal analysis, virtually never file extraordinary writs or pursue appeals, and are forced to rely on overworked county social workers and thus cannot meaningfully assess each client's placement or conduct an informed review of Child Protective Services' ("CPS") placement decisions.

52. These staggering caseloads are far in excess of those set forth by the Judicial Council and NACC and have led partly responsible for a high attorney turnover. Plaintiffs are informed and believe, and on the basis of such information and belief allege that twenty-two attorneys have left the nonprofit organization, which provides counsel for the foster children pursuant to the court-appointments, just within the last two years, with the majority of these attorneys having been employed for less than one year. For each attorney that departs, the child client must muster the strength to share his or her story, yet again, with a strange adult that the child is told to trust – an adult the child is told will be there to fight for him or her. Unfortunately, the child has already seen a myriad of "trustworthy adults" leave him or her behind for better opportunities. Insufficient funding makes it impossible for nonprofit organizations to offer its attorneys salaries commensurate with those paid by the County of Sacramento to similarly-tasked attorneys, which also contributes to the high attrition rate. In fact, these court-appointed attorneys are paid significantly less than what attorneys with comparable backgrounds earn if they work for the County of Sacramento. To make matters worse, high turnover exacerbates attorney caseloads by forcing the attorneys who remain on staff to shoulder the caseloads of the departed attorneys while their replacements are trained.

53. These overloaded attorneys cannot adequately, effectively, or competently represent the foster children of the County of Sacramento as required by federal and state statutory and constitutional law. The court-appointed attorneys are unable to meet regularly with their clients. In fact, months may pass between meetings. The needs of a child change on a weekly, if not daily, basis. This is particularly true when they are shuffled around between new homes and schools. Without regular contact, the court-appointed attorneys are incapable of adequately assessing or representing their clients' needs. Moreover, they routinely are unable to contact social workers and other professionals associated with their clients' cases, greatly hindering their abilities to develop their clients' cases or identify appropriate family and professional resources for the children. Often, a

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foster care placement that is in trouble can be saved when appropriate resources are in place. When these resources are not properly addressed, the child is simply moved, leading to phenomenon known as "foster care drift". Throughout this drift, the child's needs are not addressed but, instead, the problems are simply moved along. Further, critical pleadings, motions, responses, and objections often are neglected. Overworked social workers sometimes miss or are forced to ignore court orders. Without an attorney to file motions to enforce the court orders, a child may go without, for example, mandated visits with family members. The delay of court-ordered visitation can then lead to a delay of family reunification and permanence – the goal of the dependency system. And when a child inevitably shifts from one attorney to another due to regular turnover, the new attorney wastes precious time trying to come up to speed and risks missing key issues.

54. Plaintiffs are informed and believe, and on the basis of such information and belief allege that the appeals process does not fare any better. Due to their excessive caseloads, the court-appointed attorneys are rarely able to spend any or sufficient time pursuing their clients' interests on appeal or by extraordinary writ. Extraordinary writs are a vital tool in dependency proceedings as it is through this avenue that many of the juvenile court's interim orders, such as placement decisions, are reviewed. This problem is exacerbated by the fact that the nonprofit organization's staff does not have enough time or money to establish a writ or appellate division or to train its attorneys in the specialized practice of seeking writs. As a result, in the last four years, these court-appointed attorneys have taken only two extraordinary writs – one of which was handled by outside pro bono counsel. This means that hundreds of children have been forced to remain in placements or adhere to visitation plans simply because there was no attorney available to take the next legal step in their case.

**F. Unlawful Caseloads are Due to Inadequate Funding**

55. Plaintiffs are informed and believe, and on the basis of such information and belief allege that for years, the Superior Court of Sacramento paid for the court-appointed attorneys' services pursuant to the MOU. In 2008, however, the Superior Court of Sacramento agreed to participate in California's Dependency Representation, Administration, Funding, and Training ("DRAFT") program. Initiated in July 2004, DRAFT was established by the Judicial Council to

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centralize the administration of court-appointed counsel services within the AOC. Accordingly, when Sacramento County joined the DRAFT program, the AOC became responsible for paying for the court-appointed attorneys' services.

56. Plaintiffs are informed and believe, and on the basis of such information and belief allege that if the AOC had followed its own guidelines for DRAFT in funding the court-appointed attorneys, these attorneys could have met the recommended judicial council caseload standards. Assuming an aggregate caseload of 4,500 children, DRAFT guidelines provide that the court-appointed attorneys should receive funding sufficient to maintain 24 staff attorneys, 3.5 supervisors, and 12 social workers. The guidelines do not envision that supervisors will carry cases. Accordingly, each case-carrying attorney would be responsible for 188 cases and be assisted by a half-time social worker.

57. Plaintiffs are informed and believe, and on the basis of such information and belief allege that the staggering caseloads of attorneys and Dependency Court judges result from the funding practices of Defendants. The AOC's funding is disparate and seemingly arbitrary, at least to the extent that caseloads are concerned. For example, the AOC provides the children's court-appointed attorneys with essentially the same level of funding that it provides to Alameda County (roughly $2.6 million) even though Alameda County has less than half of Sacramento's caseload (2,300 dependency cases as compared to Sacramento's 5,100). Indeed, despite the growth of the caseload in 2008, the AOC has threatened to reduce the funding for the children's court-appointed attorneys by 10%.

58. Plaintiffs are informed and believe, and on the basis of such information and belief allege that to make matters worse, the AOC expects to reduce DRAFT funding state-wide by 10% in its next funding round. Consequently, we will likely see the already-insufficient funding for court-appointed attorneys reduced by 10%.

## VI. FACTUAL ALLEGATIONS REGARDING THE PLAINTIFFS

### A. E.T.

59. E.T. is a 14-year-old girl who is in her third foster care placement in less than one year. She is a special education student who has been diagnosed with depression. She was assigned

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a court-appointed attorney in October 2008, and she has had two attorneys in the short time since then.

60. Her lawyers have had little contact with her. Although her case has had 14 court hearings, her attorneys have met with her briefly only three times. Further, the County filed an amended petition with the Court, and her attorney was unable to discuss it with her beforehand.

61. E.T.'s lawyers have been unable to stabilize her foster care placements. She has only been visited by a lawyer at one placement.

62. E.T.'s lawyers also have been unable to investigate E.T.'s mental health issues and notify the Dependency Court on her behalf of any problems. Thus, consistent with the other Plaintiffs, E.T.'s attorneys have not, and are not, investigating this special education student's interests beyond the scope of the juvenile proceeding.

**B. K. R.**

63. K.R. is a 13-year-old girl who is in her fifth foster care placement. She suffers from severe behavioral problems, including oppositional defiance disorder. She was assigned a court-appointed attorney in early 1996. When her case was reopened in September 2005, she was again assigned a court-appointed legal representative. K.R. has had six attorneys since then.

64. K.R.'s lawyers have had almost no contact with her. Although her case has had 17 court hearings since September 2005, she has been interviewed only once outside of court (by a social worker). Further, her lawyers have not visited any of K.R.'s foster care placements, nor have they had any contact with school personnel.

65. Court-appointed counsel's investigation has been limited to some interviews with K.R.'s relatives years ago, early in the representation. Virtually nothing has been done to investigate K.R.'s interests beyond the scope of the Dependency Court proceeding. Her attorneys have been unable to file pleadings, motions, responses, or objections as necessary to protect her interests. Further, K.R.'s lawyers have failed to stabilize her foster care placements, determine whether she requires any services from the DHHS, or secure a proper educational placement.

**C. C.B.**

66. C.B. is a 17-year-old, developmentally disabled girl in over her tenth foster care

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placement. She was assigned a court-appointed attorney on February 17, 1999, and she has had 10 attorneys over the last 10 years.

67. C.B.'s case has had five court and administrative hearings. Her lawyers did not meet with her before the majority of those hearings.

68. Further, C.B.'s lawyers have been unable to file pleadings, motions, responses, or objections as necessary to protect her interests. They likewise have done little to investigate C.B.'s needs and emotional health beyond the scope of the juvenile proceeding, or to ensure that she is in a stable foster care placement. For instance, they have not visited her in at least 7 of her 10 placements.

69. C.B. has a sibling who has been adopted and has a post-adoption contact agreement to allow C.B. to see her sibling. C.B.'s lawyers have been unable to ensure compliance with this agreement. In addition, she has an adult sibling and no efforts have been made by her attorneys to contact him.

70. C.B. operates at an early grade school level with social skills that are similarly inconsistent with her age. C.B.'s lawyers have been unable to investigate her educational interests to assess whether her interests need to be protected by the institution of other administrative or judicial proceedings.

71. In addition, C.B. will "age out" of the foster care system when she turns 18 in September. Her attorneys have not had any time to assess whether C.B.'s psychological and developmental issues require that she be allowed to remain in the system until she is 21.

**D. G.S.**

72. G.S. is a 18-year-old, emotionally disturbed boy in his tenth foster care placement. He has had 11 attorneys since he first entered the dependency system on May 3, 2001.

73. G.S.'s case has had 28 court and administrative hearings. His lawyers did not meet with him before the majority of those hearings – including the original detention hearing.

74. Further, G.S.'s lawyers have been unable to file pleadings, motions, responses, or objections as necessary to protect his interests. They likewise have done little to investigate G.S.'s needs and emotional health beyond the scope of the juvenile proceeding, or to ensure that he is in a

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stable foster care placement. For instance, they have not visited him in at least 9 of his 10 placements.

75. G.S.'s lawyers also have been unable to ensure compliance with court orders. For example, the Sacramento County Department of Health and Human Services ("DHHS") has been ignoring a court order that G.S. be allowed to be visited by his siblings. G.S.'s counsel nonetheless has done nothing to enforce this order, and G.S. continues to have no access to his siblings.

76. In addition, G.S.'s attorneys have not yet assessed whether G.S.'s psychological issues will require that he be allowed to remain in the system until he is 21 have made no efforts thus far to address his potential imminent transition to life outside of the foster care system.

## VII. CLAIMS

### FIRST CLAIM

**Deprivation of Federal Constitutional Rights in Violation of 42 U.S.C. § 1983**

77. The preceding paragraphs are incorporated as if set forth here in full.

**A. Procedural Due Process Violations From Excessive Attorney Caseloads**

78. The foregoing actions and inactions of Defendants have deprived Plaintiffs and Class Members of their right to adequate and effective legal representation in both dependency proceedings and subsequent appeals, in violation of Plaintiffs' and Class Members' right not to be deprived of liberty and property without due process of law under the Fourteenth Amendment to the United States Constitution.

79. The foregoing actions and inactions of Defendants also deprive Plaintiffs and Class Members of state and federally created liberty or property rights without due process of law, in violation of the Fourteenth Amendment to the United States Constitution. The state law entitlement, of which Plaintiffs and Class Members have a protected interest, arises from the right to have competent assistance of counsel with a caseload that ensures adequate or competent representation, as guaranteed by CAL. WELF & INST. CODE §§ 317(c) and 317.5. The federal law entitlements, of which Plaintiffs and Class Members have a protected interest, arise from the Child Welfare Act, 42 U.S.C. §§ 670 et seq., and CAPTA, 42 U.S.C. §55101 et seq.

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**B. Substantive Due Process Violations From Excessive Attorney Caseloads**

80. Further, the foregoing actions and inactions of Defendants constitute a failure to exercise an affirmative duty to protect the welfare of Plaintiffs and Class Members, which is a substantial factor leading to, and the proximate cause of, violation of Plaintiffs' and Class Members' constitutionally protected liberty and privacy interests. The foregoing actions and inactions constitute a policy, pattern, practice and/or custom that is inconsistent with the exercise of reasonable professional judgment and amounts to deliberate indifference to Plaintiffs' and Class Members' serious and constitutionally protected rights and liberty and privacy interests. As a result, Plaintiffs and Class Members have been, and are being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment of the United States Constitution. Defendants have arbitrarily and capriciously deprived Plaintiffs and Class Members of their due process rights in the absence of any countervailing state interest.

81. These substantive due process rights include, but are not limited to, the right to protection from unnecessary harm while in government custody; the right to a living environment that protects foster children's physical, mental, and emotional safety and well-being; the right to services necessary to prevent foster children from deteriorating or being harmed physically, psychologically, or otherwise while in government custody, including, but not limited to, the right to safe and secure foster care placements, appropriate monitoring and supervision, appropriate planning and services directed toward ensuring that the child can leave foster care and grow up in a permanent family, and adequate medical, dental, psychiatric, psychological, and educational services; the right not to be deprived of liberty by retention in government custody or locked detention facilities beyond necessity; the right to treatment and care consistent with the purpose of assumption of custody by the County of Sacramento; the right not to be retained in custody longer than is necessary to accomplish the purposes to be served by taking the child into custody; and the right to receive care, treatment, and services determined and provided through the exercise of accepted, reasonable, professional judgment.

**C. Procedural Due Process Violations From Excessive Judicial Caseloads**

82. Further, the foregoing actions and inactions of Defendants deprive Plaintiffs and Class

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Members of a fair and adequate tribunal to hear and decide the dependency proceedings to which they are subject. Thus, Dependency Court hearing officers are routinely unable to obtain and evaluate the sufficiency of the information provided to them in and of itself, and proportional to the liberty interests and other constitutional-level interests at stake for the children. Accordingly, Plaintiffs and Class Members have no meaningful opportunity to be heard in their dependency proceedings, thus depriving them of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

83. The violation by Defendants, and each of them, of the foregoing procedural and substantive due process rights deprives Plaintiffs and Class Members of their federal rights, privileges, and immunities under color of state law in violation of 42 U.S.C. § 1983.

84. Plaintiffs and Class Members have suffered injury that is irreparable in nature as the proximate result of the failure of Defendants, and each of them, (1) to enable the SCA to provide Plaintiffs and Class Members with adequate, effective, and competent assistance of counsel and (2) maintain a Dependency Court system with a reasonable caseload that is capable of providing Plaintiffs and Class Members with a meaningful opportunity to be heard. Plaintiffs and Class Members are without an adequate remedy at law.

**SECOND CLAIM**

**Deprivation of Rights under the Federal Child Welfare Act in Violation of 42 U.S.C. § 1983**

85. The preceding paragraphs are incorporated as if set forth here in full.

86. As set forth above, the Dependency Court system in Sacramento County is overloaded. CPS social workers are overworked and labor under internal, systemic policies that have been criticized by outsiders for years, and thus cannot be relied upon to provide complete or accurate information about children involved in dependency proceedings. Accordingly, the children's court-appointed attorneys are not fully informed. That, coupled with their excessive caseloads, renders the attorneys unable to adequately, effectively or competently represent the interests of their child clients or meet their minimum responsibilities in doing so, as expressed in state and federal law. Judicial referees likewise carry overly burdensome caseloads that make it impossible to safeguard the health and safety of children in Dependency Court proceedings when the counsel for children who are the

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centerpiece of the proceeding are unable to meet their obligations, thus depriving Dependency Courts with argument, authorities, and information that because of their own caseloads they cannot obtain for themselves. Accordingly, the actions and inactions of Defendants place Plaintiffs and Class Members at risk and constitute a failure to "develop or implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children," in violation of 42 U.S.C. § 671(a)(22) of the Child Welfare Act.

87. The violation by Defendants, and each of them, of the foregoing federal rights deprives Plaintiffs and Class Members of their federal rights, privileges, and immunities under color of state law in violation of 42 U.S.C. § 1983.

**THIRD CLAIM**

**Deprivation of Rights under the Child Abuse Prevention and Treatment and Adoption Reform Act in Violation of 42 U.S.C. § 1983**

88. The preceding paragraphs are incorporated as if set forth here in full.

89. As set forth above, Plaintiffs' and Class Members' overworked, court-appoint counsel – as their guardians ad litem – are incapable of representing their child clients in dependency proceedings. Among other things, their counsel cannot conduct meaningful investigations within and beyond the scope of the juvenile proceeding to obtain, first-hand, a clear understanding of their child clients' situation and needs and are unable to make any recommendations to the Dependency Court concerning the best interests of their child clients. As a result of the foregoing actions and inactions of Defendants, Plaintiffs and Class Members have been deprived of their right to a guardian ad litem in dependency proceedings in violation of 42 U.S.C. § 5106a(b)(2)(A)(xiii) of CAPTA.

90. The violation by Defendants, and each of them, of the foregoing federal rights deprives Plaintiffs and Class Members of their federal rights, privileges, and immunities under color of state law in violation of 42 U.S.C. § 1983.

**FOURTH CLAIM**

**Violation of Art. I, § 1 of the California Constitution**

91. The preceding paragraphs are incorporated as if set forth here in full.

92. The foregoing actions and inactions of Defendants constitute a failure to provide

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Plaintiffs and Class Members with fair and adequate tribunals and with adequate and effective legal counsel whose duty is to safeguard, and whose adequate and effective assistance is necessary to safeguard, their protection, safety, and physical and emotional well-being, thereby violating their inalienable right to pursue and obtain safety under the California Constitution. CAL. CONST. Art. I, § 1.

**FIFTH CLAIM**

**Violation of Art. I, § 7 of the California Constitution**

93. The preceding paragraphs are incorporated as if set forth here in full.

94. The foregoing actions and inactions of Defendants have deprived Plaintiffs and Class Members of their right to adequate and effective legal representation in both dependency proceedings and subsequent appeals, in violation of Plaintiffs' and Class Members' right not to be deprived of liberty and property without due process of law under the California Constitution. CAL. CONST. Art. I, § 7.

95. The foregoing actions and inactions of Defendants also deprive Plaintiffs and Class Members of state and federally created liberty or property rights without due process of law. The state law entitlement of which Plaintiffs and Class Members have a protected interest arises from the right to have competent assistance of counsel with a caseload that ensures adequate representation, as guaranteed by CAL. WELF & INST. CODE §§ 317(c) and 317.5. The federal law entitlements, of which Plaintiffs and Class Members have a protected interest, arise from the Child Welfare Act, 42 U.S.C. §§ 670 et seq., and CAPTA, 42 U.S.C. §55101 et seq.

96. Further, these actions and inactions deprived Plaintiffs and Class Members of a fair and adequate tribunal to hear and decide their dependency proceedings. Accordingly, Plaintiffs and Class Members have no meaningful opportunity to be heard in their dependency proceedings, thus depriving them of due process of law.

**SIXTH CLAIM**

**Welf. & Inst. Code § 317(c)**

97. The preceding paragraphs are incorporated as if set forth here in full.

98. As a result of the foregoing actions and inactions of Defendants, Plaintiffs and Class

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Members have been deprived of their right to representation by counsel with caseloads that ensure adequate representation in dependency proceedings, in violation of CAL. WELF & INST. CODE § 317(c).

**SEVENTH CLAIM**

**Welf. & Inst. Code § 317.5(b)**

99. The preceding paragraphs are incorporated as if set forth here in full.

100. As a result of the foregoing actions and inactions of Defendants, Plaintiffs and Class Members have been deprived of their right to representation by competent counsel in their dependency proceedings in violation of CAL. WELF & INST. CODE § 317.5.

**PRAYER FOR RELIEF**

1. For the foregoing reasons, Plaintiffs request the following relief:

2. For an order certifying the proposed Class herein under Rule 23b (2) of the Federal Rules of Civil Procedure and appointing Plaintiffs' and Plaintiffs' counsel of record to represent that Class;

3. For a declaratory judgment that due to Defendants' actions or inactions, Defendants, and each of them, violated, continue to violate, and/or will violate:

A. Plaintiffs' and Class Members' rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

B. Plaintiffs' and Class Members' rights under 42 U.S.C. § 671(a)(22) of the Child Welfare Act;

C. Plaintiffs' and Class Members' rights under 42 U.S.C. § 5106a(b)(2)(A)(xiii) of CAPTA;

D. Plaintiffs' and Class Members' inalienable right to safety under Art. I, § 1 of the California Constitution;

E. Plaintiffs' and Class Members' rights under the Due Process Clause of Art. I, § 7 of the California Constitution;

F. Plaintiffs' and Class Members' right to representation by counsel in their dependency proceedings with a caseload that ensures adequate representation under CAL.

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WELF. & INST. § 317(c); and

G. Plaintiffs' and Class Members' right to representation by competent counsel in their dependency proceedings under CAL. WELF. & INST. § 317.5;

4. Defendants, and each of them, be temporarily and permanently enjoined from currently and continually violating Plaintiffs' and Class Members' constitutional and statutory rights under state and federal law;

5. For an order mandating that Defendants provide the additional resources required to comply with the Judicial Council of California and the National Association of Counsel for Children's recommended caseloads for each court-appointed attorney;

6. Costs and attorney's fees under 42 U.S.C. § 1988; and

7. Such other relief as the Court deems proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial for all issues that are so triable.

Dated: July 16, 2009

WINSTON & STRAWN LLP

By: _____
Jonathan M. Cohen
Robyn Callahan
Attorneys for Plaintiffs

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**681 F.Supp.2d 1151 (2010)**

**E.T., K.R., C.B., and G.S., by their next friend, Frank Dougherty, on their behalf and on behalf of all those similarly situated, Plaintiffs,**

**v.**

**Ronald M. GEORGE, Chair of the Judicial Council of California, in his official capacity; William C. Vickrey, Administrative Director of the Administrative Office of the Courts of the Judicial Council, in his official capacity; and James M. Mize, Presiding Judge of the Superior Court of the County of Sacramento, in his official capacity, Defendants.**

No. 2:09-cv-01950 FCD DAD.

**United States District Court, E.D. California.**

January 7, 2010.

1155 *1155 Robyn T. Callahan, Jonathan Michael Cohen, Winston & Strawn LLP, San Francisco, CA, for Plaintiffs.

Robert A. Naeve, Jones Day, Irvine, CA, for Defendants.

## *MEMORANDUM AND ORDER*

FRANK C. DAMRELL, JR., District Judge.

This matter is before the court on defendants Ronald M. George, William C. Vickrey, and James M. Mize's (collectively "defendants") motion to abstain and to dismiss the complaint. Plaintiffs E.T., K.R., C.B., and G.S., by their next friend, Frank Dougherty, (collectively "plaintiffs") oppose the motions. On November 6, 2009, the court heard oral argument on defendants' arguments relating to justiciability. For the reasons set forth below, defendants' motion to dismiss is GRANTED.

## BACKGROUND

This case arises out of plaintiffs' allegations that the caseloads in dependency courts in Sacramento County are so excessive that they violate federal and state constitutional and statutory provisions. Specifically, plaintiffs contend that the overburdened dependency court system frustrates both the ability of the courts to adjudicate and provide children with a meaningful opportunity to be heard and the effective, adequate, and competent assistance of counsel. (Compl., filed July 16, 2009.)

## A. Dependency Court Proceedings

Dependency proceedings are conducted to protect the safety and well-being of an abused or neglected child whose parents or guardians cannot or will not do so or who themselves pose a threat to the child. (Compl. ¶ 28.) They commence with an initial hearing, which is held to determine whether a child falls within one of ten jurisdictional bases of the juvenile court. Cal. Welf. & Inst.Code §§ 300, 305, 306, 311, 325 & 332. Dependency courts ultimately conduct an evidentiary hearing regarding the proper disposition of the child. *Id.* §§ 319, 352, 355 & 358. In most cases, at the disposition hearing, dependency courts "determine what services the child and the family need to be reunited and free of court supervision." *Bridget A. v. Superior Court,* 148 Cal.App.4th 285, 302-03, 55 Cal.Rptr.3d 647 (2d Dist.2007). However, the courts have a variety of options, from reuniting the family and child to removing the child from parental

1156 custody and placing the child in foster care. *See generally id.* (outlining court options at *1156 disposition hearings). After a child is placed under court supervision, subsequent court proceedings and reviews are required every six months. *Id.*; *see* Cal. Welf. & Inst.Code §§ 364, 366.21, 366.22.

California Welfare & Institutions Code § 317 requires that counsel be appointed for children in almost all dependency cases. (Compl. ¶ 34.) Specifically, § 317(c) provides that "[i]f a child is not represented by counsel, the court shall appoint counsel for the child unless the court finds that the child would not benefit from the appointment of counsel." This finding must be made on the record. *Id.* Pursuant to a Standing Order of the Superior Court of the County of Sacramento, third party, court-appointed attorneys are automatically appointed to represent each child who is the subject of dependency proceedings in the county; these attorneys are also appointed as the child's guardian ad litem. (Compl. ¶ 50.)

## B. Functions and Funding within the Dependency Court System

The Judicial Council of California is the body responsible for overseeing the statewide administration of justice in the California courts. (Compl. ¶ 9.) As Chair of the Judicial Council, the Honorable Ronald M. George,[1] defendant, is responsible for the allocation of the judicial branch budget, including the allocation of relevant funds for courts and court-appointed child representation in dependency court proceedings. (*Id.*) The Administrative Office of the Courts (the "AOC") is the staff agency of the judicial council and is responsible for California's Dependency Representation, Administration, Funding, and Training ("DRAFT") program. (Compl. ¶ 10.) DRAFT was established in July 2004 by the Judicial Council of California to centralize the administration of court-appointed counsel services within the AOC. (Compl. ¶ 55.) As Administrative Director, defendant William C. Vickrey is responsible for the administration of the AOC. (Compl. ¶ 10.) Finally, the Presiding Judge of the Superior Court, the Honorable James M. Mize, defendant, is responsible for allocating resources within the Sacramento County Superior Court in a manner that promotes the implementation of state and local budget priorities and that ensures equal access to justice and the ability of the court to carry out its functions effectively. (Compl. ¶ 11.) The Presiding Judge also has the authority to assign judges to departments, such as Sacramento County Superior Court's dependency courts. (*Id.*)

The Superior Court of Sacramento previously paid for the court-appointed attorneys' services pursuant to a Memorandum of Understanding. (Compl. ¶ 55.) In 2008, however, the Superior Court of Sacramento agreed to participate in the DRAFT program. When Sacramento County joined the DRAFT program, the AOC became responsible for paying for the court-appointed attorneys' services. (*Id.*)

Plaintiffs allege that the staff attorneys for the non-profit agency, who serve as court appointed counsel for the approximately 5,100 children subject to dependency proceedings in the County of Sacramento, carry as many as 395 cases at a time. (Compl. ¶ 51.) Plaintiffs assert this is more than double the 188 caseload standard established by the
1157 Judicial Council and nearly four times the number promulgated by the National Association of Counsel *1157 for Children. As a consequence, plaintiffs allege that the appointed lawyers are unable to adequately perform even the minimum tasks required under the law and in accordance with the American Bar Association's ("ABA") standards. Specifically, these lawyers rarely meet with their child clients in their foster care placements, rely on brief telephone contact or courtroom exchanges to communicate, cannot conduct complete case investigations or child-specific legal analysis, virtually never file extraordinary writs or pursue appeals, and rely on overworked county social workers without conducting an informed review of Child Protective Services' ("CPS") placement decisions. (*Id.*) Further, plaintiffs allege that the high caseload and inadequate salaries of these lawyers lead to high attorney turnover, which exacerbates the problems associated with adequate representation. (Compl. ¶ 52.) Plaintiffs contend that the court-appointed attorneys' unlawful caseloads are due to inadequate funding and assert that if the AOC had followed its own guidelines for DRAFT in funding the court-appointed attorneys, counsel could have met the recommended Judicial Council caseload standards. (Compl. ¶ 56.)

Plaintiffs allege that the County of Sacramento has only five judicial referees, who preside over dependency proceedings, responsible for approximately 5,100 active dependency cases. (Compl. ¶ 29.) Plaintiffs allege that this

affords referees roughly two minutes of courtroom time per case. (*Id.*) Therefore, plaintiffs contend that a foster child appearing in a Sacramento County dependency court with ineffective counsel cannot reasonably expect the judicial referee to serve as a "backstop" and look out for his or her best interests. (*Id.*)

## C. Named Plaintiffs

Plaintiff E.T. is a fourteen-year-old girl who is in her third foster care placement in less than one year. She is a special education student who has been diagnosed with depression. She was assigned a court-appointed attorney in October 2008 and has had two attorneys since then. (Compl. ¶ 59.) Although E.T. has had fourteen court hearings, her attorneys have met with her briefly only three times and have visited her at only one placement. (Compl. ¶¶ 60-61.) They have been unable to stabilize her foster care placements. (Compl. ¶ 61.) Further, they have been unable to investigate her mental health issues to notify the dependency court of any problems. (Compl. ¶ 62.)

Plaintiff K.R. is a thirteen-year-old girl who is in her fifth foster care placement. She suffers from severe behavioral problems, including oppositional defiance disorder. She was assigned a court-appointed attorney in early 1996. When her case was reopened in September 2005, she was again assigned a court-appointed legal representative. K.R. has had six attorneys since then. (Compl. ¶ 63.) However, although her case has had seventeen court hearings since September 2005, K.R.'s attorneys have not visited any of her foster care placements or had any contact with school personnel. (Compl. ¶ 64.) K.R. has been interviewed only once outside of court, by a social worker, and virtually nothing has been done to investigate K.R.'s interests beyond the scope of the dependency court proceedings. K.R.'s attorneys have been unable to file pleadings, motions, responses, or objections as necessary to protect her interests. Further, they have been unable to stabilize her foster care placements, determine whether she requires public services, or secure a proper educational placement. (Compl. ¶ 65.)

1158 Plaintiff C.B. is a seventeen-year-old, developmentally disabled girl, who is in *1158 her tenth foster care placement. She was assigned a court-appointed attorney on February 17, 1999, and she has had ten attorneys over the last ten years. (Compl. ¶ 67.) Her attorneys have not visited her in at least seven of her ten placements. She has had five court and administrative hearings, but her lawyers did not meet with her before the majority of those hearings. (Compl. ¶ 68.) C.B.'s attorneys have been unable to file pleadings, motions, responses or objections as necessary to protect her interests. They have done little to investigate C.B.'s needs and emotional health beyond the scope of the juvenile proceedings or to ensure that she is in a stable foster care placement. (Compl. ¶ 68.) Further, they have failed to ensure compliance with an agreement that C.B. be able to see her sibling, who has been adopted, or to make any effort to meet up with her other adult sibling. (Compl. ¶ 69.) They have also been unable to investigate her educational interests to assess whether her interests need to be protected by the institution or other administrative or judicial proceedings. (Compl. ¶ 70.) C.B. will "age out" of the foster case system when she turns 18; her attorneys have not had time to assess whether her psychological or developmental issues require that she be allowed to remain in the system until she is 21. (Compl. ¶ 71.)

G.S. is an eighteen-year-old, emotionally disturbed boy in his tenth foster case placement. He has had eleven attorneys since he first entered the dependency system on May 3, 2001. (Compl. ¶ 72.) G.S. has had 28 court and administrative hearings, but his lawyers did not meet him before the majority of those hearings, including the original detention hearing. (Compl. ¶ 73.) G.S.'s attorneys have been unable to file pleadings, motions, responses or objections as necessary to protect his interests. They have done little to investigate G.S.'s needs and emotional health beyond the scope of the juvenile proceedings or to ensure that he is in a stable foster placement, including failing to visit him in nine of his ten placements. (Compl. ¶ 74.) They have also failed to ensure compliance with court orders, including one that allows him to visit his siblings. (Compl. ¶ 75.) Further, his attorneys have not had time to assess whether his psychological issues require that he be allowed to remain in the system until he is 21 or make efforts relating to his potential imminent transition to life outside the foster care system. (Compl. ¶ 76.)

## D. The Litigation

On July 16, 2009, plaintiffs filed suit in this case, by their next friend Frank Dougherty, on behalf of themselves and all others similarly situated, specifically,

> All children currently and hereafter represented by court-appointed counsel in juvenile dependency proceedings in the Sacramento County Superior Court.

(Compl. ¶ 12.) They assert federal claims under 42 U.S.C. § 1983 arising out of alleged (1) procedural due process violations from excessive attorney caseloads; (2) substantive due process violations from excessive attorney caseloads; (3) procedural due process violations from excessive judicial caseloads; (4) deprivation of rights under the Federal Child Welfare Act ("FCWA"); and (5) deprivation of rights under the Child Abuse Prevention and Treatment and Adoption Reform Act ("CAPTA"). Plaintiffs also assert state law claims arising out of alleged (1) violation of the inalienable right to pursue and obtain safety set forth in Article I, § 1 of the California Constitution for failure to provide
1159 fair and *1159 adequate tribunals and effective legal counsel; (2) violation of due process as guaranteed in Article I, § 7 of the California Constitution for failure to provide adequate and effective legal representation in dependency proceedings; (3) violation of Welfare and Institutions Code § 317(c); and (4) violation of Welfare and Institutions Code § 317.5(b).

Through this action, plaintiffs seek a declaratory judgment that defendants have violated, continue to violate, and/or will violate plaintiffs' rights as guaranteed by the above constitutions and statutes. Plaintiffs also seek injunctive relief, restraining future violations of these rights, and an order "mandating that [d]efendants provide the additional resources required to comply with the Judicial Council of California and the National Association of Counsel for Children's recommended caseloads for each court-appointed attorney." (Prayer for Relief.)

## STANDARD

Under Federal Rule of Civil Procedure 8(a), a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *See* *Ashcroft v. Iqbal,* ___ U.S. ___, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009). Under notice pleading in federal court, the complaint must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atlantic v. Twombly,* 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (internal quotations omitted). "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." *Swierkiewicz v. Sorema N.A.,* 534 U.S. 506, 512, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002).

On a motion to dismiss, the factual allegations of the complaint must be accepted as true. *Cruz v. Beto,* 405 U.S. 319, 322, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972). The court is bound to give plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. *Retail Clerks Int'l Ass'n v. Schermerhorn,* 373 U.S. 746, 753 n. 6, 83 S.Ct. 1461, 10 L.Ed.2d 678 (1963). A plaintiff need not allege "`specific facts' beyond those necessary to state his claim and the grounds showing entitlement to relief." *Twombly,* 550 U.S. at 570, 127 S.Ct. 1955. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal,* 129 S.Ct. at 1949.

Nevertheless, the court "need not assume the truth of legal conclusions cast in the form of factual allegations." *United States ex rel. Chunie v. Ringrose,* 788 F.2d 638, 643 n. 2 (9th Cir.1986). While Rule 8(a) does not require detailed factual allegations, "it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Iqbal,* 129 S.Ct. at 1949. A pleading is insufficient if it offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Twombly,* 550 U.S. at 555, 127 S.Ct. 1955; *Iqbal,* 129 S.Ct. at 1950 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). Moreover, it is inappropriate to assume that the plaintiff "can prove facts which it has not alleged or that the defendants have

violated the . . . laws in ways that have not been alleged." *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters,* 459 U.S. 519, 526, 103 S.Ct. 897, 74 L.Ed.2d 723 (1983).

1160 *1160 Ultimately, the court may not dismiss a complaint in which the plaintiff has alleged "enough facts to state a claim to relief that is plausible on its face." *Iqbal,* 129 S.Ct. at 1949 (citing *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). Only where a plaintiff has failed to "nudge [his or her] claims across the line from conceivable to plausible," is the complaint properly dismissed. *Id.* at 1952. While the plausibility requirement is not akin to a probability requirement, it demands more than "a sheer possibility that a defendant has acted unlawfully." *Id.* at 1949. This plausibility inquiry is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 1950.

In ruling upon a motion to dismiss, the court may consider only the complaint, any exhibits thereto, and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201. *See Mir v. Little Co. Of Mary Hospital,* 844 F.2d 646, 649 (9th Cir.1988); *Isuzu Motors Ltd. v. Consumers Union of United States, Inc.,* 12 F.Supp.2d 1035, 1042 (C.D.Cal.1998).

## ANALYSIS

Plaintiffs' claims describe critical dependency court system failures, which adversely affect the lives of thousands of children. The complaint depicts a court system in which the voices of these children are not heard and their stories are not told while important decisions affecting their health and welfare are being made.

While acknowledging the gravity of these issues, defendants assert that such claims are nonjusticiable. Specifically, defendants assert that "the complaint impermissibly attempts to embroil this court in administration and funding of the dependency courts in the Superior Court of Sacramento County." (Defs.' Mot. to Dismiss, filed Sept. 18, 2009, at 15.) Defendants contend that plaintiffs' claims implicate duties involving state judicial processes that cannot be properly determined by a federal court and plaintiffs seek remedies that cannot be molded without violating established principles of equity, comity, and federalism.

"The judicial power of the United States defined by Art[icle] III is not an unconditioned authority to determine the constitutionality of legislative or executive acts." *Valley Forge Christian Coll. v. Americans United For Separation of Church and State, Inc.,* 454 U.S. 464, 471, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982). Rather, Article III limits "the federal judicial power `to those disputes which confine federal courts to a role consistent with a system of separated powers and which are traditionally thought to be capable of resolution through the judicial process.'" *Id.* at 472, 102 S.Ct. 752 (quoting *Flast v. Cohen,* 392 U.S. 83, 97, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968)); *Steel Co. v. Citizens For A Better Env't,* 523 U.S. 83, 102, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998).

Cases are thus nonjusticiable when the subject matter of the litigation is inappropriate for federal judicial consideration. *Baker v. Carr,* 369 U.S. 186, 198, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). In determining whether a case is justiciable, "consideration of the cause is not wholly and immediately foreclosed; rather, the [c]ourt's inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and
1161 whether protection for the right asserted can be *1161 judicially molded." *Id.* "It is the role of the courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution." *Lewis v. Casey,* 518 U.S. 343, 349, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996). These basic concerns are heightened when a lawsuit challenges core activities of *state* responsibility. *Rizzo v. Goode,* 423 U.S. 362, 378-79, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976).

"Since the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." *Younger v. Harris,* 401 U.S. 37, 43, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971). This desire is premised upon the fundamental and vital role of comity in the formation of this country's government and "perhaps for lack of a better and clearer way to describe it, is referred to by many as

`Our Federalism.'" *Id.* at 44, 91 S.Ct. 746. Our Federalism demonstrates "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways." *Id.* It represents "a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Id.*

It is within the context of this foundational concept of comity, which strikes at the heart of the country's governing principles, that the court must view plaintiffs' serious claims. The court is cognizant of the potential hardships inflicted upon one of society's most vulnerable populations if plaintiff's claims are true. The court is equally cognizant of the profound consequential principles of federalism implicated by this case. Accordingly, it is with careful attention to these two significant but conflicting interests that the court undertakes its analysis of justiciability pursuant to its equitable discretion and under the principles set forth by *Younger v. Harris* and its progeny.[2]

## 1. Equitable Abstention[3]

Principles of equity, comity, and federalism preclude equitable intervention when a federal court is asked to enjoin a
1162 *1162 state court proceeding. *O'Shea v. Littleton,* 414 U.S. 488, 499-500, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974). The doctrine of equity jurisprudence provides that a "court of equity should not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." *Id.* at 499, 94 S.Ct. 669.

The purpose of the doctrine of equitable abstention is to sustain "the special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law." *O'Shea v. Littleton,* 414 U.S. 488, 500, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974) (quotation omitted). If the equitable relief requested requires intrusive follow-up into state court proceedings, it constitutes "a form of the monitoring of the operation of state court functions that is antipathetic to established principles of comity." *Id.* Indeed, the Supreme Court has recently noted that "institutional reform injunctions often raise sensitive federal concerns." *Horne v. Flores,* ___ U.S. ___, 129 S.Ct. 2579, 2593, 174 L.Ed.2d 406 (2009) (holding that Court of Appeals should have inquired into whether changed conditions satisfied statutory violations that the continuing structural reform injunction was directed to address). These "[f]ederalism concerns are heightened when . . . a federal court decree has the effect of dictating state or local budget priorities. States and local governments have limited funds. When a federal court orders that money be appropriated for one program, the effect is often to take funds away from other important programs." *Horne,* 129 S.Ct. at 2593-94.

"When the relief sought would require restructuring of state governmental institutions, federal courts will intervene only upon finding a clear constitutional violation, and even then only to the extent necessary to remedy that violation." *Los Angeles County Bar Ass'n v. Eu,* 979 F.2d 697, 703 (9th Cir.1992). Both the First and Fifth Circuits have adjudicated cases relating to overburdened court systems and the substantial delays occasioned by these serious resource allocation problems, and both Circuits have held that the doctrine of equitable abstention barred consideration of the merits of such claims. In *Ad Hoc Committee on Judicial Administration v. Massachusetts,* the plaintiffs brought suit against the state, the state legislature, and the governor of Massachusetts to compel the furnishing of additional court facilities. 488 F.2d 1241 (1st Cir. 1973). The First Circuit noted that the Supreme Court has never found *per se* unconstitutional delay in a civil case; rather, "whether delay is a violation of due process depends on the individual case." *Id.* at 1244. Therefore, the First Circuit held the case was not justiciable because, in order to define the constitutional duty, the court would have to reduce due process into formulae and timetables establishing the maximum permissible delay, which would replace a context specific inquiry into the effect of the delay on the parties, their diligence, the nature of the case, and the interests at stake. *Id.* Similarly, to determine whether that duty was violated, the court would have to extrapolate from statistics, as opposed to considering factors such as discovery,
1163 negotiation, *1163 investigation, strategy, counsel's engagement on other matters, and even procrastination. *Id.* at 1245.

Further, the *Ad Hoc Committee* court recognized that the relief sought would be unmanageable and outside the scope of the federal judiciary. Specifically, the First Circuit noted

> a federal judge faced with the awesome task of ordering measures to cut down the waiting period in a state's judiciary could hardly consider merely the augmentation of resources. He would also have to inquire into the administration of the system, its utilization of personnel, the advisability of requiring adoption of techniques such as pre-trial conferences, different calendar arrangements, split trials, and the like, and countless other administrative matters about which books have been written and courses taught, and as to the relative value of which there remains much dispute.

*Id.* In essence, the relief requested by the plaintiff would require the court to sit as a receiver over the state court system. *Id.* at 1246 (noting that "[w]hile the state judiciary might appreciate additional resources, it would scarcely welcome the intermeddling with its administration which might follow."). Moreover, the court recognized that financing and organization of the federal and state judiciary have been historically "left to the people, through their legislature." *Id.* While, in certain circumstances, courts have ordered a state to furnish certain levels of medical or psychiatric care to those under the states' control, in such cases, the alternative, either explicitly or implicitly, was the closure of noncompliant institutions. *Id.* at 1246. Any such implied threat to close down a state court system "would amount to little more than a quixotic and unwarranted intrusion into an entire branch of government." *Id.* Accordingly, the court concluded "it would be both unprecedented and unseemly for a federal judge to attempt a reordering of state priorities" as required by the plaintiff's requested injunctive relief. *Id.* at 1245-46. While "[t]he dictates of a federal court might seem to promise easy relief, . . . they would more likely frustrate and delay meaningful reform which, in a system so complex, cannot be dictated from outside but must develop democratically from within the state." *Id.* at 1246.

Similarly, in *Gardner v. Luckey,* the Fifth Circuit held that the claims brought by plaintiff "contemplate[d] exactly the sort of intrusive and unworkable supervision of state judicial processes condemned [by the Supreme Court]." 500 F.2d 712, 715 (5th Cir.1974). The plaintiffs filed a class action against Florida Public Defender Offices, alleging ineffective assistance of counsel arising out of inadequate funding and excessive caseloads. *Id.* at 713. The plaintiffs asked the court to declare the Offices' caseloads excessive, to specify how excessive they were, and to enjoin acceptance of overload cases. *Id.* at 713. The court held that equitable abstention barred suit because the relief requested would require an ongoing audit of state criminal proceedings. *Id.* at 715. Further, the court noted that plaintiffs could file habeas actions to challenge their custody. *Id.*

The Ninth Circuit, however, has held that equitable abstention did not bar federal jurisdiction in a case for declaratory relief arising out of delays in the Los Angeles County Superior Court. *Los Angeles County Bar Ass'n,* 979 F.2d at 703-
1164 04. In *Los Angeles County Bar Ass'n,* the plaintiff alleged constitutional violations of *1164 its rights to access the courts and equal protection arising out a statute that prescribed the number of judges on the court. The Ninth Circuit distinguished the First Circuit's decision in *Ad Hoc Committee* and held that equitable abstention did not apply to bar federal court jurisdiction. First, the plaintiff alleged that the *average* time to resolution of civil cases in the Los Angeles County Superior Court was unconstitutional. *Id.* at 703. The Ninth Circuit noted that this was a less difficult question than that before the First Circuit, whether a delay was constitutionally acceptable in any given case. *Id.* Second, *the plaintiff sought only declaratory, not injunctive relief.* As such, the Ninth Circuit noted that any order would not directly require supervision of the state court system by federal judges. Therefore, the Ninth Circuit concluded, "although not without some trepidation," that the claims for declaratory relief were appropriately before it. *Id.* at 704.

Judge Kleinfeld, concurring in the decision, which ultimately dismissed the plaintiff's claims on the merits, disagreed with the majority's decision regarding equitable abstention. *Id.* at 708-11. In noting that declaratory judgments are discretionary, he asserted that a federal court cannot properly declare a state legislative action regarding the allocation of judges to be wrong, "where there are no legal standards to say what number is right." *Id.* at 709-10. Further, because it would be impossible to derive a standard without considering (1) "methods of judicial administration within the state court system," (2) "the receptiveness of the state court system to various types of claims," (3) "undesirability of delay in litigation relative to benefits of allocating resources to other uses," and (4) "many other subtle matters of state policy which are none of our business," Judge Kleinfeld noted that the challenge lacked "judicially discoverable

and manageable standards" and required relief based upon resolution of "policy determinations of a kind clearly for nonjudicial discretion." *Id.* at 710. In short, Judge Kleinfeld asserted that the Ninth Circuit lacked the power to adjudicate the case and noted,

> The people of the State of California, through their system of elected representatives, are entitled in our system of federalism to decide how much of their money to put into courts, as well as other activities in which they choose to have their state government participate. The process of deciding how much money to take away from people and transfer to the government, and how to allocate it among the departments of government, is traditionally resolved by political struggle and compromise, not by some theoretical legal principle.

*Id.*

In this case, plaintiffs' challenges to the juvenile dependency court system necessarily require the court to intrude upon the state's administration of its government, and more specifically, its court system. First, plaintiffs claim that the "crushing and unlawful caseloads" frustrate the ability of the dependency courts to adjudicate cases and "provide children with a meaningful opportunity to be heard." (Compl. ¶ 22) As such, plaintiffs allege that children subject to dependency proceedings in Sacramento County are denied a fair and adequate tribunal in violation of state and federal law. (*Id.* ¶ 27.) At their core, all of plaintiffs' federal and state law claims arising out of these allegations assert
1165 that the current judicial caseload is insufficient for the dependency court judges or referees to "consider carefully *1165
what has been provided" or to "serve as a backstop and look out for [the child's] best interest." In order to declare the current caseloads unconstitutional or unlawful, the court would necessarily have to consider, among a host of judicially unmanageable standards, how many cases are constitutionally and/or statutorily permissible, whether each type of case should be weighed evenly, which cases deserve more time or attention, and how much time or attention is constitutionally and/or statutorily permissible. *See* Los Angeles County Bar Ass'n, 979 F.2d at 710 (Kleinfeld, concurring). In order to attempt to mold an appropriate injunctive remedy to address the excess caseloads, the court cannot consider only an augmentation of the dependency court's resources. Rather, the court would also have to consider a myriad of administrative matters that affect the efficiency of the system. Further, in order to enforce any method of injunctive relief, the court would be required to act as a receiver for the Sacramento dependency court system, ensuring that judges were giving adequate time to each individualized case pursuant to the constitutional and/or statutory dictates established through this proceeding. Such involvement in any state institutional system is daunting, but the problems accompanying plaintiffs' requested relief is increased exponentially when applied to a state judicial system. *See* O'Shea, 414 U.S. at 501, 94 S.Ct. 669 (noting that "periodic reporting" of state judicial officers to a federal court "would constitute a form of monitoring of state court functions that is antipathetic to established principles of comity"); *see also Ad Hoc Committee,* 488 F.2d at 1244-46.

Second, plaintiffs claim that these overwhelming caseloads prevent children from receiving "the effective, adequate and competent assistance of counsel" in violation of state and federal law. (Compl. ¶¶ 22, 26.) Specifically, plaintiffs allege that the 395 caseload carried by court-appointed counsel in dependency proceedings render them "unable to adequately perform even the minimum tasks required of such counsel under law and in accordance with the American Bar Association's ("ABA") standards." (Compl. ¶ 51.) Similar to plaintiffs' claims regarding excess caseloads in the courts, in order to declare the current attorney caseloads unconstitutional or unlawful, the court would necessarily have to consider through a generalized inquiry how many cases are constitutionally and/or statutorily permissible, whether some types of cases require more investigation or preparation, which types of those cases deserve more resources, and how much time or attention is constitutionally and/or statutorily permissible. Further, in order to mold a remedy to the injury alleged, the court cannot consider only an increased budget for court appointed dependency counsel. Rather, the court must consider whether that money should be directed solely at hiring more attorneys, whether more resources need to be directed to support staff or non-legal resources, the need for larger facilities to house more attorneys or staff, and the quality of the staff or attorneys hired. Finally, in order to enforce injunctive relief that is carefully directed to the problems alleged, the court would have to act as an administrative manager of court-appointed dependency counsel to ensure that any additional resources were being implemented appropriately and that counsel

was complying with the constitutional and/or statutory guidelines set forth by the court. *See Gardner,* 500 F.2d at 714-15.

1166 The facts before the court in this case are readily distinguishable from the facts *1166 before the Ninth Circuit in *Los Angeles County Bar Ass'n* and weigh heavily in favor of finding this case nonjusticiable. In *Los Angeles County Bar Ass'n,* the Ninth Circuit acknowledged that it would be very difficult for courts to determine how much delay was constitutionally permissible in any given case, but concluded that the question presented by the plaintiff was whether the *average* time to resolution in a case violated its rights. 979 F.2d at 703. However, in this case, plaintiffs do not allege an *average* amount of time spent on cases by judges or court appointed attorneys to which they object. Rather, they allege that their constitutional rights have been violated based upon their specific, individual circumstances. (*See* Compl. ¶¶ 59-76.) As such, the case before the *Los Angeles County Bar Ass'n* court was substantially more manageable than that before the court in this case.

Similarly, in *Los Angeles County Bar Ass'n,* the plaintiff was a single party challenging the facial constitutionality of a statute due to its alleged harmful effect on the plaintiff's litigation. Accordingly, the court could undertake a "case-by-case examination" of the merits of the claim by evaluating whether the average delay deprived it of its ability to vindicate important rights. 979 F.2d at 707. In this case, however, plaintiffs bring claims challenging the practices of a state institution and its officers on behalf of a putative class comprised of all children represented by court-appointed counsel in Sacramento County juvenile dependency proceedings. An ongoing "case-by-case examination" of such a claim would not be just daunting, but virtually impossible. Indeed, to fit within the teachings of *Los Angeles County Bar Ass'n,* the court would have to analyze each of the 5100 juvenile dependency court cases in order to determine whether the lack of time or attention by counsel or the dependency court deprived the minor of the ability to vindicate her rights under the specific circumstances of the case.

Finally, the *Los Angeles County Bar Ass'n* court placed great emphasis on the nature of the relief sought by the plaintiff; it sought only declaratory, not injunctive relief. While the court noted that it was "not without some trepidation" in exercising declaratory jurisdiction, it stressed that *the relief sought would not directly require supervision of the state court system by federal judges.* However, in this case, in addition to declaratory relief, plaintiffs seek injunctive relief that would require the court to act as an administrator and receiver of the Sacramento County dependency court system. As such, the holding of *Los Angeles County Bar Ass'n* is inapplicable to the facts before the court in this case.

In sum, the claims asserted by plaintiffs and the relief requested strike at the very heart of federalism and the institutional competence of the judiciary to adjudicate state budgetary and policy matters. Plaintiffs' claims require the court to set constitutional parameters regarding the function of both state judicial officers and state court appointed attorneys. The adjudication of these claims, which seek to evaluate the relationship between caseloads and fair access to justice for children in a variety of situations, requires the implementation of standards that no court has yet to address. *See Los Angeles County Bar Ass'n,* 979 F.2d at 706 ("Notwithstanding the fundamental rights of access to the courts, [the plaintiff] does not cite, nor has our independent research revealed, any decision recognizing a right to
1167 judicial determination of a civil claim within *1167 a prescribed period of time."); *Ad Hoc Committee,* 488 F.2d at 1245 ("To extrapolate from court statistics a picture of those cases where inability to obtain a trial has reached due process is difficult."); *cf. Caswell v. Califano,* 583 F.2d 9, 16-17 (1st Cir.1978) (holding that where the plaintiffs had a statutory right to hearing within a reasonable time after the request, the district's court imposition of a 90 day period was not an abuse of discretion). Moreover, in adjudicating whether the Sacramento County dependency courts meet sufficient constitutional standards, there is an implicit threat that the failure to provide constitutionally adequate services would result either in a forced reduction of the number of cases brought on behalf of children or the closure of the court itself. *See Coleman v. Schwarzenegger,* No. Civ 90-0520, No. C01-1351, 2009 WL 2430820 (E.D.Cal. Aug. 4, 2009) (concluding that the only proper relief for prolonged "woefully and unconstitutionally inadequate" medical and mental healthcare in the California prison system was reduction in the overall prisoner population through prisoner release). However, any such implied threat "would amount to little more than a quixotic and unwarranted intrusion into an entire branch of state government." *Ad Hoc Committee,* 488 F.2d at 1246.

The implementation of any injunctive remedy would require an inquiry into the administration of Sacramento County's dependency court system and the court-appointed attorneys with whom it contracts. It would also require this court to impose it views on the budgeting priorities of the California legislature generally, and specifically on the Judicial Council of California and the Sacramento Superior Court.[4] The process of allocating state resources lends itself to the legislative process where people have an opportunity to petition the government regarding how their money should be spent and remove from office those political officials who act contrary to the wishes of the majority. "The judicial process does not share these democratic virtues." *Los Angeles County Bar Ass'n,* 979 F.2d at 710 (Kleinfeld, concurring). If the court granted plaintiffs' request, it would result in a command to the state to take money from its citizens, in the form of taxes, or from other governmental functions, in order to put more money in the Sacramento County juvenile dependency court system.[5] While numerous parties, including the dependency courts would likely appreciate the influx of resources, such an award, implicating the balance of budget priorities and state polices, is beyond the institutional competence of a federal court. Rather, such injunctive relief constitutes an "abrasive and unmanageable intercession" in state court institutions.[6] *See O'Shea,* 414 U.S. at 504, 94 S.Ct. 669.

1168 Therefore, the court concludes that principles of equity, comity, and federalism *1168 require the court to equitably abstain from adjudicating plaintiffs' claims.

## 2. *Younger* Abstention

Generally, the Supreme Court's decision in *Younger* and its progeny direct federal courts to abstain from granting injunctive or declaratory relief that would interfere with pending state judicial proceedings. *Younger v. Harris,* 401 U.S. 37, 40-41, 91 S.Ct. 746 27 L.Ed.2d 669 (1971); *Samuels v. Mackell,* 401 U.S. 66, 73, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971) (holding that "where an injunction would be impermissible under these principles, declaratory relief should ordinarily be denied as well"). The *Younger* doctrine "reflects a strong policy against federal intervention in state judicial processes in the absence of great and immediate injury to the federal plaintiff." *Moore v. Sims,* 442 U.S. 415, 423, 99 S.Ct. 2371, 60 L.Ed.2d 994 (1979). When federal courts disrupt a state court's opportunity to "intelligently mediate federal constitutional concerns and state interests" and interject themselves into such disputes, "they prevent the informed evolution of state policy by state tribunals." *Moore,* 442 U.S. at 429-30, 99 S.Ct. 2371.

While the doctrine was first articulated in the context of pending state criminal proceedings, the Supreme Court has applied it to civil proceedings in which important state interests are involved. *Id.; see Huffman v. Pursue, Ltd.,* 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975). "The seriousness of federal judicial interference with state civil functions has long been recognized by the Court. [It has] consistently required that when federal courts are confronted with requests for such relief, they should abide by standards of restraint that go well beyond those of private equity jurisprudence." *Huffman,* 420 U.S. at 603, 95 S.Ct. 1200.

Therefore, in the absence of "extraordinary circumstances,"[7] abstention in favor of state judicial proceedings is required if the state proceedings (1) are ongoing, (2) implicate important state interests, and (3) provide the plaintiff an adequate opportunity to litigate federal claims. *See Middlesex County Ethics Comm. v. Garden State Bar Ass'n,* 457 U.S. 423, 432, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982); *see San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose,* 546 F.3d 1087, 1092 (9th Cir.2008) (noting that where these standards are met, a district court "may not exercise jurisdiction" and that "there is no discretion in the district courts to do otherwise"). "Where *Younger* abstention is appropriate, a district court cannot refuse to abstain, retain jurisdiction over the action, and render a decision on the merits after the state proceedings have ended. To the contrary, *Younger* abstention requires *dismissal* of the federal action." *Beltran v. State of Cal,* 871 F.2d 777, 782 (9th Cir.1988) (emphasis in original).

The Supreme Court has held that *Younger* abstention is appropriately applied to broad challenges to state
1169 dependency proceedings. *Moore,* 442 U.S. 415, 99 S.Ct. 2371. In *Moore,* the appellees, husband *1169 and wife and their three minor children, sought a declaration that parts of the Texas Family Code unconstitutionally infringed upon

family integrity after a juvenile court judge entered an emergency *ex parte* order that gave temporary custody of the children to the State Department of Public Welfare. *Id.* at 419-20, 99 S.Ct. 2371. The appellees moved to terminate the temporary custody. *Id.* at 420, 99 S.Ct. 2371. However, instead of moving to expedite the hearing in the county court, requesting an early hearing from state trial or appellate courts, or appealing the temporary order, appellees filed an action challenging the constitutionality of the relevant state statutes in federal court. *Id.* at 421, 99 S.Ct. 2371. The Court first concluded that there were ongoing state proceedings, even though not all of the appellee's claims directly related to the custody determination. Specifically, the Court held that the appellee's challenge to the State's computerized collection and dissemination of child-abuse information could be raised in the state court proceedings. *Id.* at 424-25, 99 S.Ct. 2371. That the appellee's challenges constituted a "multifaceted" and broad challenge to a state statutory scheme "militated in *favor* of abstention, not *against* it." *Id.* at 427, 99 S.Ct. 2371. Second, the Court concluded that challenges to the state juvenile dependency system implicated an important state concern. *Id.* at 435, 99 S.Ct. 2371 ("Family relations are a traditional area of state concern."). Finally, the Court held that because state procedural law did not bar presentation of the constitutional claims in the dependancy court proceedings, the appellees had an adequate state court avenue for relief. In conclusion, the Court noted that it was "unwilling to conclude that state processes are unequal to the task of accommodating the various interests and deciding the constitutional questions that may arise in child-welfare litigation." *Id.* at 435, 99 S.Ct. 2371.

## a. Interference with Ongoing State Proceedings

Plaintiffs first contend that there are no ongoing state proceedings where plaintiffs' or class members' claims are currently being adjudicated. Specifically, plaintiffs assert that none of the constitutional claims asserted in this action have been asserted in the underlying dependency court cases upon which they are based. Further, plaintiffs contend that the constitutional and statutory claims alleged in this litigation will not interfere with ongoing state proceedings for the purposes of the *Younger* analysis.

Courts have concluded that continuing state dependency proceedings, which involve the plaintiffs in a federal action that challenges the constitutionality of the services and process received, are "ongoing state proceedings" for purposes of *Younger* abstention. *See* *31 Foster Children v. Bush*, 329 F.3d 1255, 1275 (11th Cir.2003); *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir.2000) (holding that the ongoing proceeding element was satisfied because the plaintiffs' complaint sought "an order requiring procedural due process to be observed in the future course of litigation" of the plaintiffs' pending state custody proceedings); *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1291 (10th Cir.1999); *Laurie Q. v. Contra Costa County*, 304 F.Supp.2d 1185, 1203 (N.D.Cal.2004) (holding that challenge to county's foster care system implicated ongoing dependency court proceedings); *see also* *Moore*, 442 U.S. at 425-27, 99 S.Ct. 2371; *cf.* *Lake v. Speziale*, 580 F.Supp. *1170 1318, 1329 (D.Conn.1984) (holding that *Younger* abstention did not apply in the absence of any pending state court proceeding); *Johnson v. Solomon*, 484 F.Supp. 278, 295-97 (D.Md.1979) (same). However, *Younger* abstention is only implicated "when the relief sought in federal court would in some manner directly `interfere' with ongoing state judicial proceedings." *Green v. City of Tucson*, 255 F.3d 1086, 1097 (9th Cir.2001) (en banc) *receded from on other grounds by* *Gilbertson v. Albright*, 381 F.3d 965 (9th Cir. 2004). "The mere potential for conflict in the results of adjudications is not the kind of interference that merits federal court abstention." *Id.* (internal quotations and citation omitted). Rather, the system of dual sovereigns inherently contemplates the possibility of a "race to judgment." *Id.* "In order to decide whether the federal proceeding would interfere with the state proceeding, [courts] look to the relief requested and the effect it would have on the state proceedings." *31 Foster Children*, 329 F.3d at 1276; *see also* *O'Shea*, 414 U.S. at 500, 94 S.Ct. 669 (holding that abstention was proper where the proposed injunction would indirectly accomplish the same kind of interference that *Younger* and subsequent cases sought to prevent).

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The Eleventh Circuit has held that an action for declaratory and injunctive relief arising out of challenges to Florida's foster care system would interfere extensively with the ongoing dependency cases of each plaintiff. *31 Foster Children*, 329 F.3d at 1279. In *31 Foster Children,* the plaintiffs alleged that the defendants' practices denied and threatened their rights, *inter alia,* to (1) substantive due process for "safe care that meet their basic needs, prompt placements

with permanent families, and services extended after their eighteenth birthdays"; (2) "procedural due process in determining the services they will receive"; (3) familial association with their siblings; and (4) prompt placement with permanent families and information provided pursuant to the Adoption Assistance and Child Welfare Act. *Id.* at 1261. The plaintiffs requested that the court declare the defendants' practices unconstitutional and unlawful and grant injunctive relief that would prevent future violations and ensure compliance. *Id.* The Eleventh Circuit held that the declaratory judgment and injunction requested would interfere with the pending state proceedings in numerous ways, including potential conflicting orders regarding what is best for a particular plaintiff, whether a particular placement is safe or appropriate, whether sufficient efforts are being made to find an adoptive family, or whether an amendment needs to be made to a child's plan. *Id.* at 1278. The court concluded that the broad implication of the relief sought was to take the responsibility away from state courts and put it under control of the federal court. *Id.* at 1279. Such action "constitute[d] federal court oversight of state court operations, even if not framed as direct review of state court judgments that is problematic, calling for *Younger* abstention." *Id.*

Similarly, the Tenth Circuit has held that declaratory and injunctive relief directed at state institutions involving dependant children warranted abstention because the requested relief would require a supervisory role over the entire state program. *J.B. ex rel. Hart v. Valdez,* 186 F.3d 1280; *see Joseph A. v. Ingram,* 275 F.3d 1253 (10th Cir.2002). In *J.B.,* the plaintiffs, mentally or developmentally disabled children in the custody of New Mexico, alleged constitutional
1171 and statutory violations arising out of the failure to provide them with services, benefits, and protections *1171 in custody determinations and treatment plans. 186 F.3d at 1282-85. The court held that the federal action would fundamentally change the dispositions and oversight of the children because, by ruling on the lawfulness of the defendant's action, the requested declaratory and injunctive relief would place the federal court in the role of making dispositional decisions in the plaintiff's individual cases that were reserved to the New Mexico Children's Court. *Id.* at 1292-93. Therefore, the court concluded that, for purposes of *Younger* abstention, the federal court interfered with the ongoing state court proceedings.

In *Joseph A.,* the Tenth Circuit likewise concluded that *Younger* abstention was implicated by the broad relief implicated by a consent decree relating to the procedures to be accorded children in the state's custody. 275 F.3d 1253. The plaintiffs, children in New Mexico's custody due to abuse or neglect, and the New Mexico Department of Human Services had entered into a federal court consent decree, and the plaintiffs subsequently moved the court to hold the Department in contempt for allegedly violating that consent decree. *Id.* at 1257. The court held that enforcement of the consent decree would require "interference with the operations of the Children's Court in an insidious way," in that the consent decree operated like that of an injunction or declaratory judgment that precluded the presentation of certain options to the Children's Court. *Id.* at 1268-69. Further, the consent decree's restrictions were ongoing, impacting the conduct of the proceedings themselves, not just the body charged with initiating the proceedings. *Id.* at 1269. Accordingly, the court concluded that "*Younger* governs whenever the requested relief would interfere with the state court's ability to conduct proceedings, regardless of whether the relief targets the conduct of the proceeding directly." *Id.* at 1272.

In this case, plaintiffs seek a declaration that the judicial and attorney caseloads are so excessive that they constitute a violation of constitutional and statutory rights. In their complaint, plaintiffs request that defendants be enjoined from currently and continually violating their constitutional and statutory rights and that defendants provide additional resources to reach recommended caseloads for attorneys. At oral argument, plaintiffs clarified that they also sought the appointment of more judges in order to ease judicial caseloads. (Tr. at 31.)

Plaintiffs contend that at this stage of the litigation, the court need not contemplate the precise remedy available to plaintiffs if they prevail on the merits; rather the court should presume that it is possible to "issue an order that avoids *Younger* and conforms to the Court's sound discretion and proof at trial." (Pls.' Opp'n at 23.) However, this contention runs counter to the Court's explanation of the appropriate inquiry regarding justiciability as set forth in *O'Shea:*

> [T]he question arises of how compliance might be enforced if the beneficiaries of the injunction were to charge that it had been disobeyed. Presumably any member of respondent's class who appeared... before petitioners could allege and have adjudicated a claim that petitioner's were in contempt of the

> federal court's injunction order, with a review of an adverse decision in the Court of Appeals and, perhaps in [the Supreme Court].

1172 414 U.S. at 501-02, 94 S.Ct. 669. Further, in evaluating whether *Younger* abstention *1172 applied to the plaintiffs' challenges to the adequacy of Georgia's indigent court system, the Eleventh Circuit looked to the Supreme Court's analysis in *O'Shea,* and reasoned that consideration of the remedies available is necessary at the outset of the litigation because "[i]t would certainly create an awkward moment if, at the end of protracted litigation, a compliance problem arose which would force abstention on the same ground that existed prior to trial." *Luckey v. Miller,* 976 F.2d 673, 679 (11th Cir.1992). The court agrees.

The relief requested by plaintiffs in this case would necessarily interfere with their ongoing dependency court cases and those of the putative class. The requested declaratory relief calls into question the validity of every decision made in pending and future dependency court cases before the resolution of this litigation. Specifically, plaintiffs seek a finding that the number of lawyers currently provided are insufficient to perform the enumerated duties that they are required to perform under both state and federal law. Plaintiffs similarly seek a finding that they have not been granted meaningful access to the courts or appropriate consideration of their matters due to judicial caseloads. While plaintiffs contend that each individual plaintiff would still have to demonstrate prejudice in order to invalidate the decision rendered in each pending case,[8] the court cannot overlook the practical impact of the proposed declaratory relief on the *5,100 active dependency court cases;* this court's order would substantiate a finding of a constitutional or statutory violation in every one of those active cases. Even if not determinative in every instance, this finding would impact each of the putative class member's cases. *See Luckey,* 976 F.2d at 679 ("[L]aying the groundwork for a future request for more detailed relief which would violate the comity principles expressed in *Younger* and *O'Shea* is the precise exercise forbidden under the abstention doctrine."); *Gardner,* 500 F.2d at 714 (noting that abstention was applicable to the plaintiffs' challenges to operation of the Florida state public defender offices "to the extent the complaint alleged present and continuing constitutional deprivations due to the representation appellants were receiving in pending state appeals proceedings"); *see also Kaufman v. Kaye,* 466 F.3d 83, 86-87 (2d Cir.2006) (holding that requested declaratory relief in challenged assignment procedures in New York court system interfered with ongoing administration of the court system because the court could not resolve the issues raised without resolving the same issues as to the subsequent remedy chosen by the state).

Further, the broad and ill-defined injunctive relief requested by plaintiffs would impact the conduct of the proceeding themselves, not just the body charged with initiating the proceedings. *See Joseph A.,* 275 F.3d at 1269. If the court finds constitutional or statutory violations based upon the amount of time or resources spent on juvenile dependency court cases, an injunction directed to remedying those violations would require the court to ensure that in each case the child was receiving certain services or procedures that the court has declared constitutional. Enforcement could
1173 not simply end *1173 with a policy directive to the Judicial Council, the AOC, or the Sacramento Superior Court, but would require monitoring of its administration.

Indeed, plaintiff contemplates such relief, as illustrated by their submission of a consent decree in a Northern District of Georgia case, *Kenny A. v. Perdue,* 218 F.R.D. 277 (N.D.Ga.2003) which they contend demonstrates a "straightforward, easily enforceable" remedy. (Pls.' Supplemental Opp'n, filed Nov. 22, 2009, at 4.) Specifically, the proffered consent decree requires that defendants ensure that Child Advocate Attorneys have a maximum caseload and that the County will hire a specified number of additional attorneys within certain time periods. (Ex. A. to Decl. of Jonathan M. Cohen ("Consent Decree"), filed Nov. 20, 2009, at 3-4.) The decree also requires that defendants provide documents and information to a "Compliance Agent" regarding the caseload and number of attorneys, training and CLE records for those attorneys, performance reviews and evaluations for those attorneys, and complaints of inadequate and ineffective legal representation. (*Id.* at 4-5.) The appointed "Compliance Agent" is then responsible for undertaking an independent fact-finding review of the parties' obligations, issuing a "Compliance Report," and reviewing or reporting any curative plans. (*Id.* at 6.) The Compliance Report must then be filed in federal court. (*Id.* at 7.) Pursuant to certain requirements, the parties could challenge non-compliance and seek enforcement of the decree in federal court. (*Id.* at 8-9.)

The court disagrees with plaintiffs' characterization that such a decree is straight-forward and easily enforceable. First, the court has grave concerns about both the effectiveness and the enforceability of the relief accorded. In this case, plaintiffs allege violations arising from excessive caseloads of both attorneys and judicial officers/judges and request injunctive relief aimed at both of these problems. An order providing for the allocation of more attorneys and judges to the dependency court system and maximum caseloads presumes that such measures would redress the problems of inadequate representation as alleged in the complaint, which ignores other issues of administrative efficiencies, resource management, and possible physical constraints that are implicated by plaintiffs' claims. However, *assuming arguendo,* that plaintiffs could support this presumption through proof, the question remains how the court would enforce such an order. Should the court order that court-appointed representation cannot be granted if attorney caseloads exceed the mandated maximum? Should the court suspend dependency court proceedings until defendants are able to hire adequately trained attorneys to represent children in these proceedings? Should the court order that dependency court judicial officers/judges simply should decline to hear cases that would require them to exceed their maximum caseload? If state courts refuse to comply with the court's maximum caseload requirements, should the federal court impose sanctions on the state court judge or officials for contempt? Would the court hold the Chair of the Judicial Council or the Presiding Judge of the Superior Court of Sacramento County in contempt for noncompliance due to state budgetary limitations?[9] These questions necessarily implicate the importance of the state's interest in
1174 adjudicating these matters *1174 and the ability of the court to enforce its own orders without violating well-established principles of federalism and comity. *See Joseph A.*, 275 F.3d at 1267-72 (holding that litigation to enforce consent decree raised *Younger* abstention issues); *see also Laurie Q.*, 304 F.Supp.2d at 1204-05 (holding that in order to cure the juvenile court's alleged failure to review case plans in a timely fashion, the court would be compelled "to either spur the Juvenile court by injunction, or even take the matter completely out of its hands" and thus, engage in the type of interference criticized by the Ninth Circuit in *City of Tucson*, 255 F.3d 1086).

Second, the proffered periodic reporting requirements, standing alone, "constitute a form of monitoring of the operation of state court functions that is antipathetic to established principles of comity." *O'Shea*, 414 U.S. at 501, 94 S.Ct. 669. The Supreme Court has explicitly disapproved of an injunction aimed at controlling or preventing the occurrence of specific events in future state proceedings because it would require "the continuous supervision by the federal court over the conduct [of defendants] in the course of future ... proceedings involving any members of the ... broadly defined class." *Id.* While the reporting requirements may not impose an undue burden in their creation, the underlying question is whether a federal court should order such reports at all. *See Luckey*, 976 F.2d at 678 n. 4; *see also Anthony v. Council*, 316 F.3d 412, 421 (3d Cir.2003) (abstaining under *Younger* where federal relief would disrupt the New Jersey court system and lead to federal monitoring). The principles underlying both *O'Shea* and *Younger* persuade the court that it should not.

Further, the court finds plaintiffs' reliance on the reasoning of *Kenny A.* unpersuasive. *See* 218 F.R.D. 277. As an initial matter, the facts considered by the *Kenny A.* court relating to interference with ongoing state proceeding are different from the facts that must be considered by the court in this case. In *Kenny A.,* nine foster children in the custody of the Georgia Department of Human Resources filed a putative class action in state court against the Governor of Georgia, the Georgia Department of Human Resources and its Commissioner, the counties' Department of Family and Children Services and their Directors, and the counties. 218 F.R.D. at 283-84. Defendants removed the case to federal court, where they asserted that the court should refrain from exercising jurisdiction pursuant to *Younger. Id.* at 284-85. The court held that defendants waived their right to raise *Younger* abstention by removing the case to federal court; accordingly, the court's cursory analysis of the applicability of *Younger* abstention is merely dicta. *Id.* at 285. However, the court reasoned that the federal action would not interfere with the juvenile proceedings because the declaratory and injunctive relief was not directed at the plaintiffs' review hearings, at Georgia's juvenile courts, juvenile court judges, or juvenile court personnel. *Id.* at 286. Rather, the court emphasized that plaintiffs' alleged violations arose out of the (1) excessive numbers of cases assigned to inadequately trained and poorly supervised case workers (not lawyers); (2) failure to identify and develop a sufficient number of foster homes; (3) failure to identify adult relatives who could care for plaintiffs; (4) failure to provide relevant information and support services to foster parents; (5) failure to develop administrative controls; (6) failure to provide timely and appropriate permanency planning; (7) placement in
1175 dangerous, unsanitary, and inappropriate *1175 homes; (8) failure to provide appropriate mental health, medical, and

educational services; and (9) separation of teenage mothers in foster care from their own children. *Id.* The court held that remedying these failures would not interfere in any way with ongoing juvenile court proceedings. *Id.*

Conversely, in this case, plaintiffs' claims are directed at the fairness and efficacy of the dependency courts and counsel arising out of excessive caseloads. As such, unlike the court's characterization of the claims in *Kenny A.,* plaintiffs' requested declaratory and injunctive relief is directed at the plaintiffs' review hearings, Sacramento County's juvenile courts, juvenile court judges, and juvenile court personnel. *See Joseph A.,* 275 F.3d at 1272 (noting that injunctive relief directed at attorneys, rather than at the court directly, does not preclude *Younger's* application because the same underlying principles apply to officers of the court).

Moreover, the court notes that the *Kenny A.* court's analysis failed to address issues that the Supreme Court and other Circuit courts have found important to the applicability of the first element of *Younger* abstention. Specifically, while the *Kenny A.* court noted that plaintiffs challenged excessive caseloads in its analysis of whether there was an adequate opportunity to raise federal claims, the court notably omitted this allegation from its analysis of potential interference with state court proceedings. *See id.* at 286-89. The court's focus on non-lawyers and non-judicial actors in the determination of whether the federal court would interfere with on-going state proceedings avoided a pivotal issue of whether an analysis of the constitutionality and lawfulness of allegedly excessive caseloads would interfere with ongoing state court proceedings. *See Luckey,* 976 F.2d at 679.

In sum, the court concludes that the declaratory and injunctive relief requested by plaintiffs severely interferes with the operation of state court proceedings. Any declaratory relief necessarily implicates the validity of pending dependency court proceedings, even if such findings are not wholly determinative. Further, the requested injunctive relief would be impossible to enforce without violation of established principles of federalism and comity. Accordingly, the first element of *Younger* abstention is present in this case.

## b. Important State Interests

The parties do not dispute that this litigation implicates important state interests in the care, placement, and welfare of children in the Sacramento County dependency court system. Indeed, the law is clear that "[f]amily relations are a traditional area of state concern." *Moore,* 442 U.S. at 435, 99 S.Ct. 2371. Further, "[p]roceedings necessary for the vindication of important state policies or for the functioning of the state judicial system ... evidence the state's substantial interest in the litigation." *Middlesex County Ethics Comm.,* 457 U.S. at 432, 102 S.Ct. 2515. Accordingly, the second element of *Younger* abstention is present in this case.

## c. Adequate Opportunity to Present Federal Claims

Plaintiffs contend that there is no adequate opportunity to present their federal claims in the pending state court dependency proceedings. Specifically, plaintiffs contend that they "would be unable to get a fair hearing in state court
1176 because the [d]efendants employ the state court *1176 judges." (Pls.' Opp'n at 21). Plaintiffs also contend that, as a practical matter, they cannot press their constitutional claims in dependency court because the system is overburdened.

"Minimal respect for state processes, of course, precludes any *presumption* that the state court will not safeguard federal constitutional rights." *Middlesex County Ethics Comm.,* 457 U.S. at 431, 102 S.Ct. 2515. Rather, a federal court "should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1, 15, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987). As such, a plaintiff opposing abstention bears the burden of establishing that the pending state proceedings do not provide an adequate remedy for their federal claims. *31 Foster Children,* 329 F.3d at 1279.

"Where vital state interests are involved, a federal court should abstain `unless state law clearly bars the interposition of the constitutional claims.'" *Middlesex County Ethics Comm.,* 457 U.S. at 423, 102 S.Ct. 2515 (quoting *Moore,* 442

U.S. at 423, 99 S.Ct. 2371); *Hirsh v. Justices of Supreme Court of Cal.,* 67 F.3d 708, 713 (9th Cir.1995) ("Judicial review is inadequate *only* when state procedural law *bars* presentation of the federal claims."). "The pertinent inquiry is whether the state proceedings afford an adequate opportunity to raise the constitutional claims." *Id.* (internal quotations omitted). A federal court "should not exert jurisdiction if the plaintiffs `had an *opportunity* to present their federal claims in the state proceedings.'" *Id.* at 425, 102 S.Ct. 2515 (quoting *Juidice v. Vail,* 430 U.S. 327, 337, 97 S.Ct. 1211, 51 L.Ed.2d 376 (1977)) (emphasis in original). The fact that judicial review is discretionary or that the clams may be raised only in state court review of administrative proceedings does not amount to a procedural bar. *Hirsh,* 67 F.3d at 713 (discretionary judicial review of the Bar Court's decision provided adequate opportunity for judicial review); *Beltran,* 871 F.2d at 783 (state appellate court review of the Agricultural Labor Relations Board's decision provided adequate opportunity to raise constitutional claim).

California courts have explicitly held that juvenile courts can hear constitutional claims relating to the deficient representation of counsel arising out of the unavailability of adequate time and resources to represent a minor. *In re Edward S.,* 173 Cal.App.4th 387, 407-10, 92 Cal.Rptr.3d 725 (1st Dist.2009); *see In re Darlice C.,* 105 Cal.App.4th 459, 463, 129 Cal.Rptr.2d 472 (3d Dist.2003) ("Where, as here, the juvenile court has ordered parental rights terminated, a parent has the right to seek review of claims of incompetent assistance of counsel."); *Laurie Q.,* 304 F.Supp.2d at 1206 ("California law has conferred upon the Juvenile Court the sweeping power to address nearly any type of deficiency in the care of a minor and order nearly any type of relief."). Indeed, at least one California court has noted, that it is the "paramount responsibility of a judicial officer to assure the provision of a fair trial" and that a continuance of pending proceedings or other adequate relief is justified where there is "an adequate showing that an [attorney's] excessive caseload and the limited resources [available to him] made it impossible ... to adequately represent" his client. *Id.; see also 31 Foster Children,* 329 F.3d at 1279 (holding that available remedies were
1177 adequate because the juvenile court can act to protect children within its jurisdiction); *J.B.,* 186 F.3d at *1177 1292-93 (holding that because the juvenile court was a court of general jurisdiction under state law, the plaintiffs had not provided "unambiguous authority" that state courts could not provide an adequate remedy); *Joseph A.,* 275 F.3d at 1274 (holding that dismissal of a federal claim in dicta from a state court opinion was insufficient to overcome the presumption that state relief was available).

In this case, plaintiffs have failed to overcome the presumption that their pending state court proceedings provide an adequate opportunity for judicial review of their federal claims. Rather, California law explicitly provides recourse through the state court system for the federal claims raised in this litigation. At oral argument, plaintiffs conceded that the state dependency courts can entertain the type of federal claims brought in this litigation. (Tr. of Nov. 6, 2009 Hr'g ("Tr.") at 43.) Further, under California law, one of the paramount responsibilities of state judicial officers is the assurance that parties are provided with a fair trial. Therefore, plaintiffs have an alternative adequate opportunity to press their federal claims.

Plaintiff's reliance on the D.C. Circuit's decision in *LaShawn A. v. Kelly,* is misplaced. 990 F.2d 1319 (D.C.Cir.1993.) In *LaShawn A.,* the plaintiffs brought a child welfare class action against the defendants based upon alleged constitutional and statutory violations arising from "ineptness and indifference, inordinate caseloads, and insufficient funds." *Id.* at 1320. In rejecting the applicability of *Younger* abstention, the court noted that the District of Columbia Family Division had "explicitly rejected the use of review hearings to adjudge claims requesting broad-based injunctive relief based on federal law." *Id.* at 1323. Accordingly, there was no alternative avenue for relief for the plaintiffs. However, as set forth above, in this case it is undisputed that state courts can entertain the type of federal claims brought in this litigation. As such, there is no procedural bar as was before the *LaShawn A.* court.[10]

Accordingly, the third element of *Younger* abstention is met in this case.

## d. Exceptions to Abstention

Finally, plaintiffs contend that abstention is unwarranted because the judicial state officer or other state judge
1178 responsible for deciding their claims "would be placed in the position of having to rule *1178 against either the

Honorable Presiding Judge in their own County or against the remaining [d]efendants ... who establish policy governing their jobs. (Pls.' Opp'n at 28.)

"Although a federal court is normally required to abstain if the three prongs of the *Younger* test are satisfied, abstention is inappropriate in the `extraordinary circumstance' that the state tribunal is incompetent by reason of bias." *Hirsh,* 67 F.3d at 713 (citing *Gibson v. Berryhill,* 411 U.S. 564, 577-79, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973)). "Bias exists were a court has prejudged, or reasonably appears to have prejudged, an issue." *Kenneally v. Lungren,* 967 F.2d 329, 333 (9th Cir.1992).

The party alleging bias "must overcome a presumption of honesty and integrity in those serving as adjudicators." *Hirsh,* 67 F.3d at 714. (internal quotations and citations omitted). Where there is an absence of any personal or financial stake in the outcome sufficient to create a conflict of interest and where there is a lack of personal animosity towards the parties in the proceedings, the presumption is not overcome. *Vanelli v. Reynolds Sch. Dist. No. 7,* 667 F.2d 773, 779-80 n. 10 (9th Cir.1982). The Supreme Court has held that a plaintiff did not sufficiently demonstrate bias when a state medical board adjudicated the merits of a disciplinary action in which the board itself investigated and filed charges. *Withrow v. Larkin,* 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). The Court has also concluded that a state board's prior involvement in a labor dispute with striking teachers did not prevent it from deciding whether those teachers should be dismissed as a result of that unlawful strike. *Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n,* 426 U.S. 482, 497, 96 S.Ct. 2308, 49 L.Ed.2d 1 (1976); *see also Vanelli,* 667 F.2d at 779-80 (holding that a school board reviewing its own prior decision was not impermissibly biased). Similarly the Ninth Circuit has held that judges are not incompetent to review findings of judicial officers whom they participate in appointing. *Hirsh,* 67 F.3d at 714. The Ninth Circuit has also held that fines imposed by a disciplinary board, which are paid to the same entity that pays the salaries of the disciplinary board, is insufficient to establish bias. *Id.*

Plaintiffs' conclusory and astonishing assertions that *all* state court judges are biased in this matter is unsupported by law or facts. Plaintiffs have not submitted any allegations or argument that all state court judges and judicial officers have a personal or financial stake in the litigation. Nor have plaintiffs proffered any allegations or arguments relating to any judge's personal animosity against them. While plaintiffs contend, without any legal authority for support, that defendants control policy decisions that may impact state judges, such a broad and ambiguous contention does not come close to surpassing the factual circumstances in which the Ninth Circuit has held the presumption of bias was not overcome. As such, plaintiffs' conclusory assertions are insufficient to demonstrate extraordinary circumstances.

Therefore, because plaintiffs' claims would interfere with ongoing state dependency court proceedings that implicate important state interests, plaintiffs have an adequate opportunity to pursue their federal claims in those proceedings,
1179 and they have failed to overcome the presumption of honesty and integrity in those serving as *1179 adjudicators, the court must abstain from adjudicating these claims pursuant to *Younger v. Harris.*

## CONCLUSION

In conclusion, the court again acknowledges that plaintiffs' claims present a troubling depiction of the state of Sacramento County's dependency court system. The facts alleged relative to the named minor plaintiffs demonstrate a serious lack of responsiveness by the state's current system to the needs of children. However, to remedy these wrongs, this court must reallocate state financial resources, reorder state legislative priorities, and revise state judicial policies. This proposed federal judicial takeover of these functions of state government not only strikes at the core principles of federalism and comity, but assumes an institutional competence that a federal district court simply does not possess.

Therefore, for the foregoing reasons, defendants' motion to dismiss is GRANTED.

IT IS SO ORDERED.

[1] The Honorable Ronald M. George is the Chief Justice of the California Supreme Court.

[2] Defendants also contend that plaintiffs lack standing to bring their claims. Defendants' arguments relating to abstention and standing relate to whether plaintiffs' claims are properly before the court and within the confines of the judicial authority conferred by Article III. Indeed, assuming that plaintiffs have sufficiently alleged injury in fact and causation, the court's conclusions relating to its ability to redress such injury, as set forth *infra,* "obviously shade into those determining whether the complaint" sufficiently presents a real case or controversy for purposes of standing. *O'Shea v. Littleton,* 414 U.S. 488, 499, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974).

[3] While a majority of decisions have applied equitable abstention in the context of cases involving injunctions in criminal cases, the Court has noted that the doctrine "has not been limited to that situation or indeed to a criminal proceeding itself." *Rizzo v. Goode,* 423 U.S. 362, 380, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). Rather, the same principles apply to civil proceedings and to cases where injunctive relief is sought against those in charge of an executive branch of an agency of state or local governments. *Id.*

The court also notes that while there is significant crossover between the fundamental principles and factors considered in the doctrines of equitable abstention and *Younger* abstention, the Supreme Court and Circuit decisions addressing equitable abstention reflect differences that justify separate treatment of these two doctrines.

[4] Indeed, plaintiffs argue that "[d]efendants spend hundreds of millions for other priorities even as they assert poverty when it comes to addressing the caseload-caused anguish their own meticulous study certifies and decries." (Pls.'s Supp. Brief [Docket # 35], filed Nov. 20, 2009.) At oral argument, plaintiff's counsel asserted the AOC spent approximately a billion and a half dollars on a new management system and has contracted to build new courthouses, implying that money to fund relief in this case could be reallocated from those or similar projects. (Tr. at 29.)

[5] Moreover, unless the Superior Court of California were awarded more judges overall, this court's order would necessarily implicate state policy decisions regarding how many judges to appoint in particular departments.

[6] Further, the court notes, as set forth, *infra,* in the court's discussion of *Younger* abstention, plaintiffs have an alternative, available avenue of relief.

[7] In *Moore,* the Supreme Court held that dependency proceedings do not, without more, constitute such an extraordinary circumstance. 442 U.S. at 434, 99 S.Ct. 2371 ("Unless we were to hold that every attachment issued to protect a child creates great, immediate, and irreparable harm warranting federal-court intervention, we are hard pressed to conclude that ... federal intervention was warranted.").

[8] The court notes that plaintiffs' contention is incongruous with their allegations and arguments relating to injury. The named minor plaintiffs allege that the excessive judicial and attorney caseloads prevented them from receiving services or process. A finding in favor of the named plaintiffs would directly affect the proceedings of those plaintiffs.

[9]*See Luckey,* 976 F.2d at 679 ("Avoidance of this unseemly conflict between state and federal judges is one reason for *O'Shea* and *Younger.*")

[10] Plaintiffs' reliance on *Kenny A.* is similarly misplaced as the Northern District of Georgia explicitly found that the juvenile court lacked the power to grant the relief requested by the plaintiffs. 218 F.R.D. at 287. Further, the *Kenny A.* court's alternative rationale, that the plaintiffs "are dependent upon an allegedly overburdened and inadequate system of legal representation, which prevents them from raising their claims in the juvenile court," is contrary to Ninth Circuit precedent, which, as set forth above, provides that judicial review is inadequate "*only* where there is a procedural *bar* to the presentation of federal claims." *See Hirsh,* 67 F.3d at 713.

The court is not dispassionate regarding the obstacles facing plaintiffs. However, their arguments regarding the practical impediments to judicial review run counter to explicit Supreme Court and Ninth Circuit authority on this issue. *See Pennzoil,* 481 U.S. at 15, 107 S.Ct. 1519 ("[W]hen a litigant has not attempted to present his federal claims in related state-court proceedings, a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary."); *Hirsh,* 67 F.3d at 713. Neither the Supreme Court nor the Ninth Circuit has held that practical impediments may amount to a procedural bar for purposes of *Younger* abstention; nor did the *Kenny A.* court cite any legal authority for its novel rationale. 218 F.R.D. at 287.

657 F.3d 902 (2011)

**E.T.; K.R.; C.B.; G.S.; Frank Dougherty, on Behalf of E.T., K.R., C.B. and G.S., Plaintiffs-Appellants,**

**v.**

**Tani CANTIL-SAKAUYE, Chair of the Judicial Council of California, in her official capacity; William C. Vickrey, Administrative Director of the Administrative Office of the Court of the Judicial Council, in his official capacity; Steven W. White, Presiding Judge of the Superior Court of the County of Sacramento, in his official capacity, Defendants-Appellees.** *903

903

No. 10-15248.

**United States Court of Appeals, Ninth Circuit.**

Argued and Submitted April 14, 2011.
Filed September 13, 2011.

Edward Howard (argued), Children's Advocacy Institute, University of San Diego School of Law, San Diego, CA; Peter E. Perkowski, Winston & Strawn, LLP, San Francisco, CA, for the plaintiffs-appellants.

Robert A. Naeve, Jones Day, Irvine, CA, for the defendants-appellees.

Before: SIDNEY R. THOMAS and JOHNNIE B. RAWLINSON, Circuit Judges, and CORMAC J. CARNEY, District Judge.[*]

## OPINION

PER CURIAM:

Plaintiff foster children appeal the dismissal of their class action lawsuit under 42 U.S.C. § 1983, in which they allege that the caseloads of the Sacramento County Dependency Court and court-appointed attorneys are so excessive as to violate federal and state constitutional and statutory provisions. The district court abstained from adjudicating Plaintiffs' claims. Based on *O'Shea v. Littleton,* 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974), we affirm. *See Kaufman v. Kaye,* 466 F.3d 83, 84 (2d Cir.2006).

## I

## A

Plaintiffs filed this action on behalf of themselves and a proposed class of roughly 5,100 foster children in Sacramento

904 *904 County.[1] They allege that "crushing and unlawful caseloads" frustrate the ability of Dependency Courts to fairly and adequately hear their cases and of court-appointed attorneys to provide them effective assistance of counsel—all to the childrens' "enduring harm." Their suit "seeks a Dependency Court for Sacramento's abused and neglected children that comports with basic Due Process and the effective, adequate, and competent assistance of counsel for the children of Sacramento County in dependency proceedings."

In their complaint, Plaintiffs assert constitutional and statutory claims under 42 U.S.C. § 1983, as well as pendent state law claims.[2] They seek relief in the form of (1) a declaratory judgment that Defendants have violated, continue to violate, and/or will violate Plaintiffs' rights; (2) injunctive relief, restraining future violations of those rights; and (3) an

order "mandating that Defendants provide the additional resources required to comply with the Judicial Council of California and the National Association of Counsel for Children's recommended caseloads for each court-appointed attorney."

Named plaintiffs E.T., K.R., C.B., and G.S. reside in the County of Sacramento and presently are in foster care or are wards of the court. Together, they allege numerous shortcomings of court-appointed counsel, including the failure to conduct meaningful interviews or regular meetings, investigate their cases, and foster contact with social workers and other professionals.

Each named Defendant plays a part in administering the County's foster care courts. The Honorable Tani Cantil-Sakauye, Chief Justice of California, is Chair of the Judicial Council of California. The Judicial Council oversees the statewide administration of justice in the state's courts. As Chair, the Chief Justice directs the Council's work, including its allocation of the judicial branch budget; promulgation of rules of court administration and procedure; and setting of priorities for the system's continual improvement. William C. Vickrey is Administrative Director of the Administrative Office of the Courts ("AOC"), the staff agency of the Council responsible for a variety of programs and services to improve access to a fair and impartial judicial system. The AOC's initiatives include Dependency Representation, Administration, Funding, and Training ("DRAFT"), a program to provide court funding to participating California counties. DRAFT funds pay for childrens' court-appointed counsel in Sacramento County Dependency Court. Finally, the Honorable Steven W. White is Presiding Judge of the Superior Court of the County of Sacramento. In that
905 capacity, Judge White's responsibilities include allocating *905 resources within the court and assigning judges to departments, such as the county's Dependency Court.

## B

On Defendants' motion, the district court dismissed Plaintiffs' complaint on abstention grounds. *E.T. v. George*, 681 F.Supp.2d 1151 (E.D.Cal.2010). The court concluded that both *O'Shea*, 414 U.S. at 501-02, 94 S.Ct. 669, and *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), require a federal court to abstain from adjudicating Plaintiffs' claims. *E.T.*, 681 F.Supp.2d at 1167-68, 1178-79. Plaintiffs timely appealed the district court's judgment only insofar as it dismissed their attorney caseload claims and related request for declaratory relief. We have jurisdiction under 28 U.S.C. § 1291.[3]

## II

Federal courts may not entertain actions that seek to impose "an ongoing federal audit of state . . . proceedings." *O'Shea*, 414 U.S. at 500, 94 S.Ct. 669; *see also id.* (warning against remedies "which would *indirectly* accomplish the kind of interference that *Younger* . . . and related cases sought to prevent" (emphasis added)); *Rizzo v. Goode*, 423 U.S. 362, 379-80, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976); *Kaufman v. Kaye*, 466 F.3d at 86; *31 Foster Children v. Bush*, 329 F.3d 1255, 1276 (11th Cir.2003); *Joseph A. v. Ingram*, 275 F.3d 1253, 1271 (10th Cir.2002); *Lucien v. Johnson*, 61 F.3d 573, 576 (7th Cir.1995); *Parker v. Turner*, 626 F.2d 1, 7 (6th Cir. 1980); *Gardner v. Luckey*, 500 F.2d 712, 715 (5th Cir.1974). "We should be very reluctant to grant relief that would entail heavy federal interference in such sensitive state activities as administration of the judicial system." *Los Angeles Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 703 (9th Cir. 1992) (citing *O'Shea*, 414 U.S. 488, 94 S.Ct. 669; *Rizzo*, 423 U.S. at 379, 96 S.Ct. 598); *cf. Horne v. Flores*, ___ U.S. ___, 129 S.Ct. 2579, 2593, 174 L.Ed.2d 406 (2009) (noting "sensitive federalism concerns" raised by "institutional reform injunctions" and federal court decrees effectively "dictating state or local budget priorities").

Heeding the teachings of *O'Shea* and cases since, the district court properly concluded that "[P]laintiffs' challenges to the juvenile dependency court system necessarily require the court to intrude upon the state's administration of its government, and more specifically, its court system." *E.T.*, 681 F.Supp.2d at 1164. Speaking to the Plaintiffs' attorney caseload claims, the court reasoned that

> in order to declare the current attorney caseloads unconstitutional or unlawful, the court would necessarily have to consider through a generalized inquiry how many cases are constitutionally and/or statutorily permissible, whether some types of cases require more investigation or preparation, which types of those cases deserve more resources, and how much time or attention is constitutionally and/or statutorily permissible.

*Id.* at 1165.

In asking us to reverse the district court's judgment, Plaintiffs rely on our decision in *Los Angeles Cnty. Bar Ass'n.*
906 There, a county bar association brought a facial challenge to the constitutionality of a *906 state statute prescribing the number of judges on the county's superior court. 979 F.2d at 699. The association sought a declaration that the statute violated federal and state constitutional guarantees—it argued that a shortage of judges caused delays in civil litigation, depriving litigants of access to courts, and that the statute denied local litigants equal protection because it forced them to suffer longer delays than litigants in neighboring counties. *Id.* at 699-700. We rejected the defendants' suggestion that a federal court should abstain under the principles of *O'Shea* and *Rizzo. Id.* at 701-04. Here, because Plaintiffs seek only declaratory relief on appeal, they believe their challenge to average attorney caseloads resembles the average court delays claim at issue in *Los Angeles County Bar Ass'n.* We disagree.

*Los Angeles County Bar Ass'n* is distinguishable from the case at bar. It involved average court delays and the "speedy civil litigation right," *id.* at 703, which the Plaintiffs allege would be solved by a simple increase in the number of judges. This case involves average attorney caseloads and the right to counsel, with remedies potentially involving a substantial interference with the operation of the program, including allocation of the judicial branch budget, establishment of program priorities, and court administration. Because the question is one of adequacy of attorney representation, potential remediation might involve examination of the administration of substantial number of individual cases. Thus, we conclude that the declaratory relief sought by Plaintiffs so intrudes in the administration of the Sacramento County Dependency Court as to require abstention under *O'Shea. See* Samuels v. Mackell, 401 U.S. 66, 72-73, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971) (noting that claims for declaratory relief can be just as intrusive as claims for injunctive relief); *Gilbertson v. Albright,* 381 F.3d 965, 977 (9th Cir.2004) (en banc) (same); *see also* O'Shea, 414 U.S. at 500, 94 S.Ct. 669; *Parker,* 626 F.2d at 7 ("When the state agency in question is a state court . . . the equitable restraint considerations appear to be nearly absolute.").

We decline Plaintiffs' invitation to consider in isolation their (now-narrowed) request for relief, as though reaching the merits of their declaratory judgment claims would end the matter. For "even the limited decree[]" sought here "would inevitably set up the precise basis for *future intervention* condemned in O'Shea." *Luckey v. Miller,* 976 F.2d 673, 679 (11th Cir.1992) (per curiam) (emphasis added). In other words, were we to declare the current Dependency Court attorney caseloads unconstitutional or unlawful, the Defendants' compliance with that remedy and its effect in individual cases could be subject to further challenges in federal district court. *See* Samuels, 401 U.S. at 72, 91 S.Ct. 764; *Kaufman,* 466 F.3d at 87. "[L]aying the groundwork for a future request for more detailed relief which would violate the comity principles expressed in *Younger* and *O'Shea* is the precise exercise forbidden under the abstention doctrine." *Luckey,* 976 F.2d at 679; O'Shea, 414 U.S. at 500-501, 94 S.Ct. 669; *accord* Kaufman, 466 F.3d at 87 (noting that later challenges to compliance with the federal court remedy requested "would inevitably lead to precisely the kind of `piecemeal interruptions of . . . state proceedings' condemned in *O'Shea*").

## III

We conclude that the district court properly abstained from consideration of the claims Plaintiffs raise here, and we
907 therefore *907 affirm the dismissal of their complaint.

AFFIRMED.

[*] The Honorable Cormac J. Carney, District Judge for the U.S. District Court for Central California, Santa Ana, sitting by designation.

[1] For purposes of a motion to dismiss, we take the factual allegations in Plaintiffs' complaint as true. *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir.2010).

[2] Specifically, Plaintiffs assert federal claims under § 1983 arising out of alleged (1) procedural and substantive due process violations from excessive attorney caseloads, and procedural due process violations from excessive judicial caseloads; (2) deprivation of rights under the Federal Child Welfare Act, 42 U.S.C. § 671(a)(22); and (3) deprivation of rights under the Child Abuse Prevention and Treatment and Adoption Reform Act, 42 U.S.C. § 5106a(b)(2)(A)(xiii). Plaintiffs also assert state law claims arising out of alleged (1) violations of the inalienable right to pursue and obtain safety set forth in Article I, § 1 of the California Constitution for failure to provide fair and adequate tribunals and effective legal counsel; (2) violation of due process as guaranteed in Article I, § 7 of the California Constitution for failure to provide adequate and effective legal representation in dependency proceedings; (3) violation of Welfare and Institutions Code § 317(c); and (4) violation of Welfare and Institutions Code § 317.5(b).

[3] The parties disagree about the standard of review applicable to the district court's decision to equitably abstain under *O'Shea* and its progeny. We need not resolve the dispute today, because whether we review the district court's ruling *de novo* or for an abuse of discretion, our conclusion remains the same. *See, e.g., United States v. Wunsch,* 84 F.3d 1110, 1114 (9th Cir.1996) ("We need not decide what the appropriate standard of review should be in the instant appeal . . . because we would reach the same result regardless of which one were applied.").

682 F.3d 1121 (2011)

**E.T.; K.R.; C.B.; G.S.; Frank Dougherty, on Behalf of E.T., K.R., C.B. and G.S., Plaintiffs-Appellants,**

**v.**

**Tani CANTIL-SAKAUYE, Chair of the Judicial Council of California, in her official capacity; William C. Vickrey, Administrative Director of the Administrative Office of the Court of the Judicial Council, in his official capacity; Steven W. White, Presiding Judge of the Superior Court of the County of Sacramento, in his official capacity, Defendants-Appellees.**

No. 10-15248.

**United States Court of Appeals, Ninth Circuit.**

Argued and Submitted April 14, 2011.
Filed September 13, 2011.
Amended March 12, 2012.

Edward Howard (argued), Children's Advocacy Institute, University of San Diego School of Law, San Diego, CA; Peter E. Perkowski, Winston & Strawn, LLP, San Francisco, CA, for the plaintiffs-appellants.

Robert A. Naeve, Jones Day, Irvine, CA, for the defendants-appellees.

1122 *1122 Before: SIDNEY R. THOMAS and JOHNNIE B. RAWLINSON, Circuit Judges, and CORMAC J. CARNEY, District Judge.[*]

## ORDER

The panel has decided to amend the opinion filed September 13, 2011. The opinion is withdrawn and a substituted opinion is filed concurrently with this order.

With the filing of the amended opinion, the panel has voted to deny the petition for rehearing and to reject the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R.App. P. 35(b).

The petition for rehearing is denied and the petition for rehearing en banc is rejected. No further petitions for rehearing will be entertained.

## OPINION

PER CURIAM:

Plaintiff foster children appeal the dismissal of their class action lawsuit under 42 U.S.C. § 1983, in which they allege that the caseloads of the Sacramento County Dependency Court and court-appointed attorneys are so excessive as to violate federal and state constitutional and statutory provisions. The district court abstained from adjudicating Plaintiffs' claims. Based on *O'Shea v. Littleton,* 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974), we affirm. *See Kaufman v. Kaye,* 466 F.3d 83, 84 (2d Cir.2006).

## I

## A

Plaintiffs filed this action on behalf of themselves and a proposed class of roughly 5,100 foster children in Sacramento County.[1] They allege that "crushing and unlawful caseloads" frustrate the ability of Dependency Courts to fairly and adequately hear their cases and of court-appointed attorneys to provide them effective assistance of counsel — all to the childrens' "enduring harm." Their suit "seeks a Dependency Court for Sacramento's abused and neglected children that comports with basic Due Process and the effective, adequate, and competent assistance of counsel for the children of Sacramento County in dependency proceedings."

In their complaint, Plaintiffs assert constitutional and statutory claims under 42 U.S.C. § 1983, as well as pendent state
1123 law claims.[2] They seek relief in the form of (1) *1123 a declaratory judgment that Defendants have violated, continue to violate, and/or will violate Plaintiffs' rights; (2) injunctive relief, restraining future violations of those rights; and (3) an order "mandating that Defendants provide the additional resources required to comply with the Judicial Council of California and the National Association of Counsel for Children's recommended caseloads for each court-appointed attorney."

Named plaintiffs E.T., K.R., C.B., and G.S. reside in the County of Sacramento and presently are in foster care or are wards of the court. Together, they allege numerous shortcomings of court-appointed counsel, including the failure to conduct meaningful interviews or regular meetings, investigate their cases, and foster contact with social workers and other professionals.

Each named Defendant plays a part in administering the County's foster care courts. The Honorable Tani Cantil-Sakauye, Chief Justice of California, is Chair of the Judicial Council of California. The Judicial Council oversees the statewide administration of justice in the state's courts. As Chair, the Chief Justice directs the Council's work, including its allocation of the judicial branch budget; promulgation of rules of court administration and procedure; and setting of priorities for the system's continual improvement. William C. Vickrey is Administrative Director of the Administrative Office of the Courts ("AOC"), the staff agency of the Council responsible for a variety of programs and services to improve access to a fair and impartial judicial system. The AOC's initiatives include Dependency Representation, Administration, Funding, and Training ("DRAFT"), a program to provide court funding to participating California counties. DRAFT funds pay for childrens' court-appointed counsel in Sacramento County Dependency Court. Finally, the Honorable Steven W. White is Presiding Judge of the Superior Court of the County of Sacramento. In that capacity, Judge White's responsibilities include allocating resources within the court and assigning judges to departments, such as the county's Dependency Court.

## B

On Defendants' motion, the district court dismissed Plaintiffs' complaint on abstention grounds. *E.T. v. George,* 681 F.Supp.2d 1151 (E.D.Cal.2010). The court concluded that both *O'Shea,* 414 U.S. at 501-02, 94 S.Ct. 669, and *Younger v. Harris,* 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), require a federal court to abstain from adjudicating Plaintiffs' claims. *E.T.,* 681 F.Supp.2d at 1167-68, 1178-79. Plaintiffs timely appealed the district court's judgment only insofar as it dismissed their attorney caseload claims and related request for declaratory relief. We have jurisdiction under 28 U.S.C. § 1291.[3]

## II

Federal courts may not entertain actions that seek to impose "an ongoing federal audit of state ... proceedings." *O'Shea,* 414 U.S. at 500, 94 S.Ct. 669; *see also id.* (warning against remedies "which would *indirectly* accomplish the

1124 kind of interference that *Younger* ... and related cases sought to prevent" (emphasis added)); *1124 *Rizzo v. Goode,* 423 U.S. 362, 379-80, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976); *Kaufman v. Kaye,* 466 F.3d at 86; *31 Foster Children v. Bush,* 329 F.3d 1255, 1276 (11th Cir.2003); *Joseph A. v. Ingram,* 275 F.3d 1253, 1271 (10th Cir.2002); *Lucien v. Johnson,* 61 F.3d 573, 576 (7th Cir.1995); *Parker v. Turner,* 626 F.2d 1, 7 (6th Cir. 1980); *Gardner v. Luckey,* 500 F.2d 712, 715 (5th Cir.1974). "We should be very reluctant to grant relief that would entail heavy federal interference in such sensitive state activities as administration of the judicial system." *Los Angeles Cnty. Bar Ass'n v. Eu,* 979 F.2d 697, 703 (9th Cir. 1992) (citing *O'Shea,* 414 U.S. 488, 94 S.Ct. 669; *Rizzo,* 423 U.S. at 379, 96 S.Ct. 598); *cf. Horne v. Flores,* 557 U.S. 433, 129 S.Ct. 2579, 2593, 174 L.Ed.2d 406 (2009) (noting "sensitive federalism concerns" raised by "institutional reform injunctions" and federal court decrees effectively "dictating state or local budget priorities").

Heeding the teachings of *O'Shea* and cases since, the district court properly concluded that "[P]laintiffs' challenges to the juvenile dependency court system necessarily require the court to intrude upon the state's administration of its government, and more specifically, its court system." *E.T.,* 681 F.Supp.2d at 1164. Speaking to the Plaintiffs' attorney caseload claims, the court reasoned that

> in order to declare the current attorney caseloads unconstitutional or unlawful, the court would necessarily have to consider through a generalized inquiry how many cases are constitutionally and/or statutorily permissible, whether some types of cases require more investigation or preparation, which types of those cases deserve more resources, and how much time or attention is constitutionally and/or statutorily permissible.

*Id.* at 1165.

In asking us to reverse the district court's judgment, Plaintiffs rely on our decision in *Los Angeles Cnty. Bar Ass'n.* There, a county bar association brought a facial challenge to the constitutionality of a state statute prescribing the number of judges on the county's superior court. 979 F.2d at 699. The association sought a declaration that the statute violated federal and state constitutional guarantees — it argued that a shortage of judges caused delays in civil litigation, depriving litigants of access to courts, and that the statute denied local litigants equal protection because it forced them to suffer longer delays than litigants in neighboring counties. *Id.* at 699-700. We rejected the defendants' suggestion that a federal court should abstain under the principles of *O'Shea* and *Rizzo. Id.* at 701-04. Here, because Plaintiffs seek only declaratory relief on appeal, they believe their challenge to average attorney caseloads resembles the average court delays claim at issue in *Los Angeles County Bar Ass'n.* We disagree.

*Los Angeles County Bar Ass'n* is distinguishable from the case at bar. It involved average court delays and the `speedy civil litigation right,' *id.* at 703, which the Plaintiffs allege would be solved by a simple increase in the number of judges. This case involves average attorney caseloads and the right to counsel. Because the question is one of adequacy of representation, potential remediation might involve examination of the administration of a substantial number of individual cases. Thus, we conclude that the declaratory relief sought by Plaintiffs would amount to an ongoing federal audit of Sacramento County Dependency Court proceedings, requiring abstention under *O'Shea. See Samuels v. Mackell,* 401 U.S. 66, 72-73, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971) (noting that claims for declaratory relief can be just as intrusive as claims for injunctive relief); *Gilbertson v. Albright,* 381 F.3d 965, 977 (9th Cir.2004) (en
1125 banc) (same); *see also O'Shea,* 414 U.S. at 500, *1125 94 S.Ct. 669; *Parker,* 626 F.2d at 7 ("When the state agency in question is a state court ... the equitable restraint considerations appear to be nearly absolute.").

We decline Plaintiffs' invitation to consider in isolation their (now-narrowed) request for relief, as though reaching the merits of their declaratory judgment claims would end the matter. For "even the limited decree[]" sought here "would inevitably set up the precise basis for *future intervention* condemned in *O'Shea.*" *Luckey v. Miller,* 976 F.2d 673, 679 (11th Cir.1992) (per curiam) (emphasis added). In other words, were we to declare the current Dependency Court attorney caseloads unconstitutional or unlawful, the Defendants' compliance with that remedy and its effect in individual cases could be subject to further challenges in federal district court. *See Samuels,* 401 U.S. at 72, 91 S.Ct. 764; *Kaufman,* 466 F.3d at 87. "[L]aying the groundwork for a future request for more detailed relief which would violate the comity principles expressed in *Younger* and *O'Shea* is the precise exercise forbidden under the abstention

doctrine." *Luckey,* 976 F.2d at 679; *O'Shea,* 414 U.S. at 500-501, 94 S.Ct. 669; *accord Kaufman,* 466 F.3d at 87 (noting that later challenges to compliance with the federal court remedy requested "would inevitably lead to precisely the kind of `piecemeal interruptions of ... state proceedings' condemned in *O'Shea*").

## III

We conclude that the district court properly abstained from consideration of the claims Plaintiffs raise here, and we therefore affirm the dismissal of their complaint.

AFFIRMED.

[*] The Honorable Cormac J. Carney, District Judge for the U.S. District Court for Central California, Santa Ana, sitting by designation.

[1] For purposes of a motion to dismiss, we take the factual allegations in Plaintiffs' complaint as true. *Hebbe v. Pliler,* 627 F.3d 338, 341-42 (9th Cir.2010).

[2] Specifically, Plaintiffs assert federal claims under § 1983 arising out of alleged (1) procedural and substantive due process violations from excessive attorney caseloads, and procedural due process violations from excessive judicial caseloads; (2) deprivation of rights under the Federal Child Welfare Act, 42 U.S.C. § 671(a)(22); and (3) deprivation of rights under the Child Abuse Prevention and Treatment and Adoption Reform Act, 42 U.S.C. § 5106a(b)(2)(A)(xiii). Plaintiffs also assert state law claims arising out of alleged (1) violations of the inalienable right to pursue and obtain safety set forth in Article I, § 1 of the California Constitution for failure to provide fair and adequate tribunals and effective legal counsel; (2) violation of due process as guaranteed in Article I, § 7 of the California Constitution for failure to provide adequate and effective legal representation in dependency proceedings; (3) violation of Welfare and Institutions Code § 317(c); and (4) violation of Welfare and Institutions Code § 317.5(b).

[3] The parties disagree about the standard of review applicable to the district court's decision to equitably abstain under *O'Shea* and its progeny. We need not resolve the dispute today, because whether we review the district court's ruling *de novo* or for an abuse of discretion, our conclusion remains the same. *See, e.g., United States v. Wunsch,* 84 F.3d 1110, 1114 (9th Cir.1996) ("We need not decide what the appropriate standard of review should be in the instant appeal ... because we would reach the same result regardless of which one were applied.").