#### Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

### SUPREME COURT OF THE UNITED STATES

### Syllabus

# KOWALSKI, JUDGE, 26TH JUDICIAL CIRCUIT COURT OF MICHIGAN, ET AL. v. TESMER ET AL.

## CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 03-407. Argued October 4, 2004—Decided December 13, 2004

After Michigan's Constitution was amended to require that an appeal by an accused pleading guilty or nolo contendere be by leave of the court, several state judges denied appointed appellate counsel to indigents pleading guilty, and the Michigan Legislature subsequently codified this practice. The two attorney respondents joined three indigent criminal defendants in filing suit in Federal District Court, alleging that the practice denies indigents their federal due process and equal protection rights. The District Court held the practice and statute unconstitutional, but a Sixth Circuit panel reversed, holding that Younger v. Harris, 401 U. S. 37, abstention barred the indigents' suit, but that the attorneys had third-party standing to assert the indigents' rights; and that the statute was constitutional. On rehearing, the en banc Sixth Circuit agreed on standing but found the statute unconstitutional.

Held: The attorneys lack third-party standing to assert the rights of Michigan indigent defendants denied appellate counsel. The Court assumes that the attorneys have satisfied Article III's standing requirement and thus addresses only whether they have standing to raise the rights of others. In deciding whether to grant third-party standing, this Court asks whether the party asserting the right has a "close" relationship with the person who possesses the right, and whether there is a "hindrance" to the possessor's ability to protect his own interests. Powers v. Ohio, 499 U. S. 400, 411. The attorneys here claim standing based on a future attorney-client relationship with as yet unascertained Michigan criminal defendants who will request, but be denied, appellate counsel under the statute. In two cases in which this Court found an attorney-client relationship suffi-

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cient to confer third-party standing—Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, and Department of Labor v. Triplett, 494 U.S. 715—the attorneys invoked known clients' rights, not those of the hypothetical clients asserted here. And Department of Labor v. *Triplett*—in which an attorney disciplined by his state bar for accepting a fee prohibited by the Black Lung Benefits Act of 1972 was held to have third-party standing to invoke claimants' due process rights to challenge the fee restriction that resulted in his punishment—falls within the class of cases allowing "standing to litigate the rights of third parties when enforc[ing] the challenged restriction against the litigant would result indirectly in the violation of third parties' rights," Warth v. Seldin, 422 U.S. 490, 510. The attorneys here do not have a "close relationship" with their alleged "clients"; indeed, they have no relationship at all. Nor have they demonstrated any "hindrance" to the indigents' advancing their own constitutional rights against the Michigan scheme. An indigent may seek leave to challenge the denial of appellate counsel in state court and then may seek a writ of certiorari in this Court; and both state and federal collateral review exist beyond that. The attorneys' hypothesis that, without counsel, such avenues are effectively foreclosed was disproved in the Michigan courts and this Court, where pro se indigents have pursued them. On a more fundamental level, if an attorney is all that the indigents need to perfect their challenge in state court and beyond, one wonders why these attorneys did not attend state court and assist them. The fair inference is that they did not want the state process to take its course, but wanted a federal court to short-circuit the State's adjudication of the constitutional question. Here, the indigents were appropriately dismissed under Younger because they had ample opportunities to raise their constitutional challenge in their ongoing state proceedings. An unwillingness to allow the Younger principle to be thus circumvented is an additional reason to deny the attorneys third-party standing. Pp. 2–8.

333 F. 3d 683, reversed and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, THOMAS, and BREYER, JJ., joined. THOMAS, J., filed a concurring opinion. GINSBURG, J., filed a dissenting opinion, in which STEVENS and SOUTER, JJ., joined.