IN THE
INDIANA SUPREME COURT

Court of Appeals Case Number 23A-MH-752

In the Matter of the Civil Commitment of J.F., Appellant-Respondent, v. St. Vincent Hosp. and Heath Care Ctr. Inc., d/b/a/ St. Vincent Stress Center Appellee-Petitioner.	)	Appeal from the Marion County Superior Court, Probate Division Case No. 49D08-2303-MH-9936 Hon. David Certo, Judge

AMICUS BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND THE AMERICAN CIVIL LIBERTIES UNION OF INDIANA IN SUPPORT OF APPELLANT

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INTRODUCTION

This case concerns mootness questions that arise when someone is released from a civil commitment while appealing the underlying commitment order. Amici curiae respectfully submit that such cases, generally speaking, are not moot, and that appellant J.F.'s case, specifically, is not moot.

The Indiana Constitution does not impose a case-or-controversy requirement on Indiana courts. Instead, it contains multiple provisions—a right to remedy, a right to appeal, and due process protections—that favor adjudicating appeals by people whose liberty has been curtailed. As pertinent here, those provisions warrant a flexible approach to two related mootness exceptions: one for cases that are "capable of repetition yet evading review," and another for cases implicating the "public interest." The former exception applies when a claim may recur for *the plaintiff herself*, while the latter applies when the plaintiff's claim may recur for *someone else* and implicates the public interest. Both exceptions readily apply when civilly committed individuals are released during their appeals. Those individuals often face a likelihood of future commitments, thus implicating the capable-of-repetition exception, and their cases involve profound intrusions on liberty that may recur for someone else, thus implicating the public-interest exception.

If this Court has concerns about administering the public-interest exception because it entails *defining* the public interest, it should resolve those concerns not by narrowing that exception but by requiring appellate courts to consider traditional mootness exceptions first. In many cases, the capable-of-repetition

exception will apply, and invoking the public-interest exception will be unnecessary.

J.F.'s case illustrates this point. Her March 2023 commitment order marked J.F.'s third hospitalization, and second commitment case, in three months. The trial court found that J.F. had a mental illness and was gravely disabled. J.F. appealed, challenging the sufficiency of the evidence and the trial court's reliance on evidence predating March 2023. The commitment expired during J.F.'s appeal, and the Court of Appeals concluded that "no exception to the mootness doctrine applies." *J.F. v. St. Vincent's Hosp. and Health Care Ctr., Inc.*, 222 N.E.3d 1020, 1025 (Ind. Ct. App. 2023). Yet the court also rejected, on the merits, J.F.'s legal argument about the scope of the information that the trial court could consider. *Id.* at 1022 n.1. The court held that the trial court could consider "any information contained in the record" including prior hospitalizations and petitions. *Id.*

But J.F.'s case is not moot. At a minimum, it is capable of repetition yet evading review because J.F.'s arguments are likely to recur in a future commitment case against J.F. herself. Indeed, the Court of Appeals' decision below seemingly allows trial courts to use the March 2023 commitment as a reason to commit J.F. again—and again, and again. For that reason alone, J.F.'s appeal should proceed, and courts need not decide whether J.F.'s case meets the public-interest exception. But, in fact, it does. J.F.'s case implicates the public interest because it involves both a severe deprivation of liberty and a legal question concerning the scope of evidence that may be considered in a civil commitment proceeding.

Accordingly, as shown below, J.F.'s appeal is not moot.

STATEMENT OF INTEREST

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to protecting the principles embodied in the state and federal Constitutions and our nation's civil rights laws. The ACLU of Indiana is an affiliate of the national ACLU that works to enhance and defend the civil liberties and rights of all Hoosiers. This work includes preserving access to the courts so that claims involving civil rights and civil liberties can be adjudicated. *See, e.g.*, Br. of Amici Curiae ACLU of Utah & ACLU in Support of Appellants, *Natalie R. v. Utah*, No. 20230022-SC (Utah filed Oct. 3, 2023), available at: https://perma.cc/7ZGY-DGND; Br. of Amici Curiae ACLU of Montana & ACLU in Support of Appellees, *Held v. Montana*, DA 23-0575 (Mont. filed Mar. 20, 2024), available at: https://perma.cc/KD5C-WFV7.

SUMMARY OF ARGUMENT

I. The Indiana Constitution favors adjudicating appeals involving individuals who have been released while appealing civil commitment orders. The Constitution lacks a case-or-controversy requirement. It expressly guarantees a right to remedy and a right to appeal. And civil commitment implicates core liberties protected by the state and federal constitutions.

II. To carry out the pro-justiciability mandate of the Indiana Constitution, and to mitigate administrability concerns, when mootness questions arise during

civil commitment appeals, Indiana appellate courts should be instructed to consider traditional mootness exceptions before turning to the public-interest exception. In many cases, the capable-of-repetition exception will apply, making it unnecessary to apply the public-interest exception. When courts do apply the public-interest exception, they should do so broadly and at a high level of generality.

III. J.F.'s case is not moot. Given her hospitalization history, and the Court of Appeals' holding that this history can be considered in future commitment proceedings, J.F.'s case is capable of repetition yet evading review. It is therefore unnecessary to decide whether J.F.'s case meets the public-interest exception. Regardless, because all civil commitments implicate important liberty interests, and because J.F.'s case raises an important question about the scope of the record that trial courts may consider, deciding J.F.'s appeal is also in the public interest.

ARGUMENT

I. The Indiana Constitution favors deciding civil commitment appeals.

J.F.'s case was not moot when the trial court ordered her commitment. Thus, the question here is whether and when a case should be deemed moot based on circumstances arising during an appeal, after an individual has experienced a profound curtailment of their liberty. The Indiana Constitution tips the scales strongly against dismissing such appeals as moot.

A. The Indiana Constitution lacks justiciability constraints.

Unlike the U.S. Constitution, the Indiana Constitution does not limit the jurisdiction of the courts to actual cases and controversies. *See In re Lawrence*, 579 N.E.2d 32, 37 (Ind. 1991). This difference reflects the distinct roles that state and federal courts serve in our federal system; state courts have general jurisdiction, while federal courts have limited jurisdiction. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). "Federal justiciability limits," including mootness, therefore "have no direct applicability" in Indiana. *Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995). Indeed, "[t]his Court can and does issue decisions which are, for all practical purposes, 'advisory' opinions." *Indiana Dep't of Env't Mgmt. v. Chem. Waste Mgmt., Inc.*, 643 N.E.2d 331, 337 (Ind. 1994) (footnote omitted). *See, e.g.*, *Mosley v. State*, 908 N.E.2d 599, 603 (Ind. 2009).

Although this Court has stated that the Indiana Constitution's distribution-of-powers clause provides "a principal justification for judicial restraint," *Horner v. Curry*, 125 N.E.3d 584, 590 (Ind. 2019), that restraint is necessarily milder than the restraint that must be exercised by federal courts. The distribution-of-powers clause instructs each branch of government not to "exercise any of the functions of another." Ind. Const. art. 3, § 1. However, it does not say what those functions *are*. Moreover, the "distribution-of-powers doctrine works both ways." *Horner*, 125 N.E.3d at 590 n.4. That is, just as the judiciary must be wary of infringing legislative and executive powers, it must also avoid unduly restricting its own authority through "excessive formalism." *State ex rel. Cittadine v. Indiana Dep't of*

Transp., 790 N.E.2d 978, 979 (Ind. 2003).

There is therefore little doubt that Indiana courts *can* decide civil commitment cases after individuals are released. For the reasons below, they generally should.

B. The Indiana Constitution text favors adjudicating appeals.

The Indiana Constitution contains two provisions that cut strongly in favor of adjudicating civil commitment cases that were not moot at their inception and purportedly became moot during an appeal.

First, the Open Courts clause promises that "every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law." Ind. Const. art. I, § 12. This Court has interpreted Indiana's Open Courts clause "more generous[ly]" than other jurisdictions read theirs, embracing the notion of a judiciary accessible to the injured, "independent" from legislative or executive interference. *Smith v. Ind. Dep't of Correction*, 883 N.E.2d 802, 807 (Ind. 2008). This Clause prohibits "outright closure of access to the courts" for a class of litigants, even when the roadblock results from legislative deliberation and conserves judicial resources. *Id.*

Second, since 1970, the Indiana Constitution has guaranteed "an absolute right to appeal" in "all cases." Ind. Const. art. 7, § 6. This is an "inviolate protection." *Campbell v. Criterion Grp.*, 588 N.E.2d 511, 515 n.6 (Ind. Ct. App. 1992), *adopted in part and vacated in part on other grounds*, 605 N.E.2d 150 (Ind. 1992). Indiana is thus "particularly solicitous of the right to appeal." *In re Adoption*

of C.B.M., 992 N.E.2d 687, 692 (Ind. 2013). This Court has meaningfully enforced this right by, for example, holding that a mother was not required to file a separate stay of the termination of her parental rights in order to appeal the adoption of her child; the Court reasoned that "her appellate right would mean little if it could be short-circuited by" a conflicting judgment "being issued before her appeal is complete." *Id.*

Similarly, the constitutional rights of civilly committed people—including the rights to a remedy and to an appeal—would mean little if the Legislature could short-circuit those rights by causing people to be committed and then released before their appeals are decided.

C. The Indiana Constitution protects liberty interests implicated by civil commitments.

The remedial and appellate rights guaranteed to all Hoosiers are especially important in the civil commitment context because every commitment "constitutes a significant deprivation" of the "[f]reedom from bodily restraint" protected by the due process guarantees of the U.S. Constitution and Article 1, sections 1 and 12, of the Indiana Constitution. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *cf. Kirtley v. State*, 84 N.E.2d 712, 714 (Ind. 1949) (explaining that Article 1, section 1's personal liberty clause covers freedom from restraint); *Indiana High Sch. Athletic Ass'n, Inc. v. Carlberg by Carlberg*, 694 N.E.2d 222, 241 (Ind. 1997) (explaining that Article I, section 12's "Due Course of Law Clause" ensures due process). As this Court has explained, civil commitment "goes beyond a loss of [an individual's] physical freedom," given "the serious stigma and adverse social consequences accompany . . .

physical confinement." *Civ. Commitment of T.K. v. Dep't of Veterans Affs.*, 27 N.E.3d 271, 273 (Ind. 2015) (citing *Addington v. Texas*, 441 U.S. 418, 425–26 (1979)). "[E]nsur[ing] the rights of the person whose liberty is at stake" is thus of great consequence. *T.K.*, 27 N.E.3d at 273 (quoting *In re Commitment of Roberts*, 723 N.E.2d 474, 476 (Ind. Ct. App. 2000)).

Indiana's civil commitment scheme acutely implicates these liberty interests. Civil commitments in Indiana do not require proof of imminent danger. *Compare* Ga. Code Ann. § 37-3-1 (2023) (requiring "a substantial risk of imminent harm" or "an imminently life-endangering crisis"), *with* Ind. Code § 12-26-2-5 (2023) (containing no such requirement). Nor do they require proof that someone cannot provide for their own basic needs; rather, an individual can be committed based only on an "obvious deterioration." *Compare* Alaska Stat. Stat. Ann. § 47.30.915 (defining "grave disability" to require "danger of physical harm" from a "complete neglect of basic needs" or that an individual is "so incapacitated" that they can't "surviv[e] safely in freedom"), *with* Ind. Code § 12-7-2-96 (2023) (including "deterioration" that results in "inability to function independently" as sufficient for grave disability). The broad sweep of Indiana's civil commitment statutes presents a heightened need for appellate review, including when the Legislature authorizes commitments that elapse faster than the time necessary to litigate an appeal.

II. Mootness exceptions provide crucial protection for civilly committed individuals.

Indiana's mootness doctrines should reflect the Indiana Constitution's pro-justiciability commitments. In civil commitment cases, the public-interest exception

to mootness has helped to perform that vital function by affording Indiana's appellate courts the "discretion to decide moot cases that present questions of great public importance likely to recur." *E.F. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 188 N.E.3d 464, 465 (Ind. 2022). But, as the Court's amicus announcement in this case implies, the public-interest exception can be challenging to administer. Accordingly, to preserve the Indiana Constitution's pro-justiciability tilt, and to mitigate administrability challenges, amici respectfully propose a two-step process for resolving mootness questions in commitment appeals. First, appellate courts should consider, and broadly construe, traditional mootness exceptions, especially the exception for cases that are "capable of repetition yet evading review." Second, courts should turn to the public-interest exception only when all other exceptions clearly do not apply, and they should assess the public interest at a high level of generality, which will favor adjudicating cases rather than dismissing them.

A. The public-interest exception need not be invoked when the capable-of-repetition exception applies.

The easiest way to limit any difficulties in administering the public-interest exception is to instruct appellate courts to consider that exception only after exhausting other mootness exceptions. The Court of Appeals recently followed this approach in *C.P. v. St. Vincent Hosp. & Health Care Ctr.*, 219 N.E.3d 142, 147 (Ind. Ct. App. 2023) (declining to address the public-interest exception because another exception applied).

Typically, a case is moot when "no effective relief can be rendered to the parties." *Lawrence*, 579 N.E.2d at 37. For example, if "the concrete controversy at

issue in a case has been ended or settled, or in some manner disposed of, so as to render it unnecessary to decide the question involved," the case is moot. *Id.* (internal quotation marks omitted). But there are exceptions. Below, J.F. argued the "collateral consequences" exception, which applies when "leaving the [original] judgment undisturbed might lead to negative collateral consequences." *J.F.*, 222 N.E.3d at 1024; *Roark v. Roark*, 551 N.E.2d 865, 867 (Ind. Ct. App. 1990). There are also other exceptions. One of them—for cases that are capable of repetition yet evading review—should be considered when a party raises the public-interest exception, because the two exceptions are closely connected.

The capable-of-repetition exception applies where the challenged action is too short-lived to be fully litigated, the plaintiff no longer has a personal stake in the outcome of the case, and "the claim may arise again with respect to that plaintiff." *Matter of Tina T.*, 579 N.E.2d 48, 52 (Ind. 1991); *Kingdomware Tech., Inc., v. United States*, 579 U.S. 162, 170 (2016). For this exception, the plaintiff need not show that her claim implicates the public interest, so long as the issue is likely to recur not just for *someone*, but for "the same complaining party." *Kingdomware*, 579 U.S. at 170; *see, e.g.*, *N. J. R. v. State*, 439 N.E.2d 725, 726 (Ind. Ct. App. 1982).

The U.S. Supreme Court has applied the capable-of-repetition exception in a case about a state's administration of antipsychotic drugs against a prisoner's will. *Washington v. Harper*, 494 U.S. 210, 218 (1990). Given the prisoner's medical history, and because he had been transferred twice to a facility where he was administered the drug, the Court held that his challenge was not moot after the

state stopped medicating him. Instead, "it [was] reasonable to conclude that there [was] a strong likelihood that [he would] again be transferred to [the facility]" and "officials would seek to administer antipsychotic medications" again. *Id.* at 219.

Harper translates straightforwardly to the civil commitment context, where courts frequently encounter plaintiffs who have faced or will likely face repeat commitments. It is therefore unsurprising that many state and federal courts have concluded that "an appeal from an order of involuntary commitment is not moot even if the individual has been released, since the issues raised [are] capable of repetition, yet evading review." *In re J.S.W.*, 303 P.3d 741, 744 (Mont. 2013) (quotations and internal citation omitted).[1] Similarly, appellate courts in Indiana should apply the capable-of-repetition exception and proceed to the merits in many civil commitment cases where plaintiffs are released during their appeals. Those courts would have no occasion to apply the public-interest exception.

B. The public-interest exception applies when the issue is likely to recur and presents an issue of public significance.

Still, in some civil commitment cases, traditional mootness exceptions do not apply, and appellate courts will need to consider the public-interest exception. In

[1] *See, e.g.*, *United States v. Springer*, 715 F.3d 535, 541 (4th Cir. 2013); *Hubbart v. Knapp*, 379 F.3d 773, 777–78 (9th Cir. 2004); *Doe v. Colautti*, 592 F.2d 704 (3d Cir.1979); *In re D.D.*, 303 A.3d 935, 937 n.4 (D.C. 2023); *Matter of Commitment of T.G.*, No. A-0959-20, 2022 WL 17747353, at *5 (N.J. Super. Ct. App. Div. Dec. 19, 2022); *In re Julie M.*, 190 N.E.3d 7630, 770–71 (Ill. 2021); *In re Christine R.*, 145 N.E.3d 95, 100 (Ill. App. Ct. 2019); *State v. Crawford*, 196 A.3d 1, 19 (Md. 2018); *Matter of N.L.*, 71 N.E.3d 476, 479 (Mass. 2017); *Smith v. State*, 229 So. 3d 178, 180–81 (Miss. Ct. App. 2017); *In re A.N.B.*, 754 S.E.2d 442, 445 (N.C. Ct. App. 2014); *In re Lemanuel C.*, 158 P.3d 148, 150 n.4 (Cal. 2007); *Gilford v. People*, 2 P.3d 120, 124 (Colo. 2000).

doing so, courts should assess the public interest at a high level of generality, without relying on any merits or demerits in a specific plaintiff's case. To do that, courts should look at the broad legal issues implicated by the *type* of proceeding at issue, as well as recurring scenarios in that *type* of case. That broad-based approach would promote appellate justiciability, as the Indiana Constitution commands. It would also promote judicial economy by guarding against embroiling appellate courts in the merits of a specific case while they assess mootness.

This Court's recent decision in *G.W. v. State*, 231 N.E.3d 184 (Ind. 2024), illustrates this approach. In *G.W.*, the petitioner challenged the juvenile court's disposition that ordered his commitment instead of home detention. *Id.* at 187. In applying the public-interest exception, the court did not focus on the facts surrounding the juvenile proceeding, the strength of the commitment order, or any characteristic unique to G.W. *Id.* at 188. Rather, it noted Indiana's long recognition of the "'paramount public importance' of 'the procedures implemented to determine the fates of juvenile wards . . . and the conditions under which they are cared for.'" *Id.*; *see also Ind. Educ. Emp. Rels. Bd. v. Mill Creek Classroom Tchrs. Ass'n*, 456 N.E.2d 709, 711 (Ind. 1983) (concluding that issues of "violations of the statute governing collective bargaining" between schools and teachers fit in the exception, without looking at specific context surrounding the labor dispute); *A.S. v. State*, 929 N.E.2d 881, 888 (Ind. Ct. App. 2010) (concluding that issues "involving the propriety of juvenile commitment" were of public importance, and rejecting State's narrow characterization of the issue as the "quality of [A.S.'s] waiver").

In contrast, courts should not use a fact- or case-specific approach to the public-interest exception that looks, for example, to whether the plaintiff's appeal presents a "close" case on the merits. *See, e.g.*, *In re Commitment of J.G.*, 209 N.E.3d 1206, 1210–11 (Ind. Ct. App. 2023). If a court assesses the merits during its mootness inquiry, then it is not saving any judicial resources by resolving the case on mootness grounds. That is, if an appellate court is going to peek at the merits, it might as well decide the merits.

So, when an appellate court decides whether to invoke the public-interest exception, the better approach is for the court to ask itself whether a civil commitment presents the type of case that, *assuming it were close on the merits*, should be decided despite the plaintiff's release. For most civil commitment cases, the answer will be yes. And for civil commitment cases in which the plaintiff raises some kind of legal issue, as J.F. did here, the answer will certainly be yes.

III. J.F.'s appeal is not moot.

Applying amici's proposed framework to this case illustrates how it might work. As a threshold matter, J.F.'s appeal meets the capable-of-repetition exception because her challenge—including to the trial court's reliance on months-old evidence—is likely to recur for J.F. herself. Thus, it is unnecessary to turn to the public-interest exception. But, in any event, the public-exception also applies here.

A. J.F.'s case is capable of repetition yet evading review.

J.F.'s appeal straightforwardly satisfies the capable-of-repetition exception. J.F. disputes the trial court's finding that she is "gravely disabled" and its reliance on evidence stretching beyond the immediate facts surrounding her commitment. As the Court of Appeals noted, J.F.'s March 2023 commitment was her third actual or attempted hospitalization in a three-month span. That history, together with the trial court's finding that J.F. is gravely disabled, makes it at least reasonably likely that J.F.'s "claim may arise again with respect to [her]." *Matter of Tina T.*, 579 N.E.2d at 52; *see Kingdomware Technologies*, 579 U.S. at 170. Accordingly, just as numerous state and federal courts have concluded in other civil commitment cases, J.F.'s appeal is capable of repetition yet evading review. *See supra* Part II.A & n.1.

Although certain state courts have held that the capable-of-repetition exception does not apply to purely fact-bound claims contesting the sufficiency of the evidence supporting a single civil commitment, *see, e.g., Matter of Commitment of S.L.L.*, 929 N.W.2d 140, 158–59 (Wis. 2019), that is not the situation here. J.F.'s claim is *not* purely fact-bound; she challenges the legality of the trial court's reliance on evidence predating March 2023. Precisely because the Court of Appeals rejected that argument, this case is not a case where "future [proceedings] will be based on new fact patterns." *Contra In re P.S.*, 702 A.2d 98, 101 (Vt. 1997) (holding that a sufficiency challenge was moot). To the contrary, if this Court endorses the Court of Appeals' approach, then each new civil commitment—for J.F. and untold others—can build on the last. Barring J.F. from appealing the March 2023

commitment order on the theory that the appeal is moot and then permitting that same order to be used against her in future commitment proceedings, would do precisely what the capable-of-repetition exception is meant to prevent.

Nor should it matter whether J.F. expressly argued the capable-of-repetition exception in the courts below. As explained above, to reduce needless litigation about the public-interest exception, appellate courts should automatically consider the capable-of-repetition exception when a plaintiff asserts the public-interest exception. J.F. did so.

B. J.F.'s case implicates the public interest.

The public-interest exception also applies here. *See Lawrence*, 579 N.E.2d at 37. As shown above, every civil commitment implicates significant liberty and dignitary interests. *See supra* Part I.C. What is more, J.F.'s case raises an important question about the extent to which trial courts can consider historical evidence when deciding civil commitment cases. On the Court of Appeals' view, every commitment can pave the way for the next, resulting in series of injustices without remedy. This issue is important to everyone in Indiana with an interest in ensuring that civil commitments do not unduly trample individual rights, and it is likely of particular interest to the estimated 264,000 adults in Indiana who have a serious mental illness. *See* National Alliance on Mental Illness, *State Fact Sheets: Mental Health in Indiana*, available at https://perma.cc/U5LX-BZHK.

The Court of Appeals overlooked J.F.'s legal argument when it concluded that J.F.'s appeal did not "address a novel issue, present a close call, or provide an

opportunity to develop case law on a complicated topic." *J.F.*, 222 N.E.3d at 1024. Regardless, while this Court has said that it can be "especially appropriate" to decide cases involving novel issues, close calls, or complicated topics, *E.F.,* 188 N.E.3d at 467, it has never limited the public-interest exception to those circumstances. And for good reason: a case can equally implicate the public interest when the law is clear. For example, if a public school were to deny admission to a student based on her race, and that student were to move to another district, her case would still implicate the public interest even if the illegality of the school's action was perfectly obvious.

Under the Court of Appeals' approach, each time a trial court determines that someone is "gravely disabled," that finding can follow them forever, leading to one hospitalization after another. That approach implicates the public interest.

CONCLUSION

For the foregoing reasons, J.F.'s appeal is not moot.

July 10, 2024

Respectfully submitted,

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WORD COUNT CERTIFICATE

I verify that this brief contains no more than 4,200 words.

July 10, 2024

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CERTIFICATE OF SERVICE

I certify that on July 10, 2024, I electronically filed the foregoing document using the Indiana E-Filing System ("IEFS"). I also certify that on July 10, 2024, the foregoing document was served, contemporaneously with this filing, via the IEFS, to the following parties:

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