

IN THE SUPREME COURT OF GEORGIA
CASE NO. S26G0021

IN THE INTEREST OF D.B. et al.,
Children,

On Writ of Certiorari from the Court of Appeals of Georgia
Case No. A25A0616

**MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE
ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION AND
THE AMERICAN CIVIL LIBERTIES UNION OF GEORGIA
IN SUPPORT OF PETITIONER**

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MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

The American Civil Liberties Union and the ACLU of Georgia move under Rule 23(3) for leave to file a friend-of-the-court brief. The proposed brief is attached to this motion as Exhibit 1.

INTEREST OF AMICI CURIAE

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 frequently litigates and files amicus curiae briefs in cases involving criminal law and state constitutional law.

The ACLU of Georgia is a non-profit organization that works to enhance and defend the civil liberties and rights of all Georgians through legal action, legislative and community advocacy, and civic education and engagement. The ACLU of Georgia envisions a state that guarantees all persons the civil liberties and rights contained in the United States and Georgia Constitutions and Bill of Rights, and it works to make that vision a reality.

The ACLU and the ACLU of Georgia are interested in the case because it has significant implications for Georgians’ constitutional procedural due process rights and substantive due process rights to family integrity. The Court

of Appeals decision below, if upheld, would substantially undermine parents' rights to a notice and hearing before the State removes their children, even where there is no emergency. It would also make Georgia an outlier in permitting *ex parte* family separation. This case presents an important opportunity for this Court to hold that the due process clause requires there to be a true emergency before the State may seize children without notice or hearing.

ARGUMENT

I. Issues to be Addressed by Amici

Amici wish to address the three questions presented by the Court:

First, Amici will address whether this case is moot. Amici will detail the collateral consequences that Petitioner faces due to the juvenile court's *ex parte* removal order. Amici will contend that, based on these consequences and the Court's case law from analogous circumstances, this case is not moot. Additionally, Amici will explain that the case is not moot for other reasons: namely, the harms in this case are capable of repetition to Petitioner herself as well as to a class of sufferers.

Second, Amici will address whether this Court's decision in *Collins v. Lombard Corp.*, 270 Ga. 120, 122 (1998), conflicts with *Republican Nat'l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771 (2025), and other recent standing decisions. Amici will argue that there is no conflict. First, both

categories of cases allow parties to challenge violations of their *own* rights. *Collins* simply embraces a mechanism that allows plaintiffs with standing to vindicate violations of those rights. Second, the Court's recent standing decisions explained that the proper method for deciding jurisdictional questions is to consider the original public meaning of the Judicial Power Paragraph. Amici will explain that this method, applied to mootness, allows the Court to hear moot cases because mootness is not jurisdictional.

Finally, Amici will address the merits of Petitioner's challenge. Amici will argue that the juvenile court's order permitting the removal of Petitioner's children where there was no emergency violated Petitioner's due process rights. Because there was no emergency justifying removal of her children, Petitioner was entitled to notice and a hearing before the State took custody of her children. Amici will highlight the decisions of federal circuit courts of appeal and state supreme courts elsewhere, as well as state statutes, that all stand for the principle that *ex parte* removal of children is unconstitutional absent emergency.

II. This Memorandum Will Assist the Court

This case presents a crucial opportunity for this Court to protect Georgians' rights to family integrity and fair process. It may also prove important in clarifying either (1) when collateral consequences mean a case

isn't moot or (2) when Georgia courts can hear cases where the harms are capable of repetition yet evading review.

The brief addresses both the jurisdictional and merits issues that the Court has identified. On the merits, the brief provides context from courts throughout the country that underscores that the Court of Appeals' decision, if upheld, would make Georgia an outlier. Specifically, whereas courts have consistently required emergency or exigent circumstances to justify the *ex parte* removal of children, the Court of Appeals' approach would allow removal in "unusual" or "exceptional" circumstances. But assessing the rarity of circumstances is no substitute for determining that an emergency exists. Thus, the Court of Appeals' decision gravely threatens Georgians' family integrity from State overreach. The brief will aid this Court in correcting the Court of Appeals' error, and providing crucial guidance to lower courts and administrative agencies.

Because the ACLU and the ACLU of Georgia have an interest in this appeal and offer relevant and novel legal analysis and perspective, the Court should allow participation as amici.

Wherefore, the ACLU and the ACLU of Georgia respectfully request that this Court grant leave to file the amici curiae brief submitted with this motion.

DATE: September 2, 2026

Respectfully submitted,

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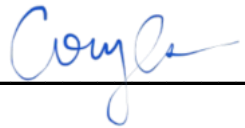
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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2026, I served a copy of the foregoing *Motion for Leave to File Brief as Amici Curiae on Behalf of the American Civil Liberties Union and the American Civil Liberties Union of Georgia in Support of Petitioner* upon all attorneys of record.

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EXHIBIT 1

Brief of the American Civil Liberties Union
and American Civil Liberties Union of Georgia
as Amici Curiae in Support of Petitioner

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INTRODUCTION

The State may not separate a parent from her children without first providing an opportunity to be heard unless an emergency makes immediate removal necessary. In this case, there was no emergency, and the intermediate appellate court's holding that the case being "unusual" justified removal flies in the face of due process and creates a dangerous standard that cannot be allowed to stand in Georgia. This Court should reverse.

As a threshold matter, the Court can hear this appeal. This case is not moot because the *ex parte* order imposes collateral consequences, including an increased likelihood that DFCS will intervene in Petitioner's family life and that a court will allow removal. Those consequences end the jurisdictional analysis. But even without them, the Court could still hear this case because it raises issues that are capable of repetition yet evade review. The Court has previously recognized its ability to hear such cases, and its recent standing decisions do not undermine that ability.

On the merits, the constitutional defect is straightforward. The juvenile court authorized *ex parte* removal based on what it regarded as "exceptional" and "unusual" circumstances of the case. *Int. of D.B.*, 376 Ga. App. 403, 417 (2025), *cert. granted* (June 2, 2026). But unusual circumstances are not a substitute for emergency circumstances. Federal circuit courts of appeal and

state supreme courts nationwide have consistently held that absent an emergency,¹ parents are entitled to notice and hearing before the State removes their children. State statutes include similar requirements. Those authorities reflect a basic constitutional principle: Only a true emergency can justify the State separating a family without a hearing.

The decision below, which allows separation in merely “unusual” cases, makes Georgia an outlier in its diminished protection of parental rights. Removal is an extraordinary intrusion into a parent’s fundamental rights to the care and custody of their child, and can inflict profound harm on children and families. A rule permitting removal without a prior hearing in non-emergency situations is unconstitutional and will fall especially heavily on families with the fewest resources to protect their rights. This Court should reverse.

INTEREST OF AMICI CURIAE

The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit, nonpartisan organization dedicated to protecting the principles embodied in the state and federal Constitutions. Protecting due process rights and the right

¹ *Amici* use the term “emergency” to refer to exigent circumstances where pre-removal process is not possible or where a child is at risk of imminent danger. Courts and statutes also use terms like “imminent harm” or “exigent circumstances” to refer to these situations.

to family integrity are matters of substantial interest to the ACLU and its members. The ACLU and its affiliates frequently litigate on behalf of individuals involved in the family-regulation system and have appeared as *Amici* in cases involving that system.²

The ACLU of Georgia is a non-profit organization that works to enhance and defend the *civil* liberties and rights of all Georgians through legal action, legislative and community advocacy, and civic education and engagement. The ACLU of Georgia envisions a state that guarantees all persons the civil liberties and rights contained in the United States and Georgia Constitutions and Bill of Rights, and works to make that vision a reality.

ARGUMENT

I. The Court Can Hear This Case.

This Court has identified two questions related to mootness: (1) whether the Court should revisit its holding in *Collins v. Lombard Corp.*, 270 Ga. 120, 122 (1998), that a case is not moot where there is “intrinsically insufficient time to obtain judicial relief for a claim common to an existing class of sufferers,” even if there is no longer a “live controversy” between the parties, and (2) whether this case is moot. The answer to the second question is that

² See, e.g., *In re Child of Barni A.*, 314 A.3d 148, as revised (Me. Mar. 7, 2024); *In the Matter of Sapphire W.*, 237 A.D.3d 41, 227 N.Y.S.3d 624 (2025); *In the Matter of K.Y.Z.*, 275 N.E.3d 1067 (N.Y. 2025); *In the Matter of Lacey L.*, 114 N.E.3d 123 (N.Y. 2018).

this case is not moot for reasons independent of *Collins*, so the Court need not address the first question. If it does decide to reach that question, it should find that the Court’s recent standing decisions do not conflict with *Collins*.

Additionally, regardless of how the Court’s recent standing decisions might intersect with the *Collins* rule about “an existing class of sufferers,” the original public meaning of the Judicial Power Paragraph allows courts to hear cases that might be moot.

A. This Case Is Not Moot for Reasons Unrelated to *Collins*’s Holding Regarding an “Existing Class of Sufferers.”

First, this case does not implicate *Collins* at all because Petitioner faces ongoing collateral consequences from the juvenile court’s *ex parte* removal order, making her claims squarely not moot on those grounds. Second, this case does not implicate *Collins*’s holding that a case is not moot where there is no longer a “live controversy” between the parties but there remains “an existing class of sufferers.” *Id.* A “genuine controversy” exists when a plaintiff seeks to vindicate her own rights, which the defendant has violated. *Republican Nat’l Comm. v. Eternal Vigilance Action, Inc.* (“EVA”), 321 Ga. 771, 775–76 (2025). And Petitioner’s appeal addresses inherently short-lived harms that are capable of repetition to *her*, not just to others. This Court has no need to apply, and thus no need to revisit, *Collins*’s holding with respect to short-lived harms

that are capable of repetition and would affect the rights only with respect to nonparties.

i. This Case Is Not Moot Because Collateral Consequences Affect Petitioner.

This case is not moot because “adverse collateral consequences continue to plague the affected party.” *Turner v. State*, 284 Ga. 494, 495 (2008). For example, this Court has held that a juvenile’s appeal of his delinquency adjudication does not become moot once his disposition expires because collateral consequences “continue to reverberate.” *Int. of M. F.*, 305 Ga. 820, 820–22 (2019). There, the Court rejected the State’s argument that the juvenile must “demonstrate collateral consequences *in the record*.” *Id.* at 821 (emphasis added). Instead, “consequences will be presumed” because of the adjudication’s *potential* impacts on possible “later juvenile [delinquency] or criminal proceedings,” where they might “be used against the child in the establishment of conditions of bail, plea negotiations, and sentencing in criminal offenses.” *Id.* at 821–22 (citing O.C.G.A. § 15-11-703).

In this case, collateral consequences are even more certain than in *Interest of M.F.*, which involved consequences that “inherently and unquestionably *can* flow from the adjudication.” *Id.* at 821 (emphasis added). Here, DFCS *must* consider the adverse order against Petitioner in any future

interactions with Petitioner’s family or proceedings. DFCS policy requires the agency to “analyze DFCS history,”³ and guidance documents explain that “a family’s DFCS history plays a significant role when making any decision concerning child safety during DFCS’ involvement with a family.”⁴ Thus, although Petitioner’s children have been returned, the juvenile court’s ruling that DFCS lawfully remove her children increases the chance of future DFCS intervention and of that intervention being more adverse. *See, e.g., Int. of K.P.*, 365 Ga. App. 38, 41–42 (2022); *In re L.A.*, 322 Ga. App. 94, 94–95 (2013) (“[A]s the earlier finding of deprivation may have future collateral consequences against the father—i.e., in petitioning another court for permanent custody—we decline to dismiss the appeal as moot.”).

Such collateral harms foreclose a mootness finding. *See id.*

ii. The Harms at Issue Here Are Capable of Repetition to Petitioner Herself.

Additionally, the Court does not need to revisit *Collins*’s holdings regarding a “live controversy” and “an existing class of sufferers” because there is a controversy at issue here—whether the State violated Petitioner’s rights

³ Ga. DFCS Child Welfare Policy Manual, Ch. 5.1, Conducting an Investigation (June 2026), <https://pamms.dhs.ga.gov/dfcs/cws/05-01> (last visited Aug. 13, 2026).

⁴ Ga. DFCS Child Welfare Policy Manual, Ch. 19.10, Analyzing DFCS History (April 2020), <https://pamms.dhs.ga.gov/dfcs/cws/19-10> (last visited Aug. 13, 2026).

and whether the adverse order entered against her should be reversed—and Petitioner faces a real threat that the harms she has experienced will recur *to her*. *Collins*, 270 Ga. at 122. *Collins* involves what is commonly called the “capable of repetition yet evading review” doctrine, allowing courts to hear cases involving inherently short-lived issues that may recur. *Id.* at 121. That doctrine applies where the issue may recur either between the parties, *see, e.g., Owens v. Hill*, 295 Ga. 302, 305 (2014), or to an “existing class of sufferers,” *Collins*, 270 Ga. at 122.

Here, the issue can reasonably be expected to recur between the parties. DFCS has already made repeated *ex parte* removal requests against Petitioner. Pet’r. Br. 2. After the juvenile court denied the initial DFCS request as insufficient, DFCS filed a second *ex parte* removal request even though it acknowledged it “couldn’t have anything new to learn.” *Id.* at 8. And DFCS did so despite admitting that “the children were *not* in immediate harm or danger.” *Id.* at 7–8. In both instances, DFCS cited a “previous history” of concerns around “inadequate supervision.” *D.B.*, 376 Ga. App. at 404. There exists a substantial risk that DFCS will again seek a non-emergency *ex parte* removal of Petitioner’s children, repeating the due process violations at issue in this appeal. *See also supra* nn. 3–4 (DFCS policy manuals).

Accordingly, this case does not implicate *Collins*'s holding regarding "an existing class of sufferers" and a lack of "live controversy" between the parties. *Collins*, 270 Ga. at 122. Accordingly, the Court need not revisit it.

B. *Collins* Does Not Conflict with Recent Standing Decisions.

In granting *certiorari*, the Court asked whether *Collins* conflicts with *EVA* and other recent standing decisions holding that "a plaintiff must assert the violation of his *own* rights and cannot merely vindicate the rights of another." 321 Ga. at 775. There is no such conflict, and the Court should hold accordingly if it decides to answer that question here.

The Court's recent pronouncements on standing comport with *Collins*'s rulings regarding mootness. As the Court has made clear, a litigant must "assert a violation of her legal rights," as Petitioner does here, to have standing in Georgia courts. *Wasserman v. Franklin Cnty.*, 320 Ga. 624, 638 (2025). The Court has also held that asserting the violation of a litigant's own rights establishes a "genuine controversy." *See EVA*, 321 Ga. at 775 ("For a genuine controversy to exist, and thereby invoke the State's judicial power, a plaintiff must have standing to sue."). *Collins* does not conflict with the need for plaintiffs to challenge a violation of their own rights; it simply establishes the circumstances under which a court may adjudicate those violations.

EVA was one of a trio of cases in which the Court “course correct[ed]” its standing doctrine. *Id.* at 776 (discussing *Sons of Confederate Veterans v. Henry Cnty. Bd. of Comm’rs* (“SCV”), 315 Ga. 39 (2022), and *Wasserman v. Franklin Cnty.*). These cases explicitly “reject[ed] ‘federal standing doctrine . . . in favor of [Georgia’s] own Constitution.’” *EVA*, 321 Ga. at 776 (quoting *Wasserman*, 320 Ga. at 627). These precedents considered common-law practices to assess the “original public meaning of the Judicial Power Paragraph as it applied to standing doctrine,” *id.*, concluding that the Paragraph precludes third-party standing theories.

In doing so, this Court explained that the violation of an individual’s private right is *itself* an injury that establishes standing to sue. *EVA*, 321 Ga. at 784. The Court has highlighted that the invocation of “the judicial power of Georgia courts” has long turned not on “the nature or extent of a plaintiff’s damages, but the violation of a right, as adjudicating these rights is what holds a defendant accountable.” *SCV*, 315 Ga. at 52; *see also Wasserman*, 320 Ga. at 631 (“[C]ommon law courts would allow plaintiffs to maintain an action whenever they asserted the violation of their private rights, even when they did not seek or try to prove actual harm or damage.”). And the assertion of a violation of the litigant’s own rights establishes a “genuine” or “actual” controversy. *See EVA*, 321 Ga. at 775; *SCV*, 315 Ga. at 50–51.

That is exactly what plaintiffs in capable-of-repetition cases seek to do: vindicate violations of their own rights. When such litigants continue their lawsuits after the violation has ended, there may no longer be an opportunity for a court to halt a *continuing* violation. But, under the Court's standing jurisprudence, a litigant need only show that her rights have been violated—not that the violation remains ongoing throughout the litigation.

Collins deals with a category of cases where plaintiffs who *have* suffered a violation of their rights seek full appellate review of their claims. In cases involving violations that are capable of repetition yet evade review, *Collins* defines mootness in a way that expands the ability of plaintiffs who *have been* harmed—who have suffered a violation of their rights and have standing under Georgia law—to have their alleged violations adjudicated. Those violations may be capable of repetition as to the immediate parties or to a class of sufferers; either way, standing and a genuine controversy remain as long as the plaintiff is asserting that her own rights were violated. *See SCV*, 315 Ga. at 53 (quoting *Eiswald v. Southern Express Co.*, 60 Ga. 496, 498 (1878) (“[T]he mere branding of the defendant’s act as a wrong may be of future consequence to the plaintiff in the matter of upholding the right involved.”)).

This case exemplifies the point. Assume, for argument’s sake, that the juvenile court’s order did not impose collateral consequences on Petitioner and

that there was no possibility of recurrence to her. Her appeal still involves a genuine controversy because she asserts that the State’s action violated her individual due process rights, and the State claims the opposite. Under this Court’s clarifying decisions in *EVA* and related opinions, that alleged violation invokes the judicial power of Georgia courts, independent of any harm or damages it may impose beyond the violation itself. Petitioner’s appeal seeks to conclusively establish that *her* rights were violated, in part because it is that adjudication that “holds [the State] accountable.” *SCV*, 315 Ga. at 52. *Collins* helps ensure that the State’s alleged violations are adjudicated and do not perpetually evade review.

C. Under the Original Public Meaning of the Judicial Power Paragraph, Courts Have Jurisdiction Over Moot Cases.

The Court’s recent standing decisions are reconcilable with *Collins* for an additional reason: The original public meaning of the Judicial Power Paragraph. As the State acknowledges, the *SCV*, *Wasserman*, and *EVA* decisions held that the original public meaning of the Georgia Constitution’s Judicial Power Paragraph—and not federal standing doctrine—defines the scope of courts’ jurisdiction. *See* Resp. Br. 10–11. The State now insists that this same approach to jurisdiction requires abrogating *Collins*. *Id.* That is not so. This Court’s recent pronouncements do not call *Collins* into question

because, under the original public meaning of the Judicial Power Paragraph, *mootness is not jurisdictional*. As a result, as long as a plaintiff initially had standing, courts are empowered to hear cases that might be considered moot, including cases where there is “intrinsically insufficient time to obtain judicial relief for a claim common to an existing class of sufferers.” *Collins*, 270 Ga. at 122.

To assess the scope of judicial power, the Court’s recent cases “consider[ed] the legal background against which the original Judicial Power Paragraph was adopted [in 1798],” SCV, 315 Ga. at 47, as well as early Georgia jurisprudence, *see Wasserman*, 320 Ga. at 640. In SCV, for example, the Court cited “early cases,” from the turn of the last century, as “instructive of how the scope of judicial power was understood when the Judicial Power Paragraph was carried forward into the 1945, 1976, and 1983 Constitutions.” SCV, 315 Ga. at 50; *see also Wasserman*, 320 Ga. at 644.

That same interpretive approach, applied to mootness, indicates that the Court can hear moot cases. This Court has uncritically imported federal mootness doctrine into Georgia law, just as it did with standing doctrine. *See McAlister v. Clifton*, 313 Ga. 737, 744 (2022) (Peterson, J., concurring). As a result, the Court has treated mootness as if it imposed a jurisdictional bar against hearing cases. *See id.* But that conclusion is at odds with the Georgia

Constitution. Specifically, under the original public meaning of the Judicial Power Paragraph, moot cases do not fall beyond the judicial power.⁵

Start with common law—the “most critical context” for understanding the Judicial Power Paragraph. *SCV*, 315 Ga. at 47. Unlike standing, mootness was not a jurisdictional constraint on the judicial power at common law. *See generally* Scott MacGuidwin, *Mootness Doctrine at the Founding*, *NYU Journal of Law and Liberty* (forthcoming 2026)⁶ (discussing originalist understanding of mootness). Rather, mootness was a prudential doctrine that permitted, but did not compel, courts to decline cases. *Id.* English Courts, including the Court of Exchequer Chamber, sometimes chose to hear important cases even if they were moot. *Id.* at 8–9. In one prominent example, even though “the cause was at an end” due to the death of the affected party, the Chamber “thought it right to give judgment to prevent future litigation” to avoid “the expence and delay of another argument.” *Id.* (quoting *Earl of Bute v. Grindall & Another* (1793) in 2 Henry Blackstone, *Reports in Common Pleas and Exchequer*, from E.T. 28 G. III., 1788, to H.T. G. III., 1796 at 265–66 (1827)). The *Earl of Bute* decision

⁵ *Collins* held that courts may not hear moot cases but explained that mootness excludes cases that are capable of repetition yet evading review. 270 Ga. at 121 (citing *Chastain v. Baker*, 255 Ga. 432, 433 (1986)). The Court may wish to revisit that ruling to apply the interpretive approach called for by the Court’s recent standing decisions, an approach that would show that under the Judicial Power Paragraph, mootness does not implicate a court’s jurisdiction.

⁶ Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7043739.

occurred just five years before Georgia adopted its 1798 Constitution. Under the logic of this Court’s recent standing cases, the “legal backdrop” of the original Judicial Power Paragraph included the power to decide moot cases. *See Wasserman*, 320 Ga. at 629.

Early Georgia caselaw, which is “instructive of how the scope of judicial power was understood,” *SCV*, 315 Ga. at 50, confirms that mootness is not jurisdictional. To be sure, Georgia courts sometimes declined to hear moot cases, but they did so for prudential reasons. As one early example of such a case put it: “Why . . . should the time of this court be taken up in hearing and determining a case which has been settled[?]” *Atlanta & F.R. Co. v. Blanton*, 80 Ga. 563 (1888). Nothing in *Blanton* indicates the Court thought it had no discretion to hear the case. Subsequent examples cited *Blanton*’s prudential approach. *See, e.g., Marietta Chair Co. v. Henderson*, 119 Ga. 65, 65 (1903); *Henderson v. Hoppe*, 103 Ga. 684 (1898). As the Court of Appeals put it in one illustrative case, these dismissals were an “exercise [of] *discretion*,” not a relinquishment of jurisdiction. *Burkett v. Dunlap*, 9 Ga. App. 671, 671 (1911) (emphasis added). Meanwhile, in other cases, this Court sometimes addressed the merits anyway, further showing that mootness did not impose a jurisdictional bar. *See, e.g., Corning v. Siesel & Wolf Co.*, 101 Ga. 389 (1897)

(affirming judgment on the merits and citing mootness as “[a]nother reason for allowing the judgment [below] to stand”).

Georgia was no outlier. Throughout the United States, “nineteenth-century decisions generally [did] not indicate that the court lacked authority to hear moot cases.” Matthew I. Hall, *The Partially Prudential Doctrine of Mootness*, 77 Geo. Wash. L. Rev. 562, 567 (2009). The Oregon Supreme Court was “unable to identify a single state-court decision from the nineteenth century that dismissed a case on the ground that deciding moot cases exceeded the ‘judicial power’ conferred by the state constitution.” *Couey v. Atkins*, 355 P.3d 866, 890 (Or. 2015); *see also Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 853 S.E.2d 698, 710 (N.C. 2021) (noting that state courts regarded mootness “not as a constitutional but as a discretionary, prudential limitation on judicial power”). Treating “the dismissal of moot cases as a matter of discretion” was evidently a “uniform” practice. *Couey*, 355 P.3d at 890.

The upshot is that the original public meaning of the Judicial Power Paragraph—as assessed using the same tools this Court used in its recent standing cases—indicates that the Court has the power to hear a case that is moot. At least two other state supreme courts have reached similar interpretations of their own “Judicial Power” provisions. *See Couey*, 355 P.3d at 890; *Dan Forest*, 853 S.E.2d at 712. As a result, even assuming the kinds of

cases described in *Collins* are moot, Georgia Courts have the power to hear them.

II. The Juvenile Court's Order Violated Petitioner's Due Process Rights.

On the merits, the Court should reverse the Court of Appeals' conclusion that *ex parte* removal absent an emergency can comply with due process. As Petitioner has shown, *Stanley v. Illinois* requires a hearing before removal. *See* Pet'r Br. 34–45; 405 U.S. 645, 649 (1972). *Amici* write to place *Stanley's* principle in a broader national context, explaining that legislatures and courts across the country permit *ex parte* removal only when there is a genuine emergency. This limitation is necessary to preserve a proper balance between the parent's fundamental right to family integrity and the State's interest in protecting children from harm.

A. Legislatures and Courts Consistently Require a Genuine Emergency Before the State May Remove a Child *Ex Parte*.

The federal courts of appeals have consistently required an emergency to justify depriving parents of their pre-removal opportunity to be heard. State statutes and high courts apply the same rule. By contrast, the anomalous construction adopted by the Court of Appeals permits family separation without notice or hearing, even where there is no showing of emergency circumstances. That construction is not only an outlier. It is unconstitutional.

i. The Federal Courts of Appeals Consistently Require an Emergency Before Pre-Hearing Removal.

Federal circuits are unanimous. While formulation of these rules differ somewhat, the courts agree that states cannot separate children from their parents without a hearing unless an emergency requires immediate removal.

The Eleventh Circuit—whose decisions construe the federal Constitution as it applies in Georgia—states the rule this Court should enforce: A State’s *ex parte* removal is constitutional only if there is an imminent threat to child safety such that pre-hearing removal is “justified by emergency circumstances.” *Doe v. Kearney*, 329 F.3d 1286, 1293 (11th Cir. 2003). *Kearney* directs courts to weigh “*all* relevant circumstances, including . . . [the] objective nature, likelihood, and immediacy of danger to the child,” precisely so that an agency cannot “conceivably manufacture an emergency.” *Id.* at 1295 n.11.

The other federal circuits all enforce some variation of that same rule. The Second Circuit finds that removal without a prior hearing is constitutional only where a child is “immediately threatened with harm.” *Tenenbaum v. Williams*, 193 F.3d 581, 594 (2d Cir. 1999).⁷ The Fourth Circuit states simply that state officials “do not contend, nor could they,” that a seizure without

⁷ The Second Circuit further explained that if the danger is not sufficiently imminent to leave insufficient time to obtain prior judicial authorization, “*ex parte* or otherwise,” the circumstances are not emergent. *Id.*

notice is proper absent exigency. *Batten v. Gomez*, 324 F.3d 288, 295 (4th Cir. 2003). The Seventh Circuit explains that “absent exigent circumstances, due process requires a hearing before state officials may remove a child from his home.” *Morrell v. Mock*, 270 F.3d 1090, 1095 (7th Cir. 2001). In the Ninth Circuit, notice and a hearing are required “except when the children are in imminent danger.” *Ram v. Rubin*, 118 F.3d 1306, 1310–11 (9th Cir. 1997). The remaining circuits agree. See *Tower v. Leslie-Brown*, 326 F.3d 290, 298–99 (1st Cir. 2003) (removal “must be preceded by notice and an opportunity to be heard,” unless there is “evidence that [the] child has been abused or is in imminent danger”); *Kovacic v. Cuyahoga Cnty. Dep’t of Child. & Fam. Servs.*, 724 F.3d 687, 695 (6th Cir. 2013) (finding “exigent circumstances” may alter notice-and-hearing requirements in child removal cases); *Heartland Acad. Cmty. Church v. Waddle*, 427 F.3d 525, 537 (8th Cir. 2005) (removals of children, even from boarding schools, “without notice or opportunity to be heard, using stale or inaccurate information, and without exigent circumstances . . . tread on federal constitutional grounds”); *Hollingsworth v. Hill*, 110 F.3d 733, 739 (10th Cir. 1997) (framing the exception to a pre-deprivation hearing in child custody cases as the “extraordinary situation” that requires real justification). See also *Miller v. City of Philadelphia*, 174 F.3d 368, 374 (3d Cir. 1999) (describing the “crucial function” of an *ex parte* custody

hearing as “protecting children who are in imminent danger of harm”); *Gates v. Texas Dep’t of Protective & Regul. Servs.*, 537 F.3d 404, 429 n.30 (5th Cir. 2008) (“[T]he government may not seize a child from his or her parents absent a court order, parental consent, or exigent circumstances.”).⁸

A clear constitutional principle unites these cases: Whether in field removal or in seeking an *ex parte* order, the State must sufficiently justify intruding on a parent’s fundamental right to family integrity. The emergency exception balances rights with the need to ensure children’s safety. Unless sufficiently justified, the State cannot commit a grave intrusion into a parent’s fundamental rights without a hearing first.

ii. States Across the Country Reflect the Same Understanding.

The consensus extends to state statutory and case law as well. This Court and state courts nationwide have recognized that a child may be taken into custody before a hearing only “if certain emergency circumstances are present.” *Watkins v. Watkins*, 266 Ga. 269, 273 (1996). State statutes likewise distinguish between circumstances that justify intervention generally and

⁸ Although the Third Circuit and Fifth Circuit have both suggested that an *ex parte* proceeding may itself satisfy due process when followed by prompt judicial review, those decisions do not transform unusual circumstances into an emergency or dispense with the constitutional need for sufficient justification to bypass pre-deprivation process.

circumstances urgent enough to allow intervention before the parent can be heard.

New York’s highest court provides an example. In *Nicholson v. Scoppetta*, the New York Court of Appeals interpreted the state’s emergency removal statute, explaining that “where the circumstances are not so exigent, the agency should . . . seek a hearing *prior to* removal of the child.” 3 N.Y.3d 357, 375 (2004). Other states’ statutes reinforce the same principle. These laws generally require imminence, necessity, or a least-restrictive-means showing before a court may authorize removal without prior notice and a hearing.⁹ The varied terminology reflects a consistent principle. . “Uncommon,” “unusual,” and “rare”—adjectives used on by the Court of Appeals here—merely describe how frequently such circumstances arise, not whether those circumstances allow the State to remove a child before a parent can be heard. Thankfully, it is rare that a child dies by suicide. But that tells us nothing about whether

⁹ North Carolina authorizes judicial removal only when “there is a reasonable factual basis to believe that there are no other reasonable means available to protect the juvenile.” N.C. Gen. Stat. § 7B-503(a). Florida requires the agency to establish that “the provision of appropriate and available services will not eliminate the need for placement” before a court may order emergency removal. Fla. Stat. § 39.402. Washington authorizes a court to order removal only where “necessary to prevent imminent physical harm to the child,” and expressly provides that any petition lacking an affidavit demonstrating imminent harm “requires that the parents are provided notice and an opportunity to be heard before the order may be entered.” Wash. Rev. Code § 13.34.050(1)–(2).

emergency removal of other children is warranted, especially without allowing the parent to be heard.

Courts and legislatures have underscored the urgency of circumstances, not their novelty, as the sole legitimate rationale for *ex parte* removal. The Court of Appeals’ construction, requiring only that circumstances be “uncommon” or “unusual,” is a grave departure from the norm. *Amici* have found no federal circuit, and no state high court, that has sanctioned *ex parte* removals on the theory that circumstances may be sufficiently “uncommon” or “unusual” to justify *ex parte* removal, without any corresponding emergency.

B. Detaching *Ex Parte* Removal from an Emergency Creates an Unjustified Risk of Error and Irreparable Harm to Families.

The emergency requirement serves a critical function. *Ex parte* removal increases the risk of erroneous deprivation because the court acts without hearing from the parent or testing the State’s claim that removal is necessary. When no emergency requires *ex parte* removal, there is no justification for accepting the heightened risk of an erroneous removal. The State inflicts an irreversible injury first and tests its justification afterward.

This case illustrates the risk of error. The *ex parte* order rested only on the State’s untested claims, without allowing Petitioner to challenge the allegations, present contrary evidence, or cross-examine the State’s witnesses.

See Pet'r Br. 30, 32. When the allegations were finally tested at the preliminary protective hearing, adversarial scrutiny revealed that the children should never have been removed. *D.B.*, 376 Ga. App. at 407. The juvenile court found "absolutely no probable cause" of dependency. *Id.*; see Pet'r Br. 30.

That is precisely the risk against which pre-deprivation process ordinarily protects. An *ex parte* presentation deprives the court of critical testing and can only be sanctioned in emergency circumstances. The Supreme Court has recognized that one-sided proceedings carry an "unacceptable risk of error," *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 55 (1993), because "cross-examination is the engine of truth in our justice system," exposing factual mistakes and testing subjective assessments. *Ellington v. State*, 292 Ga. 109, 124 (2012); see *Gregory v. Sexual Offender Registration Review Bd.*, 298 Ga. 675, 689 (2016) (emphasizing the importance of adversarial testing of subjective assessments). An erroneous removal cannot be undone. A later hearing may restore custody, but it cannot erase the separation that has already occurred. The Constitution does not permit the

State to forego adversarial testing when such fundamental rights are at stake¹⁰ without a necessity justifying that grave intrusion.

i. Permitting Ex Parte Removal Without an Emergency Compounds the Harm to Children the States Seeks to Protect.

Separation from a parent, even briefly, is an extraordinary measure that can cause profound and lasting harm to both parents and children. As the American Academy of Pediatrics has warned, family separation “can cause irreparable harm, disrupting a child’s brain architecture and affecting [their] short- and long-term health,” carrying “lifelong consequences.”¹¹ Sudden disruption of the parent-child attachment produces “toxic stress” that alters a young child’s brain development and emotional regulation.¹² Children placed into foster care show elevated rates of post-traumatic stress, developmental regression, and later diagnoses of behavioral health conditions.¹³ And the

¹⁰ See Pet’r Br. 23–29; *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Nix v. Dep’t of Hum. Res.*, 236 Ga. 794, 795 (1976) (describing the right of a parent to care for their child as among the most “fundamental and fiercely guarded” in the law); *Patten v. Ardis*, 304 Ga. 140, 141–45 (2018).

¹¹ Am. Acad. of Pediatrics, *AAP Statement Opposing Separation of Children and Parents at the Border* (May 8, 2018) [available at: publications.aap.org/aapnews/news/6615/AAP-denounces-federal-initiative-separating]; accord Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 526 (2019) (citing same); see also Pet’r Br. 28.

¹² Papovich, *Trauma and Children in Foster Care*, 5 FORENSIC SCHOLARS TODAY 4 (2019) at p. 2; see generally Naeem et al., *The Neurobiology of Infant Attachment-Trauma and Disruption of Parent–Infant Interactions*, 16 FRONTIERS IN BEHAVIORAL NEUROSCIENCE art. 882464 (2022).

¹³ Papovich, *Trauma and Children in Foster Care* at 3.

injury runs in both directions, with parents whose children are removed reporting increased rates of grief, depression, suicidal ideation, and loss of identity.¹⁴

The harm of family separation can be especially acute when separation follows an already traumatic event. Research indicates that children exposed to trauma rely on their caregiver to help regulate the physiological stress response that trauma triggers.¹⁵ Removing the caregiver in the immediate aftermath of trauma can deprive the child of an important source of stability at the very moment it is most needed. The juvenile court said as much in this case, reasoning that “[t]his is a tragic accident that the Department has compounded by removing the children from the home.” *D.B.*, 376 Ga. App. at 407.

The Court of Appeals’ rule risks turning that concern on its head. In finding “exceptional circumstances,” the court relied on the tragic shooting itself as an event “unusual and out of the norm.” *Id.* at 417–18. But as the dissent explained, the standard runs “untethered to urgency, to impending danger, to a need for immediate action to avoid harm, or to imminent danger.”

¹⁴ Marina Lalayants & Inga Saitadze, *Separation and Psychosocial Challenges of Parents with Children in Foster Care*, 171 CHILD. & YOUTH SERVS. REV. 108180, at 4–6 (2025).

¹⁵ Naeem et al., *The Neurobiology of Infant Attachment-Trauma* at 3.

Id. at 421 (McFadden, P.J., dissenting). The result is a troubling inversion: The more extraordinary the tragedy, the more likely “exceptional circumstances” will be found. But extraordinary tragedy makes it especially important to ask whether an actual emergency requires separation before the parent can be heard. Otherwise, the very circumstances that make a child particularly dependent on a caregiver’s presence become the circumstances that make separation easiest to justify.

The State unquestionably has a compelling interest in protecting children. O.C.G.A. § 15-11-1. And when an emergency arises and a child faces imminent danger, that interest may justify immediate removal. But when no true emergency exists, *ex parte* removal allows the State to gravely intrude into parents’ fundamental rights without justification, and consequently risks more harm than help to children. Due process requires a hearing before removal for this reason: “[N]o later hearing . . . can undo the fact that the arbitrary taking . . . has already occurred.” *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972); accord *Green Meadows Hous. Partners, LP v. Macon-Bibb Cnty*, 372 Ga. App. 724, 730 (2024). A statutory construction that allows novelty, including tragedy, to be the trigger for *ex parte* family separation, rather than immediate danger to the children, is not calibrated to protect families and violates due process.

ii. *Ex Parte Removal Disproportionately Burdens Families with the Fewest Resources to Vindicate Their Rights.*

Contact with the child welfare system is neither rare nor evenly distributed. An estimated 53 percent of Black children will be the subject of a child protective services investigation before they turn eighteen, compared to 23 percent of white children.¹⁶ The most severe intervention the State can impose, termination of parental rights, “is highly racially disparate, as are many other state-induced causes of parental loss.”¹⁷ Black and Indigenous families, who also face poverty at higher rates than the general population, experience termination of parental rights at more than twice the rate of white children.¹⁸ Families already disproportionately exposed to state intervention therefore bear a disproportionate share of the risks created when the authority to remove children *ex parte* is not constrained by a genuine emergency requirement.

Economic disadvantage presents a related concern. According to the federal government’s own data, neglect, rather than abuse, accounts for the

¹⁶ Kim et al., Lifetime Prevalence of Investigating Child Maltreatment Among US Children, 107 AM. J. PUB. HEALTH 274, 277 (2017).

¹⁷ Wildeman, Edwards & Wakefield, The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000–2016, 25 CHILD MALTREATMENT 32, at 7 (2020).

¹⁸ *Id.*

majority of foster care entries nationwide.¹⁹ And extensive research has long documented that what the child welfare system categorizes as neglect frequently reflects the material conditions of poverty rather than parental unfitness, with many states’ definitions of neglect including difficulty providing food or shelter.²⁰ Families with limited resources face heightened exposure to the child-welfare system, and thus to emergency removals,²¹ along with greater obstacles to obtaining immediate legal assistance.

C. Constitutional Avoidance Requires Construing “Exceptional Circumstances” to Mean Circumstances Requiring Immediate *Ex Parte* Action.

When a statute “is susceptible of more than one meaning, one of which is constitutional and the other not,” this Court adopts the constitutional reading. *Premier Health Care Invs., LLC v. UHS of Anchor, L.P.*, 310 Ga. 32, 48 (2020). Here, “exceptional circumstances” should be understood to require emergency circumstances creating a genuine need for immediate action

¹⁹ See U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILDREN’S BUREAU, *Child Welfare Outcomes 2019-2022: Report to Congress*.

²⁰ Pimentel, Punishing Families for Being Poor: How Child Protection Interventions Threaten the Right to Parent While Impoverished, 71 OKLA. L. REV. 885, 895–96 (2019).

²¹ According to a December 2025 report published in The Imprint, emergency removals are by far the most common route taken by caseworkers, both in Georgia and nationwide. See Sara Tiano, *Despite Federal Law and Due Process Rights, Most Children Taken Into Foster Care on an ‘Emergency’ Basis Before Parents Get a Hearing*, THE IMPRINT (Dec. 11, 2025) [available at <https://imprintnews.org/top-stories/despite-federal-law-and-due-process-rights-most-children-taken-into-foster-care-on-an-emergency-basis-before-parents-get-a-hearing/269291>].

without providing notice and an opportunity to be heard. That reading squares the statute with the Fourteenth Amendment and with the constitutional principles reflected in the cases discussed above.

The meaning of “exceptional” depends on the setting in which it appears. *See, e.g., United States v. Watkins*, No. 3:10-CR-73-J-32JBT, 2012 WL 1599836, at *2 (M.D. Fla. May 7, 2012) (recognizing that the meaning of “exceptional” depends on the context, there in the setting of incarceration). Courts defining the term “exceptional” must consider the constitutional interests at stake and the justification for departing from ordinary procedural protections.

Here, the relevant context is a statute authorizing the State to separate a parent and child without first hearing from the parent. That authority operates against the backdrop of parents’ fundamental interest in family integrity and the Juvenile Code’s own command that intervention occur only where “essential to protect” the child. O.C.G.A. § 15-11-1. Read in that context, “exceptional” cannot mean merely “unusual,” “rare,” or “uncommon.” Instead, it must tie to genuine urgency.

The Court of Appeals’ construction is not only unconstitutional, it is confusing. A judge asked to find mere “unusualness” has no clear criterion to apply. As Presiding Judge McFadden asked, what then qualifies? “Novelty? Newsworthiness? Political salience? Entertainment value?” *D.B.*, 376 Ga. App.

at 421 (McFadden, P.J., dissenting). Emergency, by contrast, supplies a clear standard: Whether an imminent threat exists that necessitates removal without prior notice and a hearing. Under *Kearney*, a judge tasked with answering this question should “examin[e] all relevant circumstances, including the objective nature, likelihood, and immediacy of danger to the child.” 329 F.3d at 1295; *see* Pet’r Br. 46. The *ex parte* statute’s own design presupposes these circumstances, evidenced by its provision for telephonic presentation and next-business-day paperwork. *See* O.C.G.A. § 15-11-132(a)-(b). The expedited procedure makes sense only if circumstances are truly urgent enough to bypass ordinary process, not merely rare or uncommon.²²

That construction gives “exceptional circumstances” both constitutional content and practical meaning. It permits immediate action when immediate action is genuinely necessary, while preserving the ordinary requirement of notice and an opportunity to be heard when circumstances allow it. The Court

²² Section 15-11-133(a)(2) permits an officer to remove a child without a court order when there is “imminent danger” of abuse, neglect, or trafficking, while § 15-11-132 permits a judge to authorize removal based on facts presented by telephone before a hearing occurs. *See* O.C.G.A. §§ 15-11-132, -133(a)(2); *D.B.*, 376 Ga. App. at 412–13. The provisions thus create parallel emergency pathways distinguished by judicial availability but are not redundant. Section 132 applies when there is time to seek judicial authorization, and § 133 applies when even that step is impracticable. “Exceptional circumstances” may encompass other urgent risks irrelevant to § 133, such as flight or concealment of the child. But “exceptional” must require genuine urgency. Otherwise, the limitation would do no work, particularly if DFCS may proceed *ex parte* “in any dependency case.” *D.B.*, 376 Ga. App. at 408 n.2. *See also* O.C.G.A. § 15-11-1.

of Appeals' construction does the opposite: It makes the unusual nature of a case, rather than the necessity of acting before a hearing, the justification for dispensing with process. That construction is unconstitutional.

CONCLUSION

For the foregoing reasons, this Court should exercise jurisdiction over Petitioner's appeal and reverse the courts below.

DATE: September 2, 2026

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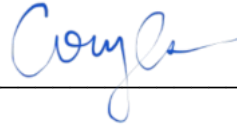
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Practicing under Supervision*

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

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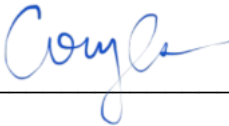
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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2026, I served a copy of the foregoing *Brief of the American Civil Liberties Union and the American Civil Liberties Union of Georgia as Amici Curiae in Support of Petitioner* upon all attorneys of record.

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