STATE OF WISCONSIN
SUPREME COURT OF WISCONSIN

APPEAL NO. 2018AP001887

In the matter of the mental commitment of K.E.K.:

Waupaca County,

Petitioner-Respondent,

v.

K.E.K.,

Respondent-Appellant-Petitioner,

BRIEF OF *AMICUS CURIAE* WISCONSIN COUNTIES ASSOCIATION, WISCONSIN ASSOCIATION OF COUNTY CORPORATION COUNSELS, INC., AND THE WISCONSIN HOSPITAL ASSOCIATION

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I. INTRODUCTION

At issue in this case is the constitutionality of Wis. Stat. § 51.20(1)(am) under the 14th Amendment of the United States Constitution. According to Respondent-Appellant K.E.K. ("K.E.K."), the statute is constitutionally infirm in its failure to impose a "right now" standard on a court's finding of an individual's dangerousness when ordering a recommitment, notwithstanding the practical inability to make such a "right now" determination when an individual subject to a recommitment petition is already under a court-ordered treatment plan and, as a result, does not pose a danger to him/herself or others. With all of the due process protections already firmly established in the Chapter 51 process, K.E.K. is simply incorrect in concluding that she has an absolute constitutional right to be free from further oversight in the context of a recommitment order unless a county can, at the time of the recommitment proceeding, present a current overt act or omission establishing dangerousness.

This case raises issues of concern to all counties, county corporation counsel, and hospitals throughout the

State. Adding duplicative procedural burdens, as K.E.K. advocates, to a system already replete with due process guarantees would prove disastrous. For this reason, the Wisconsin Counties Association ("WCA"), the Wisconsin Association of County Corporation Counsels, Inc. ("WACCC"), and the Wisconsin Hospital Association ("WHA") respectfully request that the Court uphold the constitutionality of Wis. Stat. § 51.20 (1)(am).

An individual's liberty interest in being free from unnecessary or overly-intrusive court-ordered treatment is at the forefront of the Chap. 51 process. Section 51.20 requires treatment be administered in the least restrictive means possible, and the goal of the entire Chapter 51 process is to safely release a mentally ill individual from commitment in as little time as possible. The goal in the commitment process is to not only have successful treatment during the commitment, but long-term rehabilitation of the mentally ill individual so their condition does not decompensate and require commitment again in the future. Never ending commitment is not the goal and is, in fact, impermissible under Wis. Stat. §

51.20. See *Fond du Lac County v. Helen E.F.*, 2012 WI 50, 340 Wis. 2d 500, 814 N.W.2d 179 (holding that rehabilitation is a necessary element of treatment under Wis. Stat. ch. 51, and, therefore, conditions that cannot be rehabilitated (*e.g.*, Alzheimer's disease) are not proper for treatment under Wis. Stat. ch. 51). But Chapter 51 also recognizes an individual's liberty interest must be balanced with the State's interest in preventing harm to the individual and others in society.

This necessary balancing is specifically reflected in the statutory recommitment process. Indeed, K.E.K.'s situation is the exact scenario that the recommitment process and Wis. Stat. § 51.20(1)(am) is designed to address. As indicated in the record in this case, at the time of the recommitment hearing, medical evidence established that K.E.K. still presented a danger to herself and/or others unless she continued with an effective treatment protocol. There is substantial medical evidence contained in the record that K.E.K. would have discontinued her treatment, suffered decompensation in her mental illness and her symptoms would recur were

she to be released from the treatment plan before the treatment was allowed to fully work to enhance her safety and the safety of others.

Contrary to K.E.K.'s assertions, Wis. Stat. § 51.20 (1)(am) contains robust due process protections in order to ensure the least restrictive means necessary are used to effectively treat mentally ill individuals who are unable (or unwilling) to obtain proper care and treatment on their own. While this case focuses on Wis. Stat. § 51.20(1)(am) specifically, the statute does not exist in a vacuum. Instead, the entire body of procedures and protections throughout Chap. 51 must be considered when evaluating the merits of K.E.K.'s attack on the constitutionality of Wis. Stat. § 51.20(1)(am).

Throughout the Wis. Stat. § 51.20 process, individuals undergo continuous medical observation and examinations and have multiple opportunities for hearings at which the court carefully evaluates and weighs the medical evaluations and other evidence. In the commitment process, the medical findings that form the basis for an order emanate from independent sources.

Neither county employees nor appointees perform the required medical evaluations. Wis. Stat. § 51.20(9). Rather, the court appoints independent medical professionals to conduct the examination (the subject individual also has the option of selecting one of the two independent examiners.) Wis. Stat. §§ 51.20(9)(a)1. and 2. Additionally, the individual subject to potential commitment may retain a third-party examiner of their choosing to perform another evaluation. Wis. Stat. § 51.20(9)(a)3. Committed individuals also have the opportunity to petition for a reexamination under the same examination process as the initial commitment at any time during a court-ordered treatment program. Wis. Stat. § 51.20(16). Importantly, the burden of proof is at all times on the county to establish by clear and convincing evidence[1] that the individual is in need of continued commitment and court-ordered involuntary treatment during the recommitment process. Wis. Stat. §

[1] *Addington v. Texas*, 441 U.S. 418, 425, 99 S. Ct. 1804, 1809 (1979) (holding that due process does not require states to use the "beyond a reasonable doubt" standard in civil commitment proceedings, and that the appropriate standard is "clear and convincing evidence".)

51.20(13)(g)3. This means that the county carries the burden to establish each element needed to continue a commitment, including that the individual is currently a danger to himself or herself or to others.

In practical terms, invalidating Wis. Stat. § 51.20(1)(am) would prove disastrous. If a court is prohibited from allowing medical professionals to provide an opinion, to a reasonable degree of medical certainty,[2] concerning whether a person presents a danger to himself or herself or others if a treatment plan is discontinued, it will result in the end of court-ordered involuntary treatment for that individual before his or her treatment plan is given the opportunity to fully manage his or her mental illness. It is at this point that the "revolving-door" begins to spin because despite medical probability of decompensation and return of symptoms, a mentally ill individual is removed from the court-ordered treatment plan. If released because there has been, unsurprisingly, no evidence of recent acts or omissions exhibiting dangerousness, such persons will likely be committed

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[2] See Wis. Stat. § 51.20 (9)(a)5.

again to the State's care, then released again after receiving appropriate treatment, and then committed again after his or her treatment lapses, and so on, creating the "revolving door." Confining a person against his or her wishes in order to stabilize symptoms on an inpatient basis (*e.g.*, the initial detention in the commitment process) undoubtedly intrudes far more on an individual's liberty than does continuing a person on an established treatment plan (particularly an outpatient plan.)

Moreover, there is ample medical support for continuing a treatment regimen that is producing beneficial results. Medical studies have shown that starting and stopping psychiatric medications can lead to treatment resistance in patients.[3] Medications can become ineffective or take longer to yield their intended benefits as a person continues to start and stop taking the

[3] De Hert, M., Sermon, J., Geerts, P. *et al.*, The Use of Continuous Treatment Versus Placebo or Intermittent Treatment Strategies in Stabilized Patients with Schizophrenia: A Systematic Review and Meta-Analysis of Randomized Controlled Trials with First- and Second-Generation Antipsychotics. *CNS Drugs* 29, 637–658 (2015). https://doi.org/10.1007/s40263-015-0269-4.

medications. It is illogical under any circumstance to withdraw a person's medication in a scenario when it is known that his or her condition will likely decompensate with a return of symptoms previously ameliorated by the medication and treatment plan.

K.E.K.'s argument fails to appropriately balance the State's interest in protecting mentally ill persons and society as a whole and an individual's liberty interest. Indeed, the process K.E.K. advocates disregard's the State's interests altogether. Such a result is untenable.

II. ARGUMENT

A. THE STATE HAS A COMPELLING GOVERNMENT INTEREST IN PROVIDING CARE AND TREATMENT TO THOSE SUFFERING FROM MENTAL ILLNESS.

Courts have appropriately exercised significant restraint in recognizing substantive due process rights. The State violates an individual's substantive due process rights only when its conduct "shocks the conscience … or interferes with rights implicit in the concept of ordered liberty" *United States v. Salernoi,* 481 U.S. 739, 746 (1987). In simple terms, the rights guaranteed under

substantive due process forbid a government from exercising "power without any reasonable justification in the service of a legitimate governmental objective." *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

Courts have universally recognized the State indisputably has a legitimate government interest in treating people with mental and other disorders who are unable to care for themselves. *Winnebago County v. Christopher S.*, 2016 WI 1, ¶ 44, 366 Wis. 2d 1, 878 N.W.2d 109 (concluding that "[t]he "State has more than a well-established and legitimate interest; it has a 'compelling interest' in providing care and assistance to those who suffer from a mental disorder"); see also *In re Commitment of Dennis H.*, 2002 WI 104, ¶ 36, 255 Wis. 2d 359, 383, 647 N.W.2d 851, 862 (providing that "the state has a well-established, legitimate interest under its *parens patriae* power in providing care to persons unable to care for themselves"); see also *Addington v. Texas*, 441 U.S. 418, 426. The State "also has 'authority under its police power to protect the community' from any dangerous mentally ill persons." *In re Commitment of*

Dennis H., 2002 WI 104, ¶ 36 (citing *Heller v. Doe,* 509 U.S. 312, 332, 113 S.Ct. 2637 (1993).)

In order to ensure that the government interest is achieved while still maintaining individual liberty to the extent possible, the Legislature created a system under Wis. Stat. ch. 51 which balances a person's need for mental health treatment with the preservation of that person's personal liberties. Chapter 51 requires use of the least restrictive means of treatment necessary[4] and incorporates a robust set of due process protections and patient rights.[5] Because of the due process protections afforded through the commitment process, which the statute incorporates into the recommitment process, it is necessary to analyze Wis. Stat. § 51.20 and the commitment process thereunder as a whole in order to evaluate the constitutionality of Wis. Stat. § 51.20(1)(am)

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[4] Wis. Stat. § 51.20(13)(c)2.

[5] Including, without limitation, appointed counsel (Wis. Stat. § 51.20(3)), the right to an open hearing and to cross examine and present witnesses (Wis. Stat. § 51.20(5)), a reexamination or independent evaluation (Wis. Stat. §§ 51.20(16) and (17)), the right to the least restrictive treatment (Wis. Stat. § 51.61(1)(e)), and all the patient's rights in s. 51.61 and as promulgated in Wis. Admin. Code Chapter DHS 94.

specifically. When viewed within the entire context of Wis. Stat. § 51.20, it is evident that Wis. Stat. § 51.20(1)(am) legitimately serves an area of compelling government interest and does not violate substantive due process or, alternatively, privileges and immunities.

B. SECTION 51.20 PROVIDES ROBUST PROCEDURAL SAFEGUARDS AND DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS OR PRIVILEGES AND IMMUNITITES.

Analyzing Wis. Stat. § 51.20(1)(am) in isolation, as K.E.K. attempts to do, takes the Section out of the context of the entire protective framework provided under Wis. Stat. § 51.20. Indeed, our courts have found a "county comports with due process when it 'confine[s] a mentally ill person if it shows 'by clear and convincing evidence that the individual is mentally ill and dangerous.''" *Matter of Commitment of J.W.K.*, 2019 WI 54, ¶ 16, 386 Wis. 2d 672, 686, 927 N.W.2d 509, 516 (citing Wis. Stat. § 51.20(1)(a) and (am).) In order for a county to satisfy the required foundational elements of mental illness and dangerousness, a number of procedural steps must be

taken and a court's determination must be based on clear and convincing evidence.[6]

After an order for involuntary treatment, or initial commitment order, is entered (as happened with K.E.K.), the order may be extended for "a period not to exceed one year" upon application for extension by the county and a finding by the court "that the individual is a proper subject for commitment…" Wis. Stat. §§ 51.20(13)(g)1. and (g)3. Significantly, the court's finding must comport to the requirements of Wis. Stat. §§ 51.20(1)(a)1. and (1)(a)2. or (am). Wis. Stat. § 51.20(13)(g)3. This means that "[a]n extension [of a commitment] requires the [c]ounty to prove the same elements [as for the initial commitment] by clear and convincing evidence: (1) the individual is mentally ill and a proper subject for treatment, and (2) the individual is dangerous." *Matter of Commitment of J.W.K.*, 2019 WI 54, ¶ 18; see also *Matter of Mental Commitment of J.W.J.*, 2017 WI 57, ¶ 20, 375 Wis. 2d 542, 554, 895 N.W.2d 783, 788 (concluding that "[u]pon each petition to extend a term of commitment, a

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[6]See supra footnote 1.

county must establish the same elements [as for the initial commitment] with the same quantum of proof.") Stated another way, the county's burden of proving an individual has both a mental illness *and* that they are dangerous is no different in an initial commitment proceeding than it is in a recommitment proceeding.

In a recommitment proceeding, however, Wis. Stat. § 51.20(1)(am) exists as an alternate way that the county may prove the dangerousness element "in addition to the five standards for showing dangerousness by recent acts or omissions under § 51.20(1)(a)2.a-e…" *Matter of Commitment of J.W.K.*, 2019 WI 54, ¶ 18. This statute provides (in relevant part):

> …the requirements of a recent overt act, attempt or threat to act under par. (a) 2. a. or b., pattern of recent acts or omissions under par. (a) 2. c. or e., or recent behavior under par. (a) 2. d. *may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn*. (emphasis added).

Importantly, Wis. Stat. § 51.20(1)(am) does *not* eliminate the requirement that the county demonstrate

current dangerousness. *Matter of Commitment of J.W.K.*, 2019 WI 54, ¶ 24 (concluding that "[t]he alternate avenue of showing dangerousness under paragraph (am) does not change the elements or quantum of proof required".) Rather, it permits the county to carry its burden (and for the court to conclude) that the dangerousness element is met for an individual who is positively responding to treatment, but has a "substantial likelihood" of regression evidenced by return of symptoms of mental illness should the person be released from treatment at the point in time of the recommitment proceeding. Section 51.20(1)(am) "merely acknowledges that an individual may still be dangerous despite the absence of recent acts, omissions, or behaviors exhibiting dangerousness…" *Id.*

Again, the recommitment standard is no different than the standard this Court has endorsed on initial commitment, which includes the notion that proof of "imminent physical harm" is not constitutionally required prior to commitment for treatment. *In re Commitment of Dennis H.*, 2002 WI 104, ¶ 37. "[E]ven if there is no foreseeable risk of self-injury or suicide, a person is

literally 'dangerous to himself' if for physical *or other reasons* he is helpless to avoid the hazards of freedom either through his own efforts or with the aid of willing family members or friends." *Id.* (citing *O'Connor v. Donaldson,* 422 U.S. 563, 574, n. 9, 95 S.Ct. 2486 (1975).)

The *Dennis H.* Court explicitly held that Wis. Stat. § 51.20(1)(a)2.e. (the "Fifth Standard") is constitutional. Importantly for purposes of this case, the evidentiary standards for the Fifth Standard are largely analogous to those contained within Wis. Stat. § 51.20(1)(am). The Fifth Standard permits involuntary commitment when a mentally ill person needs care or treatment, but is unable to make an informed choice to accept it. *Id.*, ¶ 39. This finding must be "'demonstrated by both the individual's treatment history' and by the person's 'recent acts or omissions.'" *Id.* (citing Wis. Stat. § 51.20(1)(a)2.e.) It must also be "*substantially probable* that if left untreated, the person 'will suffer severe mental, emotional or physical harm' resulting in the loss of the 'ability to function independently in the community' or in the loss of 'cognitive or volitional control.'" *Id.*

The *Dennis H.* Court found no constitutional issue with the Fifth Standard, and determined that it "thus fits easily within the *O'Connor* formulation: even absent a requirement of obvious physical harm such as self-injury or suicide, a person may still be 'dangerous to himself' if 'he is helpless to avoid the hazards of freedom either through his own efforts or with the aid of willing family members or friends.'" *Id.*, ¶ 40. The *Dennis H.* Court further provided that "by requiring dangerousness *to be evidenced by a person's treatment history* along with his or her recent acts or omissions, the fifth standard focuses on those who have been in treatment before and yet remain at risk of severe harm." *Id.*, ¶ 41 (emphasis added.) While the Fifth Standard requires the finding to be based on both the individual's treatment record and a pattern or recent acts or omissions, the evidentiary burden within Wis. Stat. § 51.20(1)(am) is not lowered even though it relies, as must be the case, solely on the individual's treatment record.

Like the Fifth Standard, Wis. Stat. § 51.20(1)(am) relies heavily on an individual's treatment record and

requires that the county demonstrate that there is a "substantial likelihood" the individual would be dangerous if treatment were withdrawn. Wis. Stat. § 51.20(1)(am). In this circumstance, dangerousness is determined based solely on the individual's treatment record and Wis. Stat. § 51.20(1)(am) serves as a critical substitute for the recent acts or omissions requirement. This substitution is necessary because, in the vast majority of circumstances, an individual subject to mandatory treatment will exhibit no acts or omissions demonstrating dangerousness. However, a county's evidentiary burden is not lowered by this substitution. Indeed, Wis. Stat. § 51.20(1)(am) serves as a *substitution* for the recent acts or omissions requirement, not a subtraction. A county must still meet its evidentiary burden, by clear and convincing evidence, that the person would be *substantially likely* to be a proper subject for commitment should they be released and their treatment no longer monitored.

As this Court has recognized, a finding of imminent dangerousness is not constitutionally required in a recommitment proceeding if the county can demonstrate

that the individual is otherwise currently dangerous. *In re Commitment of Dennis H.*, 2002 WI 104, ¶ 37. The county must prove by clear and convincing evidence[7] that the individual is substantially likely to abandon their treatment and "may still be 'dangerous to himself' if "he is helpless to avoid the hazards of freedom either through his own efforts or with the aid of willing family members or friends." *Id.*, ¶ 40.

This does not mean that every committed person who responds positively to treatment can be found to be currently dangerous, and thus eligible for recommitment, under Wis. Stat. § 51.20(1)(am). There are individuals who respond positively to treatment and as a result, are rehabilitated such that they should be released from commitment. As contemplated in statute, the treatment record, and medical professionals reviewing the treatment record, will reach that conclusion when warranted. However, Wis. Stat. § 51.20(1)(am) is meant to address those individuals that have responded positively to

[7] See supra, footnote 1.

treatment, but clearly are not fit for release from commitment based on their treatment record. This includes evaluations and diagnoses by independent medical professionals as to the persons' mental status (*e.g.*, do they recognize that they have a mental illness, is it likely that they will discontinue their treatment once released, etc.)[8] In other words, the individual may be doing well and not exhibit any immediate signs of dangerousness because of their current treatment (*e.g.*, recent overt acts or omissions), but it is substantially likely he or she is not ready to carry on that treatment on his or her own if released and will regress to the point of dangerousness that resulted in his or her initial commitment. For these reasons, the Court should uphold the constitutionality of Wis. Stat. § 51.20(1)(am) just as it has done with the Fifth Standard.

C. THE STRONG PUBLIC POLICY OF AVOIDING THE "REVOLVING DOOR" SHOULD BE PROMOTED.

[8] Substantial evidence in this regard was presented by Waupaca County's three witnesses with respect to K.E.K. See Response Brief of Petitioner Respondent, pp. 5-8.

Our courts have acknowledged the "clear intent of the Legislature in amending sec. 51.20(1)(am), Stats., [into the current version] was to avoid the 'revolving door' phenomena whereby there must be proof of a recent overt act to extend the commitment but because the patient was still under treatment, no overt acts occurred and the patient was released from treatment only to commit a dangerous act and be recommitted." *Matter of Mental Condition of W.R.B.*, 140 Wis. 2d 347, 351, 411 N.W.2d 142, 143 (Ct. App. 1987). From a policy perspective, the State's interest in providing the mechanism for recommitment in Wis. Stat. § 51.20(1)(am) is clear, the mechanism appropriately balances the State's interest and an individual's constitutional rights and, for these reasons, the statute is constitutional.

Should the court accept K.E.K.'s argument, it will be nearly impossible for counties to prove dangerousness in recommitment proceedings for individuals who are responding positively to treatment. However, there is significant evidence (both anecdotal based upon significant county experience and from medical studies)

that shows many of these mentally ill individuals still need to be committed in order to not only receive the positive benefits of treatment, but to be rehabilitated. Indeed, rehabilitation is the ultimate aim of Wis. Stat. § 51.20. *Fond du Lac County v. Helen E.F.*, 2012 WI 50. Many committed individuals respond positively to treatment during the initial commitment, but are not yet rehabilitated, and, therefore, should be recommitted for continuing medically-guided treatment to achieve a lasting positive result for that individual.

If such non-rehabilitated individuals cannot be recommitted, there will be disastrous effects on both the *amicus curiae* and the individuals who are prematurely released.

For the *amicus curiae*, the repercussions will be (a) an increase in dangerous actions by mentally ill individuals who otherwise would have been committed; (b) the increased burden of additional initial commitment proceedings triggered by law enforcement or medical systems emergency intervention with the individual that otherwise would have been avoided; and (c) additional

emergency department visits and increased administrative costs imposed upon our already strained emergency health system. The entire process will need to shift away from evaluating treatment progress and prognosis to determining how to shift resources to community monitoring upon mandatory release. Disregarding for a moment the impact such a shift will have on persons in dire need of continued treatment, the impacts on counties and hospital systems, and society as a whole, will be tremendous. Scarce resources will become even more scarce.

For hospitals, more emergency detention situations will result in more resources spent to safely manage, evaluate and stabilize an unnecessary influx of involuntary patients in psychiatric crisis coming to general hospital emergency departments. From a healthcare system perspective, an emergency department is the most expensive part of a hospital in which to receive care. Emergency departments, as the name suggests, are triage centers. An individual presenting at an emergency department is given only the level of care and service

necessary to stabilize his or her condition. Indeed, the cost and burden of emergency detentions in Wisconsin has recently received significant attention.[9] The *amicus curiae* are concerned that K.E.K.'s position would significantly exacerbate Wisconsin's existing emergency detention problems.

Emergency departments are not designed, and do not function, as primary care centers for any medical condition, much less any psychiatric presentation. The hospitals of our State are ill-equipped to function as the new "ground zero" for the increase in emergency detentions that would be necessitated if recommitments became nearly impossible to order.

The repercussions for the mentally ill individuals will be even greater. Indeed, current research shows that the "revolving door" is a legitimate problem. Importantly, "outpatient commitment programs are associated with

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[9] See e.g., Wisconsin Summit Looks to Address Emergency Detention Issues, U.S. News & World Report, accessed on November 2, 2020, available at: https://www.usnews.com/news/best-states/wisconsin/articles/2019-10-31/wisconsin-ag-wades-into-emergency-detention-issues.

reduced rates of hospitalization, improved treatment compliance, and a reduction in police contact."[10] The purpose of these outpatient programs is to provide proper psychiatric intervention before a patient completely decompensates into another psychotic episode. *Id.* These programs provide "for treatment over objection when a person has a history of treatment noncompliance and frequent hospitalizations, violence, or both." *Id.*

To be sure, "continuous treatment remains the 'gold standard' for good clinical practice."[11] Studies have shown that the lowest risk of rehospitalization or death is observed with patients who received antipsychotic treatment continuously.[12]

On the contrary, it is a near-certainty that mentally ill individuals will be committed again in the future

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[10] Steven K. Erickson, Michael J. Vitacco, Gregory J. Van Rybroek, Beyond Overt Violence: Wisconsin's Progressive Civil Commitment Statute As A Marker of A New Era in Mental Health Law, 89 Marq. L. Rev. 359, 384 (2005).

[11] See supra, footnote 3.

[12] Jari Tiihonen, M.D., Ph.D., Antti Tanskanen, Phil.Lic., Heidi Taipale, Ph.D., 20-Year Nationwide Follow-Up Study on Discontinuation of Antipsychotic Treatment in First-Episode Schizophrenia, The American Journal of Psychiatry, Published Online: April, 6 2018, https://doi.org/10.1176/appi.ajp.2018.17091001.

should they prematurely discontinue their treatment programs and plans (particularly taking prescribed medication.) Consider, even though the large majority of individuals with a first episode of schizophrenia will experience a remission of symptoms within their first year of treatment, there is a 77% chance of recurrence of symptoms one year after the discontinuation of antipsychotic medication, and a 90% chance of recurrence by two years.[13] Further, individuals who discontinue treatment and decompensate in their condition have a greater severity of symptoms and a lower functional status.[14] These subsequent episodes of decompensation can also lead to treatment resistance.[15] That is, individuals who stop taking medication and decompensate in having symptoms return and may not have a positive

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[13] Zipursky, Menez, and Streiner, Risk of symptom recurrence with medication discontinuation in first-episode psychosis: A systematic review, Schizophrenia Research, Volume 152, Issues 2-3, February 2014.
[14] Mayoral-van Son , et al., Clinical outcome after antipsychotic treatment discontinuation in functionally recovered first-episode nonaffective psychosis individuals: a 3-year naturalistic follow-up study, PubMed.gov, April 2016.
[15] See supra footnote 3.

treatment response to medications in the future. Likewise, a 20-year study following certain patients with a schizophrenia diagnosis showed that the risk of death was *174%–214% higher* among nonusers of antipsychotics, and patients with early discontinuation of antipsychotics, compared with patients who received antipsychotic treatment continuously.[16] Medical science supports the current Wisconsin system for recommitment.

Releasing persons in dire need of mental health treatment simply because a county cannot establish dangerousness "right now," is an untenable result, which flies in the face of the requirement by Wis. Stat. ch. 51 that individuals be treated in the least restrictive means possible. The least restrictive means possible would be to commit individuals for an appropriate amount of time to achieve rehabilitation, not to continuously cycle them in and out of commitment where their physical and mental health will continue to suffer and likely degrade further.

[16] See supra footnote 12.

III. CONCLUSION

For the foregoing reasons, WCA, WACCC, and WHA request that the Court affirm the Wisconsin Court of Appeals' decision and uphold the constitutionality of Wis. Stat. § 51.20(1)(am).

Respectfully submitted this 3rd day of November, 2020

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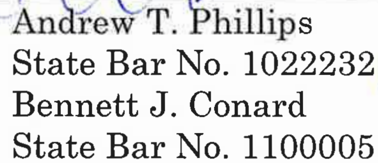

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FORM AND LENGTH CERTIFICATE

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §§ 809.19(8)(b) and (c), as modified by the Court's order dated October 29, 2020 granting the motion of the Wisconsin Counties Association, the Wisconsin Association of County Corporation Counsels, Inc., and the Wisconsin Hospital Association for leave to file an oversized joint non-party brief amicus curiae, for a brief produced using a proportional serif font.

The length of this brief is 4545 words.

Dated: November 3, 2020.

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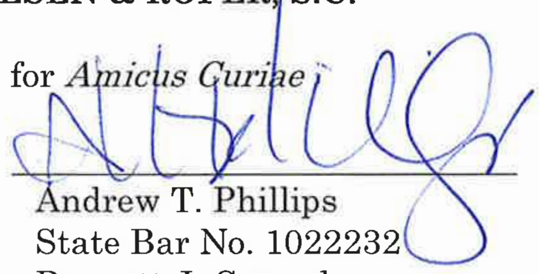

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ELECTRONIC FILING CERTIFICATE

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that the text of the electronic copy of this brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the Court and served on all opposing parties.

Dated: November 3, 2020.

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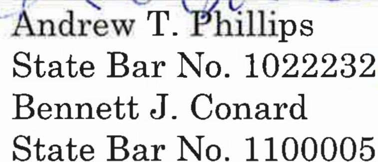

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CERTIFICATE OF SERVICE

I, Stacie Fechter being first duly sworn on oath, certify that on November 3, 2020, I caused true and correct copies of the Amicus Brief of Wisconsin Counties Association, the Wisconsin Association of County Corporation Counsels, Inc., and the Wisconsin Hospital Association, to be served, upon the following, as indicated:

Twenty-two (22) copies via Hand Delivery:

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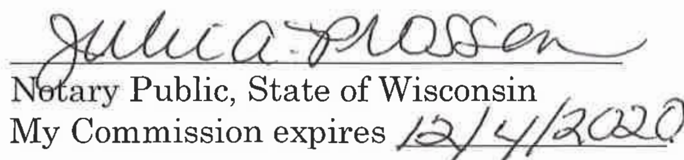
Dated this 3rd day of November, 2020

Stacie Fechter

Subscribed and sworn to before me
this 3rd day of November, 2020.



Notary Public, State of Wisconsin
My Commission expires 12/4/2020