No. 86234-6

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DETENTION OF MORGAN

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND

HEALTH SERVICES,

Respondent,

v.

CLINTON MORGAN,

Petitioner.

BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON

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INTEREST OF *AMICUS CURIAE*

The American Civil Liberties Union of Washington ("ACLU") is a statewide, nonpartisan, nonprofit organization of over 20,000 members, dedicated to the preservation of civil liberties. The ACLU strongly supports the constitutional requirement that court proceedings generally should be open to the public. It also strongly supports the constitutional right to due process in civil proceedings, particularly those when a person is facing substantial deprivation of personal liberty. The ACLU has participated as *amicus curiae* in numerous cases involving open court hearings, due process, and forced medication.

ISSUES TO BE ADDRESSED BY *AMICUS*

Whether, in a sexually violent predator proceeding under RCW 71.09:

1) holding an in-chambers conference to discuss the involuntary medication of the defendant violates the public's right to open hearings under Article I, Section 10 of the Washington Constitution or the defendant's right to be present;
2) due process requires use of mental commitment proceedings under RCW 71.05 when a defendant has been ruled incompetent to stand trial.

STATEMENT OF THE CASE

The parties' briefs have adequately presented the facts of this case.

SUMMARY OF ARGUMENT

It is undisputed that the proceedings in this case involved a massive deprivation of liberty, both in the form of lifelong incarceration and in the form of involuntary medication. Thus, the public interest in judicial oversight, recognized in Article I, Section 10, was at its zenith. Based on the experience and logic test of *State v. Sublett*, 176 Wn.2d 58, 292 P.3d 715 (2012), the trial court could not exclude the public and defendant Morgan from the in-chambers conference discussing forcible medication, without first conducting the required analysis for a closed hearing. Morgan also had the right to be present.

It also follows from the significant deprivation of liberty at stake here, and the need for strong due process protections, that when a defendant in RCW 71.09 proceedings is incompetent, mental commitment proceedings under RCW 71.05 should be used instead.

ARGUMENT

A. Holding the in-chambers conference at issue here, without first conducting a *Bone-Club* analysis, violated Article I, Section 10 of the Washington Constitution.

Wash. Const. art. I, sec. 10 states that "justice in all cases shall be administered openly." This provision requires a public right of access to

trials and pretrial hearings. *Seattle Times Co. v. Eberharter*, 105 Wn.2d 144, 155, 713 P.2d 144 (1986). Public access serves: "to ensure a fair trial, to remind the prosecutor and judge of their responsibility to the accused and the importance of their functions, to encourage witnesses to come forward, and to discourage perjury." *Sublett*, 176 Wn.2d at 72. But the public's right to open hearings under Article 1, section 10, is not limited to criminal cases; this Court has applied it in civil cases as well. *Dreiling v. Jain*, 151 Wn.2d 900, 915, 93 P.3d 861 (2004).

More specifically, the Court has recognized the importance of the public's right to open hearings in commitment proceedings. Involuntary commitment proceedings and sexually violent predator proceedings have traditionally been open to the public. *See In re Det. of Campbell*, 139 Wn.2d 341, 355, 986 P.2d 771 (1999) (holding that "there is a constitutional principle that both civil and criminal case proceedings are open to the public" and that this principle is particularly relevant in cases involving sexually violent predators because "the public has an undeniably serious interest in maintaining current and thorough information about convicted sex offenders"); *In re Det. of Turay*, 139 Wn.2d 379, 415, 986 P.2d 790 (1999) (holding that there is "a long tradition of keeping courtrooms open in this state, and there is certainly a rational basis" for openness in sexually violent predator commitment proceedings).

Deep historical roots support the public's right to open commitment proceedings."[T]he traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber, and to the French monarchy's abuse of the lettre de cachet[1]. . . [all of which] symbolized a menace to liberty." *In re Oliver*, 333 U.S. 257, 268-69, 68 S. Ct. 499, 505-06, 92 L. Ed. 682 (1948). Openness, therefore, acts as "a safeguard against any attempt to employ our courts as instruments of persecution." *Id.* at 270. As Justice Harlan noted, "the public trial guarantee embodies a view of human nature, true as a general rule, that judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings." *Estes v. Texas*, 381 U.S. 532, 588, 85 S. Ct. 1628, 1662, 14 L. Ed. 2d 543 (1965) (Harlan, J., concurring).

Applying these well-established principles to this case, the Court should find that the public's right to openly administered justice was

[1] *See also* Lorri M. Thompson, *Soviet Straightjacket Psychiatry: Legislation to End the Psychiatric Reign of Terror in the U.S.S.R*, 16 Syracuse J. Int'l L. & Com. 271, 271–72 (1989-1990) (describing the hospitalization of dissidents in the Soviet Union and reflecting that "psychiatric commitment makes it possible to avoid a full scale trial with all its attendant publicity, to confine patient for an indefinite period of time, . . . to use powerful mind-numbing drugs to keep patients under control"); Louise Shelley, *The Political Function of Soviet Courts: A Model for One Party States*, 13 Rev. Socialist L. 263, 271–272 (1987) (describing secret trials during the post-Stalin transition in the Soviet Union); *see also id.* at 264.

violated when the trial court held an in-chambers hearing to discuss forcibly medicating defendant Morgan.

1. The experience and logic test is the appropriate method for determining whether Article I, Section 10 attaches.

The lower court applied an improper test to conclude that Article I, Section 10 did not attach to the closure in this case because the in-chambers conference "concerned purely ministerial and legal matters." *State v. Morgan*, 161 Wn. App. 66, 70, 253 P.3d 394 (2011), *review granted*, 177 Wn.2d 1001 (2013). This ruling was based on the factual/legal test that the Court of Appeals applied in previous RCW 71.09 closure cases. *See, e.g.*, *In Det. of Ticeson*, 159 Wn. App. 374, 384, 246 P.3d 550 (2011).

However, subsequent to *Ticeson*, a majority of this Court questioned the validity of the categorical factual/legal test and specifically questioned the *Ticeson* and *Morgan* analyses. *Sublett*, 176 Wn.2d at 72 (plurality opinion) (rejecting the factual/legal framework because "the resolution of legal issues is quite often accomplished during an adversarial proceeding, and disputed facts are sometimes resolved by stipulation following informal conferencing between counsel"); *id.* at 138 (Stephens, J., concurring) (arguing that the factual/legal distinction "is simply out of place in the context of the right to a public trial"). A majority of the

Justices further advocated for the application of the federal experience and logic test to determine if a closure implicating the defendant's Article I, Section 22 rights occurred. *Id.* at 73 (plurality opinion); *id.* at 99 (Madsen, C.J., concurring); *id.* at 136 (Stephens, J., concurring).

The rationale of *Sublett* applies equally strongly to the exclusion of the public from an in-chambers conference under Article 1, section 22, and under Article 1, section 10. The *Bone-Club* analysis has already been applied to closures in civil cases. *Dreiling v. Jain*, *supra*, 151 Wn.2d at 915; *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 254 (1995). Sections 10 and 22 serve "complementary and interdependent functions in assuring the fairness of our judicial system." *Bone-Club*, 128 Wn.2d at 259. Thus, the *Sublett* experience and logic test should be applied here, to determine whether Article I, Section 10 was violated by the exclusion of the public from the in-chambers conference in this case.

2. Experience and logic weigh in favor of a presumption of openness.

In order for the public trial right to attach, both the experience and logic prongs must be satisfied. *Sublett*, 176 Wn.2d at 73. When they are satisfied, a consideration of the five-factor *Bone-Club* analysis[2] is necessary before a proceeding can be closed to the public. *Id.*

[2] "1) The proponent of closure and/or sealing must make some showing of the need therefor. . . . 2) Anyone present when the closure (and/or sealing) motion is made

a. Commitment proceedings have historically been open to the public.

If "the place and process have historically been open to the press and general public," then experience weighs in favor of a presumption of openness. *Press-Enterprise Co. v. Sup. Ct.*, 478 U.S. 1, 8, 106 S. Ct. 2735, 2740, 92 L. Ed. 2d 1 (1986) (*Press II)*. Similarly, Washington cases consider historical trends and other sources in applying the experience and logic test. *See State v. Jones*, 2013 WL 2407119, *3-*5 (Ct. App. No. 41902-5-II 2013) (in-chambers selection of alternate jurors was unconstitutional because Washington State traditionally had an open alternate-juror selection process).

As noted above, there is a strong tradition of open hearings in sexually violent predator commitment proceedings. *Campbell*, *supra*; *Turay*, *supra*. Because similar proceedings have traditionally been open to the public, experience weighs in favor of finding a presumption of openness in this case.

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must be given an opportunity to object to the suggested restriction . . . 3) The court, the proponents and the objectors should carefully analyze whether the requested method for curtailing access would be both the least restrictive means available and effective in protecting the interests threatened. . . 4) The court must weigh the competing interests of the defendant and the public and consider the alternative methods suggested. Its consideration of these issues should be articulated in its findings and conclusions, which should be as specific as possible rather than conclusory. . . 5) The order must be no broader in its application or duration than necessary to serve its purpose." *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 37–39, 640 P.2d 716 (citations omitted).

b. Logic weighs in favor of a presumption of openness.

If "public access plays a significant positive role in the functioning of the particular process in question," then logic weighs in favor of a presumption of openness. *Press II*, 478 U.S. at 8. When a proceeding implicates the "purposes of the public trial right and the constitutional assurance of open courts," then public access is likely to play a significant role in the functioning of that proceeding. *Jones*, 41902-5-II, 2013 WL 2407119 at *4. In *Jones*, Division Two held that logic weighed in favor of attaching Article I, Section 10 to the in-chambers selection of alternate jurors because the proceedings implicated two of the purposes of the public trial right—fairness and public oversight. *Jones*, 41902-5-II, 2013 WL 2407119 at *7. Although there was no evidence that the drawing for alternate jurors was conducted improperly, the possibility of impropriety implicated the purposes of the public trial right. *Id.*

Two fundamental rights are at stake in this case. First, "an individual has a significant constitutionally protected liberty interest in avoiding the unwanted administration of antipsychotic drugs." *Sell v. United States*, 539 U.S. 166, 178, 123 S. Ct. 2174, 2183, 156 L. Ed. 2d 197 (2003) (quoting *Washington v. Harper*, 494 U.S. 210, 241, 110 S. Ct. 1028, 1047, 108 L. Ed. 2d 178 (1990)) (internal quotation marks omitted).

Second, "it is clear that commitment for any purpose constitutes a significant deprivation of liberty." *Jones v. United States*, 463 U.S. 354, 361, 103 S. Ct. 3043, 3048, 77 L. Ed. 2d 694 (1983) (quoting *Addington v. Texas*, 441 U.S. 418, 425, 99 S.Ct. 1804, 1809, 60 L.Ed.2d 323 (1979)) (internal quotation marks omitted).

When fundamental rights are at stake, the public has a significant interest in ensuring that defendants are treated fairly and that the court is reminded of the importance of its duties. In this case, the public had an interest in ensuring that forcible medication was not abused, particularly because it was being considered largely to prevent the defendant from being disruptive. 08/30/06 RP at 28–31. Similarly, the public had a significant interest in fairness and oversight because of the significant deprivation of liberty at stake in the sexually violent predator commitment process. As Justice Harlan noted, state officials are more likely to perform their duties with circumspection if they believe that they are subject to public scrutiny. *Estes*, *supra*.

As in *Jones*, "the issue is not that the [proceedings] in this case [were] a result of manipulation or chicanery on the part of the court. . . but that [they] could have been." *Jones*, 41902-5-II, 2013 WL 2407119 at *7. Even though the in-chambers hearing here was on the record, the public was still excluded and there was no way for the trial judge, defense

counsel, and the State to know in advance that all would go as planned. As in *Jones*, "this lack of assurance raises serious questions regarding the overall fairness of the trial, and indicates that court personnel should be reminded of the importance of their duties." *Id.* Because of the importance of public oversight here, logic weighs in favor of openness.

3. Holding the in-chambers hearing without conducting a *Bone-Club* analysis warrants reversal for new commitment proceedings.

Because there is a tradition of open hearings in civil commitment proceedings and because there are numerous compelling reasons for that openness, the public's right to open hearings attaches to the closed in-chambers hearing which occurred in this case. It follows from this that in order for the closed hearing here to meet the requirements of Article I, Section 10, the court must have undertaken the five-step process articulated in *Ishikawa* and *Bone-Club*. *Ishikawa*, 97 Wn.2d at 37–39; *Bone-Club*, 128 Wn.2d at 258–59. As noted above, the *Bone-Club* analysis applies to closures in civil cases, under Article 1, Section 10. *Dreiling v. Jain, supra*, 151 Wn.2d at 915 (emphasizing the importance of the public's right to monitor the functioning of our courts, in the context of a civil case).

Since a *Bone-Club* analysis prior to closing a hearing is required under the above authority, the failure to conduct one is error that almost

invariably warrants a new trial. *See, e.g., State v. Wise*, 176 Wn.2d 1, 6, 288 P.3d 1113 (2012); *Bone-Club*, 128 Wn.2d at 261. Conducting the hearing in chambers and excluding the public violated the public's right to openly administered justice, which "is one of the limited classes of fundamental rights not subject to harmless error analysis." *State v. Easterling*, 157 Wn.2d 167, 181, 137 P.3d 825 (2006). Providing a transcript of the hearing after the fact is not sufficient. *In re Det. of D.F.F.*, 172 Wn.2d 37, 46, 256 P.3d 357 (2011) (plurality opinion); *id.* at 48 (Johnson, J.M., J., concurring) (stating that " release of a transcript. . . is clearly not a sufficient remedy"). As the *Jones* case explained, 2013 WL 2407119 at *7, prejudice resulting from a "secret" hearing is unquantifiable and there is no constitutionally acceptable substitute for an open hearing. The public's fundamental right under Article 1, Section 10, can only be properly enforced with a finding that failure to conduct a *Bone-Club* analysis prior to a closure is structural error that warrants new commitment proceedings.

4. As a member of the public, and as a matter of due process, Morgan had the right to be present at the in-chambers conference.

If this Court finds that Article I, Section 10 was violated by exclusion of the public from the in chambers hearing, the Court should also find that Morgan's right to be present was violated. As a matter of

logic, if the general public had the right to attend the in-chambers conference, then Morgan, a member of the general public, also had the right to be present.

The in-chambers conference at issue in this case dealt with the forcible medication of the defendant and affected his substantial rights. *See Harper*, 494 U.S. at 221-22 (holding that there is a "significant liberty interest in avoiding the unwanted administration of antipsychotic drugs"). Moreover, the record indicates that the forcible medication motion was brought in connection with Morgan's alleged disruptive behavior rather than to help return him to competency. 08/26/04 RP at 28–29. Thus Morgan's interests were even more substantial than in the traditional forcible medication case. Like the public, moreover, Morgan had an interest in overseeing the State's use of its power to forcibly medicate defendants. As a member of the public, there was no legally valid basis to exclude him from the in-chambers conference.

Additionally, the in-chambers conference here was not purely ministerial. Rather, it involved the presentation, if not the "resolution," of disputed facts. Both defense counsel and the guardian ad litem made statements regarding Mr. Morgan's mental health, 08/30/06 RP at 28–31, and their statements could be viewed as persuasive arguments that included facts yet to be determined conclusively by the trial judge. The

trial judge may not have foreseen the trajectory of the meeting, but that does not mitigate the potential for such a conference to affect the outcome of Morgan's case. Holding the conference without Morgan therefore violated his right to be present.

B. Because of the significant deprivation of liberty at stake, a higher level of civil due process protection, including requiring the defendant to be competent, is warranted.

Morgan's commitment order must also be reversed because he was incompetent. Commitment under 71.09 results in potentially indefinite incarceration, a severe deprivation of liberty. Due process demands that such commitment be imposed only when an individual has been afforded heightened procedural protections. A person who is incompetent cannot take advantage of those protections. Accordingly, when an individual is incompetent, the state should pursue the alternative remedy of commitment under RCW 71.05, the mental commitment process that is more specifically tailored to the needs of a person who has been found incompetent to stand trial. .

Under *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), three factors are considered to determine whether the procedures used in a particular type of proceeding comply with due process: the private interests affected by the proceeding; the risk of error created by the State's chosen procedure; and the governmental interests

involved. It is significant that the weight of the private interest is considered first, and that in Morgan's case the weight of that interest is very strong. Freedom from physical restraint "has always been at the core of the liberty protected by the Due Process Clause …" and civil commitment "produces a 'massive curtailment of liberty ….'" *Foucha v. Louisiana*, 504 U.S. 71, 80, 118 L.Ed.2d 437, 112 S.Ct. 1780 (1992); *Vitek v. Jones*, 445 U.S. 480, 491-92, 100 S.Ct. 1254, 53 L.Ed.2d 522 (1980). It is clear based on this authority that the more severe the deprivation of liberty at stake, the more procedural safeguards are required.

Commitment under RCW 71.09, Washington's Sexually Violent Predator statute, constitutes a more significant deprivation of liberty than civil commitment under RCW 71.05. Although RCW 71.05 was "intended to be a short-term civil commitment system," RCW 71.09 provides for long-term indefinite and potentially life-long commitment. *In re Young*, 122 Wn.2d 1, 39, 857 P.2d 989 (1993). Confirming this point, under RCW 71.05.320(7), non-SVP commitment orders are limited to 180 days, and the State must file a new petition and bear the burden of proof in order to extend the order. RCW 71.05.320(6); RCW 71.05.310. Conversely, under RCW 71.09, there is a yearly show-cause hearing at which the State is only required to present prima facie evidence that the person continues to meet the definition of a sexually violent predator. RCW 71.09.090(2)(a)–

(b). It could be years before the committed person is able to have another full hearing.

Recognizing that commitment under RCW 71.09 represents the most extreme form of deprivation of liberty available in a civil proceeding, the legislature and courts have required additional, quasi-criminal procedural requirements in 71.09 proceedings. For example, under former RCW 71.09.060(1), the State bears the burden of proving that the defendant meets the definition of a sexually violent predator beyond a reasonable doubt. "The Legislature's use of the 'beyond a reasonable doubt' standard suggests an acute awareness of the need for heightened procedural protections in these proceedings." *Young*, 122 Wn.2d at 48. In *Young*, this Court imposed a further requirement—that jury verdicts be unanimous. *Id.*

In this case, Morgan argued that due process prohibits the commitment pursuant to 71.09 of an incompetent individual, because a person ruled incompetent to stand trial lacks a rational and factual understanding of the proceedings and sufficient ability to consult with his lawyer and assist in preparing his defense. The Court of Appeals rejected this reasoning, based on a flawed application of *Mathews. State v. Morgan, supra,* 161 Wn. App. at 79-83. The lower court agreed, as it must, that the private interest prong of the *Mathews* test weighed in favor

of requiring the defendant's competence, due to the massive deprivation of liberty at stake. But it found there was no risk of error because Morgan had vigorous representation by counsel, and the State had an interest in protecting the public from dangerous mentally unstable people.

The *Mathews* test requires that the court consider whether alternative procedures can protect the state's interest, particularly when the weight of the private interest is strong. Here, there is another way the State's interest in protecting the public can be satisfied: use of the RCW 71.05 commitment process instead of the RCW 71.09 process when a defendant is incompetent. The RCW 71.05 process and treatment resulting from it are specifically designed for individuals who are incapable of understanding the proceedings and assisting in their defense. In cases such as Morgan's, the "gravely disabled" standard articulated in RCW 71.05.020(17) is better suited to an incompetent defendant, and serves the State's interests by keeping the person confined and receiving appropriate treatment while they remain mentally unstable and dangerous, but providing the necessary procedural protection for the individual by preventing lifelong incarceration until the person is competent.

RCW 71.05.020(17) defines gravely disabled as "a condition in which a person, as a result of a mental disorder: (a) is in danger of serious physical harm resulting from a failure to provide for his or her essential

human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety." In *In re LaBelle*, 107 Wn.2d 196, 208, 728 P.2d 138 (1986), this Court articulated a two-prong test to determine if a person is gravely disabled under RCW 71.05.020(17)(b). First, the State must provide "recent proof of significant loss of cognitive or volitional control[, which]. . . must reveal a factual basis for concluding that the individual is not receiving or would not receive, if released, such care as is essential for his or her health or safety." *Id.* Second, the State must show that the subject of the petition is "*unable*, because of severe deterioration of mental functioning, to make a rational decision with respect to his need for treatment." *Id.* (emphasis in original). In *LaBelle*, this Court accepted evidence of delusions, hallucinations, confusion, disorganization, paranoia, and hostility as proof of the first prong. *Id.* at 212. Opposition to medication or further treatment can be used to satisfy the second prong. *Id.* 211–12.

Based on the record in this case, there is evidence that Morgan would satisfy both prongs of the *LaBelle* test. As in *LaBelle*, defense

counsel and the guardian ad litem described Mr. Morgan as delusional.[3] 8/30/06 RP at 30–32. The guardian ad litem further noted that Mr. Morgan was "violently and vehemently" opposed to medication. *Id.* at 31. These comments provided a factual basis for pursuing the case under RCW 71.05.[4]

The facts of *In re Det. of McGary*, 128 Wn. App. 467, 471, 116 P.3d 415 (2005) are also instructive. The Department of Social and Health Services (DSHS) filed a petition to commit defendant McGary as a sexually violent predator. *Id.* at 469. While McGary was being held in preparation for the sexually violent predator proceedings at Western State Hospital (WSH), his mental health deteriorated. *Id.* at 470–71. He was both paranoid and delusional. *Id*. at 472. A doctor and psychologist at WSH recommended that McGary be involuntarily committed for treatment for his schizophrenia because he was, in part, gravely disabled. *Id.* at 470–71. DSHS dismissed their initial petition under RCW 71.09, and McGary was committed under RCW 71.05. *Id.* at 471. Once

[3] Defense counsel stated that Mr. Morgan "still has all these beliefs that he's not who he is, that he's actually somebody else." 8/30/06 RP at 30. The guardian ad litem stated that Mr. Morgan's "delusions are of time and space and identity." *Id.* at 31.

[4] In fact, during the sexually violent commitment proceedings, the trial judge stated that he found it "ironic. . . that the State has never taken the position to have [Mr. Morgan] found to be incompetent and place in a mental facility other than a commitment proceeding at this point in time." RP at 18.

McGary's condition stabilized, the DSHS renewed their petition under RCW 71.09. *Id.* at 472.

McGary and *LaBelle* demonstrate that RCW 71.05 commitment better satisfies the private and governmental interests prongs of the *Mathews* test for an incompetent defendant than RCW 71.09 commitment. Moreover, the risk of error prong of the *Mathews* test also weighs in favor of using the RCW 71.05 process instead of 71.09 for incompetent defendants. There is less risk of error under 71.05 because the legal standard of "gravely disabled" is a better fit for an incompetent defendant, and the treatment provided is better tailored to an incompetent defendant. A 71.05 commitment allows the defendant's status to be re-evaluated at a later date, if competency is restored through appropriate treatment designed to meet the needs of an incompetent person. In contrast, a 71.09 commitment of an incompetent defendant results in indefinite and possibly life-long incarceration, even if the defendant's competency status later changes. Additionally, as explained in Morgan's supplemental brief, an incompetent defendant has an impaired ability to assist counsel and to exercise the civil due process right to be heard, undermining the reliability of the outcome of the proceeding. The defendant's inability to assist necessarily raises a question about whether important information, possessed only by the defendant, has been overlooked. As the Court of

Appeals recognized, "the trial court determined that Morgan was not competent and expressed 'very great concerns regarding the ability of Mr. Morgan to assist in [his] representation in these matters.' RP (Feb. 23, 2006) at 9."

Given the severity of the outcome in a 71.09 proceeding and the extreme weight of the private interest, plus the availability of a better procedure which satisfies the governmental interest and reduces the risk of error, the *Mathews* test supports requiring a competent defendant for 71.09 proceedings. The State should have postponed commitment proceedings under RCW 71.09 until Morgan could be returned to competency, or proceeded with commitment under RCW 71.05.

CONCLUSION

For the foregoing reasons, *amicus* respectfully requests that the court reverse Morgan's RCW 71.09 commitment order.

Respectfully submitted this 16th day of August 2013.

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