

April 6, 2020

Indiana Supreme Court
200 W. Washington St.
Indianapolis, IN 46204

Re: Supreme Court Case No. 20S-MS-234

Dear Chief Justice Rush and Members of the Supreme Court,

The undersigned members of the Indiana Senate appreciate the opportunity to comment on the petition filed with this Court by the ACLU. We do so with a deep respect for the separation of powers and the Constitutional roles and responsibilities of each branch of government in our state.

We express grave concerns that the relief sought by the ACLU regarding imprisoned persons is unconstitutional. We take issue with its contention that this Court has the authority to modify sentences of already-convicted offenders who are serving executed sentences in an Indiana penal facility, or any other facility holding a convicted offender. Indiana's separation of powers doctrine, found in Article 3, Section 1 of the Indiana Constitution, "prevents the courts from reviewing political, social, and economic actions within the exclusive province of coordinate branches of government." *Berry v. Crawford*, 990 N.E.2d 410, 415 (Ind. 2013).

Indiana courts have no legal authority to modify sentences outside the statutory framework established by the Legislative branch of state government. Procedures and limitations for sentence modification are specified in Indiana Code 35-38-1-17. Moreover, a court's authority to modify sentences is limited to modification to a sentence that the court could have imposed at the time of sentencing. Ind. Code 35-38-1-17(e). Any additional sentence modification authority granted by this Court would usurp the power of the Indiana General Assembly and violate Indiana's cherished separation of powers doctrine.

Should grounds as asserted by the ACLU exist, the remedy is through legislative action. The Governor, at any time, can call a Special Session of the Legislature, which can then swiftly act to modify the governing statutes. As of this writing the Governor has extended his "Stay at Home" Order for only two more weeks, a potentially shorter time frame than that within which the relief requested by the ACLU could be implemented. In addition, the Department of Correction (DOC) currently has significant unused capacity which could be used to provide additional separation of prisoners. Either of these options provides a remedy to the concerns (if valid) raised by the ACLU without putting public safety at risk or crossing the Constitutional separation of powers.

The ACLU makes several baseless claims that the inmate population is among 'the most medically fragile' and that institutional environments' create an unconscionable risk to the inmates' health and safety'. The ACLU makes such broad allegations that any public health

outbreak could 'objectively subject the inmates to an 'unreasonable risk of harm'. And yet their request for full medical histories of all inmates suggests they are casting a broad net, regardless of the inmate's current status. It is not inherently impossible to maintain safe health practices in an institution, and not all institutions have been compromised. However, the ACLU does NOT consider the burden on already overburdened public safety officers, health care workers and maybe the inmate's own family members. The tracking, support and oversight that is necessary creates a risk to public safety and health workers at an extremely critical time. The ACLU is irresponsible by not considering the significant burden their broad request would place on a public health system already taxed to its limit. These are public policy considerations that lie exclusively with the Legislative branch.

For these reasons, we respectfully urge the Court to deny the petition filed by the ACLU. Thank you for the opportunity to provide these comments.

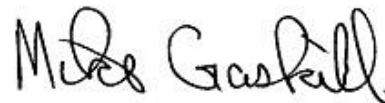
Respectfully,



Senator Philip Boots
Indiana Senate District 23



Senator Michael Crider
Indiana Senate District 28



Senator Mike Gaskill
Indiana Senate District 26



Senator Liz Brown
Indiana Senate District 15



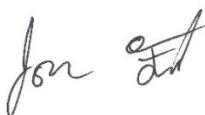
Senator Blake Doriot
Indiana Senate District 12



Senator Susan Glick
Indiana Senate District 13



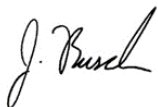
Senator Brian Buchanan
Indiana Senate District 7



Senator Jon Ford
Indiana Senate District 38



Senator Ron Grooms
Indiana Senate District 46



Senator Justin Busch
Indiana Senate District 16



Senator Aaron Freeman
Indiana Senate District 32



Senator Travis Holdman
Indiana Senate District 19



Senator John Crane
Indiana Senate District 24



Senator Chris Garten
Indiana Senate District 45



Senator Erin Houchin
Indiana Senate District 47



Senator Eric Koch
Indiana Senate District 44



Senator Jack Sandlin
Indiana Senate District 36



Senator Dennis Kruse
Indiana Senate District 14



Senator Victoria Spartz
Indiana Senate District 20



Senator Jean Leising
Indiana Senate District 42



Senator James Tomes
Indiana Senate District 49



Senator Mark Messmer
Indiana Senate District 48



Senator Greg Walker
Indiana Senate District 41



Senator Rick Niemeyer
Indiana Senate District 6



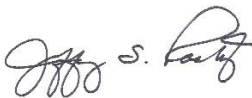
Senator Michael Young
Indiana Senate District 35



Senator Chip Perfect
Indiana Senate District 43



Senator Andy Zay
Indiana Senate District 17



Senator Jeff Raatz
Indiana Senate District 27



Senator Linda Rogers
Indiana Senate District 11