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January 5, 2022

Clerk of the Supreme Court  
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Re: Supreme Court Rule Petition 21-03

Dear Honorable Justices of the Supreme Court:

We write to share our concerns about Supreme Court Rule Petition 21-03, regarding videoconferencing in and location of the Wisconsin state courts.

The statutory amendments proposed in Petition 21-03 were, with some small differences, previously proposed as part of Petition 20-09. The concerns that we voiced with respect to Petition 20-09 continue to apply today.

In particular, sections 1 and 4 of Petition 21-03 continue to propose changes of questionable constitutional validity to Wis. STAT. §§ 753.24 and 757.14, which provide for public court appearances. Section 757.14 codifies the constitutional right to a public trial, a right held not only by litigants but by the public itself. See *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1909-10 (2017).

As we previously noted, these proposed amendments to §§ 753.24 and 757.14 would appear to allow courts unfettered discretion to hold proceedings using telephone or videoconferencing technology and to allow public access to courts hearings solely by electronic means, even when the court proceedings are themselves occurring within the courtroom. This might be less objectionable were high-quality internet connections ubiquitous. However, there are many areas in Wisconsin where the quality of internet connection is low or non-existent; and even where quality is good, its access is not easily

January 5, 2022

Page 2

attainable by those of low income – the very people whose family members are too often the subject of criminal complaints. These amendments would deprive criminal defendants of the right to be physically present during critical court proceedings and the right to confront witnesses, as discussed above. They would also deprive the public of the right to observe court proceedings. In sum, these amendments would affect the basic framework of the justice system, amounting to a structural error that cannot be deemed harmless as a matter of law. *See id.* at 1907.

Section 1 of Petition 21-03 adds in a nod to “constitutional requirements” that was not present in the amendment proposed in Petition 20-09. This addition does little more than explicitly recognize the conflict between what the proposed statute allows and what the Constitution requires—it does not rein in courts’ discretion within constitutional bounds or even offer guidance on the issue.

In addition, we share the concern previously voiced by others regarding the changes proposed to § 757.12, which can be found within section 3 of Petition 21-03. The proposed changes would allow a judge to adjourn court to any other location within the state whenever the judge deems it “unsafe or inexpedient, by reason of war, pestilence, public calamity, or other compelling factors limiting or preventing access to the courthouse.” The proposed amendment would also allow a bench warrant to issue as long as the party received notice of the date, time, and location of the proceeding. These amendments would allow a judge to require attendance at a location hundreds of miles away by parties who lack the means to travel out of county or otherwise access technology necessary to appear remotely, and the amendments would further allow the judge to issue a warrant for the party’s arrest upon nonappearance as long as the party was notified of the new location – without regard for the party’s ability to appear. In addition to the practical problems posed by the proposed changes to § 757.12, there may be constitutional concerns as well, if the relocation affects the right to a public trial or access to the court.

These changes, if adopted, would likely spur challenges requiring resolution by this Court and the U.S. Supreme Court. In addition, they would abridge the substantive rights of litigants, something that cannot occur under this Court’s rulemaking authority. *See WIS. STAT. § 751.12(1).*

January 5, 2022  
Page 3

Thank you for the opportunity to present these comments for your consideration.

Cordially,

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