OFFICE OF CORPORATION COUNSEL

Client-Driven. Community-Focused.

MARGARET C. DAUN
Corporation Counsel

SCOTT F. BROWN
KAREN L. TIDWALL
Deputy Corporation Counsel

ALAN M. POLAN
KATHRYN M. WEST
DALE R. NIKOLAY
DAVID N. FARWELL
LISA M. PROCACCIO
NELSON W. PHILLIPS III
MELINDA S. LAWRENCE
JUDD H. TABACK
CHRISTOPHER L. MORGAN
JENNIFER O. HEMMER
WILLIAM G. DAVIDSON
Assistant Corporation Counsel

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CLERK OF COURT OF APPEALS OF WISCONSIN

July 8, 2022

Sheila Reiff, Clerk of Supreme Court
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Re: *Milwaukee County v. K.M.*,
District I, Appeal No. 2019AP1166
Milwaukee County Case No. 2015ME2083

Dear Ms. Reiff:

Please accept this letter as Milwaukee County's (the "County") response to the Court's order of June 23, 2022 directing the parties to this appeal to submit letters discussing the impact of *Sauk County v. S.A.M.*, 2022 WI 46, on the issues raised in the petition for review.

The Court in *S.A.M.* found that "an appeal of an expired recommitment order is not moot because vacating the order would still have practical effects on two of the order's collateral consequences – the ability to restore a constitutional right and the liability for the cost of care received while subject to the recommitment order." *Id.* at ¶27. The second collateral consequence in *S.A.M.*, liability for cost of care, has not been raised in this case. This Court should find that argument as waived in this matter.

The facts of K.M.'s case substantially differ from the facts of *S.A.M.* It appears that S.A.M. was committed, recommitted, then his recommitment order was allowed to expire. He appealed his recommitment, which the Court found not to be moot, but affirmed. Here, after K.M.'s recommitment order at issue expired, K.M. was subject to a completely new commitment order and several subsequent recommitments arising from the new commitment case. The Court in *S.A.M.* does not differentiate why S.A.M.'s specific situation overcomes mootness, as opposed to a recommitment appeal with differing circumstances, as noted in Justice Kingsland Ziegler's dissent. *Id.* at ¶41 (Kingsland Ziegler, C.J., concurring in part, dissenting in part). The impact of one recommitment order on a court's analysis as to whether to restore gun rights would certainly be greatly diminished as an implied collateral consequence when a subject has multiple other commitment and recommitment orders subsequent to the recommitment order being appealed.[1] We further have no indication that K.M. has attempted to regain her gun rights, or that if she did,

[1] *See Waukesha County v. S.L.L.*, 2019 WI 66, ¶40, 378 Wis. 2d 333, 929 N.W.2d 140 ("[V]acatur is not the same thing as expungement ... vacating the Extension Order would have no effect on [the subject's] examining physician reports, treatment records, court files, or records relating to previous proceedings....").

there was any impact of this specific recommitment order on a court's decision as to whether to restore those rights. While the County agrees with Justice Kingsland Ziegler's dissent regarding the issue of mootness, the County recognizes the majority opinion is the law. However, if the Court does take up this matter, the County would request clarification on the application of *S.A.M.* to the mootness of recommitment cases with facts different than *S.A.M.*

If the Court finds that this appeal is not moot, *S.A.M.* does not change the County's position that K.M.'s petition for review fails under Wis. Stat. § 809.62(1r), as it does not present a significant or novel question of law. As this Court recognized in *Waukesha County v. S.L.L.*, 2019 WI 66, 387 Wis. 2d 333, 929 N.W.2d 140 (2019), due process considerations do not "guarantee the right to appear at a Chapter 51 hearing in the same way they guarantee a right to appear in a criminal trial. . . . Rights may be waived or forfeited—even constitutionally-protected rights." *Id.*, ¶¶33-34. K.M. received notice of the hearing and chose not to appear, which is not a due process violation. K.M. was also represented by counsel at the recommitment hearing, who agreed that the hearing could proceed without K.M. present. Counsel's failure to object at the hearing constitutes a waiver of the due process issue.

Likewise, the recommitment trial counsel's failure to contemporaneously object to the testimony K.M. now claims was hearsay constitutes waiver of that issue. Wis. Stat. § 805.11(1). Even if trial counsel had objected at the hearing, the County contends that the testimony was not hearsay. Both Dr. Rainey and Mr. Siedl had personally spoken with K.M. and based their professional assessments and testimony on that personal knowledge. Further, K.M. was not denied confrontation rights by choosing not to attend her hearing, despite receiving notice. K.M. was represented by counsel, who had the opportunity to cross-examine witnesses on her behalf and object to any testimony he believed to be inadmissible or irrelevant.

The County respectfully requests that the petition for review in this matter be denied. Alternatively, if the Court determines that the Court of Appeals decision is to be reexamined, that the Court remand this case to District I for a decision on the merits. Wis. Stat. §§ 809.26(2), 809.62(2)(a), 809.62(6).

Sincerely,

Jennifer O. Hemmer

Jennifer O. Hemmer
State Bar No. 1091279

CC: Atty. Colleen Ball (via facsimile/email/mail)