

April 21, 2020

The Honorable Deborah A. Ryan
Presiding Judge, Santa Clara County Superior Court
191 North First Street
San Jose, California 95113
dwalker@scscourt.org; media@scscourt.org; BRada@scscourt.org

Via Email

RE: COVID-19 and Court Secrecy: Preserving Public Access to the Santa Clara County Superior Court

Dear Presiding Judge Ryan,

Thank you for your letter dated April 13, 2020, responding to the combined concerns of the American Civil Liberties Union of Northern California, Silicon Valley De-Bug, Essie Justice Group, the First Amendment Coalition, and Public Justice regarding the lack of public access to court proceedings occurring in the Santa Clara County Superior Court.

We appreciate the court's proactive actions to reduce the jail population and to ensure criminal defendants are timely arraigned. We also appreciate the need to limit physical access to the court, consistent with public safety and public health as we navigate these unprecedented challenges.

The April 13 letter notes that Santa Clara County Superior Court is "hoping to provide access by way of listen only public conference dial-in lines." We learned over the weekend that the Court intends to implement this tool by the end of this week. We write to unequivocally support this effort and to urge the Court to get this capability up and running quickly and to ensure that information on how to access it is widely and publicly available.¹ As you know, the First

¹ The April 13 letter also describes a case-by-case procedure for grants of access and notes that "[a]nyone, including members of the media, crime victims and advocates and others who have a need to be physically in court upon a showing of good cause will be allowed physical access to the courthouse." While we appreciate this effort, it falls woefully short of providing meaningful public access to court proceedings as constitutionally required. To begin, this procedure flips the burden and presumption of access on its head. The constitutional right of access to court proceedings does not demand that an observer show good cause. To the contrary, U.S. Supreme Court precedent is clear that "proceedings cannot be closed unless specific, on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enter. Co. v. Superior Court of California for Riverside Cty.*, 478 U.S. 1, 13–14 (1986) (internal quotations omitted). What's more, there exists

Amendment Coalition’s first letter on this topic was sent on March 25, 2020—nearly a month ago. Time is of the essence here. As the U.S. Supreme Court has recognized, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Each day that passes, and each hearing that occurs, without the opportunity for public access works an irreparable injury on family and community members and the many other Californians with an interest in this court’s administration of justice.

For all these reasons, we ask that the court implement its contemplated public call-in capability no later than **Monday, April 27, 2020**. If we do not hear that such measures have been put in place, and are operational by then, we may be forced to seek judicial relief. We look forward to your response. Please do not hesitate to contact us with any questions.

Regards,



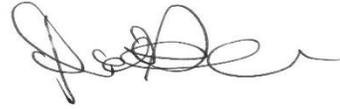
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no clear guidance as to how one would request such a good cause exception. Although the April 13 letter mentions that one member of the press has had their request granted, we are aware of members of the public who have attempted to gain access but have been unable to figure out how. Finally, this procedure provides only for those few who are able to show good cause to be physically present in court. It is therefore imperative that there exist alternatives that allow family and community members who wish to observe the criminal court proceedings of their loved ones or fellow citizens without making the Hobson’s choice of jeopardizing their own health and safety, and that of their families,—to realize their constitutional right of access.



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Also on behalf of:

Silicon Valley De-Bug
Essie Justice Group

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