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**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

**PETITION TO AMEND  
RULE 25(E), ARIZONA RULES  
OF PROTECTIVE ORDER  
PROCEDURE**

**In Re: R-23-0010**

**ARIZONA PROSECUTING  
ATTORNEYS' ADVISORY  
COUNCIL COMMENT IN  
OPPOSITION**

The Arizona Prosecuting Attorneys' Advisory Council (APAAC) herein respectfully submits its comments in opposition to rule change petition R-23-0010, which proposes to materially alter Rule 25(e) of the Arizona Rules of Protective Order Procedure. In addition to the basis articulated below for APAAC's opposition to the proposed rule amendment,

we acknowledge and support the opposing comment filed by the Maricopa County Attorney's Office (MCAO).

The proposed rule change effectively raises the burden of proof necessary to invoke Rule 25(g) of the Arizona Rules of Protective Order Procedure to "clear and convincing evidence." However, this is contrary to statutory framework defining the burden of proof upon which Rule 25(e) and (g) are based.

A.R.S. § 13-3602(E) states, in pertinent part:

The court *shall* issue an order of protection under subsection G of this section if the court determines that there is *reasonable cause to believe* any of the following:

1. The defendant may commit an act of domestic violence.
2. The defendant has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.

(Emphasis added).

According to the plain language of the statute, the court is *required* to issue an order of protection upon finding reasonable cause. At that point, the court *may* also issue an order prohibiting the defendant from possessing or purchasing firearms for the duration of the order upon finding the defendant is a "credible threat to the physical safety of the plaintiff or other

specifically designated persons.” A.R.S. § 13-3602(G)(4). The statute does not impose an evidentiary burden on the court for the issuance of the injunction above and beyond the “reasonable cause” standard set forth for the general protective order. See A.R.S. § 13-3602(E).

Petitioner’s arguments in support of the proposed change are based almost exclusively upon the supposition that 2017 legislative amendments in statutes governing the burden of proof necessary to sustain civil forfeiture under A.R.S. §13-4305 evidence a legislative intent to raise the burden of proof necessary for a court to enjoin a defendant from possessing or purchasing firearms under A.R.S. § 13-3602(G)(4).

However, neither Rule 25(g) nor A.R.S. § 13-3602(G) permanently divests a defendant, nor anyone else, of their property interest in the affected firearm. Whether the order is issued pursuant to A.R.S. § 13-3602(G)(4), or Rule 25(g) which effectuates the statute, the injunction against possession of the firearms for a limited duration is not a seizure as contemplated under A.R.S. § 13-4305.

Following the statutory construction rule of *expressio unius est exclusio alterius*, if the legislature had intended to enlarge the evidentiary burden necessary to sustain a firearms injunction order under A.R.S. § 13-3602(G)(4)

when it amended A.R.S. § 13-4305, it would have amended A.R.S. § 13-3602(E) or (G)(4) explicitly.

The plain language of A.R.S. § 13-3602(E) and (G) defining the burden of proof necessary for a court to issue an order of protection and attendant firearms injunction as “reasonable cause to believe” is clear and unambiguous. Rule 25(e) in its current form effectuates both the purpose and the plain language of A.R.S. § 13-3602(E) and (G).

Accordingly, for the reasons stated above and those contained in the MCAO opposing comment, APAAC respectfully requests that the petition be denied in its entirety.

Respectfully submitted this 1<sup>st</sup> day of May, 2023,

By   
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APAAC