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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO ABROGATE RULE
25(g) OF THE ARIZONA RULES OF
PROTECTIVE ORDER PROCEDURE

Supreme Court No. R-__-_____

**Petition to Abrogate ("Repeal")
Rule 25(g) of the Arizona Rules of
Protective Order Procedure, the
Court's Red Flag "law"**

Emergency adoption requested

Pursuant to Rule 28 of the Supreme Court, Mike Palmer petitions you all to abrogate (more aptly here, to "repeal") Rule 25(g) of the Rules of Protective Order Procedure – your Red Flag "law" – on an emergency basis. This to conform with Arizona statute, the U.S. and Arizona Constitutions, your own case law, and a former governor's and legislator's statements that Arizona does not have a Red Flag Law.

[A "Red Flag Law" is the popular name for the DOJ's model Extreme Risk Protection Orders.¹ The DOJ is currently sending more than \$200 million to states

¹ <https://www.justice.gov/doj/reducing-gun-violence/commentary-extreme-risk-protection-order-model-legislation>.

to administer/promote Red Flag Laws.² The Arizona Supreme Court (along with various law enforcement agencies in Arizona) accepts grant money from the DOJ's Office on Violence Against Women.³ I leave it to the reader to reflect on the Independence of the Judiciary in this instant matter.]

Since the Arizona Supreme Court is not allowed to make law, nor Rules of Procedure that abridge the substantive rights of a litigant (Ariz. Const., Article III & A.R.S. § 12-109(B)(1)), and since the statute/Constitutions/case law/intent are manifestly clear here, there is no need to debate this Petition. Irreparable harm (e.g. "death") may come to Arizonans if you do not act quickly. (See Conclusion.)

I. Preface

This marks the 14th year that I, and others, have petitioned you to repeal your patently unlawful, unconstitutional Red Flag "law." What's changed this time? At least three things:

1) In 2022, the US Supreme Court ruled that firearm rules [depriving law-abiding citizens their 2nd Amendment right] must be consistent with the nation's "historical tradition." (*New York State Rifle & Pistol Ass'n v. Bruen.*)

Now, to support your Red Flag rule (Rule of Procedure, Rule 25(g)) you say that the Arizona legislature allows judges to deprive Arizonans their Second

² <https://apnews.com/article/us-funds-red-flag-laws-ef06146b4db58a404471bb6ebde90aaa>

³ <https://www.justice.gov/ovw/awards/fy-2011-ovw-grant-awards-program>

Amendment right in civil Injunctions Against Harassment. (Shown later below.)

Even if that were the Legislature's intent (it isn't), your support fails now because such a deprivation in civil IAH's is inconsistent with the nation's historical tradition of allowing citizens to keep and bear arms. It's certainly inconsistent with Arizona's historical tradition, which amplifies the federal tradition, as it guarantees "the right of the individual citizen to bear arms in defense of himself."

2) In 2023, the US Supreme Court heard the matter of *U.S. v. Rahimi*, "Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violates the Second Amendment on its face." While we await its ruling, just the fact that the SCOTUS took up the matter shows that there is a constitutional issue of great importance here.

If the SCOTUS rules that prohibiting possession of firearms by those convicted of **criminal** domestic violence Restraining Orders violates the Second Amendment, then it follows that it is also a violation of the Second Amendment to prohibit defendants in **civil** IAH's from possessing firearms. As you currently do via Rule 25(g).

3) Last year was the year that the US Supreme Court reversed itself in *Roe v. Wade*.

In *Roe*, the court had made up a constitutional right absent law. That is, it

made a purely political/policy decision.

Here this Court has taken away a constitutional right absent law, also a purely political/policy decision.

We can only hope that it will not take 50 years for you all to admit, like the SCOTUS, that you have been wrong.

II. Analysis/Purpose

Rule 25(g) says in full, "The judicial officer **must** ask the plaintiff about the defendant's use of or access to **firearms**. If necessary to protect the plaintiff or any other specifically designated person, the judicial officer may prohibit the defendant from possessing, purchasing, or receiving **firearms** for the duration of the order."

a. Where are you getting any of this from?

A.R.S. §12-1809 is the only statute governing civil IAH's.

There is nothing in the statute that says a judge **must** ask about firearms. In fact, the word "firearm" isn't in the statute. (Use your browser's Search function.)

"When the plain text of a statute is clear and unambiguous, it controls unless an absurdity or constitutional violation would result." (Quoting this Court's FN 1 in *State ex rel. Ariz. Dep't of Revenue v. Tunkey*, 2023.)

The plain text of -1809 is clear and unambiguous. It does not say anywhere that a judge must ask the plaintiff about firearms. Ironically, as shown next, it is

your interpretation of the statute that results in an absurd constitutional violation.

As such, Rule 25(g) is a Red Flag "law" that you all made up.⁴ (As further evidenced by the fact that, unlike all the other ARPOP Rules where you cite an A.R.S. for authority, you do not cite one here.)

b. This Court's cosmic finding of legislative intent

Now, over the past 14 years, you all have consistently claimed that your Red Flag "law," Rule 25(g), has statutory support. This because the legislature said that, if a court issues an injunction, the court may "Grant relief necessary for the protection of the alleged victim..." (A.R.S. §12-1809(F)(3).)

But your own COA has proved that the Legislature could never have intended to prohibit firearms in civil IAH's, because the constitutional standard needed for such a prohibition can never be met in a civil IAH.

Ruling on a criminal DV OOP, your COA said, "a **higher standard** of review applies when a court's order implicates a defendant's right to possess firearms under the Second amendment to the United States Constitution or under Article 2, Section 26, of the Arizona Constitution. A firearm restriction under the federal Gun Control Act is triggered by an order of protection '**only if** the order `includes a finding that [the] person represents a credible threat to the physical safety of [the] **intimate partner** or child.'" (*Savord v. Morton.*)

⁴ Your Red Flag "law" first appeared in 2006, in the advisory Domestic Violence Benchbook.

The bottom line (literally) is that, to prohibit firearm possession in an order of protection, the petitioner must be an "intimate partner" of the defendant. (i.e., Domestic Violence.)

But since civil IAH's do not involve "intimate partners" (else they would be a crim DV OOP matter), a firearm restriction cannot be triggered by a court order in civil IAH's.

[But note that this deprivation in criminal DV matters might not even be constitutional after the SCOTUS rules this year on *Rahimi*.]

Despite this, you're saying that the legislature authorized Injunctions that violate the constitutional rights of Arizonans? Your own COA, ruling on a civil IAH, said "...we do NOT attribute to the legislature ANY intention to authorize unconstitutional injunctions." (FN 7, *LaFaro v. Cahill*.) So yours is an absurd interpretation of the statute., per *State ex rel.*, above.

If you really believe that a judicial officer can grant whatever relief is necessary for the protection of an alleged victim, then wouldn't it also be good public policy to temporarily lockup a defendant in a civil Injunction in order to protect a plaintiff? That's what a Severe Threat Order of Protection (STOP) does. (Which Arizona legislators rejected the last time it came up.)

But you haven't made up your own STOP law via a Rule of Procedure. Everyone knows that that would be an obvious Fourth Amendment violation. And

that courts aren't supposed to make policy/law.⁵

Making up your own Read Flag "law" is no less a violation.

c. But you're not on a cosmic search

"Our oath as judges does not send us on a cosmic search for legislative intent. It requires us to support the ... Constitution and laws of the State of Arizona." (quoting "Justice" Bolick from *State ex rel. Dep't of Revenue*, above.)

And, "courts **will not read into a statute** something which is not within the manifest intention of the legislature **as gathered from the statute itself.**" (*State ex rel.* above.)

I'm glad that you acknowledge that you took an oath to support our laws.

I'm sad that you've broken your oath by reading into a statute something that is not in the statute itself.

You must correct this overreach now.

d. What a legislator said, he meant. And vice versa.

As if the absence of the word "firearm" from the statute – and the absence of any provision for seizing firearms – wasn't clear enough evidence that you all have made up your own Red Flag "law," I quote a legislator saying that it has never been the legislature's intent to give us a Red Flag Law.

⁵ You know you aren't allowed to make policy. "This is a policy argument for the legislature to address ..." *State ex rel.* above.

In 2019, then-former Senator Eddie Farnsworth, explaining why the Legislature wouldn't take up STOP legislation (a Red Flag/civil IAH on steroids) said, "There has to be proof that a **crime** has been committed and that **crime** has risen to the level that somebody is at risk of being harmed."⁶

Since a civil IAH is a civil matter, no crime has been committed, by definition.

"What the Legislature means, it will say" is ostensibly your standard (quoted as late as 2023 by the AZ COA in *Machue Picchu Holdings, LLC v. Pinal County*)). Here a Legislator is saying what he means.

Similarly, former Governor Ducey once said, "As long as I am governor, there will be **no** Red Flag Law in the state of Arizona... All law-abiding Arizonans are going to have access to the Second Amendment rights in our state."⁷

So both a legislator and a governor have said that we do not have a Red Flag Law in Arizona. It is only the Judiciary who says we do. By a mere Rule of Procedure.

e. Logic dictates

Again, as if the absence of the word "firearm" from the law wasn't clear evidence that the Legislature never intended to prohibit firearm possession in civil

⁶ https://tucson.com/news/local/gov-doug-ducey-s-plan-to-make-arizona-schools-safer/article_3622beb8-9fc2-5e45-9adc-18753f9042de.html

⁷ https://www.parkerpioneer.net/news/article_b9580db2-533a-11ea-a500-b3fdfa750d10.html

IAHs, the fact that in criminal DV Orders of Protection, the Legislature DID mention firearms – and a provision to seize them, shows that the Legislature could have put the word "firearms" – and the provision to seize them – in civil IAH law.

But it did not.

Thus the principle of *expressio unius est exclusio alterius* says that "where like-natured entities [here, firearms prohibition in criminal OOP's] are listed, but others are not [no firearm prohibition in civil IAH's], the omitted entries were meant to be excluded." (This Court in 2020, *Morrissey v. Garner*.)

III. Conclusion

Your Red Flag "law," Rule 25(g), must be repealed. Immediately. Before irreparable harm comes to a defendant. (From when, say, an angry plaintiff, emboldened after obtaining an ex parte Injunction, shoots his neighbor defendant dead, knowing that his neighbor has been deprived the right to defend himself/herself via judicial fiat, your Rule 25(g).)

Likewise you must repeal all the other Rules/Wrongs associated with your made up "law." For example, Appendix B in Petition R-20-0038, titled *Plaintiff's Guide Sheet for Protective Orders*. There the AOC lumps civil IAH's together with criminal DV OOPs and wrongly tells plaintiffs in civil IAH's that they can ask for a firearm prohibition.

(As an aside: Why is there a Plaintiff's Guide Sheet, but not a Defendant's

Guide Sheet? Having a Guide Sheet for only one party is prejudicial on its face.)

IV. Proposed Change to the Rule

Delete all of Rule 25(g).

~~(g) Firearms. The judicial officer must ask the plaintiff about the defendant's use of or access to firearms. If necessary to protect the plaintiff or any other specifically designated person, the judicial officer may prohibit the defendant from possessing, purchasing, or receiving firearms for the duration of the order.~~

V. Disclosure

To the best of my knowledge, no one has filed a similar petition within the previous five years.

SUBMITTED this 10th day of January 2024.

By /s/ Mike Palmer

"You shall not add to the word that I command you, nor take from it ..." Deut 4:2