

1 **Elizabeth Burton Ortiz**
State Bar No. 012838
2 ARIZONA PROSECUTING ATTORNEYS'
ADVISORY COUNCIL
3 3838 N. Central Avenue, Suite 850
Phoenix, Arizona 85012
4 Tel. (602) 542-7222
Fax. (602) 274-4215

5
6 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

7 In the Matter of:

In Re: R-24-0037

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

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

10
11
12 The Arizona Prosecuting Attorneys' Advisory Council ("APAAC")
13 respectfully submits the following comment opposing Petition R-24-0037, which
14 proposes to abrogate Rule 25(g) of the Arizona Rules of Protective Order Procedure
15 ("ARPOP"). Although unclear, the Petition appears to allege that the Arizona
16 Supreme Court exceeded its rulemaking authority and ARPOP 25(g) violates a host
17 of laws, including the state and federal constitutions. (Pet. at 1.)

18 **I. Introduction**

19 Rule 25(g), of the ARPOP, provides: "**Firearms.** The judicial officer must
20 ask the plaintiff about the defendant's use of or access to firearms. If necessary to

1 protect the plaintiff or any other specifically designated person, the judicial officer
2 may prohibit the defendant from possessing, purchasing, or receiving firearms for
3 the duration of the order.” *See also* Rule 23(i), ARPOP.

4 An injunction against harassment and an order of protection are similar
5 provisions, and both contain identical provisions related to firearms restrictions.
6 ARPOP 23(i), 25(g); *see Moreno v. Beltran*, 250 Ariz. 379, 381, ¶ 6 (App. 2020)
7 (“[T]here is little substantive difference between an order of protection and an
8 injunction against harassment.”). “The primary difference between the two
9 categories of orders is that an order of protection may be issued only between parties
10 in specific relationships, *e.g.*, spouses, cohabitants, or other familial relationships,”
11 while there is “no relationship requirement for injunctions against harassment.”
12 *Moreno*, 250 Ariz. at 381, ¶ 7 (citing ARPOP 4(a), 4(c); A.R.S. § 13-3602(G) (listing
13 relief available for an order of protection); A.R.S. § 12-1809(F) (listing similar relief
14 available for an injunction against harassment)).

15 **II. The Arizona Supreme Court Did Not Exceed Its Rulemaking Authority.**

16 The Arizona Supreme Court did not exceed its rulemaking authority in
17 creating ARPOP 25(g), the firearms restriction clause for injunctions against
18 harassment. “In Arizona, the legislature possesses those powers not expressly
19 prohibited or granted to another branch of the government.” *State v. McCartney*, 251
20 Ariz. 478, 480, ¶ 10 (App. 2021) (internal citations and quotation omitted). However,

1 the Arizona Supreme Court has “exclusive constitutional authority to enact rules that
2 govern procedural matters in all Arizona courts.” *Id.* The Supreme Court cannot
3 “enlarge or diminish substantive rights provided by statute.” *Id.* And, in some areas,
4 the legislative and judicial branches of government both have some rulemaking
5 authority. *Id.* However, “in the event of [an] irreconcilable conflict between a
6 procedural statute and a rule, the rule prevails.” *Id.*

7 Courts first determine whether the statutes and rules can be harmonized. *Id.*
8 at 481, ¶ 11. Here, the statute governing injunctions against harassment is readily
9 harmonized with ARPOP 25(g). Arizona Revised Statute § 12-1809(F)(3) instructs
10 trial court: “If the court issues an injunction, the court may do any of the following:
11 [g]rant relief necessary for the protection of the alleged victim and other specifically
12 designated persons proper under the circumstances.” Rule 25(f) and (g) provide clear
13 examples of relief for those additional and necessary protections, like firearms
14 restrictions, for the safety of the victim. There is nothing inconsistent between those
15 two provisions, and the Arizona Supreme Court did not exceed its rulemaking
16 authority in providing those examples.

17 **III. Constitutional Rights Are Not Absolute.**

18 Like other federal and state constitutional rights, and contrary to the Petition,
19 the right to possess firearms is not absolute. In *Dist. of Columbia v. Heller*, 554 U.S.
20 570, 626-27 (2008), the United States Supreme Court affirmed that principle: the

1 right to possess firearms is not absolute and does not preclude the existence of certain
2 long-standing prohibitions such as those forbidding “the possession of firearms by
3 felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive
4 places such as schools and government buildings.” The Supreme Court recently
5 reaffirmed that principle in *New York Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S.
6 1, 21, 30 (2022).

7 For decades, Arizona law has similarly made clear that “the right to possess a
8 firearm in Arizona is qualified and subject to legislative regulation.” *State v. Rineer*,
9 193 Ariz. 160, ¶¶ 13, 16 (App. 1999); *Dano v. Collins*, 166 Ariz. 322, 324 (App.
10 1990) (Arizona “constitutional right to bear arms is not absolute”); *State v. Noel*, 3
11 Ariz. App. 313, 315 (1966).

12 Injunctions against harassment have withstood scrutiny in previous
13 constitutional challenges. For example, the Arizona Court of Appeals has considered
14 whether an injunction against harassment can impermissibly infringe on a
15 defendant’s free speech rights. *LaFaro v. Cahill*, 203 Ariz. 482, 484-88, ¶¶ 7-8, 16,
16 22 (App. 2002). The Court of Appeals rejected the defendant’s constitutional first-
17 amendment challenge and concluded, “the protection of citizens from harassment
18 [is] a legitimate and laudable goal [that] is not incompatible with the protection and
19 exercise of free speech.” *Id.* at 486-88, ¶¶ 16, 22. Thus, by that same rationale, orders
20 for protection and injunctions against harassment can legitimately infringe

1 constitutional rights for the protection and safety of victims, including removing
2 firearms from a volatile and increasingly deadly situation. And notably, any imposed
3 injunction is limited in scope and narrowly tailored, as both the injunction and the
4 firearms prohibition expire one year from the date it is served on the individual.
5 ARPOP 25(i). Rule 25(g) thus appropriately balances an individual’s constitutional
6 right to possess a firearm with the legitimate and compelling need to keep the
7 community and victims safe. *See LaFaro*, 203 Ariz. at 484-88, ¶¶ 7-8, 16, 22

8 Finally, to the extent any individual has been aggrieved by an injunction
9 against harassment, including a firearms restriction pursuant to ARPOP 25(g), that
10 individual can challenge both the constitutionality of the Rule and the court’s order.
11 *LaFaro*, 203 Ariz. at 485, ¶ 8 (holding that an “injunction against harassment is an
12 appealable order, and [the Court of Appeals has] jurisdiction over this case pursuant
13 to A.R.S. §§ 12-120.21 (1992) and 12-2101(F)(2)”). It is therefore not appropriate
14 to abrogate a rule, through an amendment process, based on one petition’s claim that
15 it is unconstitutional, rather than challenge the rule in the proper legal forum.

16 **IV. Conclusion**

17 Accordingly, for the reasons stated herein, APAAC respectfully requests that
18 the Petition be denied in its entirety.

1 Respectfully submitted this 1st day of May, 2024.

2
3 */s/ Elizabeth Burton Ortiz*
4 Elizabeth Burton Ortiz

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20