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

7 In the Matter of:

8 PETITION TO AMEND RULE 38(e)
9 OF THE ARIZONA RULES OF
PROTECTIVE ORDER PROCEDURE

In Re: R-24-0038

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

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12 The Arizona Prosecuting Attorneys' Advisory Council ("APAAC")
13 respectfully submits the following comment opposing Petition R-24-0038, which
14 proposes to amend Rule 38(e), of the Arizona Rules of Protective Order Procedure
15 ("ARPOP"). The Petition asserts that the Rule permitting the trial court to direct the
16 defendant to remain in the courtroom for a brief period of time to allow the plaintiff
17 to safely leave constitutes an unconstitutional seizure under the Fourth Amendment.

18 Safety in Arizona's courtrooms is a paramount concern. Matters of courtroom
19 security and safety are left to the trial court's broad discretion. *State v. Cruz*, 218
20 Ariz. 149, 168 ¶ 118 (2008).

1 The Fourth Amendment and article II, § 8 of the Arizona Constitution prohibit
2 only unreasonable searches and seizures. The Arizona Court of Appeals recently
3 reaffirmed that trial courts have “the authority to control [the] courtroom” in civil
4 proceedings for injunctions against harassment, including taking measures so that
5 parties do “not have contact with each other as they [are] leaving court.” *Hunter v.*
6 *Barna*, 2023 WL 364965, at 7, ¶ 15 (App. 2023) (citing *Cf. Ariz. R. Evid. 611(a)*).¹

7 Even assuming the court’s directive to a defendant to remain in the courtroom
8 momentarily while the plaintiff leaves, pursuant to ARPOP 38(e), constitutes
9 government action and a “seizure,” there is nothing unreasonable about ensuring
10 safety for the litigants and others in the courtrooms by keeping individuals briefly
11 separated, particularly in proceedings concerning injunctions against harassment.
12 *See Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) (It is well established that the
13 government has a “legitimate and weighty” interest in officer safety.).

14 To the extent any individual has been aggrieved by an injunction against
15 harassment, and the court’s directive to remain in the courtroom momentarily, that
16 individual can challenge both the constitutionality of the Rule and the court’s order.
17 *LaFaro v. Cahill*, 203 Ariz. 482, 485, ¶ 8 (App. 2002). (holding that an “injunction
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19 ¹ The Arizona Court of Appeals’ memorandum decision in *Hunter v. Barna*, 2023
20 WL 364965, at 7, ¶ 15 (App. 2023), is cited as persuasive authority pursuant to Rule
111(c)(1)(C), of the Arizona Rules of the Supreme Court of Arizona. APAAC has
not attached a copy to save paper, but will provide one to the Court if needed.

1 against harassment is an appealable order, and [the Court of Appeals has]
2 jurisdiction over this case pursuant to A.R.S. §§ 12-120.21 (1992) and 12-
3 2101(F)(2)”). It is therefore not appropriate to abrogate a portion of the rule, through
4 an amendment process, based on one petition’s claim that it is unconstitutional,
5 rather than challenge the rule in the proper legal forum.

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

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

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10 /s/ Elizabeth Burton Ortiz

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