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IN THE SUPREME COURT
STATE OF ARIZONA

PETITION TO REPEAL RULE 6 (E)(4))
(e)(2) OF THE ARIZONA RULES OF) Supreme Court No. XXX
PROTECTIVE ORDER PROCEDURE,)
SUPREME COURT NO. R -06-0032)

Pursuant to Rule 28 of the Rules of the Supreme Court, Mike Palmer, a person "interested . . . in the repeal of a court rule" respectfully petitions this Court to repeal Rule 6 (E)(4)(e)(2) of the Arizona Rules of Protective Order Procedure. The rule should be repealed because 1) there is no lawful basis for it and worse 2) when invoked, it is unconstitutional, violating the 2nd Amendment civil right of individuals.

I. Background. It has been my recent observation that both judges and clerks lump Orders of Protection (OOP) and Injunctions Against Harassment together, treating them the same, making no distinction between them. Perhaps that's what originally happened here with the Domestic Violence Rules Committee?

But they're not the same. For example, in Arizona, OOP's are governed by Title 13 Criminal Code (see A.R.S. §13-3602) whereas Injunctions Against Harassment are governed by the less draconian Title 12 Court & Civil Procedure. (A.R.S. §12-1809) Furthermore, there is wording in Order of Protection law to prohibit a defendant from possessing firearms. This has its

basis in Federal law, colloquially known in the courts as a so-called “Brady Disqualification.” But there is no equivalent Federal prohibition for an Injunction Against Harassment.

II. Argument. The basis for “Brady” in an Order of Protection is 18 U.S.C. Sections 922(d) and (g). Please note that this law applies ONLY to “intimate partners,” i.e., Domestic Violence situations. It does NOT apply to Injunctions Against Harassment because the relationship requirement defined in 18 U.S.C. § 921(a)(32) is not met.¹

Consequently, “Brady” is codified in Arizona law governing OOP’s. Specifically, A.R.S. §13-3602(G)(4) says a judicial officer can suspend a defendant’s Second Amendment right, prohibiting a defendant from possessing firearms. The Committee cited this State law to justify its Rule 6(C)(5)(d)(1) for Title 13 OOP’s.

However, there is no State law equivalent in a Title 12 Injunction because there is no Federal law supporting. Consequently, the Committee did not cite any law as its basis for its Rule (below). Indeed, the word “firearm” does not appear in Arizona law governing Injunctions Against Harassment (A.R.S. §12-1809). Nevertheless, as it’s written now, Rule 6(E)(4)(e)(2) in the Procedure for Injunctions Against Harassment, subtitled “Other Relief” states,

The judicial officer shall ask the plaintiff about the defendant’s use of or access to weapons or firearms. The judicial officer may prohibit the defendant from possessing, purchasing or receiving firearms and ammunition for the duration of the Injunction Against Harassment.

I submit the Committee erred here, going beyond the law the Legislature gave. Consequently, when invoked by a judicial officer, this Arizona Rule of Protective Order Procedure violates the Second Amendment civil right of defendants, especially in light of the

¹ Per 18 U.S.C. § 921(a)(32), the term “intimate partner” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

recent US Supreme Court Heller ruling. (District of Columbia et al. V. Heller, 554 U. S. _____
(2008)

III. Request for Emergency Adoption. If I am correct and there is no lawful basis for the Committee's Rule, petitioner requests expedited repeal of this Rule as permitted by Supreme Court Rule 28(G). There is no need for a comment period because if there is no law, there is nothing to discuss. It should be perfunctory.

I request expedited repeal because this is not trivial "harmless error." Taking that literally, there can be real harm and irreparable damage to law abiding defendants as a result of this unconstitutional Rule,² presumably opening the State to liability.

RESPECTFULLY SUBMITTED this 29th day of December 2009.

By _____

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² Namely, death from the inability to defend oneself in a dangerous metroplex like Phoenix where there is almost one murder a day.