PROPOSED RULE CHANGES FOR RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO, WHICH DEPRIVE YOU OF YOUR RIGHT TO KEEP AND BEAR ARMS AND TAKE STEPS TOWARDS GUN CONFISCATION

When proposing changes to the RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO the Justices of the Supreme Court of Ohio may find it helpful to read District of Columbia v. Heller, and any other cases related to the sovereignty of our Civil Rights.

As Justice Scalia stated in District of Columbia v. Heller "the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home." Justice Scalia further stated "what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct;" such is the impact of the proposed changes to the RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO that the Supreme Court of Ohio has put out for public comment.

After reading the proposed changes to the RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO, it appears that the Ohio Justices who voted in favor of placing the proposed rule changes out for public comment, have not taken the collateral effects of their proposed changes into consideration. These rule changes in many cases propose significant changes to existing Ohio Law. If these proposed changes pass, these rule changes make changes that the Ohio General Assembly has refused to make.

The Supreme Court of Ohio has proposed significant amendments to the Rules of Court in Ohio that essentially disarms and forces those subject to a "civil" protection order to surrender all of their firearms to Law

Enforcement; without a showing of a "sufficient nexus," evidence that a firearm was threatened to be used, used, or brandished." *Cee v. Stone*, 3rd Dist. Union No. 14-17-06, 2017 Ohio-8687, at ¶ 8. It has long been held that "[i]n cases where there was no sufficient nexus between the conduct and the firearm restriction, the restriction has not been permitted. *See Newhouse v. Williams*, 167 Ohio App.3d 215, 2006-Ohio-3075, 854 N.E.2d 565, ¶ 16 (3d Dist.) "Without a nexus between the offending conduct and the restriction . . . [a person's] constitutional right to bear arms may not be restricted." *Cee v. Stone*, 3rd Dist. Union No. 14-17-06, 2017 Ohio-8687, at ¶ 8. This too is something that Ohio General Assembly has refused to legislate.

Accordingly, Appellate Courts have consistently held that, an order to surrender firearms to police absent a "sufficient nexus," is an abuse of discretion when no evidence exists that the Respondent to a Civil Protection Order had ever threatened to use, used, or brandished a firearm. *Butcher v. Stevens*, 182 Ohio App.3d 77, 2009-Ohio-1754, 911 N.E.2d 928, ¶17 (4th Dist.).

Therefore, at a minimum, before the Ohio Courts can restrict, limit or deprive a Respondent of their Second Amendment Rights, the Court first must specifically find that there is "substantial nexus" between the Respondent to a Civil Protection Order's conduct, and the firearms restriction imposed by the Court order. Absent that finding, a Respondent to a Civil Protection Order's constitutional right to keep and bear arms shall not be restricted. See for example the proposed amendment to Form 10.01-I, page 3 of 6 provision 13, DOMESTIC VIOLENCE CIVIL PROTECTION ORDER (DVCPO) FULL HEARING

RESPONDENT SHALL TURN OVER ALL DEADLY WEAPONS, FIREARMS, AMMUNITION, AND CONCEALED CARRY

WEAPON LICENSE owned by Respondent or in Respondent's possession to the law enforcement agency that serves Respondent with this Order no later than _____ or as follows:_____

_____ _____

Law enforcement shall immediately notify the Court upon receiving Respondent's deadly weapons, firearms, and ammunition for protective custody as set forth in this Order. Any law enforcement agency is authorized to take possession of deadly weapons, firearms, and ammunition pursuant to this paragraph and hold them in protective custody until further Court order. [NCIC 07]

This amendment has been added to the other forms except for juvenile civil protection order, juvenile domestic violence civil protection order, and the post-conviction no-contact order.

The proposed amendments, are particularly troublesome, given the fact that the General Assembly expressly excluded firearms, ammunition, and concealed handgun permits when it enacted R.C. 3113.31(E)(1), and specifically listed 9 things the domestic relations court may order. None of the 9 provisions listed, permit the domestic relations court to order surrender of all firearms to law enforcement. Nowhere is the court permitted to force surrender and take possession of a ccw license, only the sheriff who issued the license shall suspend the license; and if the suspension so ends, the sheriff shall return the license or temporary emergency license to the licensee. See R.C. 2923.128.

R.C. 2923.128 provides a means for the sheriff to "return" license after suspension, note that nowhere in the proposed amendments does the rule changes provide for return of the ccw license or firearms that have been seized once the suspension ends.

Given the fact the R.C. 3113.31(E)(1) is rather specific related to what the court may do, it seems inconceivable that the General Assembly would not have listed the prohibition of a constitutionally protected activity, such as firearms ownership, when it directed the domestic relations court on what it may do.

Although the statute contains what at first may seem to be a catch all provision, "grant other relief that the court considers equitable, and fair, including, but limited to." By citing examples of orders the General Assembly intended to apply, the General Assembly limited the domestic courts authority to expand the scope of authority beyond the list of examples given, it intended to apply. The Supreme Court of Ohio has held, that "general or unstated terms in the definition should be determined with reference to the terms expressly included. *Henley v. Youngstown Bd. of Zoning Appeals,* 90 Ohio St.3d 142, 150-151. Using the Supreme Court of Ohio 's own logic, because there is no mention of firearms in R.C. 3113.31(E)(1), the Supreme Court of Ohio lacks any "reference" of terms "expressly included" to mandate the surrender or seizure of firearms, ammunition and concealed carry weapons [sic] license, by applying its test laid out in *Henley* above.

Additionally, nowhere in R.C. 2923, related to the application or licensing process to obtain or possess a concealed Handgun Permit, is being the Respondent of a Civil Protection Order, a disqualifier for having a Concealed Hand Gun License.

Further, neither the Ohio Revised Code, nor the Legislature restricts the Respondent to a Civil Protection Order from possessing a firearm. R.C. 3113.31(F)(2) only refers to firearms regarding a mandatory notice that the domestic relations court must give:

‘”As a result of this order or consent agreement, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8)for the duration of this order or consent agreement. If you have any questions whether this law makes it illegal for you to possess or purchase a firearm or ammunition, you should consult an attorney."’ *Id.*

Because of the inclusion of R.C. 3113.31(F)(2) the General Assembly was aware that the Respondent to a Civil Protection Order may in fact own firearms. Contrastingly, the General Assembly did not provide a means for the domestic relations court, to order one who is Respondent to a Civil Protection Order to surrender their firearms. Ohio law does not make it a crime for a person Respondent to a Civil Protection Order to possess a firearm.

Ohio law under R.C. 2923.13, the having weapons under a disability statute, does make it a crime for well-defined individuals, certain felons; fugitives; those adjudicated mentally ill; and drug addicts from possessing firearms; but that does not apply to the Respondent of a Civil Protection Order. Even, 18 U.S.C. 922(g)(8), warning that it may be unlawful for certain individuals to possess or purchase a firearm or ammunition, does not require any court to order the surrender of firearms and ammunition.

Yet by proposing such language in certain forms, the Supreme Court of Ohio is in all actuality legislating which is the power reserved for the Ohio General Assembly, by putting forth these proposed changes.

A review of the proposed changes also indicates that if passed the proposed changes submitted for public comment by the Supreme Court of Ohio is interfering with our 2nd and 5th Amendment rights by mandating that the Respondent to a Civil Protection order must

surrender their firearms to Law Enforcement. *See Lerner v. Giolekas*, 8th Dist. Cuyahoga No. 102768, 2016-Ohio-696, ¶ 50-51.

If passed, members of the Supreme Court of Ohio who voted in favor of these rule changes are ignoring the decisions of the Courts below who have consistently held that "[w]ithout a nexus between the offending conduct and the restriction . . . [ones] constitutional right to bear arms may not be restricted. *Cee v. Stone*, 3rd Dist. Union No. 14-17-06, 2017 Ohio-8687, at ¶ 8. There must be a "sufficient nexus" between the conduct and the firearm restriction. "However, in cases where there was no sufficient nexus between the conduct and the firearm restriction, the restriction has not been permitted. *See Newhouse v. Williams*, 167 Ohio App.3d 215, 2006-Ohio-3075, 854 N.E.2d 565, ¶ 16 (3d Dist.)

If these rule changes, are adopted in their current form, the Supreme Court of Ohio is legitimizing which has consistently been held to be an abuse of discretion by Courts of Appeals throughout the State of Ohio. "A trial court will be found to have abused its discretion when its decision is contrary to law, unreasonable, not supported by the evidence, or grossly unsound." *See, Holloway v. Parker*, 3d Dist. Marion No. 9-12-50, 2013-Ohio-1940. An abuse of discretion will not be found if the record presents some competent, credible evidence to support the trial court's decision. Id at ¶ 18.

Clearly, if these proposed rule changes are implemented, the Supreme Court of Ohio will mandate the surrender of Firearms absent evidence a firearm was threatened to be used, used, or brandished, in direct violation of the requiring a "substantial nexus". Ohio courts have long held that, absent findings of a "substantial nexus," the test used by the Ohio Courts of Appeals, the Respondent of a Civil Protection Order's constitutional right to keep and bear arms may not be restricted. *See, Cee* at ¶ 8.

Once again, since the Ohio legislature has not made it a requirement that any respondent who is Respondent to a Civil Protection Order be restricted from possessing a firearm, the Supreme Court of Ohio by proposing such language in certain forms, is effectively legislating, and improperly usurping the power reserved for the Ohio General Assembly.

DISPOSITION OF FIREARMS SURRENDERED

One of the more troubling aspects related the Supreme Court of Ohio's proposed rule changes, specifically concern the Disposition of Weapons upon Expiration or Termination of Protection Order, if the forms are implemented for use in their current form. In other words, what happens to the firearms surrendered, to Law Enforcement by court order, upon the expiration or termination of the Civil Protection Order?

As the proposed amendment found in paragraph 13 of Form 10.01-I, and other forms provide, pertaining to the proposed changes to the RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO related to the final disposition of surrendered firearms indicates, upon expiration, or termination of the Civil Protection Order:

> Law enforcement shall immediately notify the Court upon receiving Respondent's deadly weapons, firearms, and ammunition for the protective custody as set forth in this Order. Any law enforcement agency is authorized to take possession of deadly weapons, firearms, and ammunition pursuant to this paragraph and hold them in in protective custody until further Court order. [NCIC 07]
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> Upon the expiration of this Order, any deadly weapons, ~~including~~ firearms and ammunition, held in protective custody by law enforcement pursuant to this Order ~~shall~~ may be disposed of as unclaimed property pursuant to R.C. 2981.12 ~~unless the~~

~~Respondent files a motion for return with this Court within 30 days before the expiration of this Order.~~

These provisions if approved are particularly troubling because the Supreme Court of Ohio has taken it upon them to suggest that the surrendered firearms be destroyed pursuant to R.C. 2981.12 and further eliminated language that provides the manner in which the surrendered firearms can be returned after expiration, or termination of the Civil Protection Order. As the Supreme Court of Ohio recently noted, "there is no provision of Ohio law that imposes restriction as a result of an expired protection order." Cyran v, Cyran, 152 Ohio St.3d 484, 2018-Ohio-24, 97N.E.3d 487, at ¶11. What makes the Supreme Court of Ohio's proposed changes to the RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO even more troublesome, is the fact that the Ohio General Assembly just amended the notice provision found in R.C. 3113.31; to unequivocally make clear that although it may be unlawful for the Respondent who is the subject of a protection order to possess firearms or ammunition, but that extends only "for the duration of this order or consent agreement." 2018 Sub. H.B. No. 1 (effective July 6, 2018). Once again, even in the shadow of recently enacted legislation, it seems that the Supreme Court of Ohio, in the proposed amendments chooses to reach beyond the authority granted to it by the Ohio General Assembly, to restrict and interfere with the Second Amendment rights of Ohio citizens.

The Ohio Revised Code provides specific guidelines related to the disposal of weapons, which the Supreme Court of Ohio seems to ignore when drafting its proposed changes to RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO, by suggesting that the Civil Protection Order allows law enforcement to dispose of the

firearms pursuant to, rather than return them to the dispossessed Respondent.

The impropriety surrounding the manner in which seized and surrendered firearms are disposed of under the rule changes, proposed by the Supreme Court of Ohio seems to originate from the confusion between the two words seized and surrendered, the words clearly are not synonymous; but the Supreme Court of Ohio is applying them as such. Black's Law Dictionary defines seize, as "[t]o forcibly take possession." Black's Law Dictionary 1480 (9th Ed.2009), but to surrender is "[t]he act of yielding (being nonresistant) to another's power or control. Id. at 1581. This distinction is important for the Supreme Court of Ohio to take into account when proposing changes to the RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO, because that which is surrendered is not subject to forfeiture or destruction under R.C. 2981.02 because they are not contraband, the fruits or instrumentalities of a crime.

The Supreme Court of Ohio must edit the proposed changes in the forms to align them with existing Ohio law, and require the return of surrendered firearms when the Civil Protection Order expires. To do otherwise, begs the question, is this an unlawful taking?

Throughout the proposed changes, on a number of forms, the Supreme Court of Ohio seems dedicated to creating a firearms registry, by repeatedly asking for a list of firearms by people seeking a Civil Protection Order, from those who may become the Respondent to a Civil Protection Order. In fact on several occasions the Supreme Court of Ohio creates or attempts to create that registry for non-Brady included offenses, for example a boyfriend- girlfriend relationship.

Why, for example on a form being completed for a dating violation order, by a girlfriend who may of only known the boyfriend all of one date to the movies, does the Supreme Court of Ohio, in its proposed form, ask the girlfriend to list all firearms that she may have knowledge of, that the boyfriend possesses? Why on a form for a Civil Protection order, does the Supreme Court of Ohio require the Petitioner seeking a Civil Protection Order to list all firearms possessed by the Respondent? Why does the Supreme Court of Ohio require a Petitioner to list all firearms that a Respondent possesses, when a "sufficient nexus," evidence that a firearm was threatened to be used, used, or brandished does not exist? Why is the Supreme Court of Ohio creating a gun registry list when the Civil Protection Order being sought, lacks merit and might be denied?

My comments apply to all of the forms found in the 174 pages of proposed changes that can be found by following this link:

http://www.supremecourtofohio.gov/ruleamendments/documents/Protection%20Order%20Forms%20(As%20Published%20for%20Public%20Comment).pdf

These proposed changes must be defeated! To do otherwise is to agree to the violation and partial destruction of our civil rights; to do otherwise would render much of the rights reclaimed by District of Columbia v. Heller meaningless.

Deadline for public comment is Oct. 12.

To comment and demand that these proposed changes not be enacted, Email objections to: DomesticViolence@sc.ohio.gov

Or by surface mail to:
Diana Ramos-Reardon, Policy Counsel
Supreme Court of Ohio
65 South Front Street, 6th Floor
Columbus, Ohio 43215-3431

Use all or pieces of my above analysis to point out where our Constitutional rights are being trampled. These proposed changes set up a registration scheme that are a big step towards FIREARMS CONFISCATION. These proposed changes are the most significant attacks on the Ohio Constitution of our time, as well as an attack of our 2nd and 5th amendment rights found in our United States Constitution.