County Court, Gunnison County, Colorado Court Address: 200 East Virginia Avenue Gunnison, CO 81230 Phone: (970) 642-8300 Fax: (970) 642-8350	DATE FILED: May 11, 2020 4:21 PM CASE NUMBER: 2020C17 ▲ COURT USE ONLY ▲
GUNNISON POLICE DEPARTMENT, Petitioner, v. NICHOLAS MAXIMILIANO VALLEJO, Respondent.	Case Number: 2020C17 Division B Courtroom
ORDER RE: RESPONDENT'S AMENDED RESPONSE TO PETITION FOR EXTREME RISK PROTECTION ORDER	

This matter came on for an extreme risk protection order hearing and hearing on Respondent's Amended Response to Petition for Extreme Risk Protection Order ("Motion to Dismiss") on April 21, 2020 via a WebEx virtual courtroom. Ms. Fogo appeared by video on behalf of the Petitioner with Officer Michaels by telephone. Mr. Lowenberg appeared by video and Respondent appeared by telephone. Counsel for Respondent requested the court issue an order on Respondent's Motion to Dismiss based on the pleadings, and Counsel for Petitioner agreed. The Court reviewed Respondent's Motion to Dismiss, Petitioner's Response, Respondent's Reply and the Amicus Curiae Brief of the State of Colorado.

I. ISSUES PRESENTED AND SUMMARY OF ARGUMENTS

The court clarified the issues presented by the Respondent at the hearing on April 21. Respondent does not seek dismissal of the temporary extreme risk protection order based on insufficient evidence presented at the temporary extreme risk protection order hearing. The Respondent does not assert the Act violates his equal protection or First Amendment rights. Respondent clarified that the non-delegation argument contained in the Motion to Dismiss is part and parcel of his argument that the Act is void for vagueness. Respondent clarified, despite the assertions in his Motion to Dismiss, that he does not contend that the Act is unconstitutional as applied.

Respondent requests dismissal of the Petition for Extreme Risk Protection Order because Colorado Revised Statutes Section 13-14.5-101 et. seq., the Deputy Zackari Parrish III Violence Prevention Act (the Act), is unconstitutional on its face under the Second, Fifth and Fourteen Amendments of the United States Constitution; Article II, Section 13 and Article II, Section 25 of the Colorado Constitution; and is void for vagueness. Respondent argues that an order to surrender firearms issued pursuant to the Act abrogates the constitutional right to keep and bear arms in violation of the Second Amendment of the United States Constitution and Article II, Section 13 of the Colorado Constitution. Respondent also contends that the Act deprives respondents of liberty and property interests without due process in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article II,

Section 25 of the Colorado Constitution. Respondent argues that "significant risk of causing personal injury to self or others" is not clearly defined, anyone can arbitrarily and unreasonably, without notice, be deemed a "danger to self or others", and, thus, the Act is void for vagueness and delegates legislative power to the courts, law enforcement officers and individuals who have standing to file a petition for an extreme risk protection order.

Petitioner argues that the Act is constitutional because it is a legitimate exercise of the state's police power to protect public safety; is not void for vagueness because it contains separate identifiable and understandable factors a court must consider when reviewing a petition for an extreme risk protection order; meets standards of procedural due process; and does not impermissibly delegate legislative rule-making authority to an agency or individual. The State argues that the Act does not violate the Second Amendment because it covers conduct beyond the bounds of the intended protection of the Second Amendment for law-abiding, responsible citizens, and even if it falls within the scope of the Second Amendment, it has a reasonable relationship with an important State interest in public safety and saving lives. For the same reasons that the Act satisfies Second Amendment standards, the State argues that it is reasonably related to a legitimate government interest such that it does not violate Article II, Section 13 of the Colorado Constitution. Further, the State argues that the Act protects due process through numerous safeguards, and provides notice and an opportunity to be heard, such that it is not impermissibly vague or violative of the Fifth or Fourteenth Amendments or Article II, Section 25. Finally, the States argues that any argument by Respondent that the Act violates separation of powers principles and the nondelegation doctrine is inapplicable here.

II. STANDARD OF REVIEW

The Act is presumed constitutional. *Danielson v. Dennis*, 139 P.3d 688, 691 (Colo. 2006). A party challenging a statute on constitutional grounds must prove the statute's unconstitutionality beyond a reasonable doubt. *City of Greenwood Village v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 440 (Colo. 2000). The Respondent must demonstrate "no conceivable set of circumstances" under which the law can be constitutionally applied. *Danielson*, 139 P.3d at 691. The conflict between the statute and the Constitution should be "clear and unmistakable" before a court substitutes its judgement for that of the legislature and finds a statute unconstitutional. *City of Greenwood Village*, 3 P.3d at 440 *quoting People v. Goddard*, 7 P. 301, 304 (Colo. 1885).

III. LEGAL ANALYSIS AND CONCLUSION

A. The Act does not violate the Second Amendment of the United States Constitution or Article II, Section 13 of the Colorado Constitution.

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1. Second Amendment

The Second Amendment of the Constitution of the United States provides "[a] well regulated Militia, being necessary for the security of a free State, the right of people to keep and bear Arms, shall not be infringed." The United States Supreme Court has recognized that the Second Amendment "[e]levates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). The Second Amendment right applies

equally to the states through the Due Process Clause of the Fourteenth Amendment. *McDonald v. Chicago*, 561 U.S. 742, 791 (2010). However, that right is limited in scope and subject to regulation. *Heller,* 554 U.S. at 626. It does not confer "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* For example, the *Heller* court identified a non-exhaustive list of "presumptively lawful" regulations on firearms including "prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27 n. 26; *McDonald*, 561 U.S. at 786 ("incorporation does not imperil every [state] law regulating firearms").

While the Supreme Court did not specify in *Heller* the burden of justification required for regulation of firearms, it rejected a rational basis test to evaluate the extent to which a legislature may regulate the right to keep and bear arms as well as a proposed interest balancing test. *Heller,* 554 U.S. at 628-29 n. 27, 635. *Heller* suggests a two-step review of Second Amendment claims. *U.S. v. Reese*, 627 F.3d 792, 800-01 (10th Cir. 2010); *People v. Cisneros*, 356 P.3d 877, 887 n.3 (Colo. App. 2014). The reviewing court first asks "whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee." *Id. citing United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010). "If it does not, the court's inquiry is complete.'" *Id.* Traditionally, individuals who are determined dangerous to the public or themselves fall outside the scope of Second Amendment protection. *Beers v. Attorney Gen. United States*, 927 F.3d 150, 157 (3d Cir. 2019) *petition for cert. filed, January 10, 2020.* However, if the law imposes a burden on conduct falling with the scope of the Second Amendment's, the court must evaluate the law under some form of means-end, intermediate scrutiny—the government must demonstrate that its objective is an important or significant one, and the objective is advanced by means substantially related to it. *Reese*, 627 F.3d at 802; *United States v. Huitron-Guizar*, 678 F.3d 1164, 1169 (10th Cir. 2012).

The Act does not implicate the Second Amendment because it does not restrict law-abiding, responsible citizens from possessing arms. It restricts, for a limited period of time, the right to possess a firearm for an individual whom a court has determined, based on clear and convincing evidence, poses a significant risk of causing personal injury to self or others if (s)he has custody or control of a firearm. C.R.S. §13-14.5-105(2); *See Hope v. State*, 133 A.3d 519, 524 (Conn. Ct. App. 2016). In other words, the Act restricts the rights of individuals who a court finds are not responsible to possess firearms. It is an example of the presumptively lawful regulations that prohibit the possession of firearms articulated in *Heller*. *See, e.g., Id.* (holding a statute authorizing court seizure of firearms for one year after a finding that an individual poses a risk of imminent personal injury to self or others is not within the scope of the Second Amendment)*; see also, e.g., San Diego v. Boggess,* 157 Cal. Rptr. 3d 644, 654 (Cal. Ct. App. 2013) (holding that a statute authorizing court seizure and forfeiture of firearms due to an individual's mental condition is not within the scope of the Second Amendment); *see also, e.g., Redington v.* State, 992 N.E. 2d 823, 835 (In. Ct. App. 2013).

Even assuming the Act imposes a burden on conduct within the scope of the Second Amendment, there is a substantial relationship between the Act and a significant governmental interest. The State's interest in public safety is indisputably an important interest. *Huitron-Guizar*, 678 F.3d at 1169; *see U.S. v. Salerno*, 481 U.S. 739, 745 (1987); *see also Davis v. Gilchrist County Sheriff's Office*, 280 So. 3d 524, 532 (Fla.

Dist. Ct. App. 2019). The intent of the Act, as stated in its title and text and articulated by its sponsors, is to prevent violence by creating a way for family or household members and law enforcement to seek temporary removal of an individual's firearms if (s)he poses a significant risk of injury to self or others. House Judiciary Committee Hearing on HB19-1177, February 21, 2019 (Statement of Alec Garnett).[1] The Act is tailored to have a substantial relationship to the State's interest in public safety. First, the Act only applies to individuals whom a court finds, based on clear and convincing evidence, pose a significant risk of personal injury to self or others by possessing a firearm. C.R.S. § 13-14.5-105(2). Second, the Act limits the period of time a court can order an individual to not possess or purchase a firearm based on that finding to three hundred and sixty-four days. *Id.* Only after a hearing, and a determination that a respondent continues to pose a significant risk of causing personal injury to self or others, may a court extend that order for more than a year. C.R.S. § 13-14.5-107(2)(e). Finally, the Act includes procedural mechanisms for review of the judicial determination that a respondent cannot possess or purchase firearms. C.R.S. § 13-14.5-107(1).

Even if strict scrutiny were applied, which requires that the legislation be narrowly tailored to further a compelling state interest, for the reasons enumerated above, the Act would satisfy those requirements. The State's interest in protecting the safety and lives of its citizens is a compelling one. *Salerno*, 481 U.S. at 745. To fulfill that interest, the Act is narrowly tailored to ensure that only individuals subject to a finding, based on clear and convincing evidence at a hearing, are subject to a time-limited protection order that s(he) not possess or purchase firearms.

2. Article II, Section 13

In Colorado, "[t]he right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question but nothing herein contained shall be construed to justify the practice of carrying concealed weapons." Colo. Const. art. II, § 13. While the Colorado Constitution guarantees an individual's right to bear arms in self-defense, it does not grant "an absolute right to bear arms under all situations." *People v. Blue*, 544 P.2d 385, 391 (Colo. 1975). The right is subject to reasonable regulation to protect public safety. *Id.*; *Robertson v. City and County of Denver*, 874 P.2d 325, 329 (Colo. 1994). With respect to a claimed violation of the right to bear arms, Colorado examines "whether the law at issue constitutes a reasonable exercise of the state's police power." A regulation "is within the state's police power if it is reasonably related to a legitimate governmental interest such as the public health, safety or welfare," but "is facially overbroad if it sweeps within its reach constitutionally protected, as well as unprotected activities." *Id.* at 331; *See also Students for Concealed Carry on Campus, LLC v. Regents of the University of Colorado*, 280 P.3d 18, 28 (Colo. App. 2010).

The State's interest in public safety is a "very significant" or "compelling one." *Robertson*, 874 P.2d at 332. As previously stated, the purpose of the Act is to protect public safety. The legislative history demonstrates the legislature's intent to protect public safety—prevent violence and death—by regulating the possession of firearms by individuals who pose a significant risk of harm to themselves or others. For

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[1] Representative Garnett stated during his introductory comments at the House Judiciary Committee Hearing on HB-1177 (the Act) on February 21, 2019, "This critical legislation will save the lives of both law enforcement and members of the community."

the same reasons the Act withstands review under the Second Amendment analysis, it is reasonably related to a legitimate government interest. The Act applies to a narrow class of individuals who a court finds poses a significant risk of injury to self or others, and its regulation on the right to keep and bear arms is limited in time and scope. The Act does not permanently deprive an individual of the right to possess firearms. Rather, the Act limits the duration of the extreme risk protection order and allows the respondent to petition for recovery of the right. C.R.S. §§ 13-14.5-105(2); 13-14.5-107. The Act allows an individual subject to an extreme risk protection to possess other weapons for purposes of self-defense. C.R.S. § 13-14.5-102(3)(defining a firearm as "any handgun, automatic, revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges"). Contrary to the Respondent's arguments, the Act is not so broad as to negate the constitutional right to bear arms. It regulates the possession of firearms by individuals who, by their conduct, have "demonstrated an unfitness to be entrusted with such dangerous instrumentalities." *People v. Trujillo*, 497 P.3d 1, 2-3 (Colo. 1972) (holding that to limit possession of firearms by those individuals is in the interest of the public health, safety and welfare and within the scope of the State's police powers).

While the Colorado Supreme Court may soon clarify the standard of review to apply when a challenge is brought under Article II, § 13 of the Colorado Constitution, with one exception, for the last twenty-five years Colorado courts have applied the *Robertson* "reasonable exercise" test. *Rocky Mountain Gun Owners Association v. Polis*, 2018SC0817 (*cert. granted* April 22, 2019 as to whether the Colorado Supreme Court should address and resolve the conflict between *Students for Concealed Carry on Campus, LLC v. Regents of the University of Colorado*, 280 P.3d 18 (Colo. App. 2010) and *Trinen v. City and County of Denver*, 53 P.3d 754 (Colo. App. 2002) surrounding the meaning of the "reasonableness" standard of review established in *Robertson v. City and County. of Denver*, 874 P.2d 325 (Colo. 1994)). Other than the decision in *Trinen*, no published decision in Colorado has applied a rational basis test in a challenge brought under Article II, § 13. *Students*, 280 P.3d at 28; *See also Cisneros*, 356 P.3d at 887-888. However, the Act also withstands review under the rational basis test. It is conceivable that the Act bears a rational relationship to an end of government which is not constitutionally prohibited. *Students*, 280 P.3d at 27. For the reasons discussed in the previous paragraph, the Respondent has not demonstrated beyond a reasonable doubt that there exists no conceivable set of facts to establish a rational relationship between the Act and a legitimate government interest. *See Students*, 280 P.3d at 27; *Pace Membership Warehouse v. Axelson*, 938 P.2d 504, 507 (Colo. 1997).

B. The Act does not violate the Fifth and Fourteenth Amendments of the United States Constitution and Article II, Section 25 of the Colorado Constitution.

The Fifth and Fourteenth Amendments of the United States Constitution guarantee that the government shall not deprive any person of an interest in "life, liberty, or property, without due process of law." U.S. Const. amend. V; amend. XIV, § 1. Article II, Section 25 of the Colorado Constitution similarly provides "[n]o person shall be deprived of life, liberty or property without due process of law." Due process requires that deprivation of life liberty or property by adjudication be preceded by notice and the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 313 (1950). Thus, *ex parte* hearings that result in the deprivation of a liberty or property interest can only be justified by extraordinary circumstances that necessitate prompt action without a hearing or when sufficient

safeguards are provided. *Fuentes v. Shevin*, 407 U.S. 67, 82, 90 (1972); *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976); *In re Marriage of Fiffe*, 140 P.3d 160, 163 (Colo. App. 2005)(due process necessitates either a finding of imminent danger or notice and an opportunity to be heard prior to the issuance of a civil protection order, which necessarily involves the deprivation of liberty or property). In criminal cases, as a matter of procedural due process, the prosecution has the burden of proving beyond a reasonable doubt each element of the offense charged. *In Re Winship*, 397 U.S. 358, 364 (1970); *Jolly v. People*, 742 P.2d 891, 896 (Colo. 1987). However, proof beyond a reasonable doubt has historically been reserved for criminal cases. Even when the deprivation of a significant liberty interest is at issue in a civil proceeding, proof beyond a reasonable doubt is not required. *Addington v. Texas*, 441 U.S. 418, 425, 428 (1979)(holding that "beyond a reasonable doubt" is not the appropriate standard for civil commitment proceedings).

The Act provides adequate due process protections. The purpose of the Act is not punitive but, rather, preventative. A temporary extreme risk protection order may be issued after an *ex parte* hearing based on a finding by a preponderance of the evidence that the "respondent poses a significant risk of causing personal injury to self or others in the near future" by possessing a firearm and remains in effect, absent extension by consent of the parties, until the sooner of fourteen days or an extreme risk protection order hearing. C.R.S. §§ 13-14.5-103(3), 13-14.5-103(5). Like the issuance of a temporary civil protection order, the necessity of imminent danger justifies the issuance of a temporary extreme risk protection order without providing the respondent notice and an opportunity to be heard. C.R.S. § 13-14-104.5(10); *In Re Marriage of Fiffe*, 140 P.3d at 162. Balancing a respondent's liberty and property interests, the State's interests in public safety and preventing gun violence, and the limited risk of erroneous deprivation due to the procedural requirements of the Act—a sworn/affirmed petition, in most cases, an opportunity for the judge to determine the credibility of the petitioner during the temporary extreme risk protection order hearing, the limited duration of the temporary order, and criminal penalties for filing a malicious or false petition—the Act provides sufficient due process prior to the issuance of a temporary extreme risk protection order. *Matthews*, 424 U.S. at 335, 347; *see In Re Marriage of Fiffe*, 140 P.3d at 162; *see also, e.g., Blazel v. Bradley*, 698 F.Supp. 756 (W.D. Wis. 1988); *see also, e.g., State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 230-232 (Mo. 1982)

The Act requires notice to the respondent of the extreme risk protection order hearing, court-appointed counsel for respondent, if necessary, and an opportunity for the respondent to present evidence and cross-examine witnesses at that hearing such that respondent has a meaningful opportunity to be heard. C.R.S. §§ 13-14.5-105(1)(a), 104(1), 105(5). The Act requires proof greater than the preponderance of the evidence standard applicable in civil protection order proceedings, which also involve the deprivation of liberty or property. C.R.S. §§ 13-14.5-105(2), 13-14-106(1)(a); *In Re Marriage of Fiffe*, 140 P.3d at 162. A court may only issue an extreme risk protection order based on a finding, by clear and convincing evidence, that the "respondent poses a significant risk of causing personal injury to self or others by having in his or her custody or control a firearm or by purchasing, possessing, or receiving a firearm" and must articulate specific findings for the issuance or denial of the order. C.R.S. §§ 13-14.5-105(2), 105(11)(a). An extreme risk protection order is limited to a duration of 364 days and can only be renewed following a hearing with the same procedural due process requirements—notice, court-appointed counsel, the opportunity to present evidence and cross-examine witnesses—as the extreme risk protection order hearing. C.R.S. § 13-14.5-107(2). A respondent may seek termination of the order before it would

otherwise expire. C.R.S. § 13-14.5-107(1)(a). Further, the Act criminalizes the malicious or false filing of a petition for a temporary extreme risk protection order or extreme risk protection order. C.R.S. § 13-14.5-113(2). The requirement of finding imminent danger at an *ex parte* temporary protection order hearing and notice and a meaningful opportunity to be heard at an extreme risk protection order hearing provide sufficient due process protection prior to the deprivation of a liberty or property interest pursuant to the Act.

C. The Act is not void for vagueness.

A statute that forbids or requires the doing of an act in terms so vague that persons of ordinary intelligence must necessarily guess as to its meaning and differ as to its application violates the due process clause of the Fifth Amendment of the United States Constitution and Article II, Section 25 of the Colorado Constitution. *Connally v. General Construction. Co.*, 269 U.S. (1926); *Robertson*, 874 P.2d at 333. Civil and penal enactments are subject to vagueness challenges. *Sellon v. City of Manitou Springs*, 745 P.2d 229, 233 (Colo. 1987). A statute is unconstitutionally vague if it does not give fair notice of the conduct prohibited and does not supply adequate standards for those enforcing it to prevent arbitrary and discriminatory enforcement. *Id.; Sessions v. Dimaya*, 138 S.Ct. 1204, 1212 (2018). A statute is not unconstitutionally vague simply because it could have been drafted with greater precision. *Board of Education of Jefferson County School District R-1 v. Wilder*, 960 P.2d 695, 703 (Colo. 1998) *citing United States v. Powell*, 423 U.S. 87, 94 (1974). Further, the legislature need not specifically define readily comprehensible and everyday terms used in statutes. *Blue*, 544 P.2d at 389. A statute is unconstitutional "only if it 'is vague, not in the sense that it requires a person to confirm his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all.'" *Wilder*, 960 P.2d at 703 *quoting Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971). The void-for-vagueness doctrine is a corollary of the separation of powers. *Dimaya*, 138 S.Ct. at 1212. It requires that the legislature establish minimum standards to guide the actions of individuals within the executive or judicial branch. *Id.*

The level of scrutiny that a court must use in reviewing a vagueness challenge depends on whether the challenged statute threatens to inhibit the exercise of constitutionally protected rights. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc*., 455 U.S. 489, 498-99 (1982); *Robertson*, 874 P.2d at 334; *Parrish v. Lamm,* 758 P.2d 1356, 137 (Colo. 1988). When a statute may implicate constitutionally protected rights, more specificity is required than when a statute does not implicate constitutionally protected rights. *Id.* The Act arguably implicates the constitutional right to keep and bear arms and would require greater specificity to withstand a vagueness challenge.

Respondent argues that the Act is unconstitutionally vague because the phrase "significant risk of causing personal injury to self or others" is not clearly defined; the Act leaves too much discretion to judges, law enforcement and family or household members to determine whether an individual poses a significant risk of causing personal injury to self or others; allows the court to consider "any relevant evidence" in making that determination; and may infringe on the right to bear arms by "anyone who happens to possess a firearm or even intends to possess a firearm." Respondent's Motion to Dismiss pp. 12-14. Federal and state courts have rejected similar vagueness challenges because "significant" has an established, commonly understood meaning. *Dr. John's Inc. v. City of Roy*, 465 F.3d 1150, 1158 (10th

Cir. 2006) (holding that phrase "significant or substantial" could be understood by a person of ordinary intelligence); *City of Colorado Springs v. Board of County Commissioners*, 895 P.2d 1105, 1114 (Colo. App. 1994)(noting that "significant" is used in over 200 state statutes "without any reported interpretative difficulty"). Courts in other states have also rejected similar vagueness challenges to the language of extreme risk protection order statutes. *See Davis*, 280 So. 3d at 532 (holding that the phrase "significant danger" in Florida's statute is not unconstitutionally vague). A law enforcement officer or agency or a family or household member of the respondent may petition a court for issuance of an extreme risk protection order, but a court determines whether the respondent "poses a significant risk of causing personal injury to self or others" such that grounds for issuance of an extreme risk protection order exist. C.R.S. §§ 13-14.5-104(1); 13-14.5-105(2). While the Act allows a court to consider any relevant evidence when making that determination, it also includes twelve factors for a court to consider. C.R.S. § 13-14.5-105(3). The Act requires the issuance of an extreme risk protection order based on clear and convincing evidence supported by specific findings. C.R.S. §§ 13-14.5-105(2); 13-14.5-105(9)(a). While two factors considered by the court when determining whether grounds for issuance of an extreme risk protection order exist are a "respondent's ownership, access to, or intent to possess a firearm" and "evidence of recent acquisition of a firearm or ammunition by the respondent." Contrary to Defendant's characterization of the Act's language, ownership of firearms or ammunitions alone does not constitute grounds for issuance of an extreme risk protection order. C.R.S. §§ 13-14.5-105(3)(f), (l). The Act requires those factors to be considered within a specific context—the threat of gun violence—and necessitates that those factors be coupled with a finding that the respondent poses a significant risk of causing injury to self or others. Although a court's determination of whether an individual poses a significant risk of causing injury to self or others by possessing or purchasing a firearm will necessarily require a case-by-case, fact-specific inquiry by the court, that is not a basis to find the Act void for vagueness. *Denver Health & Hosp. Auth. V. City of Arvada ex rel. Arvada Police Dep't* 405 P.3d 308, 314 (Colo. App. 2016, *rev'd on other grounds*, 403 P.3d 609 (Colo. 2017). The Act is not impermissibly vague because it provides sufficiently particular notice of the grounds for issuance of an extreme risk protection order and clear standards to guide courts.

D. The Act does not violate Article III of the Colorado Constitution.

Colorado divides its government into three departments—legislative, executive and judicial. Colo. Const. art. III. Article III of the Colorado Constitution provides that "no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted." *Id.* The Colorado constitution vests legislative power of the state in the General Assembly. Colo. Const. art. V, § 1(1). The nondelegation doctrine, which is rooted in the constitutional separation of powers, prohibits the General Assembly from delegating its legislative power—to make or define law—to another branch of government, agency or person. *Touby v. U.S.*, 500 U.S. 160, 165 (1991); *People v. Lowrie*, 761 P.2d 778, 781 (Colo. 1988). However, the legislature may delegate the power to promulgate rules and regulations so long as "it describes what job must be done, who must do it, and the scope of its authority." *Swisher v. Brown*, 402 P.2d 621, 626 (1965); *People v. Holmes*, 959 P.2d 406 (Colo. 1998); *Rocky Mountain Gun Owners v. Hickenlooper*, 371 P.3d 768, 777 *as modified* (Colo. App. 2016).

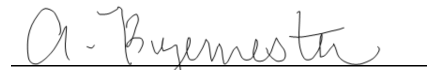
Any argument that the Act violates the separation of powers is without merit. The Act does not delegate legislative or rulemaking authority to family or household members, law enforcement officers or agencies or the judicial branch. It does not provide discretionary authority to any individual who may file a petition in or make determinations in a case filed pursuant to the Act. Rather, it defines specific standards that govern the conduct of the public, law enforcement and courts to employ the act. The Act allows a limited class of persons to file a petition for an extreme risk protection order and outlines the requirements for such petitions. C.R.S. § 13-14.5-104(1), 13-14.5-102. The Act does not leave a court to engage in arbitrary determinations. It sets forth the evidentiary burden that must be met prior to issuing an extreme risk protection order and factors that may be considered when making that determination. C.R.S. §§ 13-14.5-105(2), (3). Further, it requires the court state specific reasons for granting or denying a petition for an extreme risk protection order. C.R.S. § 13-14.5-105(11). The Act does not delegate the power to either make or define law or to promulgate rules and regulations.

IV. CONCLUSION

For the foregoing reasons, Court finds the Respondent has failed to demonstrate beyond a reasonable doubt that the Act is unconstitutional. The Motion to Dismiss is denied. The matter remains scheduled for an extreme risk protection order hearing on May 12, 2020 at 1:00 p.m.

Dated this 11th day of May, 2020.

BY THE COURT:



Ashley M. Burgemeister
Gunnison County Court Judge