

# LETTER TO GOVERNOR MALLOY (1)

*Regarding Connecticut Ex Parte Restraining Orders, Due Process, and Amending the Laws to Discourage Abuse of Process and Protect Victims of Domestic Violence*

Dear Governor Malloy –

You announced on September 10<sup>th</sup> at a Domestic Violence Roundtable in West Hartford a proposal to bar access to firearms for anyone who is the subject of an ex parte restraining order. Jenny Wilson of *The Hartford Courant* explained in her report of the West Hartford event that under current state law anyone subject to a restraining order is entitled to a hearing before a judge to determine whether the measure is merited.<sup>1</sup> As reported by Ms. Wilson, "[i]f the judge upholds the restraining order at the hearing, a provision prohibiting gun ownership takes effect." Mike Savino of the *Journal Inquirer* agreed, writing that "[s]tate law now allows subjects of temporary restraining orders to continue possessing weapons until a judge holds a hearing on the order."<sup>2</sup> Your proposal is that the "gun ban take effect before the hearing in order to remove a current window of time in which someone who poses a threat to his or her partner could have access to firearms."<sup>3</sup>

First, you are correct to acknowledge that under current state (and federal) law a person subject to an ex parte restraining order is entitled to a hearing prior to an order prohibiting possession of firearms. The issue of ex parte restraining orders and firearms possession was brought to our attention some time ago when a firearms owner complained about a letter he received from the state police demanding that he transfer or surrender his firearms as required under an ex parte restraining order signed by a superior court judge. The state police demanded this person transfer or surrender his firearms under threat of arrest for felony criminal possession of a firearm. Following numerous letters and a complaint to the Federal Bureau of Investigation, the state police acknowledged this practice was wrong and stopped abusing powers of arrest to extort firearms from persons subject only to ex parte restraining orders.

Second, with your public acknowledgment that persons subject to ex parte restraining orders in Connecticut may continue to possess firearms under current law, superior court judges, similar to the state police, must also be made aware that their practice of ordering subjects of ex parte restraining orders to transfer or surrender firearms violates due process under both state and federal laws. This practice of superior court judges is aided and abetted by local and state law enforcement agencies that receive notice of ex parte restraining orders and then seize firearms based on unlawful court orders. Therefore, when you propose a bar to access firearms for anyone who is the subject of an ex parte restraining order, please be informed that this has been accomplished already--albeit through unlawful court orders and complicit police action.

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<sup>1</sup> Jenny Wilson, *Gov. Malloy Announces Domestic Violence Proposal*, *The Hartford Courant*, September 10, 2014.

<sup>2</sup> Mike Savino, *Malloy wants subjects of restraining orders to be subject to giving up guns*, *Journal Inquirer*, September 12, 2014.

<sup>3</sup> See footnote 1, above.

Rest assured, your deficiency of knowledge about the day-to-day operation of the ex parte restraining order process and disregard for the daily violation of Connecticut citizens' due process rights by superior court judges who order the transfer and surrender of firearms when the subject of the order has had no notice or opportunity for hearing is shared by Tom Foley, your Republican Party opponent in the upcoming election, who as reported by Mary O'Leary in the *New Haven Register* on September 16, 2014, called your proposal a "not unreasonable request for people who are potential victims of domestic abuse"<sup>4</sup> and apparently had no original thought or counterpoint to add to the discussion.

Third, in discussing the circumstances when a superior court judge dismisses an ex parte restraining order on the day of hearing, Ms. Wilson quotes you as referencing the return of the firearms as "relatively easy."<sup>5</sup> We appreciate this comment indicating a modicum of concern for the due process and property rights of firearms owners. Without digressing into concerns about the storage and maintenance of firearms while in local or state police custody, we are hopeful that your concern for a quick turnaround time for the return of firearms when restraining orders are dismissed will extend to a proposal that handgun permit holders whose permits are revoked under state law upon the issuance of an ex parte restraining order without notice or opportunity for hearing obtain hearings on the reinstatement of their permits within the same period of 30 days that alcohol- or drug-impaired drivers are afforded for license suspensions, rather than the 12 to 28 month wait period for a hearing before the Board of Firearms Permit Examiners.

A true concern for addressing domestic violence and improving the effectiveness of protections afforded by restraining orders in Connecticut, ex parte or otherwise, would prompt legislative proposals this session to

- (1) Establish a Blue Ribbon Commission to review statements submitted in support of successful applications for ex parte restraining orders to determine whether the requisite details of "what happened," "when it happened," "where it happened," and "who was there when it happened" are being provided to support findings of fact for issuance of the orders.
- (2) Revise the application for an ex parte restraining order to add an advisement of the statutory penalty for making a false statement intended to mislead a public official in his or her duty. This notice, in addition to a sworn oath, is provided as a routine matter on suspect, victim, and witness statement forms used by law enforcement agencies.
- (3) Require that an applicant for an ex parte restraining order appear on the date set for hearing whether in court or by remote means and in the absence of an appearance perform a welfare check at the applicant's residence to make inquiry of the reason for the failure to appear.

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<sup>4</sup> Mary O'Leary, *Foley favors gun restriction with temporary restraining orders*, *New Haven Register*, September 16, 2014.

<sup>5</sup> See footnote 1, above.

- (4) Provide immediate and specific legal recourse for subjects of maliciously-motivated ex parte restraining orders to hold applicants civilly liable for false statements.
- (5) Set a 30-day deadline for administrative hearings on handgun permit revocations or for reinstatement of handgun permits for persons revoked due to ex parte restraining orders that are dismissed on the hearing date where no other disqualification to holding a permit exists.

Any legislation first and foremost must restore the significance of the restraining order by legitimizing a process that, in candor, is viewed by many who frequent the courts as a tool used to gain advantage and revenge by parties to disgruntled relationships, including sibling rivalries, children of ex-spouses, competing heirs to real and personal property, jealous new partners, jealous old partners, and parents in custody disputes. The restraining order process attracts a variety of litigants and disputes as broad as the variables of human nature.

Proposals that ignore these realities insult domestic violence victims and have as much depth as the thought required to voice them in sound-bites at a roundtable. The means to protect genuine domestic violence victims are legislative proposals drafted to flush out restraining order applicants who abuse the process. Only by limiting the process to relief for the victims whom the laws are intended to protect will the courts and law enforcement have the resources to afford the protections promised.

SUMMARY JUDGMENT  
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