Case #: 1044101

Court of Appeals Division I No. 85858-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JESSICA MONTESI, Respondent

v.

BRANDON MONTESI, Petitioner/Appellant

AMENDED PETITION FOR REVIEW

Carlos M. Sosa
Sosa Law Firm PLLC
102 W Main Suite 301
Auburn, WA 98001
Attorney for Petitioner

Chelsea Scott
Sterling Law Group
3708 14th St. Place SW
Puyallup, WA 98373
Attorney for

I. TABLE OF CONTENTS

II. TABLE OF AUTHORITIES

Cases

Federal

Washington

Statutes

Federal

Washington

Other Authorities

A. IDENTITY OF PETITIONER.

Brandon Eugene Montesi is the Petitioner/Appellant herein, and respectfully prays of this Honorable Court to accept his Petition for Review of the Decision of the Coul1 of Appeals Division I Number 85858- 1-I filed on June 30, 2025 in this matter.

B. COURT OF APPEALS DECISION.

Petitioner respectfully requests that the decision of the Court of Appeals, Division I, under Cause Number 85858-1-I, filed on June 30, 2025, be reviewed by the Supreme Court of the State of Washington. A copy of the Decision of the Court of Appeals is in the Appendix at pages A-I through A-17.

C. ISSUES PRESENTED FOR REVIEW.

1. The Court of Appeals Division I Erred by affirming that there were no violations of Appellant's Fifth Amendment Rights in the case below;

2. The Court of Appeals Division I erred by allowing the Appellant's Fifth Amendment rights to be violated by

upholding the provisions of RCW 9.41.801(9)(a) as dispositive of any self-incrimination concerns regarding the 5th Amendment. The Court of Appeals Division I erred by allowing the Appellant's protection against self-incrimination under the Constitution of the State of Washington, Article 1, §9 in violation of Article I, §9 prohibition of self-incrimination;

3. The Court of Appeals Division I erred by affirming the constitutionality of the 2019 amendment to RCW 9.41.801(9) which did not adequately address the self-incrimination violations of that section since there was no blanket immunity - but instead a creation of layers of conditional immunity when blanket immunity would be the only method to avoid the violations of the Fifth Amendment and Article I §9 of the Constitution of the State of Washington;

4. The Court of Appeals Division I erred by affirming the validity and constitutionality of RCW 9.41.809(9)(b) regarding remedies and protocols in order for the Appellant to be able to invoke his 5th Amendment Right

not to incriminate himself, especially as to the realistic threat standard; the Court of Appeals Division I erred as the decision below also violated Article 1, §9 of the Constitution of the State of Washington;

5. The Court of Appeals Division I erred by affirming the validity and constitutionality of RCW 9.41.809(9)(c) which permits the prosecutor to decide, if they deem fit, to offer an immunity agreement tailored to the individual case, in order to address any prospective Fifth Amendment violation, also as to Article I, §9 of the Washington Constitution;

6. The Court of Appeals Division I erred by affirming the validity and constitutionality of 9.41.80 I (9)(d), which authorizes the prosecutor to be the only officer to offer and create that immunity agreement, which violates the Appellant's 5th Amend Right not to incriminate himself; the Court of Appeals Division I also violated Article I, §9 of the Constitution of the State of Washington;

7. The Court of Appeals Division I erred in its opinion

stating the *State v. Flannery, supra,* was no longer instructive making the decision in the instant case, *Montesi v. Montesi;*

8. The Court of Appeals Division I erred in its opinion stating that the "Flannery Fix" made by the legislature was constitutional despite not resolving the issue of Fourth and Fifth Amendment constitutional violations;

9. The Court of Appeals Division I erred in concluding there were no constitutional violations of Appellant's 4th Amendment Rights against unreasonable and unlawful searches and seizure by requiring Respondents in civil Weapons Surrender Hearings to search their own premises for weapons;

10. The Weapons Surrender Order issued by the trial court and the affirmation of that Order by the Court of Appeals Division I was error as to violation of the Petitioner's rights to be secure regarding their persons or property from unlawful searches and seizures;

11. The Court of Appeals, Division I erred in rejecting

Appellant's Separation of Powers argument where the procedures of the statute as outlined violated the Separation of Powers argument between the judiciary, legislature and the executive branches.

D. STATEMENT OF THE CASE.

This matter stems from a domestic violence protection order DVPO) filed by respondent. On May 27, 2022. Respondent obtained a temporary DVPO protecting her and the parties' two children. CP 13-20. As part of that order, an order to surrender weapons was issued without notice to appellant. CP21-25. A review hearing was also scheduled for June 16, 2022, to assess appellant's compliance with the weapons surrender order. CP 26-28. On June 14, 2022, Appellant filed a declaration of non-surrender. CP 31-39. When the parties separated in January 2022, appellant gave all firearms in his possession to a friend Mr. Krance, who stored those weapons in his personal safe. CP 29-30. Appellant's declaration of no surrender was appropriate, as Appellant then had no weapons to

surrender. On June 14, Mr. Krance filed a declaration stating he had in his possession all of appellant's firearms since January 28, 2022. CP 90-92.

On June 16, 2022, the court held a weapon surrender review. At that hearing, the court ordered Appellant to surrender his concealed pistol license. CP I 07-110. The court needed additional information as to the firearms in Mr. Krance's possession. The court therefore continued the weapons surrender review to allow appellant an opportunity to surrender his concealed pistol permit to allow Mr. Krance time to provide an accounting of the weapons that he had in his possession. CP 119-120; 136-140. On June 28, 2022, Mr. Krance filed an additional declaration in which he outlined seven guns in his possession that he received from appellant in January, 2022. VRP (Resp. 6- 30-2022 pp 8-10). Jessica Montesi submitted a reply in which she stated her belief appellant still had multiple assault rifles, at least one additional handgun, additional hunting rifles, at least two 9 mm handguns, and a double-action revolver nicknamed "the Judge." VRP *Ibid., supra.*

The court held an additional Weapons Surrender Hearing on June 30, 2022. The hearing was held telephonically due to Covid restrictions. Appellant was present in his attorney's office. During that hearing, the court inquired about the guns that Respondent alleged were still in Appellant's possession. Appellant testified he did not have those firearms. When asked where those guns were, Appellant replied, "I do not know." At the additional weapon surrender hearing, the court inquired of Appellant whether he lost the guns. Appellant replied "I don't have those firearms. I don't know where they are at." VRP (Resp. 6-30-2022, p. 9, lines 5-25). The court asked appellant's counsel to clarify whether Appellant never had the guns or if the guns existed but he just did not know their whereabouts. Appellant's attorney replied Appellant did not know where the guns were. VRP *Ibid., supra. See also* VRP (Resp. 6-30-2022, p. 11, lines 16-23).

After the additional weapon surrender hearing, the court determined that contempt proceedings should be initiated due to

Appellant's failure to provide the whereabouts of the additional alleged firearms. VRP (Resp. 6-30-2022, p.14, lines 3-18). The court found Appellant's statements about not knowing the location of the missing firearms was not credible. At the additional weapon surrender hearing, the court specifically put appellant on notice he could face monetary sanctions if he failed to produce the missing firearms. The court notified Appellant that he could be subjected to incarceration if he failed to comply with the show cause order. VRP (Resp., 6-30-2022 p. 14, lines 3-18).

Per the court's direction on July 1, 2022, Appellant surrendered his concealed pistol license. CP 93. Mr. Krance also surrendered the guns he had in his possession to the Bonney Lake Police Depat1ment. CP 95. On July 8, 2022, the final order of protection was entered. CP 96-106. Appellant was ordered to surrender weapons. CP 96-106. A review hearing to assess appellant's compliance with the weapons surrender was set for July 14, 2022. CP 96-106. Under the DVPO, Appellant's visitation with his children was conditioned on his compliance

with domestic violence treatment for at least 60 days and Appellant's compliance with the order to surrender firearms. CP 96-106.

With the new DVPO, a new order to surrender and prohibit weapons was issued. CP 107-110. The order outlined at least 13 guns that needed to be surrendered. CP 107-110. The order set another compliance hearing for July 14, 2022 CP 107-110. On July 13, 2022, an amended firearm information was provided when the order was filed. The document explained the guns surrendered by Appellant matched the guns in Appellant's purchase history. The document indicated all firearms listed in the purchase history were accounted for. CP 107-110.

On July 14, 2022, another hearing was conducted. At that hearing, the court determined Appellant was still not in compliance as he still did not have any additional weapons to surrender. VRP (Resp. 7-14-2022, p. 27, lines 9-21; p. 31, lines 4-6.) The weapon surrender order indicated that while Appellant had turned over all firearms in his purchase history, the court still found based on Respondent's statement there should be

additional firearms to surrender. VRP (Resp. 7-14-2022, p. 28, lines 17-25; p. 29, line I).

On July 22, 2022, Appellant's counsel filed a motion for reconsideration. Therein, Appellant's counsel asked the court to reconsider its June 30, 2022 decision that appellant still had additional firearms, and referenced his prior statements in open court when referring to that on 6-30 2022 as further support for the Motion. Appellant's counsel argued any indication appellant had any additional guns **came from Appellant's counsel, and not from Appellant.** Appellant's counsel explained he misspoke and there never were any additional firearms. VRP (Resp. 6-30-2022, p. 11, lines 4-12). Appellant's counsel's motion for reconsideration was accompanied by a declaration of appellant's counselor, Dr. Richard Stride, who stated Appellant gets nervous and anxious when he gets confused, especially if things come at him too fast. Dr. Stride's declaration demonstrated putting Appellant on the spot to answer questions that were confusing, such as guns Appellant never had, could be confusing and could result in odd behavior.

On July 27, 2022, another compliance hearing was set for August 11, 2022. CP 77. In that order, the court recognized there was a pending motion for reconsideration and the court reiterated the guns were not accounted for. CP 77. The order also reserved attorney fees for respondent to be decided at the August 11, 2022 compliance hearing. CP 77. The court entered its order denying reconsideration on August 3, 2022. CP 119-120. On August 11, 2022, the parties appeared for the hearing. The court did not enter a ruling at that time, and instead ordered it would take the matter under advisement and would issue a written order at a later time. VRP (Resp., p. 52, lines 15- 25; p. 53, lines 1-17). On August 31, 2022, another weapon sun-ender hearing was conducted and appellant was again found to be in noncompliance. In the August 31, 2022 hearing, contempt was indicated and appellant was ordered to appear and testify about at his weapon surrender hearing scheduled for September 15, 2022 CP 136-140. Appellant filed several additional declarations explaining how the guns in question never existed. Dan Johnson, a family friend

testified he shot with appellant often and never saw any additional firearms other than those firearms that were surrendered. CP 191-192. Appellant filed an additional Declaration of Non-Surrender. CP 193-194. Appellant also filed a declaration from Devon Robinson, another acquaintance in which he explained why someone may have ammunition for guns they do not own. CP 188-190. Appellant also wrote an additional Declaration himself, explaining his position and why the court should find him in compliance. CP 165-187.

On September 16, 2022 Appellant appeared with new counsel. Respondent argued Appellant should be sent to jail for his non-compliance. The court did not issue a ruling at that time. On September 27, 2022, the court issued an order. CP 195-198. In that order the appellant was found in contempt. CP *Ibid.* The court explained the purge conditions were to account for the outstanding firearms and to surrender them to law enforcement. CP *Ibid.* The court assessed $1,878 in attorney fees and sanctioned appellant $300 per week for each week he remained

noncompliant. CP *Ibid.* The court another review hearing October 6, 2022. CP *Ibid.*

After entry of the September 27, 2022 order, Appellant filed another declaration of non-surrender indicating he did not have any additional firearms. CP 201-202. A t the hearing on October 6, 2022, Respondent's argument to send Appellant to jail was again rejected by the court. On November 3, 2022, the court issued its order for the October 6, 2022 hearing. The order stated Appellant had provided no new information on the existence of the guns. The order directed Appellant to deposit $5,000 with the clerk of the coult within 14 days. The order stated no further hearings would be held until Appellant took action to remedy the finding. CP 203-205. On January 18, 2023, Appellant filed his declaration and a receipt for three additional weapons he surrendered. CP209-10. Appellant explained while the parties were together, he stored several firearms for his grandfather in the family safe. CP 209-210. When the parties were separating returned those guns to his grandfather. CP 209-210.

After Appellant's grandfather suffered a stroke, Appellant decided to surrender those firearms with the Bonney Lake police department with the hope that those were the guns to which Respondent was referring when she stated Appellant had additional firearms. CP 210.

After those documents were filed, the court set a review hearing for February 16, 2023, later reset for July 13, 2023. At a subsequent hearing Appellant raised the constitutionality of the weapon surrender order under *State v. Flannery,* 24 Wash.App.2d 466, 520 P.3d 517 (2022). On July 20, 2023 the Court renewed the Order of Protection. CP 230-233; 234-235. Appellant's constitutional challenge was set for oral argument after briefing was exchanged on both sides before the Hon. Sean O'Donnell, and was argued on August 30, 2023 and September 5, 2023. On September 6, 2023, the court issued Findings of Non-Compliance. CP 203. That Order was appealed by the Appellant on October 9, 2023. CP 254-271. Oral argument was on April 15, 2025, with the Court of Appeals issuing its ruling on June 30, 2025, denying Appellant's request to declare

the Weapons Surrender Statute unconstitutional. The matter is now before the Coult on this Petition for Review.

E. ARGUMENTWHY REVIEW SHOULD BE ACCEPTED.

(i) *This Case Involves an Issue of Significant Public Importance that Should be Determined by the Supreme Court.*

The issues under the fact pattern involved herein present a case of significant public importance regarding the constitutionality of the Weapons Surrender Statute in the State of Washington. The statutes at issue and the protocols as currently in place violate the rights of a Respondent to the statute as to unreasonable search and seizure under the 4th Amendment of the United States Constitution. The Appellant/Petitioner respectfully disagrees with the assertion that the statute is constitutional as to the 4th Amendment and Article I, §7, §9 of the Constitution of the State of Washington. Similarly, the Appellant disagrees with the assertion that the Weapons Surrender Statute is constitutional as to the 5th Amendment of the United States Constitution, and Article I, §7 and §9 of the

Constitution of the state of Washington and the Separation of Powers doctrine. RAP 13.4(b)(3) and (b)(4).

(ii) The published decision below in the Court of Appeals, Division I, Montesi v. Montesi No. 85858-1-1, 2025 is in conflict with a published decision of the Court of Appeals, Division II, State v. Flannery, 24 Wash.App.2d, 466, 520 (2022).

The published decision below is in conflict with the decision in *State v. Flannery, supra,* as more specifically stated in the briefing argument provided below. RAP 1 3.4(b)(2).

(iii) This Case Presents a Significant Constitutional Question under both the Constitution of the State of Washington and the United States and Separation of Powers.

The published decision below, presents a significant question of law under the Constitution of the state of Washington, Article 1, §7; 9 and the United States Constitution regarding the application of 4th Amendment and 5th Amendment Rights of the Appellant, as well as to the violation of the Separation of Powers Doctrine between the branches of the Federal government. RAP 13.4(b)(3).

F. AUTHORITY AND ARGUMENT.

(i) The Fifth Amendment.

Error is assigned to the trial court's Order Denying Respondent's Motion to Declare Weapons Statute Unconstitutional. CP 248-53, which has now been affirmed below in the Court of Appeals Division I.

The Fifth Amendment can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory; and it protects against any disclosures which the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used." *Kastigar v. United States, 406 U.S. 441, 444--45, 92 S.Ct. 1653, 1656 (1972).* See, also, *United States v. Bodewell, 66 F.3d 1000, 1001 (9th Cir. 1995).* The protection against self-incrimination given by Washington Constitution Article 1, §9 is given the same interpretation as the protection given by the Fifth Amendment. *State v Foster, 91 Wn. 2d 466, 473; State v.*

Wheeler, 43 Wn. App. 191,203. The court distinguished *State v. Flannery, supra* on grounds of the 2019 legislative amendment of RCW 9.41.801 (9)(a), that the inclusion of immunity provisions addressed the self-incrimination provisions of Article I, Sections 7 and 9 raised in *Flannery* and by Appellant in this case. CP 249.

A closer examination of RCW 9.41.80 I (9) leaves serious doubt whether the 2019 amendment adequately addressed incrimination provisions concerns of Article 1, Sections 7 and 9. RCW 9.41.801 (9) (a) provides that the act of voluntarily surrendering firearms or weapons, providing testimony relating to the surrender of firearms or weapons, or complying with an order to surrender and prohibit weapons ... "may not be used against the person subject to the order in any criminal prosecution under this chapter, chapter 7.105 RCW, or RCW 9A.56.310, or in any criminal prosecution pursuant to which such order to surrender and prohibit weapons was issued " Orders under RCW Ch. 7.105 or

RCW 26.09 are not specifically listed in RCW 9 .41.801 (9) (a). This raises a question how can a court grant immunity for orders that pertain to a part of the statute that does not specifically reference the afore mentioned statutes in the original statute from where this immunity grant is based – never covered in the genesis language of the statute when originally passed. While the amendment may seem to create an immunity scheme such that one size fits all, it is not drafted in a way that creates a specific statutory immunity. Also, provisions in RCW 9.41.801 (9)(c) and (d), which involve the prosecutor as a gatekeeper and issuer of immunity fail to provide a blanket immunity that covers all scenarios under RCW Ch. 7.105 and RCW Ch. 26.09.

A party's invocation of their 5th Amendment rights is fraught with hurdles, whether at the first hearing, first receipt of temporary order, or at any other time throughout the adjudication process of the petition for order of

protection. A party faces a discretionary "may" decision by the court by requiring a party to show compliance with the order, and the court must still engage in a *Bone Club* analysis before affording immunity from self-incrimination to the party. *State v. Bone Club, 128 Wn.2d 254, (1995).* To effectively provide blanket immunity, the court must allow· complete, unconditional immunity. To base immunity from prosecution for Fifth Amendment privilege utterances and writings on any conditions is rife with mischief, and is not full, unfettered immunity. This rationale could potentially create additional problems given the fuzzy definitions in the in the amendment such as "opportunity to demonstrate," or "in chambers" in the new world involving Zoom - is it an open court determination? Shouldn't that be the case and if so, does that not that require blanket, unequivocal and non-conditional language? Is the Court going to have to invade the police powers at the at the initial stage regarding a

fundamental civil right of not self-incriminating and be required to issue Miranda warnings? *Miranda v. Arizona, 384 US 436, 86 S. Ct. 1602 (1966).* Absent a blanket, unequivocal statement of immunity for appellant, the "Flannery Fix" amendment fails. Just too many conditions - and frankly, ***any*** condition defeats the "Fix".

RCW 9.41.801(c)'s language 1s also problematic and concerning. If the person subject to the order establishes such a realistic threat of self-incrimination regarding possible criminal prosecution that is not addressed by the immunity from prosecution set forth in (a) of this subsection, the court shall afford the relevant prosecuting attorney an opportunity to offer an immunity agreement tailored specifically to the firearms or weapons implicated by the potential self-incrimination. To achieve the purposes of this section, any immunity offered should be narrowly tailored to address any realistic threat of self-incrimination while

ensuring that any other firearms not implicated are surrendered. Under RCW 9.41.801 (c)'s language, the prosecutor becomes the gatekeeper and decider for those matters not covered by RCW 9.41.80 I (a). The statute requires ("shall") the Court to provide the prosecutor with the task to offer hand tailored and specifically designated immunity pertaining to those facts and issues in the case, which by definition **is not** a blanket immunity. Instead, from its inception and creation, the form and content of the immunity is controlled by the prosecutor, who is ostensibly appellant's accuser, and solely determined by the prosecutor as to whether or not they wish to do that at all. Such language further violates Appellant's Fifth Amendment right of self- incrimination.

The same problem is manifested by RCW 9.41.S0l(d):

> Any immunity from prosecution beyond the immunity set forth in (a) of this subsection, may only be extended by the prosecuting attorney. If the prosecuting attorney declines to extend immunity such that the person subject to the order

> cannot fully comply with its surrender provision without facing a realistic threat of self-incrimination, the court's order must provide for the surrender of every firearm, dangerous weapon, and concealed pistol license that does not implicate a realistic threat of self-incrimination...

RCW 11.41.80 I (9) (d) vests solely in the prosecutor the gatekeeping and decision duties of when they think a conditional grant of immunity applies. The immunity needs to be unconditional - that is the only way it works for immunity to be effective and non-invasive of the Fifth Amendment privilege that every accused has, including appellant.

ii. Application of statutory changes to RCW 9.41.801 (9) (a) did not cure Fifth Amendment Violations.

In the case at bar and as noted above, Appellant made statements to the court under penalty of perjury where his guns were. The court did not find those statements credible, and the court-initiated contempt proceedings. VRP (Resp. p. 14, lines 3) CP 248-253. Contempt is punishable with fines and even jail time. These are prospective punishments

based upon being compelled to testify in a civil proceeding that create a Fifth Amendment violation and involve several judicial officers utilizing government police power enforcing an unconstitutional order, compelling the person to testify by requiring a declaration of non-surrender. Appellant is being punished for not complying with a statute punishable by prospective incarceration and ordered to testify and answer questions during the hearing from the bench, and to make statements under oath in the written declaration of surrender. At this point, Appellant has made numerous statements under penalty of perjury, that he does not have the guns Petitioner references. VRP (Resp. 6-30-2022, p. 11, lines I 6-23). Appellant further maintains he never had the guns referenced. VRP (Resp. 6-30-2022, p. 9, lines 5-25). Any previous "admission" of having such firearms came from his previous attorney who later acknowledged he misspoke. VRP (Resp. 6-30-2022, p. 11, lines 4-12). A fine is being issued weekly for appellant's alleged continued non-compliance with the court's order. Appellant was ordered to

put $5,000 in the court registry. The contempt against appellant is still active. As a result, appellant is still at risk of being incarcerated for contempt. Appellant has been fined and has paid $5,000 into the court registry. CP 203-205. Appellant's Fifth Amendment rights have been violated by procedural protocols created by legislative action, through the declaration of surrender form created by the court in attempting to comply with legislative requirements, and by the court being forced to act as in a police power role in enforcing legislative mandates in the statute, a role that is not a function of the judicial branch.VI-6.

iii. The Weapon Surrender Order violates Appellant's rights against unreasonable search and seizure.

Error is assigned to the Order to Surrender Weapons decision in finding the same to be in compliance with the Washington State and the United States Constitution. CP 248-253. *Flannery, supra,* supports the conclusion that the weapons surrender order violates appellant's rights against unreasonable search and seizure

under the Fourth Amendment and Washington Constitution, Article I, § 7; *24 Wash. App.2d at 484-85.* The Washington Legislature implicitly acknowledges the application of Fourth Amendment and

Washington Constitution, Article 1, § 7 to a surrender order such as the order at issue in this case. RCW 9.41.801 (4):

> Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms or dangerous weapons as required by an order issued under RCW 9.41.800 or 10.99.100, ***the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms and dangerous weapons in their possession, custody, or control. If probable cause exists that a crime occurred, the court shall issue a warrant describing the firearms or dangerous weapons and authorizing a search of the locations where the firearms am/ dangerous weapons are reasonably believed to be and the seizure of all firearms am/ dangerous weapons discovered pursuant to such search. (Emphasis added).***

The limitation of Fourth Amendment requirements to the circumstances listed in RCW 9.41.801(4) is arguably too narrow an application of those constitutional principles. Nevertheless, the application of Fourth Amendment/

Article I, § 7 to the facts before the court cannot be denied, and renders the statute not in compliance with the same.

The trial court concluded that "asking a Respondent in a civil matter to account for something (even a gun) does not equate to an unreasonable and unconstitutional search of a particular place." CP 249. The trial court's conclusion cannot be reconciled with RCW 9.41.801 (4). It must also be remembered that the Court was inquiring to the

Appellant to respond and account for the weapons, and this direct inquiry was a violation of Appellant's Fifth Amendment rights of self-incrimination, and requiring the Appellant to search and seize the weapons without a warrant and to do it himself was a Fourth Amendment violation, as well as a violation of the companion provisions of the Washington State Constitution.

iv. The Court of Appeals Division I erred in rejecting Appellant's Separation of Powers argument.

"The Legislature 's outline of how to conduct hearings and ensure compliance with the Order to Surrender does not implicate the separation of powers doctrine." CP 248-253. The separation of powers doctrine is not specifically enunciated in either the Washington or Federal constitution, but is universally recognized as deriving from the tripartite system of government established in both constitutions. See, e.g., WASH. CONST. arts. II, III, and IV (establishing the legislative department, the executive, and judiciary); U.S. CONST. arts. I, II, and III defining legislative, executive, and judicial branches). *State v. Wadsworth, 139 Wash.2d 724, 735, (2000).* Washington courts rely on federal principles regarding the separation of powers doctrine in interpreting and applying the state's separation of powers doctrine. *Id.* ***The judicial branch violates the separation of powers doctrine when it assumes tasks that are more***

properly accomplished by other branches. *Hale v. Wellpinit Sch. Dist. No. 49, 165 Wash.2d 494, 506, (2009). Emphasis added.* The judiciary assumed a police power role by enforcing legislative mandates in the statute. Appellant does not blame the judicial officers for attempting to navigate and adjudicate the prior protection order statute and now the "Flannery Fix" amendment under HB 1715. Blame lies with the Legislature, which boxed Washington judicial officers in an untenable, but more importantly, an unconstitutional position of repeatedly requiring appellant to violate their constitutional rights (4th and 5th Amendments) to further incriminate themselves by requiring answers to questions that may violate their constitutional rights, especially their 4th and 5th Amendment rights.

The judicial officer is empowered to call balls and strikes- not to pick the pitches to be thrown which is akin to pitching the pitches and then deciding if the pitches

were balls or strikes (constitutionality of the action). While it may be convenient and efficient to have judicial officers, and by extension their staffs, to issue forms and documents and suggest, require or mandate appellant to sign, document or testify as to searches in their own homes and to report on the same under oath, these protocols create repeated and multiple unconstitutional actions on a daily basis in courtrooms throughout Washington State, and conflate the judicial role of the executive with the police power enforcement provisions of the Legislature. Following these protocols also require appellant to further incriminate himself every time he answers an inquiry or signs a statement. The Doctrine of Separation of powers is violated by these actions in these proceedings as currently constituted.

G. CONCLUSION

Based upon the foregoing rationale, the Supreme Court of the State of Washington should declare the Weapons

Surrender Statute unconstitutional, and reverse and remand the Decision of the Court of Appeals Division I below, and reverse and remand to the Trial Court's original Order, for further action not inconsistent with this Order and mandate.

Respectfully submitted this 31st day of July, 2025

Carlos M. Sosa WSBA#11539
Attorney for Appellant Brandon Montesi

III. Certificate of Compliance

The undersigned Attorney certifies the number of words contained in the document, exclusive of words in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, and signature blocks contains no more than 4,957 words.

Carlos M. Sosa WSBA#11539
Attorney for Appellant Brandon Montesi

IV. Certificate of Service

The undersigned does hereby certify that on July 30, 2025, he served copies of the Appellant's Petition for Review on the following individual(s) via the matter indicated below.

BENJAMIN GOULD, WSBA #44093
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3400
Seattle, WA 9810-3268
Attorney for Respondent Jessica Montesi

Courtesy copies of this e-filing of the Appellant's Amended Petition for Review are being electronically served through the Washington State Appellate Courts' Portal on all the counsel/staff as designated in said portal and listed therein as currently constituted by the Court of Appeals, and not separately being listed herein.

VIA Washington State Appellate Courts' Portal:

Clerk
Court of Appeals State of Washington Supreme Court
Counsel and Staff as listed on Court of Appeals Portal.

Dated this 31st day of July, 2025 in Auburn, WA.

CARLOS M. SOSA
WSBA #11539
Attorney for Appellant Brandon Montesi

V. Appendices

Appendix A-1: *Montesi v. Montesi 85858-1-I Published Opinion Division I Court of Appeals state of Washington (2025)*

FILED
6/30/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Domestic Violence Protection Order for JESSICA DIANE MONTESI, Respondent, and BRANDON EUGENE MONTESI, Appellant.	No. 85858-1-I DIVISION ONE PUBLISHED OPINION

SMITH, J. — In 2022, Jessica Montesi obtained a domestic violence protection order (DVPO) against her ex-husband, Brandon Montesi, that required him to surrender any weapons he possessed. When Brandon failed to comply with the DVPO, the trial court found him to be in civil contempt. A year later, Brandon asked the court to declare the weapons surrender statute unconstitutional under the Fifth Amendment, Fourth Amendment, Second Amendment, and the separation of powers doctrine. The trial court denied the motion. Brandon appeals.

FACTS

Jessica and Brandon Montesi[1] divorced in April 2022. In May 2022, Jessica moved for a DVPO. The trial court issued a temporary DVPO and, as

[1] We refer to the parties by their first names solely for the purpose of clarity and to avoid confusion.

part of that order, required Brandon to surrender his firearms. Brandon submitted a declaration of non-surrender, claiming all of his firearms were stored at his friend, Steve Krance's, house. Krance submitted a declaration stating the same.

After the court determined Brandon was not in compliance with the weapons surrender order, Krance submitted a new declaration identifying seven firearms he had received from Brandon. Jessica filed a declaration in response to Krance's declaration, identifying numerous weapons Brandon owned while they were married that Krance had not accounted for.

The court eventually set a show cause hearing and informed Brandon he could face consequences, such as monetary sanctions and incarceration, if he was not able to account for the missing firearms. The court issued a one-year DVPO and a new order to surrender weapons, listing the additional firearms Jessica had included in her declaration. Brandon surrendered his concealed pistol license and Krance surrendered the guns he had in his possession to local law enforcement. The court again found Brandon not in compliance with the weapons surrender order, noting 13 weapons were still unaccounted for.

The court held a contempt hearing in August 2022, and after a review hearing in September, the court issued an order finding Brandon in contempt of the weapons surrender order. In January 2023, Brandon surrendered three additional guns. Brandon claimed they were his grandfather's guns that he had stored in his safe at one point, but had not had in his possession since January 2022.

At a compliance hearing in July 2023, Brandon asked the court to find the weapons surrender statute unconstitutional under the holding in *State v. Flannery*, 24 Wn. App. 2d 466, 520 P.3d 517 (2022). After allowing the parties to brief the issue and hearing arguments, the court issued findings of noncompliance and an order denying Brandon's motion to declare the weapons surrender statute unconstitutional.

Brandon appeals, arguing the weapons surrender statute is unconstitutional under the Fifth Amendment, Fourth Amendment, Second Amendment, and the separation of powers doctrine.

ANALYSIS

Standard of Review

We review issues of statutory interpretation de novo. *State v. Wadsworth*, 139 Wn.2d 724, 734, 991 P.2d 80 (2000). A statute is presumed to be constitutional, and the party challenging the constitutionality of a statute bears the burden of proving the statute is unconstitutional beyond a reasonable doubt. *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 796, 432 P.3d 805 (2019). When interpreting a statute, we must read the statutory provisions as a whole, not in isolation. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). When a party raises constitutional challenges under both federal and state law, this court will, when feasible, resolve questions first under the state constitution before analyzing federal law. *State v. Rivers*, 1 Wn.3d 834, 858, 533 P.3d 410 (2023).

Fifth Amendment

Brandon alleges the order to surrender weapons violates his right against self-incrimination. Jessica contends the issue is not ripe and, even if it were, Brandon's Fifth Amendment rights are not violated. We conclude the issue is ripe and Brandon's Fifth Amendment rights were not violated.

Protection against self-incrimination in criminal proceedings is guaranteed under the Fifth Amendment of the United States Constitution and article 1, section 9 of the Washington State Constitution. While both constitutions refer specifically to criminal proceedings, an individual may invoke their right against self-incrimination in any proceeding " 'where the answer might incriminate [them] in future criminal proceedings.' " *State v. Brelvis Consulting LLC*, 7 Wn. App. 2d 207, 218, 436 P.3d 818 (2018) (internal quotation marks omitted) (quoting *Alsager v. Bd. of Osteopathic Med. & Surgery*, 196 Wn. App. 653, 668, 384 P.3d 641 (2016)). A party must invoke their Fifth Amendment right against self-incrimination " 'through specific, individual objections, not by invoking blanket constitutional protection to avoid participating in the proceeding.' " *Brelvis*, 7 Wn. App. 2d at 222-23 (quoting *Alsager*, 196 Wn. App. at 668). The threat of incrimination "must be substantial and real, not merely speculative." *State v. Hobble*, 126 Wn.2d 283, 290, 892 P.2d 85 (1995). Determining whether the implication of self-incrimination is genuine lies within the sound discretion of the trial court. *Hobble*, 126 Wn.2d at 291.

The right to invoke the Fifth Amendment is not absolute. *Hobble*, 126 Wn.2d at 291. When an individual is protected " 'against the use of [their]

compelled answers and evidence derived therefrom in any subsequent criminal case in which [they are] a defendant,' " the party may be compelled to answer, even when the answer is incriminating. *Flannery*, 24 Wn. App. 2d at 480 (quoting *State v. King*, 130 Wn.2d 517, 524, 925 P.2d 606 (1996)). This type of protection is called "immunity from use and derivative use," and is "coextensive with the scope of the privilege against self-incrimination." *Kastigar v. United States*, 406 U.S. 441, 453, 92 S. Ct. 1653, 32 L. Ed. 2d 212 (1972).

1. Ripeness

Jessica claims the issue is not ripe because Brandon never invoked his Fifth Amendment right against self-incrimination. While Jessica is correct that Brandon never explicitly asserted his Fifth Amendment right, RCW 9.41.801(9)(a) does not require a party to affirmatively invoke the privilege. RCW 9.41.801(9)(a) is self-executing and automatically confers immunity upon any individual subject to an order issued under RCW 9.41.800 or RCW 10.99.100.

Because Brandon was subject to an order to surrender and prohibit weapons issued in accordance with RCW 9.41.800(1), which covers DVPOs entered under chapter 7.105 RCW, he was automatically granted immunity and was not required to affirmatively invoke his Fifth Amendment privilege. Therefore, the issue is ripe for review.

2. Immunity

Here, Brandon contends RCW 9.41.801(9) does not provide adequate immunity and violates his right against self-incrimination. First, Brandon asserts orders under chapter 7.105 RCW and chapter 26.09 RCW are not listed in

RCW 9.41.801(9) and, accordingly, immunity under RCW 9.41.801(9) does not cover his weapons surrender order. But the immunity provision of RCW 9.41.801(9) specifically includes orders issued pursuant to RCW 9.41.800, and RCW 9.41.800 includes orders entered under chapter 7.105 RCW and chapter 26.09 RCW. Therefore, orders issued under those two chapters, including Brandon's DVPO issued under chapter 7.105 RCW, are covered by the immunity granted in RCW 9.41.801(9).

Next Brandon asserts RCW 9.41.801(9)(a) does not provide "blanket immunity" covering all scenarios under chapter 7.105 RCW and chapter 26.09 RCW. But, Brandon fails to read the statute as a whole. The additional provisions under RCW 9.41.801(9)(c) and (d) address situations that may arise and are not covered by the immunity granted under section (9)(a).

The language of RCW 9.41.801(9)(c) reads:

> If the person subject to the order establishes such a realistic threat of self-incrimination regarding possible criminal prosecution that is not addressed by the immunity from prosecution set forth in (a) of this subsection, the court shall afford the relevant prosecuting attorney an opportunity to offer an immunity agreement tailored specifically to the firearms or weapons implicated by the potential self-incrimination.

Subsection (9)(d) further clarifies, "Any immunity from prosecution beyond the immunity set forth in (a) of this subsection, may only be extended by the prosecuting attorney." These provisions grant the prosecuting attorney an opportunity to offer immunity not covered by subsection (9)(a). Brandon claims these provisions inappropriately "vest[] solely in the prosecutor the gatekeeping and decision duties of when they think a conditional grant of immunity applies."

While the statute does give the prosecuting attorney an opportunity to address immunity not provided under subsection (9)(a), immunity is not solely in the prosecutor's control. Brandon fails to consider the additional immunity provided under subsection (9)(d).

RCW 9.41.801(9)(d) states:

> If the prosecuting attorney declines to extend immunity such that the person subject to the order cannot fully comply with its surrender provision without facing a realistic threat of self-incrimination, the court's order must provide for the surrender of every firearm, dangerous weapon, and concealed pistol license that does not implicate a realistic threat of self-incrimination.

RCW 9.41.801(9)(d) ensures that, if a defendant faces a realistic threat of self-incrimination and immunity has not been conferred by subsection (9)(a) or the prosecutor, the defendant does not have to surrender any incriminating weapons. Therefore, if Brandon is put in a situation where he is not covered by the immunity in subsection (9)(a) and the prosecutor declines to provide immunity, he can only be ordered to surrender weapons that are not self-incriminating.

3. Constitutionality

Brandon claims the procedures under RCW 9.41.801(9)(b) are unconstitutional because the court is given discretion to determine whether a person subject to a weapons surrender order has shown a realistic threat of self-incrimination, and obtaining immunity requires a party to meet certain conditions, such as showing compliance. But neither of these procedures raises a constitutional issue.

RCW 9.41.801(9)(b) states,

> If a person subject to such an order invokes the privilege against self-incrimination at the time of issuance of the order or at a subsequent hearing, the court may afford the person subject to the order an opportunity to demonstrate that compliance with the surrender provision of the order would expose that person to a realistic threat of self-incrimination in a subsequent or pending criminal proceeding. The court may conduct this portion of the proceeding ex parte or receive evidence in camera, without the presence of the prosecuting attorney, after the court conducts an analysis under *State v. Bone-Club*,[2] . . . and concludes that the courtroom may be closed.

Washington courts have long held the court has the duty to determine whether a party invoking their Fifth Amendment privilege has shown a realistic threat of self-incrimination. *See, e.g.*, *Hobble*, 126 Wn.2d at 291 ("The determination whether the privilege applies lies within the sound discretion of the trial court under all the circumstances then present."); *Seventh Elect Church in Israel v. Rogers*, 34 Wn. App. 105, 113, 660 P.2d 280 (1983) ("[I]t is for the court to determine whether silence is justified."). The court's discretion on this matter is not only appropriate, it is required.

Brandon also claims RCW 9.41.801(9)(b) creates unnecessary hurdles for a party invoking their Fifth Amendment privilege. Brandon notes the statute's use of the word "may" provides for a discretionary decision by the court, requiring the court to engage in a *Bone-Club* analysis before closing the courtroom. But this requirement is only necessary if it is not evident from the information requested that the party's Fifth Amendment rights are implicated. *See Rogers*, 34 Wn. App at 115 ("[W]here the external circumstances support the privilege

---

[2] *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995).

claim, an in camera hearing is not required.") The "may" language in RCW 9.41.801(9)(b) is only relevant if the privilege is not covered under subsection (9)(a) and it is not apparent whether invoking the privilege is appropriate. Brandon's order is covered under subsection (9)(a) because it was issued pursuant to RCW 9.41.800, so any implication of subsection (9)(b) is only theoretical.

Because Brandon's weapons surrender order is covered under RCW 9.41.801(9)(a), he has immunity from prosecution related to the surrender of firearms, including testimony associated with the surrender of firearms and complying with an order to surrender. Therefore, Brandon's Fifth Amendment rights are not violated.

Fourth Amendment & Article 1, Section 7

Brandon asserts the weapons surrender statute violates his right against unreasonable searches and seizures. Jessica contends Brandon's rights have not been violated because Brandon is not a state actor and the constitutional right to be free from unreasonable searches and seizures does not apply. We agree with Jessica.

Under the Fourth Amendment to the United States Constitution, individuals have the right to be free from unreasonable searches and seizures. Likewise, article 1, section 7 provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Both the Fourth Amendment and article 1, section 7 protect individuals from unjustified government intrusion. *City of Pasco v. Shaw*, 161 Wn.2d 450, 458-59, 166 P.3d

1157 (2007). But article 1, section 7 provides greater protection than the Fourth Amendment. *State v. Muhammad*, 194 Wn.2d 577, 586, 451 P.3d 1060 (2019). Under article 1, section 7, "a search occurs when the government disturbs 'those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.' " *Muhammad*, 194 Wn.2d at 586 (quoting *State v. Myrick*, 102 Wn.2d 506, 511, 688 P.2d 151 (1984)).

1. State Action and the Warrant Requirement

Jessica contends we do not need to reach the issue of whether article 1, section 7 or the Fourth Amendment were violated because neither apply. Jessica notes article 1, section 7 and the Fourth Amendment are only applicable to state actors and claims Brandon was not acting in a governmental capacity at the time of the search.

The Fourth Amendment and article 1, section 7 apply only when a state action occurs, or when an individual is acting as a government agent. *Kalmas v. Wagner*, 133 Wn.2d 210, 216, 943 P.2d 1369 (1997). An individual is a state actor "if that person functions as an agent or instrumentality of the state." *Shaw*, 161 Wn.2d at 460. To determine whether an individual is a state actor, courts look to " 'the capacity in which [a person] acts at the time of the search.' " *Shaw*, 161 Wn.2d at 460 (alteration in original) (quoting *State v. Ludvik*, 40 Wn. App. 257, 262-63, 698 P.2d 1064 (1985)). The individual challenging the constitutionality of an action "bears the burden of establishing that state action is involved." *Shaw*, 161 Wn.2d at 460.

State action mainly involves law enforcement. *See*, *e.g.*, *Muhammad*, 194 Wn.2d at 584-96 (analyzing governmental action in the context of law enforcement obtaining cell phone records); *State v. Mecham*, 186 Wn. 2d 128, 380 P.3d 414 (2016) (discussing whether field sobriety tests by law enforcement constitute a search).[3] Under RCW 9.41.801(2), the role of law enforcement is to serve the order, inform the respondent the order is effective upon service, and take possession of any weapons surrendered. Law enforcement does not conduct a search unless the court finds probable cause that a crime occurred and issues a warrant. RCW 9.41.801(4).

A court order requiring Brandon to "search" his own home for weapons is not the type of search included in the protection of the Fourth Amendment or article 1, section 7. No governmental trespass into private affairs has occurred—Brandon is simply required to locate all weapons in his possession and surrender them to law enforcement. Brandon provides no argument for why producing weapons under a court order is state action. Brandon only briefly addresses state action in his reply, noting, "In the order to surrender possession, the trial court directed Appellant to take action to surrender the weapons in his possession. In doing so, the trial court made Appellant an instrumentality (albeit

---

[3] Other contexts not involving law enforcement where state action has been found include actions by tax appraisers (*State v. Vonhof,* 51 Wn. App. 33, 751 P.2d 1221 (1988)); city building inspectors performing nonconsensual inspections (*City of Seattle v. McCready,* 123 Wn.2d 260, 868 P.2d 134 (1994)); and school officials conducting searches of student luggage (*Kuehn v. Renton Sch. Dist. No. 403,* 103 Wn.2d 594, 694 P.2d 1078 (1985)). Like law enforcement cases, all of these cases involve one individual searching the property of another.

unwilling) of its order." (Citation omitted.) Brandon claims, because he was made an instrumentality of the state, a warrant was required before he could be forced to search his home. Brandon cites several cases to support his claim, but provides no explanation for how these cases advance his argument that he was acting as an instrumentality of the state. In fact, in each of the cases Brandon cites, the court did not find state action.[4] Without state action, no "search and seizure" as defined by law exists and, therefore, no violation of article 1, section 7 or the Fourth Amendment.

Because state action is not implicated when a court issues a weapons surrender order, article 1, section 7 and the Fourth Amendment are not applicable.

1. Search and Seizure under *Flannery*

Brandon contends *Flannery* supports a finding that the weapons surrender statute violated his right against unreasonable searches and seizures. But, *Flannery* is no longer instructive.

In *Flannery*, the State charged Dwayne Flannery with second degree assault and the court entered a no-contact order under RCW 10.99.040(2)(a), which instantly made it illegal for Flannery to possess firearms. 24 Wn. App. 2d at 475. The court also issued a weapons surrender order. *Id.* At the time Flannery's weapons surrender order was entered, former RCW 9.41.800 did not have an immunity provision. *Id.* at 476. Flannery moved to vacate the order,

---

[4] *State v. Clark*, 48 Wn. App. 850, 743 P.2d 822 (1987); *State v. Swenson*, 104 Wn. App. 744, 9 P.3d 933 (2000); *State v. Walter*, 66 Wn. App. 862, 833 P.2d 440 (1992); *Shaw*, 161 Wn. 2d 450.

claiming it violated his privilege against self-incrimination and his right to be free from unreasonable searches and seizures. *Id.* Flannery argued, because it was unlawful for him to own or possess a firearm under the no-contact order, a later order to surrender weapons would force him to incriminate himself unless he had some form of immunity. *Id.* at 476. The trial court held,

> [T]o the extent the order directs a defendant to search [their] home for firearms and other dangerous weapons and bring those items to law enforcement during a period when such possession and delivery of those items would constitute a criminal law violation since there is no immunity from prosecution for him set forth in the statute.

Id. at 477-78.

On appeal, the State did not argue the search was legal, it only argued the statute itself was not unconstitutional because a Fourth Amendment violation does not occur at the time of the search, but only when the fruits of a search are later used to prosecute. *Id.* at 485-86. The court disagreed with the State concerning the timing of a Fourth Amendment violation and concluded its argument failed for that reason alone. *Id.* at 485. Because the State did not address the Fourth Amendment violation further, neither did the court. *Id.* The court held the statute violated Flannery's Fourth and Fifth Amendment rights. *Id.*

In 2021, the legislature amended RCW 9.41.801 and added an immunity provision to the firearm surrender statutory scheme. LAWS OF 2021, ch. 215, § 75. The revisions of RCW 9.41.801 directly addressed the Fourth Amendment issue raised in *Flannery*.[5] The statute now provides immunity for individuals

---

[5] In his reply brief, Brandon claims for the first time that the trial court failed to address that the immunity provisions of the amendment to

surrendering weapons. Accordingly, surrendering weapons while under another order which prohibits the possessing of weapons will not result in a violation of criminal law.

In light of the amendment of RCW 9.41.801, Brandon has not established the presence of state action and his reliance on *Flannery* is misplaced. We conclude Brandon's Fourth Amendment right against unreasonable searches and seizures was not violated.

Second Amendment

Brandon contends the weapons surrender statute violates his Second Amendment right to bear arms. Jessica disagrees. Recent Supreme Court case law directly addresses this issue and establishes that the weapons surrender statute does not infringe upon Brandon's right to bear arms.

The Second Amendment provides individuals the right to bear arms. *See* U.S. CONST. amend. II. But this right is not unlimited. *District of Columbia v. Heller*, 554 U.S. 570, 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). When faced with a challenge to a firearm regulation, "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *United States v. Rahimi*, 602 U.S. 680,

---

RCW 9.41.801(9) are not retroactive and, therefore, do not apply to his case. We do not consider arguments raised for the first time in reply briefs. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn. 2d 801, 828 P.2d 549 (1992). But even if we were to consider this argument, the legislature explicitly stated the provisions of amended RCW 9.41.801 apply to "[p]rotection orders entered prior to the effective date of this section under chapter 74.34 RCW or any of the former chapters 7.90, 7.92, 7.94, 10.14, and 26.50 RCW." LAWS OF 2021, ch. 215, § 65.

692, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024). At common law, individuals were barred from using firearms to threaten or menace others. *Rahimi*, 602 U.S. at 693. In accordance with these "going armed" laws, the Supreme Court has held, "When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Rahimi*, 602 U.S. at 698.

Here, Brandon contends the weapons surrender statute violates his Second Amendment rights, but he bases his entire argument on *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), which was reversed by the Supreme Court in *Rahimi*, 602 U.S. at 702. In *Rahimi*, the Supreme Court held a federal statute prohibiting an individual subject to a domestic violence restraining order from possessing a gun does not violate the Second Amendment. 602 U.S. at 700-02. After the Supreme Court's decision in *Rahimi*, the basis for Brandon's reasoning is no longer good law and his argument fails.

Because an individual subject to a DVPO may lawfully be prohibited from possessing weapons, the weapons surrender statute does not violate the Second Amendment.

Separation of Powers

Brandon claims the weapons surrender statute violates the separation of powers doctrine. Because the legislature properly delegated authority to the courts under RCW 9.41.801, the separation of powers doctrine is not violated.

The separation of powers doctrine is not explicitly enumerated in the Washington State Constitution, but the division of government into three separate branches "has been presumed throughout our history." *Hanson v. Carmona*, 1

Wn.3d 362, 387, 525 P.3d 940 (2023). While the branches are separate, they are not completely isolated. *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 507, 198 P.3d 1021 (2009). "The separate branches must remain partially intertwined to maintain an effective system of checks and balances." *Hale*, 165 Wn.2d at 507. A separation of power issue arises when " 'the activity of one branch threatens the independence or integrity or invades the prerogatives of another.' " *State v. Chavez*, 134 Wn. App. 657, 666, 142 P.3d 1110 (2006) (quoting *State v. Moreno*, 147 Wn.2d 500, 505-06, 58 P.3d 265 (2002)). That two branches of government engage in " 'coinciding activities' " is not enough, the activity of one branch must threaten the independence of another. *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994) (quoting *Zylstra v. Piva*, 85 Wn.2d 743, 750, 539 P.2d 823 (1975)).

For one branch to delegate authority to another branch is not inherently improper. *In re Disciplinary Proceeding Against Petersen*, 180 Wn.2d 768, 781, 329 P.3d 853 (2014). "A delegation of authority must involve (1) standards to guide the [branch] and (2) procedural safeguards to control for abuse of discretionary power." *Peterson*, 180 Wn.2d at 781.

Here, the legislature appropriately delegated authority to the courts to ensure compliance with weapons surrender orders. The legislature provides clear guidelines to the courts for how and when to enforce the orders and neither the legislature's nor judiciary's activities threaten the independence of the other. Brandon provides no case law for why this type of delegation is inappropriate or why issuing weapons surrender orders would be better left to the legislature.

Because RCW 9.41.801 does not impermissibly delegate authority to the courts, it does not violate the separation of powers doctrine.

We hold the weapons surrender statute is constitutional and affirm.

WE CONCUR:

SOSA LAW FIRM

July 31, 2025 - 10:35 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	104,410-1
Appellate Court Case Title:	In the Matter of the Domestice Violence Protection Order for Jessica Montesi and Brandon Montesi

The following documents have been uploaded:

- 1044101_Other_20250731103405SC164594_1090.pdf
  This File Contains:
  Other - Amended Petition for Review
  The Original File Name was FINAL Montesi Amended Petition for Review.pdf

A copy of the uploaded files will be sent to:

- Chelsea@Sterling.Law
- bgould@kellerrohrback.com
- chelsea@donnapersonsmith.com
- rocio@sosalawfirm.net
- shelly@sosalawfirm.net
- tyler@sosalawfirm.net

Comments:

Sender Name: Rocio Diego - Email: rocio@sosalawfirm.net
Filing on Behalf of: Carlos Manuel SosaIII - Email: carlos@sosalawfirm.net (Alternate Email: carlos@sosalawfirm.net)

Address:
102 West Main Street
Suite 301
Auburn, WA, 98001
Phone: (253) 288-1801

Note: The Filing Id is 20250731103405SC164594