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**TESTIMONY OF NATASHA A. PLUMLY
ON BEHALF OF SOUTHEASTERN OHIO LEGAL SERVICES
AND TRI-COUNTY HELP CENTER, INC.**

Chairman Oelslager, Vice Chair Manning, Ranking Member Skindell and Committee members:

I am an attorney with Southeastern Ohio Legal Services and the Vice President of the Board for Tri-County Help Center, Inc. We are testifying in opposition to the expungement of ex parte Civil, Stalking, and Sexually Oriented Offense Protection Orders (collectively "CPOs") and all of the records pertaining to those orders when a final hearing CPO is not granted.

The Supreme Court of Ohio has held that final CPOs may be sealed and expunged if there are unusual and exceptional circumstances. *Schussheim v. Schussheim* (2013), 137 Ohio St. 3d 133, 998 N.E.2d 446, 2013-Ohio-4529. The individual's interest in having the record sealed must outweigh the state's interest in maintaining the records. *Schussheim* at 136 (citing *Pepper Pike v. Doe* (1981), 66 Ohio St. 2d. 374, 377, 421 N.E.2d 1303). On remand, the trial court found, with the 12th District upholding, that respondent could not meet this standard, at least not until the parties' children were no longer minors. *Hennemmen v. Schussheim*, 2015-Ohio-829.

There is a distinction between sealing and expunging. Sealed records can still be accessed and reviewed by courts, prosecutors, and police. R.C. 2151357 (juveniles) and R.C. 2953.53 (adults). They can be discoverable in civil actions. *Carter v. Gestalt Institute of Cleveland, Inc.* (8th Dist.), 2013-Ohio-5748. Expunged records cannot, as they are actually physically destroyed. R.C. 2953.38. Even the Juvenile CPO statute only permits sealing, not expungement. R.C. 2151.31.

Victims do sometimes file for CPOs and obtain an ex parte order, but lose the final hearing, and then another incident of violence happens, entitling him/her to a final CPO. Because of the expungement, the petitioner cannot refer to the prior case in his/her current case. If service happens in the new case, the prior case cannot be used in the new case. All evidence will have to be resubmitted, wasting the court's, counsel's, and petitioner's valuable time in attempting to escape. The expungement may also further empower the respondent to cause the petitioner more serious harm.

On the other side of the coin, petitioners sometimes file for CPOs, are granted ex parte CPOs and lose final hearings because they cannot meet the legal standard for CPOs, and then refile and still cannot meet the standard. Respondents will be unable show the new case is the second baseless claim. They also cannot use either record in a defamation/slander case. Unlike in criminal cases, both parties in CPO cases may have an interest in maintaining the records, not just the state.

The Juvenile CPO sealing statute, R.C. 2151.31(D)(6), and the adult criminal sealing statute, R.C. 2953.52(B)(1), comply with due process. Expunging without notice to the petitioner and an opportunity to be heard violates his/her due process rights under the 14th Amendment to the United States Constitution. Due process could explain things such as why s/he did not show for the

hearing (s/he was afraid and threatened by respondent), or why s/he requested to dismiss the CPO at the final hearing (s/he could not afford to live on his/her own). We have seen this violation of due process issue recently in a CPO case out of Jefferson County. Respondent requested sealing after the CPOs time ran. The Court, without notifying the petitioner, sealed the case.

Finally, courts are not seeing many requests for sealing CPOs. Between 2011 and 2016, 558 CPOs were filed in Belmont County. Only 5 respondents requested and were granted sealing. That is .9%.

In summary, we oppose the proposal for expunging ex parte CPOs in its entirety, as it would create irreparable legal harms to petitioners, respondents, courts, and attorneys. Such an important policy issue should not be buried in the budget bill, but should instead be the subject of free standing legislation.

Thank you. I would be happy to answer any questions.