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Non-party public observer, in propria persona

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:
**PETITION TO AMEND RULES 122 AND 122.1,
RULES OF THE SUPREME COURT OF ARIZONA**

Supreme Court No. R-26-0003

COMMENT OF JASON ADAM JENSEN ON THE TASK FORCE'S REVISED PROPOSAL

Jason Adam Jensen, a member of the public who observes Arizona court proceedings, submits this comment under Rule 28(e), Rules of the Supreme Court, and the Court's November 5, 2026 order reopening this petition. The comment is different from most you will receive, because the rule it addresses was applied to me in the last two days. On November 9, 2026, I filed a Notice of Intent to Use Personal Audio Recorder under current Rule 122(h) in State v. Myers, Pima County Superior Court Nos. CR20251060-001 and CR20251454-001. On November 10, the assigned judge denied the notice in a two-page in-chambers ruling and warned that any attempt to use a recorder would result in expulsion from the hearing and/or a contempt citation. The notice is Exhibit A and the ruling is Exhibit B to the accompanying Appendix. This comment explains what that sequence shows about the current rules and about the revised proposal. It incorporates by reference my Petition to Amend Rule 122, No. R-26-0051, and my Reply to the Comment of Monika Jane Browatzki in that docket, and it asks the Court to deny R-26-0003 and to disband the Task Force that filed it.

I. WHAT THE CURRENT RULE PROMISES, AND WHAT HAPPENED

1. Rule 122(h) lets a member of the public use a personal audio recorder in a courtroom on notice to the judge or staff "prior to using the device." It requires no motion and no leave. If a judge intends to deny recording, Rule 122(c)(3) requires a hearing first, and Rule 122(d)(1) permits denial only on specific, on-the-record findings that the likelihood of harm outweighs the public benefit. Rule 122.1(e) preserves a judge's authority to terminate activity that is "disruptive or distracting" or "otherwise contrary to the administration of justice," and Rule 122.1(e)(3) says members of the public may use a personal audio recorder in a courtroom "only as provided by Rule 122."

2. The notice I filed was written to give every actor in the process a chance to use those mechanisms. It identified the proceeding, gave notice in advance, and pointed to the hearing and findings the rule requires before any denial. The Ruling answered in one day, without a hearing and without the findings Rule 122(d)(1) requires. It rests on earlier orders that, in its words, bar personal audio recorders "due to the potential for disruption." It states that the Court of Appeals "denied his appeal" and that, "consequently, this Court's previous order still stands." It treats a pool reporter's recording as "fundamentally different from using a personal audio recorder, as Rule 122 recognizes." And it announces that "any attempt to use a personal audio recorder will result in expulsion from the hearing, and/or a contempt citation." (Ex. B.)

3. Each of those steps departs from the text. Rule 122.1(e) authorizes terminating disruptive activity that is happening, not forbidding a quiet audio device before anything has happened. A prediction of "potential for disruption" that applies to every recorder in every hearing is not the individualized finding Rule 122(d)(1) calls for. The Court of Appeals did not "deny an appeal" on the merits; it declined jurisdiction in a single sentence (Part VI). Peltz did not hold

what the Ruling says it held (Part II). And Rule 122 does not "recognize" a difference between a reporter's recorder and anyone else's; the (h) right belongs to the public. I raise these points because the revised proposal would turn each departure into the rule.

4. Nor was this the first unequal application. As the notice recounts, I was corrected for having a powered-off phone out of my pocket while a newspaper reporter in the same proceeding was permitted a laptop. I do not ask the Court to decide that dispute, only to notice what it shows: what a person may bring depends on who the person is, and no standard says why.

II. A QUIET RECORDER IS "DISRUPTION"; A TELEVISION CAMERA IS NOT. THE RULING CANNOT BE SQUARED WITH EQUAL PROTECTION, DUE PROCESS, OR OPEN COURTS

5. The Ruling is not an aberration of one judge's temper. It is what Rules 122 and 122.1 permit, because nothing in them stops it. A judge may call any device a "disruption," say so in a chambers ruling, and enforce the label with expulsion and contempt, and no mechanism in the rules tests the label.

6. Consider what the Ruling treats as disruptive and what it does not. On November 6, 2026, the same court granted KVOA-TV's request to place a video camera and a lavalier microphone in the courtroom for the same hearing. (Ex. E; Ex. A ¶ 3.) On November 10, it ruled that a pocket-sized audio recorder that makes no sound is a "potential for disruption" that justifies expulsion or contempt. (Ex. B.) If disruption is the standard, a camera, a microphone, cabling or a mount, and an operator are the greater risk to a quiet courtroom, not the lesser. The Ruling does not say otherwise. It says that serving as the pool reporter "is fundamentally different from using a personal audio recorder, as Rule 122 recognizes." The difference it identifies is who is recording, not what the device does.

7. The effect is that the Court chose a broadcaster whose recording would reach the public and barred the public's own recorder from the same room. That broadcaster decides, alone and without any duty to the public, what portion of the proceeding is aired and how it is framed. A member of the public with an audio file decides nothing for anyone but himself, and can be checked against the record by anyone who was there. I do not need to show that any outlet's coverage favors any party. The rule is defective because it lets a judge pick the speaker, and the Ruling shows a judge doing it.

8. A rule that lets a court call a quiet recorder a disruption, while it admits the equipment that is, has stopped being a rule about disruption. It has become a rule about control of the public's account of the proceeding, and its openness commitments are decoration. Rule 122 states a right in (h), a hearing in (c)(3), and findings in (d)(1). The Ruling shows all three can be set aside by a judge with no cost to him, because Rule 122 has no consequence for the court that disregards it. In the sense that matters to the public, Rule 122 is a vacant authority: it binds the person who invokes it and no one else.

9. How is it explained? It is not. The Ruling gives two reasons. The first, "potential for disruption," is refuted by the Court's own order admitting a camera and microphone to the same hearing. The second, that a pool reporter is "fundamentally different," restates the classification without justifying it: it says the broadcaster is treated differently because it is the broadcaster. Neither is a reason that connects the line the Court drew to any purpose the Court is entitled to pursue. The Ruling also treats the Court of Appeals' one-sentence decline of jurisdiction as approval of the merits, which it was not.

10. The Ruling's reliance on "prior orders" fails for a further reason. It says the Court "has previously entered orders that it is not allowing members of the public to record proceedings in this case using personal audio recorders due to the

potential for disruption," and that "this Court's previous order still stands." Those orders were entered when no one was permitted to record. Whatever a blanket prohibition could be said to justify while it applied to everyone, it cannot justify a prohibition that applies to everyone but one. On November 6, 2026 the Court changed the footing of every earlier order by granting KVOA-TV a video camera and a lavalier microphone for the November 17 hearing. (Ex. E.) After that order, the earlier prohibition has no rationale that the Court has stated and applies only to those outside the Court's chosen exception. The Court may not rely on an old order whose premise it has itself abandoned.

11. The November 6 order also did what Rule 122 does not allow. It ends: "IT IS FURTHER ORDERED that no further requests for audio or video recording will be granted for this hearing." (Ex. E at 2.) That sentence denied, in advance and without a hearing or findings, every request that had not yet been made, including the notice I filed three days later. Rule 122(c)(3) requires a hearing before a court denies a request it intends to deny, and Rule 122(d)(1) requires specific findings. A pre-emptive denial of unknown future requests is neither.

12. Nor does the record show how the exception came to be made. The Order recites that the Court "received a request from KVOA-TV," that the parties were advised, and that there was no objection. (Ex. E at 1.) I have reviewed the docket in this case. It reflects my filings and the Court's rulings, but no motion, request or notice filed by KVOA-TV. The request on which the Court acted is not in the public record, and the public, who had no notice that it was pending, had no opportunity to be heard on it. A court that grants access to one outlet by an unfiled request, on notice to the parties only, and then declares the matter closed to everyone else, has not administered justice "openly." Ariz. Const. art. 2, § 11.

13. Nor does the federal decision the Ruling cites say what the Ruling says it does. The Ruling states that "the United States District Court has held that this

Court's orders denying the use of a personal audio recorder in this case does not violate the requestor's constitutional rights," citing Peltz v. Metcalf, No. CV-25-00165-TUC-SHR (D. Ariz. Mar. 20, 2026) (Ex. C). That is not what Peltz decided, and the decision is not final: the plaintiffs appealed on April 16, 2026, and the appeal is docketed in the Ninth Circuit as No. 26-2529. (Ex. D.) The plaintiffs in Peltz were Vernon Peltz, Mark Brown and Roy Tripoloni, not I and not the "requestor" in this notice. They sued Judge Metcalf and court security staff on First Amendment and due process claims, challenging an earlier order barring recording except through the court's livestream and courthouse cell-phone and recording restrictions. The district court dismissed on a Rule 12(b)(6) motion, with prejudice, on the ground of qualified immunity: the plaintiffs had not shown a violated and clearly established right. It said they had not shown "any established federal law or constitutional right underlying their claims," and that courthouses are nonpublic fora in which reasonable, viewpoint-neutral limits are allowed. It did not hold that any order of Judge Metcalf denying a personal audio recorder was constitutional, and it could not have: qualified immunity asks only whether a right was clearly established, and the court declined to reach the defendants' other arguments. No equal protection claim was before it. More fundamentally, Peltz concerned a different situation. As the plaintiffs there described the order, it barred recording by everyone except through the court's own livestream, so no one outside the Court was allowed to record, and a claim of unequal treatment had nothing to stand on. Here the Court has now admitted a television camera and microphone, so the question is whether it may let one party record and bar another. Peltz did not and could not decide that, because that order did not yet exist. And the person excluded is not asking under the media-request procedure of Rule 122(c). He is invoking Rule 122(h), a separate subsection that gives a member of the public the right to use a personal audio recorder on notice. Peltz did not hold that this right may be

denied to one member of the public while others are allowed to record. Peltz's remark that Rule 122(h) "imposes no such requirement" answered the plaintiffs' claim that subsection (h) itself requires a hearing. It says nothing about Rule 122(c)(3), which requires a hearing before a judge denies a request, or about Rule 122(d)(1), which requires findings. A dismissal on the pleadings of other litigants' claims, under appeal, is not an adjudication that this notice, or this Court's treatment of it, is constitutional, and a ruling that treats it as one has mischaracterized the decision.

14. That is unequal treatment without a rational basis, and it is what the Constitution forbids. The Equal Protection Clause protects a person intentionally treated differently from others similarly situated without a rational basis for the difference. Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). Where the State opens a forum to some speakers, it may not choose among them by who they are. Police Dep't of Chicago v. Mosley, 408 U.S. 92, 95–96, 101 (1972). The Court admitted the broadcaster's equipment, which would carry the proceeding to a far larger audience than a handheld audio file, and barred the public's. The disruption rationale applies with more force to the former than to the latter, so it cannot explain the line. Arizona's Constitution says the same in its own words. It requires that "[j]ustice in all cases shall be administered openly," Ariz. Const. art. 2, § 11, and it declares that privileges and immunities granted to any citizen, class of citizens, or corporation must, "upon the same terms," belong equally "to all citizens or corporations," id. § 13.

15. I recognize that the federal decisions on which the Task Force relies hold that there is no unfettered or clearly established right to record court proceedings, and I do not argue otherwise. The argument here is narrower and does not depend on any such right. When a court, under a rule that creates a recording procedure, admits recording by some and bars it for others, it must allocate that access on equal and rational terms. It must also follow the procedure its own rule

prescribes before it denies. “[W]hen a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause.” Evitts v. Lucey, 469 U.S. 387, 401 (1985). A court that grants one party’s request, denies another party’s notice with no hearing and no findings, and threatens the second with contempt for what the first is allowed to do has done neither. The Ruling is therefore not an unreviewable matter of courtroom management. It is a ruling that violates the equal protection and due process guarantees and Arizona’s open-courts and equal-privileges provisions.

III. THE CASE THAT BROUGHT THIS RULE TO THE COURT

16. The Task Force petition and its predecessor, R-25-0031, did not arise from a record of recording abuse. According to my Reply in R-26-0051 (Part XI) and the filings it cites, R-25-0031 was authored by Matthew Walker, the Tucson City Prosecutor, who is the husband of the complainant in State v. Myers and who testified for the State in that case. It cites a single example of Rule 122(h) being “misused — if not openly weaponized”: a YouTube video about Mr. Myers’s own cases. The Arizona Prosecuting Attorneys’ Advisory Council then commented in support, describing Mr. Myers’s livestreaming as a “weaponization of technology.” (APAAC Comment at 2.) I did not combine a rule petition with a criminal case, and neither did Mr. Myers. The author of the petition did, by choosing a defendant in his own household’s case as the single example for expanding judicial control of recording.

17. The record has since changed. Press reports in early November 2026 state that on November 2 Tucson police executed a search warrant at the Walkers’ home and seized fifteen items, including a City of Tucson laptop issued to Mr. Walker; that a warrant return unsealed on November 3 states that at least two of the

emails relied on against Mr. Myers came from an internet protocol address associated with the Walkers' home; that the City of Tucson placed Mr. Walker on paid administrative leave while police investigate "possible misconduct"; and that the Pima County Attorney's Office opened its own investigation. See, e.g., Tucson Police Look into Whether City Prosecutor Faked Evidence, KGUN 9; Tucson Prosecutor's Home Linked to Emails in Stalking Case, KVOA; Tucson Prosecutor Placed on Leave as Police Investigate 'Possible Misconduct,' Arizona Daily Star (Nov. 2026). I do not ask the Court to decide who sent any email or whether anyone fabricated anything. Those questions belong to the investigations. I report these facts because they bear on the only thing this Court is asked to decide: whether the courts need more power to restrict recording.

18. The connection between Mr. Walker's petition and this one is on the Court's own record. R-25-0031, filed January 10, 2025 by Matthew A. Walker as Principal Assistant Prosecuting Attorney of the Tucson City Attorney's Office, asked the Court "to broaden the power of a court to restrict recording or broadcasting court proceedings." It was referred to the Task Force, and the Task Force's petition R-26-0003 asks the Court to review and then dismiss R-25-0031 and to consider R-26-0003 in its place. R-26-0003 is thus the Task Force's vehicle for the subject Mr. Walker raised. I do not claim that his petition caused the Task Force to be created. Administrative Order 2025-89 describes a rules-restyling project. The claim is narrower and is established by the docket: the recording provisions of R-26-0003 descend from a petition filed by the husband of the complainant in a live criminal case, in which he was also a State witness, and that petition used the defendant in that case as its only example of misuse.

19. A litigant with a personal stake in a pending case who uses the Court's rulemaking process to expand judicial control over recording in that very case presents a serious question of propriety, apart from anything the investigations

find. Mr. Walker's role in the case is now itself the subject of a police investigation and of administrative leave from his office. I draw no conclusion about the outcome of those investigations. The point is that the rulemaking Court should not build a rule on a petition that the author had every personal reason to want, whose single example is a case in which he is now under scrutiny, and which was not examined by anyone who was not part of the institution it benefits. The remedy is to decline to rely on R-25-0031 and on the premises it carried into R-26-0003.

20. They do not. The petition's single example of weaponization is a defendant in a case in which the complainant's household is now the subject of a police investigation, and whose public videos are among the means by which the public could see how those proceedings were conducted. The argument that Rule 122 was "weaponized" by Mr. Myers is contradicted by the record in State v. Myers: Rule 122(h) was invoked by members of the public, and the court answered by denying it. The rule was not used as a weapon. It was disregarded as a rule. If the petition's founding example is the reason to give judges more latitude, the case is a reason to give them less: the Myers proceedings show what unchecked discretion over recording and access produces.

21. The proponents' theory, then, is that Myers shows courts need more power to restrict recording, and the record shows the reverse. In this case the trial court already held every power the proponents say courts lack. It barred personal audio recorders by standing order, citing only a "potential for disruption." It denied requests and a reconsideration without the hearing and findings Rule 122 describes. It admitted a broadcaster while excluding a member of the public. It threatened expulsion and contempt before anyone had done anything. And no reviewing court has examined any of it: the Court of Appeals declined jurisdiction in a sentence, and the petition for review has been pending since September 18. What this record demonstrates is that Rules 122 and 122.1 are too lax on the court,

because they give a judge room to do all of that and set no consequence when he does. The harm the proponents describe, harassment of a complainant, is the province of the criminal law and of injunctions, which were used here. A recording rule is not the tool for it, and tightening one against the public would not have prevented any of what the record shows.

IV. WHAT THE REVISED PROPOSAL WOULD DO

I have read the Task Force's September 2026 reply and its proposed Rules 122.1 and 122.2 as posted on the Rules Forum. As I read them, the revised proposal would change the following features of the current rule. If I have misread any provision, I ask that this comment be read against the rule as the Court ultimately publishes it.

A. It abolishes the notice-only right in Rule 122(h).

22. The revised text drops the term "personal audio recorder" and the notice-only mechanism. Every recording by a member of the public becomes a request, with filing deadlines measured in calendar days before the proceeding. The (h) right exists precisely because the people who most need to record are those who learn of a hearing late, cannot afford a transcript, or are not parties: observers, family members, and the press. A person who learns of a hearing within the deadline window loses the right under the new text; under the current rule he keeps it.

B. It lets a judge deny an untimely request without a hearing.

23. Under the revised proposal a timely request that a judge intends to deny gets a hearing, but an untimely request "may be denied" without one. The deadline thus becomes the gate to due process. This is the mirror image of what happened to me: I gave notice eight days before the scheduled hearing, and still received no hearing. A rule that withholds the hearing from late requesters, and a bench that

withholds it from timely ones, leaves the written hearing guarantee with nothing to operate on.

C. It adds a status-based factor and an unbounded catch-all.

24. Among the factors the revised proposal directs a judge to weigh is whether the requester is "engaged in the dissemination of news," together with a catch-all for "any other factor affecting the administration of justice or court security." The first writes into the rule the very distinction the Ruling drew when it called a pool reporter "fundamentally different" from a member of the public. The second means no denial can be wrong, because any reason the judge supplies is a "factor." Together they authorize what the notice calls a tiered system: access determined by occupation and by the judge's unreviewable view of what affects the administration of justice.

25. A government that grants access to some speakers and withholds it from others must do so under standards that are, in the Supreme Court's words, "objective, workable." Minnesota Voters Alliance v. Mansky, 138 S. Ct. 1876, 1891 (2018); see id. at 1888; Forsyth County v. Nationalist Movement, 505 U.S. 123, 130 (1992) (standardless discretion to burden expression is itself the defect); Police Dep't of Chicago v. Mosley, 408 U.S. 92, 95–96 (1972) (government may not choose who gets access based on who the speaker is). A catch-all is the opposite of an objective standard, and an occupational status factor is the opposite of equal treatment. Cf. Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (equal protection protects a "class of one" intentionally treated differently from others similarly situated without rational basis).

D. It keeps review "only by special action" and adds removal and contempt.

26. The revised text provides that a ruling on a request is "reviewable only by special action," allows the findings to be made in a minute entry or order, and

expressly lists removal and contempt among the available sanctions. A reviewing court that may decline jurisdiction in a sentence, a bench that may make findings in a minute entry, and a sanction regime that attaches to the person rather than the order, together mean that the rule protects the judge at every step and the requester at none.

V. THE RULE'S GUARANTEES ARE ONLY AS REAL AS ITS ENFORCEMENT

27. The core defect in current Rules 122 and 122.1 is not what they say. It is that nothing happens when a court does not follow them. The hearing in Rule 122(c)(3) was not held. The findings in Rule 122(d)(1) were not made. The notice-only right in Rule 122(h) was treated as a request to be granted or denied. Each of those obligations is written as mandatory, and each was disregarded without consequence to the court. A mandatory rule with no remedy is advice.

28. When the State chooses to create a procedure, it must run it fairly. "When a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause." Evitts v. Lucey, 469 U.S. 387, 401 (1985). The question under due process is whether a person has "an opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)); see also Logan v. Zimmerman Brush Co., 455 U.S. 422, 432 (1982) (state-created procedures may not be applied in a way that denies the claimant a meaningful opportunity to be heard); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (notice must be reasonably calculated to give a party an opportunity to present objections). A notice given days in advance and answered by a ruling issued the next afternoon, without hearing or findings, is neither.

29. The revised proposal does not close this gap. It enlarges it. It converts a mandatory pre-denial hearing into a hearing available only to timely requesters, converts specific findings into whatever a minute entry says, and converts the sole remedy into a discretionary one.

VI. SPECIAL ACTION IS NOT A REMEDY FOR THESE RULINGS

30. The revised proposal's reliance on special action as the exclusive route of review is the point on which my own experience bears most directly, and I ask the Court to look at it as an empirical matter. Earlier in State v. Myers, the same court entered an order barring personal audio recorders. I sought special action review in the Court of Appeals, Division Two (2 CA-SA 2026-0068). On August 21, 2026, that court declined jurisdiction in one sentence. (Ex. F.) A petition for review of that decision (CR-26-0273-PR) has been pending in this Court since September 18, 2026. Meanwhile, the trial court has now treated the Court of Appeals' decline of jurisdiction as a merits ruling: "the Court of Appeals denied his appeal. Consequently, this Court's previous order still stands." (Ex. B.)

31. That is the system the revised text calls the exclusive remedy. Special action is discretionary, so the court of appeals can decline it without reasons. Declining it, in practice, leaves the lower court's order intact and then supplies the lower court with a reason to say its order has been "upheld." The person who sought review has spent months and a petition for review to learn nothing about whether the rule was followed. Review that arrives after the hearing it concerns is no review at all. The right at stake—contemporaneous access to a public proceeding—is lost when the proceeding ends.

32. If special action is to remain the route of review, the rule must say that a court may not decline to reach a Rule 122 denial without addressing whether the required hearing and findings occurred. Better, a denial should be reviewable by

ordinary expedited process. The Court should not codify "reviewable only by special action" when the record shows that special action does not review.

VII. THE PETITIONER IS THE TASK FORCE, AND THE TASK FORCE IS THE INSTITUTION

33. R-26-0003 is not advice offered to the Court by an outside body. It is a petition filed by the Task Force on Rules of the Supreme Court of Arizona, established by Administrative Order No. 2025-89, through its Chair, Vice Chief Justice John R. Lopez IV of this Court. The Task Force also filed the September 2026 reply that produced the revised proposal. According to its published membership list, its members include further justices of this Court, judges of the Court of Appeals and the Superior Court, Administrative Office of the Courts personnel, and lawyers from the Attorney General's Office and the State Bar. Judge D. Douglas Metcalf, who entered the Ruling in Exhibit B, is a member. The petitioner and the body that will decide the petition are drawn from the same institution, and the petitioner's Chair sits on the deciding Court. (See Reply in R-26-0051, Part XI.)

34. The rules at issue govern how much the public may see of that institution. A rule that expands judicial discretion, confines review to a discretionary remedy, and attaches removal and contempt to the requester is the rule most favorable to the body that wrote it. That is the oldest structural problem in the law: no one should be the judge in his own cause. Dr. Bonham's Case, 8 Co. Rep. 107a, 118a (C.P. 1610); Tumey v. Ohio, 273 U.S. 510, 523 (1927). The test is objective and requires no proof of bad faith: "justice must satisfy the appearance of justice." Offutt v. United States, 348 U.S. 11, 14 (1954).

35. Part I of this comment shows the problem is no longer abstract. A member of the Task Force, in a case the Task Force's own work touches, denied a member of the public the recording right Rule 122(h) provides, on the strength of

orders this comment shows to be unreviewed, and threatened expulsion and contempt for exercising it. I do not ask the Court to find that any member acted in bad faith. Structure alone requires the remedy I seek in Part XI.

VIII. THE COURT'S AUTHORITY RESTS ON JUDGMENT THE PUBLIC CAN SEE, NOT ON FORCE

36. The Ruling cites Peltz as though another judge's dismissal of a claim against Judge Metcalf confirmed that what he is doing is right. It does not, and the order itself says so. Peltz dismissed on qualified immunity, which shields an official from suit unless the right was clearly established, and the court stated that it "need not address the additional arguments raised in the Motion to Dismiss." (Ex. C at 3 n.2.) A ruling that an official cannot be sued is not a ruling that he acted rightly, and it is no answer to the standard that governs this Court's own conduct: "justice must satisfy the appearance of justice." Offutt v. United States, 348 U.S. 11, 14 (1954). That standard asks what the public can see. A federal court declining to hold a state judge liable in damages does not show the public that a quiet audio recorder is a disruption and a television camera is not.

37. Rule 122 exists for that reason. It is the means by which the public can see what the courts do, and so it is the means by which courts earn the authority they claim. A court has no army. Hamilton wrote that the judiciary "may truly be said to have neither FORCE nor WILL, but merely judgment." The Federalist No. 78. What a court has, therefore, is the voluntary adherence of the people to its rulings, and that adherence follows the judgment those people can see to be sound. Contempt and expulsion are legitimate tools for keeping order in a hearing. They are not a substitute for the judgment itself, and they cannot be the means by which a court defends its control over how much of itself the public may see.

38. That is the use the Ruling makes of them. A court that admits a broadcaster and then threatens a member of the public with expulsion and

contempt, before any act, for a quiet audio recorder, is deciding who may carry its proceedings outside the courtroom and enforcing the decision with the power to jail. Calling that the control of disruption does not make it one. Compliance obtained this way sorts the public into those who comply regardless of whether the ruling is sound and those who conclude that the court does not belong to them. Neither is the voluntary adherence on which a court's authority depends.

39. The revised proposal would write that sorting into the rule: a status factor for those "engaged in the dissemination of news," an uncontestable catch-all, review only by a discretionary remedy, and removal and contempt for those on the wrong side of the line. Authority is restored the way it is lost, by judgment the public can observe and test: a presumption of openness, equal terms for all who record, written reasons for any restriction, and a remedy when a court does otherwise.

IX. THIS COMMENT IS NOT ADVOCACY FOR ANY LITIGANT

40. I am not a party to State v. Myers, and I do not speak for Mr. Myers or anyone else. My interest is that of any member of the public who observes proceedings and records them to understand them accurately. A comment on public access rules is not a comment on the merits of any criminal case.

X. INCORPORATION BY REFERENCE

41. I incorporate by reference, in full and as though set out here, the following filings in this Court, which are already of record and which I do not reproduce:

(a) my Petition to Amend Rule 122, Rules of the Supreme Court of Arizona, No. R-26-0051 (dated August 2, 2026), including its Parts I through XX and its proposed rule text in Part XIX, and in particular Part XIV (the ethical dimension of R-25-0031), Part XVII (relationship to R-25-0031 and the Task Force's

superseding petition), and Part XVIII (the Task Force Petition confirms, rather than answers, the petition's concerns); and

(b) my Reply to the Comment of Monika Jane Browatzki in R-26-0051 (dated October 4, 2026), including its Parts I through XIV and the Appendix to that Reply, and in particular Part VIII (the authority the current rule preserves is thin and unreviewable, and the Myers record), Part XI (the institution cannot be the sole judge of its own openness), Part XII (amendment to proposed section (e)), and Part XIV (relief requested).

42. Everything those filings say about the presumption of public recording, the appearance of justice, the failure of discretionary and special-action review, the elastic sanctions that follow recording, and the composition of the Task Force applies to R-26-0003 and the revised proposal, and I ask that it be considered part of this comment. Those filings and this comment, together with the Exhibits, are my response to R-26-0003 in its original and revised forms.

XI. RELIEF REQUESTED

For these reasons, and for the reasons stated in the filings incorporated above, I respectfully request that the Court:

1. Deny R-26-0003 in its entirety, in both its original and revised forms, and decline to adopt proposed Rules 122.1 and 122.2.

2. Disband and dissolve the Task Force on Rules of the Supreme Court of Arizona established by Administrative Order No. 2025-89, or at a minimum withdraw its authority over Rules 122 and 122.1, and decide any further rulemaking on public recording of court proceedings in an open process that does not rest on a petitioner drawn from the institution whose openness is at issue and led by a member of the deciding Court. The relief rests on structural grounds and requires no finding that any member acted in bad faith.

3. Adopt the amendments to Rule 122 proposed in R-26-0051, as amended in Part XII of my Reply in that docket, establishing a presumption of public recording and requiring any restriction to be made by a standalone written order stating all of its reasons.

4. Deny R-25-0031 as well, as requested in paragraph (4) of my petition in R-26-0051.

5. Decline to treat the Myers matter as evidence that courts need greater authority to restrict recording, and instead take notice that it shows the authority courts already have under Rules 122 and 122.1 operating without any check.

6. Consider R-25-0031, R-26-0003 and R-26-0051 together at the December 2026 Rules Agenda and decide them as requested here.

7. If the Court declines to deny R-26-0003 in full, then in the alternative adopt none of the revised provisions in Part IV above, and adopt instead at least the following: (a) retain the notice-only right of Rule 122(h) with no deadline other than prior to use; (b) require a hearing before any denial, timely or not; (c) require specific, individualized, on-the-record or written findings, and provide that a generalized prediction of "disruption" is not a finding; (d) delete the news-dissemination factor and the catch-all; (e) limit removal and contempt to actual disruptive conduct, never to giving notice or stating an intent to exercise a right the rule recognizes; (f) provide expedited review of any denial or termination, and require a court on special action to address whether the required hearing and findings occurred; and (g) state that Rule 122.1(e) permits a judge to end disruptive activity that is occurring and does not authorize a standing prohibition on a recorder allowed under Rule 122.

A recording right that depends on who you are, when you learned of the hearing, and whether the judge chooses to explain is not a right. I ask the Court to

write the rule so that it cannot be set aside in a day, through a process the public can trust.

RESPECTFULLY SUBMITTED this 11th day of November, 2026.

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Jason Adam Jensen
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Tucson, Arizona 85705
jasonajensen@gmail.com

CERTIFICATE OF SERVICE

I certify that on November 11, 2026, I filed the original of this Comment, with its Appendix, with the Clerk of the Supreme Court of Arizona, 1501 W. Washington Street, Room 402, Phoenix, Arizona 85007 (with one paper copy), in an envelope marked "Rule Comment" [or through the Court's Rules Forum], and that on the same date, as the Court's November 5, 2026 order requires, I sent a copy to the Petitioner, the Task Force on Rules of the Supreme Court of Arizona, by email to its committee support staff at vgonzales@courts.az.gov.

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Jason Adam Jensen