

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Jason Gerhard

Plaintiff,

v.

TERRENCE REIDY, in his official capacity as secretary of the Executive Office of Public Safety and Security (EOPSS), and ANDREA JOY CAMPBELL, in her official capacity as Attorney General of Massachusetts,

Defendants.

Civil Action No. 1:24-cv-10270

CIVIL ACTION TO REDRESS

**DEPRIVATION OF RIGHTS AND
FOR DECLARATORY JUDGMENT**

Jury Trial Demanded

INTRODUCTION

1. I, Jason Gerhard, am one of the people¹ and a Citizen² of New Hampshire, residing in Merrimack County. I present myself *in propria persona* in this action to seek redress for the deprivation of my rights and a declaratory judgement in a case of actual controversy arising under the Constitution. But for the defendants' misapplication of the firearms licensing scheme, I would keep and bear arms during my frequent travels into Massachusetts.

¹ *District of Columbia v. Heller*, 554 U. S. 570, 580 (2008): The term [people] unambiguously refers to all members of the political community, not an unspecified subset. As we said in *United States v. Verdugo-Urquidez*, 494 U. S. 259, 265 (1990): "... 'the people' protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."

² A Citizen within the meaning of Art. 4 Section 2 of the Constitution.

DEFENDANTS

2. Terrence Reidy (“Secretary Reidy”) is the secretary of the Executive Office of Public Safety and Security, hereinafter “EOPSS.” He is the chief firearms licensing authority in Massachusetts and is vested with the authority to implement, to interpret, to enforce, and to administer the state's statutory scheme³ for firearms licensing through the Department of State Police, the Firearm Licensing Review Board (FLRB), and the Department of Criminal Justice Information Services (DCJIS) as authorized by *G. L. c. 30A, § 1(5)*, *G. L. c. 6A, § 2*, and *G. L. c. 6A, § 18*. Secretary Reidy’s place of office is 1 Ashburton Place, Suite 2133, Boston, MA 02108. His publicly listed contacts are: Phone 617-727-7775 and Email: eopsinfo@state.ma.us.
3. Andrea Joy Campbell (“AG Campbell”) is the Attorney General of Massachusetts. She is the chief prosecuting officer in Massachusetts and is vested with the authority to protect the people by prosecuting crime in accordance with *G. L. c. 12, § 3*. AG Campbell’s place of office is 1 Ashburton Place, 20th Floor, Boston, MA 02108. Her publicly listed contacts are: Phone 617-727-2200 and Email: ago@state.ma.us.

VENUE, FORUM AND JURISDICTION

4. The United States District Court for the District of Massachusetts is the proper venue in accordance with *28 U.S.C. § 1391(b)(1)*, as all the defendants are residents of the State in which

³ “Discussion of the statutory scheme governing licensing of firearms. ... 1. Statutory scheme. ... The historical aim of licensure generally is preservation of public health, safety, and welfare by extending the public trust only to those with proven qualifications.” *Mirko Chardin v. Boston Police Commissioner*, 465 Mass. 314, 315 (2013).

the district is located. This Court is a court of record created under [28 U.S.C. § 132](#), and vested by Article III, Section 1 of the Constitution with the judicial Power of the United States.

5. This District Court has original jurisdiction of all civil actions arising under the Constitution pursuant to [28 U.S.C. § 1331](#), including a civil action to redress deprivation of rights pursuant to [28 U.S.C. § 1343\(a\)\(3\)](#) and [42 U.S.C. 1983](#). Further, this action seeks a declaratory judgment in a case of actual controversy pursuant to [28 U.S.C. § 2201](#), with further necessary or proper relief as may be granted under [28 U.S.C. § 2202](#).

6. Actual controversy has arisen because the defendants are conspiring under color of state statutes to deprive me of my right to keep and bear arms, within the meaning of [42 U.S.C. 1983](#). “The declaratory judgment procedure is an alternative to pursuit of the arguably illegal activity;” [Steffel v. Thompson](#), 415 U.S. 452, 480 (1974), and “where threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat.” [Medimmune, Inc. v. Genentech, Inc.](#), 549 U.S. 118, 128-29 (2007). “Instead, we have permitted pre-enforcement review under circumstances that render the threatened enforcement sufficiently imminent. Specifically, we have held that a plaintiff satisfies the injury-in-fact requirement where he alleges ‘an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by [the defendant], and there exists a credible threat of prosecution thereunder.’” [List v. Driehaus](#), 573 U.S. 149, 159 (2014).

7. As such, the standing and ripeness requirements of jurisdiction are met, because “the injury threatened by ... unconstitutional [enforcement under color of law] is present and real ... and will become irreparable if relief be postponed to that time, a suit to restrain future enforcement ... is not premature. [Pierce v. Society of Sisters](#), 268 U.S. 510 (1925).

8. Furthermore, should AG Campbell or her agents prosecute me for keeping and bearing arms without a license, the judicial Power of the United States would not protect me. As this Court “may not grant an injunction to stay proceedings in a State court,” [28 U.S.C. § 2283](#), and “Federal courts will not enjoin pending state criminal prosecutions except under extraordinary circumstances” [Younger v. Harris](#), 401 U.S. 37 (1971). Therefore, this Court has original jurisdiction arising under the Constitution.

STATEMENT OF THE CLAIM

9. No one disputes my right to keep and bear arms in New Hampshire, and I it is my wish to exercise this same unalienable, individual right whenever I may sojourn into Massachusetts, as covered by the plain text of the Second Amendment. However, the defendants have conspired to deprive me of these secured rights by deliberately misconstruing and misapplying the statutes enacted to regulate persons carrying on the business of a gunsmith or a retailer, or for the professional licensing of public safety and security personnel.

10. My action is an as-applied challenge “brought against defendants who, claiming to act as officers of the State, and under color of a statute which is valid and constitutional, but wrongfully administered by them, commit, or threaten to commit, acts of wrong or injury to the rights and property of the plaintiff, or make such administration of the statute an illegal burden and exaction upon the plaintiff.” [Pennhurst State School & Hospital v. Halderman](#), 465 U.S. 89, 136 (1984).

11. Where each allegation is not denied by the defendants, it is admitted in accordance with [Federal Rules of Civil Procedure 8 \(b\)\(6\)](#), and the court may declare the law as follows:

ALLEGATIONS

- I. To obtain a firearms license, *G. L. c. 140, § 131(i)* or *G. L. c. 140, § 129B* requires an applicant to pay \$100, “to the licensing authority,” defined by *G. L. c. 140, § 121* to mean the town police chief or the colonel of the state police. *G. L. c. 140, § 122* authorizes the town police chief to issue licenses “to sell, rent or lease firearms, rifles, shotguns or machine guns, or to be in business as a gunsmith;” while *G. L. c. 147, § 25* authorizes the colonel of the state police to issue licenses to private detectives or to those who “protect persons or property” for hire or reward. But neither the police chief, nor the colonel of the state police has authority to issue a license to bear arms, as secured by the Constitution.
- II. *G. L. c. 119A, § 16* defines “licensing authority” as “any department, bureau, authority, division, board, commission, unit or other entity of the commonwealth, any political subdivision or agency thereof, or any city or town of the commonwealth, which issues licenses,” and *G. L. c. 6, § 172N* provides that a “‘licensing authority’ shall include an agency, examining board, credentialing board, or other office or commission with the authority to impose occupational fees or licensing requirements on a profession.” But no licensing authority can “impose a charge for the enjoyment of a right granted by the Federal Constitution.” *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943).
- III. The state’s broadest definition of a “license,” at *G. L. c. 119A, § 16*, means “any license, permit, certificate, registration, charter, authority or any other form of permission required by law for the operation or use of property, the conduct of an activity or the carrying on of a trade or business, including, but not limited to, any professional, trade, business,

occupational, commercial, recreational or sporting license or permit, driver's license, learner's permit, right to operate a motor vehicle, or certificate of motor vehicle registration.” *G. L. c. 140, § 131* states “A license shall **entitle** a holder thereof ... to purchase, rent, lease, borrow, possess and carry...firearms,...” emphasis added. But none of these licensed *entitlements* include a right secured by the Constitution.

IV. *G. L. c. 6, § 172B.5* “require[s] applicants for licenses in specified occupations to submit a full set of fingerprints.” While the state may require fingerprinting for a license to carry firearms as an occupation, no law requires the submission of fingerprints for the enjoyment of the right to keep and bear arms for personal use, as secured by the Constitution.

V. *803 CMR 2.01* is a regulation published by Secretary Reidy’s EOPSS through its subordinate department, the Department of Criminal Justice Information Services (DCJIS) under authority of *G. L. c. 6, §172*. It provides, that the “Purpose and Scope” of the Criminal Offender Record Information (CORI) background check is for “the purpose of evaluating applicants for employment, volunteer opportunities, or professional licensing.” But no published law imposes a background check for the enjoyment of the individual right to keep and bear arms for personal use, as secured by the Constitution.

VI. Legislation empowers Secretary Reidy to regulate officers, retailers, gunsmiths, private detectives, security guards, and other persons whose profession or occupation requires them to handle firearms; but, no legislation authorizes him to regulate or to license my individual right to keep and bear arms for personal use. If such power was ever granted, then under the major questions doctrine, he must point to clear legislative authorization for the authority he claims, *West Virginia v. E.P.A.*, 597 U.S. ____ (2022).

- VII. Legislation empowers AG Campbell to prosecute crime to protect people; but, no legislation authorizes her to prosecute conduct presumptively protected by “the Second Amendment’s unqualified command,” such as my “individual right to keep and bear arms for self-defense.” *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. ____ (2022).
- VIII. My individual right to keep and bear arms for personal use, the defence of my life and property, farming and hunting, to aid the civil authority, to support the common defence, and for the security of a free State is guaranteed by the plain text of the state laws⁴, the Massachusetts and Federal constitutions. The Second Amendment right is “not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument [or a license] for its existence.” *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008).

PRAYER FOR RELIEF

WHEREFORE, I, Jason Gerhard pray that the Court:

12. Enter a declaration verifying the truth of the forgoing allegations I through VIII;
13. Enter an order enjoining defendants from misapplying the state’s statutory scheme governing licensing of firearms against my individual right to keep and bear arms;
14. Award remedies cognizable under *42 U.S.C. 1983*, and court costs and expenses under *42 U.S.C. 1988*, or any applicable law; and,
15. Grant any such other and further relief as the Court may deem proper.

⁴ *G. L. c. 62C, § 55A, G. L. c. 149, § 177, G. L. c. 131, § 78, G. L. c. 269, § 4, G. L. c. 60, § 24.*

JURY DEMAND

I demand a trial by jury of all issues so triable under Federal Civil Procedure [Rule 38](#).

RULE 11(b) CERTIFICATION

I certify to the best of my knowledge, information, and belief that this complaint complies with the requirements of [Rule 11\(b\)](#).

Dated: February 1st, 2024.

Respectfully submitted,

Jason Gerhard
in propria persona
107 N. Main Street
Concord, NH 03301
Voicemail/Phone: 603-499-7919
[BearArmsUSA@protonmail.com](mailto: BearArmsUSA@protonmail.com)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Jason Gerhard

Plaintiff,

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TERRENCE REIDY, in his official capacity as
secretary of the Executive Office of Public
Safety and Security (EOPSS), and ANDREA
JOY CAMPBELL, in her official capacity as
Attorney General of Massachusetts,

Defendants.

CIVIL ACTION

No. 1:24-cv-10270-AK

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

I, Jason Gerhard, a Citizen of New Hampshire, present myself *in propria persona* to oppose the defendants' motion to dismiss, ECF No. 13 and 14, pursuant to [*Local Rule 7.1*](#).

COUNTER ARGUMENTS

I. I have standing to challenge the defendants' application of the Massachusetts' firearm licensing scheme as they may apply it to me.

The defendants assert that I lack "standing to challenge Massachusetts' firearm licensing scheme because [I'm] already prohibited from possessing a firearm under both New Hampshire and federal law," defendants' memorandum ECF No. 14, page 2. This assertion combines a logical fallacy that undermines the truthfulness and credibility of their argument with a factual inaccuracy, which I am prepared to disprove.

In order to extend an unwarrantable jurisdiction to deprive me of my rights, the defendants employ *equivocation*, a logical fallacy in which similar words or phrases are given an equivalent meaning. This tactic sows ambiguity and ultimately leads to faulty conclusions. In this case, the defendants improperly equate the licensed entitlement to “possess and carry firearms” in specified occupations with my constitutionally secured right to “keep and bear Arms” for myself. In essence, they use equivocation to suggest that “Those prohibited from possessing or carrying firearms are prohibited from keeping and bearing Arms.”

The defendants willfully employ this scheme to suppress the fact that “firearms possession” is a narrow statutory entitlement for “the carrying on of a trade or business” or the duties of persons in “specified occupations,” see ECF No. 1, Allegations I-V, pages 5-6. This error of law grossly violates the ordinary rules of statutory construction, see **III** below.

At issue is not whether “this Court would ... redress [my] inability to possess a firearm,” see ECF No. 14, page 1, as recast by defendants, nor is it a challenge of any statute, but rather:

Have the defendants deprived me of my rights to “keep and bear Arms” as secured by the Constitution under the color of state laws, such as *G. L. c. 140, § 131*, which “shall entitle a holder thereof of a license” to possess or carry firearms?

To make this determination, it is imperative to differentiate the regulated entitlement to “possess or carry firearms,” from my constitutionally secured right to “keep and bear Arms.” As long as the defendants refuse to define the illegal conduct “with sufficient definiteness that ordinary people can understand what conduct is prohibited,” *Kolender v. Lawson*, 461 U. S. 352, 357 (1983), I “cannot know the scope of [my] constitutional protection, nor can a policeman know the scope of his authority.” *New York v. Belton*, 453 U.S. 454, 459-460 (1981).

The defendants’ refusal to provide regulatory clarity blurs the “signposts to criminality” *United States v. CIO*, 335 U.S. 106, 142 (1948), and invariably risks or “encourage[s] arbitrary and discriminatory enforcement.” *Id.* *Kolender* at 357. Their threats of prosecution and imprisonment for crimes whose borders the defendants refuse to delineate impairs the free exercise of my rights, causing me insecurity and “an injury in fact,” which is a “concrete and particularized, actual or imminent invasion of a legally protected interest, ... likely [to] be redressed by a favorable decision.” See *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

If actual prosecution were to commence, the defendants would also violate procedural due process: “The Commonwealth violates the Federal and State Constitutions’ guarantees of procedural due process when it ‘tak[es] away someone’s life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.’” *Johnson v. United States*, 576 U.S. 591, 595 (2015).” *Vega v. Commonwealth*, 490 Mass. 226, 237 (2022).

Thus, the standing and ripeness requirements of jurisdiction are met, “where threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat.” *Medimmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007). “Instead, we have permitted pre-enforcement review under circumstances that render the threatened enforcement sufficiently imminent. Specifically, we have held that a plaintiff satisfies the injury-in-fact requirement where he alleges ‘an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by [the defendants], and there exists a credible threat of prosecution thereunder.’” *List v. Driehaus*, 573 U.S. 149, 159 (2014). See also ECF No. 1, pages 2-3.

II. No state or federal law prohibits my right to keep and bearing Arms.

The defendants claim that I am “already prohibited from possessing a firearm under both New Hampshire and federal law,” but my action is not about “possessing a firearm” as explicitly entitled by the State’s firearms licensing scheme, it’s about my “right to keep and bear Arms” as secured by the Constitution. Since the defendants have never defined, nor provided any guidance on how these activities differ, their assertion ought to be discarded as misleading.

In addition, their assertion is factually false, because I was recently granted a Certificate of Discharge, pursuant to N.H. [RSA 607-A: 5 II](#), which provides that my rights “are thereby restored and that [I] suffer[] no other disability by virtue of [my] conviction[s] and sentence except as otherwise provided by this chapter;” and nothing in N.H. RSA [Chapter 607-A](#) prohibits me from having a firearm, nor does any state or federal law prohibit my “right to keep and bear Arms” for my own self-defense.

III. The Court “need not conduct the two-step test articulated in [Bruen](#).”

The defendants state “the Court ... need not conduct the two-step test articulated in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen* ...,” ECF No. 14, page 4. I agree. Constitutional questions should be avoided, when ordinary rules of statutory construction would suffice: “The Court will not pass upon a constitutional question, although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. ... Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.”

[Ashwander v. Tennessee Valley Authority](#), 297 U.S. 288, 347 (1936).

My action is a question of statutory construction: **“What is the difference between the statutory entitlement to ‘possess or carry firearms,’ and my ‘right to keep and bear Arms’ according to the plain text of the Constitution?”** Only two logical choices exist. To “possess or carry firearms” is either the same as to “keep and bear Arms,” or something different.

Applying the ordinary rules of statutory construction announced by the Supreme Court, we see that “when a statute is reasonably susceptible of two interpretations, by one of which it is unconstitutional and by the other valid, the court prefers the meaning that preserves to the meaning that destroys.” *Panama Refining Co. v. Ryan*, 293 U.S. 388, 439 (1935); and “it is our plain duty to adopt that construction which will save the statute from constitutional infirmity. ... where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter. *United States v. Delaware & Hudson Co.*, 213 U.S. 366, 407-408 (1909) and *Jones v. United States*, 526 U.S. 227, 228 (1999).

In other words, where the statutory use of the term “possess and carry firearm” includes “the carrying on of a trade or business,” or the duties of persons in “specified occupations,” or other conduct not covered by the plain text of the Constitution, it is the Court’s “plain duty to adopt that construction,” and to “avoid an interpretation of a ... statute that engenders constitutional issues.” *Gomez v. United States*, 490 U.S. 858, 858 (1989). Ultimately, if a law is plausibly ambiguous and “if both the law and the Constitution apply to a particular case, ... the Constitution, and not such ordinary act, must govern the case to which they both apply.” *Marbury v. Madison*, 5 U.S. 137, 178 (1803).

Further, “The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself.” *United States v. Wiltberger*, 18 U.S. 76, 95 (1820). And “we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Thus, “We are required by ordinary rules of statutory construction to construe any criminal statute strictly against the Commonwealth.” *Commonwealth v. Wotan*, 422 Mass. 740, 742 (1996).

In short, this Court “need not,” and indeed *should not* conduct a *Bruen* analysis, as we are constrained to conclude that explicit statutory entitlements to “possess and carry firearms” must be different from my rights secured by the Constitution to “keep and bear Arms.”

IV. *Bruen* did not state that “states require a license to possess and carry a firearm.”

To be clear, just because the Court may not entertain a *Bruen* style analysis in this present action, doesn’t mean that constitutional challenges to shall-issue regimes have been ruled out. The defendants’ erroneous assertion that the *Bruen* Court “made clear that states may require a license to possess and carry a firearm,” ECF No. 14, page 4, is disputed for the record.

As the *Bruen* Court explained in footnote 9 on p. 30: “...because any permitting scheme can be put toward abusive ends, **we do not rule out constitutional challenges to shall-issue regimes.**” (Emphasis added.) While the Supreme Court did not perform a formal analysis of all firearms licensing schemes, it nonetheless did cast doubt on such practices, stating in its concluding remarks: “The constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’ We know of no other constitutional right that an individual may exercise only after

demonstrating to government officers some special need. ... And it is not how the Second Amendment works when it comes to public carry for self-defense.” *Id.* at 62-63.

Thus, subject to the defendants’ objection, if any, the *Bruen* Court established that “proper-cause” licensing schemes are unconstitutional, it “expressly rejected any interest-balancing inquiry,” it “[did] not rule out constitutional challenges to shall-issue regimes,” it *reiterated* that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct,” and the burden of persuasion is on “the government [to] justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at pages 2, 15, 30.

CONCLUSION

This Court has jurisdiction to compel defendants to disclose the standards by which they administer the State’s firearms regulatory scheme, because failure to clearly delineate criminal conduct from conduct presumptively protected by the Constitution deprives me of my substantive rights and procedural due process protections secured by the Constitution and laws. Therefore, the Court must **DENY** the defendants’ motion to dismiss.

Dated: March 21st, 2024.

Respectfully submitted,

/s/ Jason Gerhard
Jason Gerhard, *in propria persona*
107 N. Main Street
Concord, NH 03301
Voicemail/Phone: 603-499-7919
BearArmsUSA@protonmail.com

REQUEST FOR ORAL ARGUMENT

I request oral argument pursuant to *Local Rule 7.1(d)*, as I believe that it may assist the Court, and I wish to be heard.

/s/ Jason Gerhard
Jason Gerhard, *in propria persona*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the defendants by electronically filing through the Court's CM/ECF system.

Dated: March 21st, 2024.

Respectfully submitted,

/s/ Jason Gerhard
Jason Gerhard, *in propria persona*
107 N. Main Street
Concord, NH 03301
Voicemail/Phone: 603-499-7919
[BearArmsUSA@protonmail.com](mailto: BearArmsUSA@protonmail.com)

**UNITED STATES DISTRICT COURT
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TERRENCE REIDY, in his official capacity as secretary of the Executive Office of Public Safety and Security (EOPSS), and ANDREA JOY CAMPBELL, in her official capacity as Attorney General of Massachusetts,

Defendants.

CIVIL ACTION

No. 1:24-cv-10270-AK

MOTION FOR SUMMARY AND DECLARATORY JUDGMENT

I, Jason Gerhard, appearing *in propria persona*, respectfully move this Honorable Court, pursuant to [Rule 56](#) of the Federal Rules of Civil Procedure, for summary judgment. In the interest of justice and regulatory clarity, I request under [Rule 57](#) and [28 U.S. Code § 2201](#), that this Court declare that the State’s regulatory scheme for firearms licensing is fully constitutional as applied to professional licensing in specified occupations; however, it does not apply to my individual right “to keep and bear Arms” as secured by the Second Amendment. Specifically, the Court should declare that the Allegations I–VIII, set forth in the Complaint (ECF No. 1, pages 5–7), are true as a matter of law:

- I. Neither the local police chief, nor the colonel of the Massachusetts State Police has the authority to issue a license for the rights secured by the Constitution.
- II. The licensing authorities of “A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution.” *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943).
- III. The State’s “license to carry firearms” under *G. L. c. 140, § 131* does not license the enjoyment of rights secured by the Second Amendment.
- IV. The fingerprinting requirement under *G. L. c. 6, § 172B~1/2* applies to “applicants for licenses in specified occupations;” it does not apply to the enjoyment of rights secured by the Constitution.
- V. The “Purpose and Scope” of the background check under *803 CMR 2.01* is for “evaluating applicants for employment, volunteer opportunities, or professional licensing;” it does not apply to the enjoyment of rights secured by the Constitution.
- VI. Secretary Reidy promulgates regulations that license purchasers, gunsmiths, officers, private detectives, security guards, and other persons who possess or carry firearms in their profession or occupation; however, he does not license the individual right “to keep and bear Arms.”
- VII. AG Campbell is empowered to prosecute the use of firearms to carry out a criminal act, the unlicensed carrying on of a business where firearms are

possessed, or their use for hire or reward; however, she may not prosecute me for exercising my individual right to keep and bear arms for personal use.

VIII. The law guarantees the individual right to keep and to bear arms for personal use, self-preservation, the defense of life and property, aiding civil authority, the common defence, the security of a free State, and for farming, hunting, and subsistence. The Second Amendment right is “not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument [nor a license] for its existence.” *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008).

This motion is supported by the accompanying Memorandum of Law, and all other pleadings, materials, and references on file in this case.

REQUEST FOR ORAL ARGUMENT

I, Jason Gerhard, respectfully request oral argument pursuant to *Local Rule 7.1(d)*, as I believe that it may assist the Court, and I wish to be heard.

Dated: Dec. 9th, 2024.

Respectfully submitted,

/s/ Jason Gerhard

Jason Gerhard,
107 N. Main Street
Concord, NH 03301
Phone: 603-499-7919
BearArmsUSA@protonmail.com

CERTIFICATES OF CONFERENCE AND SERVICE

I certify, pursuant to [*Local Rule 7.1\(a\)\(2\)*](#), that I conferred with AAG Phoebe Fischer-Groban for the defendants and have attempted in good faith to resolve or narrow the issue.

I further certify that a true copy of this motion and supporting memorandum were served upon the defendants by electronically filing through the Court's CM/ECF system.

Dated: Dec. 9th, 2024.

Respectfully submitted,

/s/ Jason Gerhard

Jason Gerhard,
107 N. Main Street
Concord, NH 03301
Phone: 603-499-7919
[BearArmsUSA@protonmail.com](mailto: BearArmsUSA@protonmail.com)

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CIVIL ACTION

No. 1:24-cv-10270-AK

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S
MOTION FOR SUMMARY AND DECLARATORY JUDGMENT**

I. SUMMARY JUDGMENT:

This Court has jurisdiction to grant summary judgment declaring the rights, entitlements, and other legal relations respecting the State’s firearms regulatory scheme, including clarifying the legal distinction between “possessing and carrying firearms” and the right “to keep and bear Arms”...“with sufficient definiteness that ordinary people can understand what conduct is prohibited,” *Kolender v. Lawson*, 461 U. S. 352, 357 (1983).

Rule 56 of the Federal Rules of Civil Procedure provides: “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to

any material fact and the movant is entitled to judgment as a matter of law.” A fact “is material if it ‘has a natural tendency to influence, or [is] capable of influencing, the decision of’ the” trier of fact. *Kungys v. United States*, 485 U. S. 759, 770 (1988); and a dispute “is ‘genuine,’ ... if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In this case, the material facts are:

1. My wish to “keep and bear Arms” during my travels into Massachusetts is covered by the plain text of the Second Amendment.
2. As the secretary for the Office of Public Safety and Security, Defendant Reidy safeguards the public safety and security by promulgating regulations for the license to carry firearms (“LTC”), which “shall entitle a holder thereof ... to ... possess and carry... firearms,” see *G. L. c. 140, § 131(r)* and *(a)*.
3. Defendant Reidy works in concert with “licensing authorities,” defined by *G. L. c. 140, § 121* to include the town police chief or the colonel of the state police to issue licenses to carry firearms.
4. Under authority of *G. L. c. 140, § 131(i)*, Defendant Reidy requires LTC applicants to pay a \$100 fee to the “licensing authority,” which are those “with the authority to impose occupational fees or licensing requirements on a profession,” see *G. L. c. 6, § 172N*.
5. Defendant Reidy promulgates *803 CMR 2.01* to require LTC applicants to undergo a Criminal Offender Record Information (“CORI”) background check, the “Purpose and Scope” of which is “for employment, volunteer opportunities, or professional licensing.”
6. Under authority of *G. L. c. 6, § 172B~1/2*, Defendant Reidy requires LTC applicants to submit a full set of fingerprints, which applies to “applicants for licenses in specified occupations.”

7. In this manner, Defendant Reidy enhances the Public Safety and Security by regulating the licensing of firearms purchases, possession, and carry, including:
 - a. ... those who carry on a business as a gunsmith, or “to sell, rent or lease firearms,” see *G. L. c. 140, § 122*,
 - b. ... those who carry weapons as a “power and duty” of police officers under *G. L. c. 41, § 98*,
 - c. ... those who “carry revolvers ... and such other weapons as are necessary in the performance of their duties” as a sheriffs officer, corrections officer, parole officer, or penal institutions officer under *G. L. c. 147, § 8A*,
 - d. ... a “licensee, employee or agent” who “carry a firearm ... while in the performance of his duties” under *G. L. c. 147, § 29*,
 - e. ... “guards and other employees carrying guns in the performance of their duties” under *G. L. c. 147, § 29A*,
 - f. ... “a person engaged in business as a private detective...watchmen, guards, private patrolmen or other persons” who carry firearms “to protect persons or property ... for hire or reward,” as defined in *G. L. c. 147, § 22*.
8. Defendant Reidy does not promulgate any regulation that licenses my private, individual right “to keep and bear Arms” as guaranteed by the Second Amendment.
9. Defendant Campbell has publicly stated her intention to criminally prosecute whoever possesses or carries firearms without having in effect a license to carry firearms issued by a licensing authority, see *G. L. c. 269, § 10*.
10. However, neither Defendant Campbell nor Defendant Reidy has made a fair distinction between the licensed entitlement “to possess and carry firearms” and my constitutionally secured fundamental right “to keep and bear Arms.”
11. Instead, they have concealed from me the meaning and application of their regulations, and used *equivocation* to equate and regulate my constitutionally secured right “to keep and bear Arms” under color of professional entitlements licensed by the State.

12. Thus, the defendants' refusal to clarify and their concealment of the regulatory scope of the licensing scheme create uncertainty and impose a chilling effect on my individual right "to keep and bear Arms."

The defendants do not genuinely dispute the facts of this case; therefore, in accordance with [Rule 56](#), I am entitled to judgment as a matter of law, and request declaratory judgment.

II. DECLARATORY JUDGMENT:

This Court must declare that the State's regulatory scheme for firearms licensing is fully constitutional as applied to professional licensing in specified occupations. However, it does not apply to my private right "...of 'bearing arms for a lawful purpose.' This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument [nor a license] for its existence." [United States v. Cruikshank](#), 92 U. S. 542, 553 (1876), quoted in [District of Columbia v. Heller](#), 554 U.S. 570, 592 (2008).

Under [Rule 57](#) of the Federal Rules of Civil Procedure and [28 U.S. Code § 2201](#), this Court may declare the rights and other legal relations of any interested party in a case of actual controversy, whether or not further relief is sought. Furthermore, "It is emphatically the province and duty of the Judicial Department to say what the law is. ... If two laws conflict with each other, the Courts must decide on the operation of each." [Marbury v. Madison](#), 5 U.S. 137, 177 (1803).

An actual controversy has arisen due to the defendants' refusal to provide explicit standards for their application of the State's firearms licensing scheme. This creates uncertainty and permits arbitrary and discriminatory enforcement, unchecked by the letter of the law. Their intentional and incorrigible equivocation of the licensed professional entitlement "to possess and carry firearms" with the right "to keep and bear Arms" deprives me of my rights through the threat of prosecution, under color of professional regulations.

Therefore, this action for declaratory judgment is proper, as "an alternative to pursuit of the arguably illegal activity;" *Steffel v. Thompson*, 415 U.S. 452, 480 (1974), and "where threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat." *Medimmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007). "Instead, we have permitted pre-enforcement review under circumstances that render the threatened enforcement sufficiently imminent. Specifically, we have held that a plaintiff satisfies the injury-in-fact requirement where he alleges 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by [the defendant], and there exists a credible threat of prosecution thereunder.'" *List v. Driehaus*, 573 U.S. 149, 159 (2014).

Thus, this Court has jurisdiction to declare that Allegations I–VIII, set forth in the Complaint (ECF No. 1, pages 5–7), are true as a matter of law.

III. CONCLUSION:

WHEREFORE, I, Jason Gerhard, respectfully request that this Honorable Court grant my motion for summary and declaratory judgment.

Dated: Dec. 9th, 2024.

Respectfully submitted,

/s/ Jason Gerhard

Jason Gerhard

CERTIFICATE OF SERVICE

I certify that a true copy of the above document was served upon the defendants by electronically filing through the Court's CM/ECF system.

Dated: Dec. 9th, 2024.

Respectfully submitted,

/s/ Jason Gerhard

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