

**NOTICE**

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2284CV2125

KANG LU

vs.

MAURA HEALY and Others<sup>1</sup>

**DECISION AND ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND THE DEFENDANT'S MOTION TO DISMISS**

Previously, on April 12, 2023, the parties came before the court on the Plaintiff's Motion for Summary Judgment and the Defendants' Motion to Dismiss. The court conducted a hearing on the parties' motions<sup>2</sup>. At that time, because the Plaintiff's criminal trial on the same charges was then still pending, the court reserved on these motions until after the criminal case was tried. Now after the conclusion of the criminal trial, and the Plaintiff has filed a notice to appeal from his conviction in that criminal matter, this court now returns to the pending motions for the court's decision. As explained below, the court **ALLOWS** the Commonwealth's Motion to Dismiss and **DENIES** the Plaintiff's Motion for Summary Judgment.

The Plaintiff seeks a declaration that the Commonwealth's firearm licensing requirements, as applied to him, are unconstitutional because his right to bear arms to defend himself arises as a natural right from the creator and not via a license contracted for with the

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<sup>1</sup> Maura Healy was sued in her official capacity as then the Attorney General, and likewise the other two defendants were sued in their official capacities; Anthony D. Gulluni as the District Attorney For Hampden County and Terrance Reidy in his official capacity as the Executive Office of Public Safety. The names in the caption should be updated and substituted as there are new occupants in these positions.

<sup>2</sup> The plaintiff is self-represented. Because he did not have counsel, the court cautioned that Plaintiff that whatever he said in this civil motion hearing could be used against him in the criminal proceeding.

government. The Plaintiff contends that state and federal constitutions support his position that the Commonwealth cannot premise his right to bear arms to defend himself, or his home, or his farm on the Commonwealth's firearm licensing scheme under G.L. c. 140 §131. The Attorney General, representing the Defendants, responds that the court should dismiss the case before reaching the issue of the Plaintiff's Rule 56 motion because Plaintiff should not be permitted to use this civil case to interfere with his ongoing criminal prosecution in Hampden County for the following crimes: the unlicensed possession of a firearm under G.L. c. 269 §10(a) (two counts); unlawful possession of ammunition without an FID card in violation of G.L. c. 269 §10(h)(1); unlawful possession of a large capacity weapon under G.L. c. 269 §10(m) and assault by means of a dangerous weapon under G.L. c. 265 §15B(b).<sup>3</sup> Additionally, the Defendants challenge Plaintiff's standing to challenge the licensing requirements especially where he has not offered evidence that he sought to obtain a firearm license and was denied.

Since the last hearing date (April 12, 2023) and the court's first interim order, the Plaintiff was tried on criminal charges involving, *inter alia* gun charges. Plaintiff was found guilty on two charges: indictment 1: possession of a gun without a license and indictment 2: possession of ammunition without a license. The Plaintiff's motion to stay the execution of his sentence has been allowed and he remains at liberty pending his appeal.<sup>4</sup>

He comes before the court in this civil matter asking the court to proceed in his civil matter so that he can challenge the validity of the statute which formed one of the elements of his conviction, namely, possession of a firearm without a license. In his civil complaint the Plaintiff asks the court to declare his right to bear arms for his personal use cannot be burdened by any

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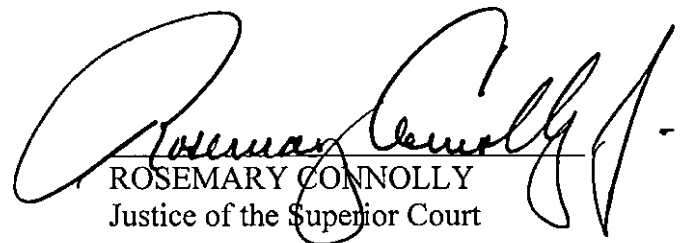
<sup>3</sup> *Commonwealth v Lu*, Hampden County Superior Court 2179CR 67.

<sup>4</sup> On Indictment 1 the court sentenced the Plaintiff to 18 months in the House of Corrections and on count 2, he received a sentence of 2 – 3 years probation, from and after his sentence on count 1.

state licensing requirement and he seeks to “enjoin the defendants from licensing, prosecuting or otherwise depriving” him of his right to keep and bear arms, “under the color of professional licensing statutes and regulations intended for specific occupations.” (Complaint. ¶1 &2) The civil suit is, in effect, a collateral attack on the criminal conviction. As such, the civil matter cannot proceed as a separate, parallel, action. As a matter of law, this civil case must be dismissed.<sup>5</sup>

Plaintiff’s contention that his right to carry a firearm overrides and invalidates the state’s licensing requirements, as applied to him, are properly made in the appeal of his criminal conviction. Indeed, he is currently exercising those rights and has filed his appeal. He may make all the same arguments in his criminal case regarding the constitutionality of the law as applied to him. If he is successful with that argument then his criminal conviction would need to be vacated because his possession of a gun and ammunition was not in violation of the state statute.

Therefore, the Court **ALLOWS** the Commonwealth’s Motion to Dismiss and **DENIES** the Plaintiff’s Motion for Summary Judgment.



ROSEMARY CONNOLLY  
Justice of the Superior Court

DATE: AUGUST 30, 2023

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<sup>5</sup> The court relies on the Commonwealth’s Memorandum of Law as persuasive as to why the Motion to Dismiss should be allowed. Finally, the court notes that the state licensing scheme Plaintiff challenges has not been found by the Supreme Judicial Court nor the Supreme Court to be constitutionally defective. Even after *Heller* and its progeny, there remains a rule for state and local governments to impose reasonable regulations that do not violate a citizen’s second amendment right to bear a firearm. Additionally, the Plaintiff lacks standing to change the licensing statute because he has not demonstrated that he was wrongfully denied a license or FID card or that even sought to obtain one.