

STATEMENT OF FACTS AND NATURE OF PROCEEDINGS

I. NATURE OF PROCEEDINGS

The Plaintiff, Edward A. Peruta ("Peruta"), brought this action for declaratory judgment by way of complaint filed December 3, 2007, in the Judicial District of New Britain, seeking a judicial determination of his right to openly carry a pistol or revolver when in possession of a valid state permit and not on premises where carrying a pistol or revolver is lawfully prohibited by the premises owner or by law. (Compl. ¶ 1; R.) The trial court (Pittman, J.) ordered Peruta to provide written notice of the action by sending to all local and state police departments having jurisdiction in Connecticut and employing at least one police officer a copy of the complaint together with a cover letter with the proposed judgment as notice. (Notice, Schedule B Letter, App. at A1; R. ; App. at A2-A3; R.) The cover letter summarized the nature of the declarations sought in the complaint:

- (1) Whether a Connecticut resident has the right in Connecticut to carry a pistol or revolver openly, without concealing the pistol or revolver, in any location where carrying a pistol or revolver is not otherwise prohibited by the premises' owner or by law.
- (2) Whether the Defendants and municipalities have lawful authority to confiscate pistol permits from Connecticut permit holders upon arrest or otherwise without notice of revocation pursuant to General Statutes § 29-32(b).
- (3) Whether the Defendants and municipalities stand in violation of the Fifth and Fourteenth Amendments to the United States Constitution, or condone such violations, by confiscation of a pistol permit upon the arrest of the Connecticut permit holder; by failing to afford proper return of a pistol permit to the rightful owner when submitted by the arresting agency; by relying solely on arrests of Connecticut pistol permit holders as justification for immediate revocation; and by revocation of a pistol permit without the mandatory investigation or finding of cause required by state statute.

Peruta, by his counsel, filed an affidavit of notice on September 15, 2008, confirming service upon all interested parties. (Notice and Aff., App. at A2-A5, Notice, Schedule A, App at A58-A61; R.)

The Defendants moved to dismiss claiming sovereign immunity, lack of a justiciable claim, and the availability of alternate procedures for redress which Peruta opposed. (R.) After the March 12, 2009, oral argument on the motion to dismiss, the trial court (Cohn, J.)¹ invited Peruta to supplement his opposition with emails, declaratory judgment requests, legislation, and legal argument to address the trial court's concern that Peruta had not exhausted his administrative remedies before the DPS pursuant to Connecticut General Statutes ("General Statutes"), §§ 4-175, 4-176. (03/12/2009 Hr'g Tr., App. at A6-A9) Peruta submitted an affidavit and thirty exhibits in response. (03/31/2009 Peruta Aff., App. at A10-A18) The trial court, finding that Peruta failed to comply with §§ 4-175, 4-176, dismissed the complaint and entered judgment for the Defendants on the grounds of subject matter jurisdiction. (Ruling, App. at A19-A21; R.)

Peruta filed a motion to reargue on the ground that the DPS failure to provide rules of practice for accepting and reviewing declaratory ruling requests constituted a waiver of the agency's jurisdiction to render declaratory rulings. (DPS Hr'g Regulations, A22-A33) The trial court denied Peruta's request for reargument. (Order, App. at A34; R.) Peruta filed a second motion to reargue the adequacy of inquiries submitted by Peruta on July 28, 2007, to the DPS toward exhausting his administrative remedies. (05/14/2009 Peruta Aff. ¶ 1 n.1, App. at A35-A37)² The trial court denied Peruta's second motion for reargument. (Order, App. at A38)

Peruta timely appealed and filed a motion for articulation pursuant to Practice Book § 66-5. (R.) He attached three exhibits to his motion for articulation. (06/28/2006 DPS

¹ References to the trial court hereinafter are to The Honorable Henry S. Cohn.

² Although the inquiries reference the date of July 28, 2006, as the submission date in the upper left corner of the document, the actual date of submission was July 28, 2007. (05/14/2009 Peruta Aff. ¶ 2 n. 1, App. at A35, A39-A40)

Inquiries, Articulation Mot. Ex. 1, App. at A39-A40; 06/02/2009 DPS Inquiries, Articulation Mot. Ex. 2, App. at A41-A42; 06/09/2009 DPS Letter, Articulation Mot. Ex. 3, App. at A43) The trial court ruled on Peruta's motion on July 9, 2009, articulating the case law relied upon in denying the adequacy of the requests submitted by Peruta on July 30, 2007, and finding that Exhibit 5 to Peruta's affidavit submitted to the DPS on July 28, 2007, did not constitute a request to the DPS for declaratory ruling consistent with the declaratory judgment sought. (03/31/2009 Peruta Aff., App. at A10-A18; DPS Inquiries, App. at A39-A40)

II. FACTS

Peruta possesses a permit issued by the state of Connecticut to carry pistols or revolvers ("state permit") pursuant to Chapter 529 of the General Statutes. Conn. Gen. Stat. § 29-28(b) (App. at A44-A45) (Compl. ¶ 3; R.) He travels throughout the state. (Compl. ¶ 4; R.) A person holding a state permit is not prohibited by state statute from carrying a pistol openly. (General Statutes § 29-35, App. at A46; 03/31/2009 Peruta Aff. Ex. 14, OLR Research Report 2008-R-0238, "Gun Permit Issues," A47-A51; 03/31/2009 Peruta Aff. Ex. 13, 02/24/2009 Letter from Comm. Danaher to Public Safety and Security Committee at 2, A52-A53; 03/31/2009 Peruta Aff. Ex. 12, Agency Legislative Proposal, A54-A56) The DPS and municipal law enforcement agencies in Connecticut prohibit, under threat of arrest, state permit holders from openly carrying a pistol. (Compl. ¶ 18; R.) When such an arrest occurs, the DPS revokes the holder's state permit based upon the arrest. (Compl. ¶ 21; R.) The right to keep and bear arms is a fundamental constitutional right. This action seeks a judgment to declare the rights of state permit holders to carry a pistol or revolver openly in Connecticut without threat of arrest.