

STATE OF INDIANA	)	IN THE LAKE SUPERIOR COURT
	)	SS: CIVIL DIVISION
COUNTY OF LAKE	)	
OSCAR MARTINEZ, JR.,	)	
personally, and as Lake County Sheriff	)	
Plaintiff,	)	
v.	)	
	)	
BERNARD A, CARTER,	)	CAUSE NO.
in his official capacity as Prosecuting	)	
Attorney for the 31 st Judicial Circuit	)	
	)	
and	)	
	)	
STANLEY M. LEVCO	)	
in his official capacity as Special	)	
Prosecuting Attorney	)	
Defendant(s).	)	

COMPLAINT FOR DECLARATORY JUDGEMENT AND INJUNCTIVE RELIEF

Plaintiff, Oscar Martinez, Jr., Lake County Sheriff, by counsel, Paul G. Stracci, J. Michael Woods and Peter Fouts of Stracci Law Group, PC, for his Complaint for Declaratory Judgment and Injunctive Relief against the Defendant, alleges and states as follows:

PARTIES AND VENUE

1. Plaintiff, Oscar Martinez, Jr., is the duly elected Sheriff of Lake County, Indiana ("Sheriff Martinez" or the "Sheriff").
2. Sheriff Martinez is also a resident of Lake County, Indiana.
3. Defendant Bernard A. Carter ("Prosecutor Carter") is the duly elected Prosecuting Attorney for the 31st Judicial Circuit.
4. Pursuant to Indiana Code § 33-33-45-2(a), the 31st Judicial Circuit

encompasses all of Lake County, Indiana.

5. Pursuant to Indiana Code § 33-39-1, *et seq.*, Prosecutor Carter is required, upon receipt of “information of the commission of a felony or misdemeanor,” to seek subpoenas for those with relevant information, question those persons, seek the issuance of other process, including “process for apprehension of the accused,” and “conduct all prosecutions for felonies, misdemeanors, or infractions...”

6. Pursuant to Indiana Code § 33-39-10, *et seq.*, Prosecutor Carter may also seek the court appointment of a special prosecutor to fulfill these duties.

7. Defendant Stanley M. Levco (“Special Prosecutor Levco”) is the court-appointed special prosecutor for purposes of “representation of the State of Indiana regarding information presented by the Lake County Board of Commissioners requesting and investigation by the Indiana State Police regarding possible criminal charges arising out of the use of a county owned vehicle, to-wit: a Jeep Trackhawk license plate number 669EFI on September 17, 2021 in the vicinity of 93rd Avenue and Main Street In Crown Point, Lake County, Indiana.”

8. Pursuant to his appointment, Special Prosecutor Levco has targeted Sheriff Martinez for grand jury investigation, obtained indictments of Sheriff Martinez from that grand jury, and prosecuted the same in Cause 45G03-2201-F6-24 now pending. The unconstitutional disability imposed on Sheriff Martinez, from which he now seeks relief, arises from Special Prosecutor Levco’s prosecution.

9. This Court has jurisdiction to hear this complaint pursuant to Indiana Code § 33-28-1-2, Indiana Code § 33-33-45-9, and Indiana Code § 34-14-1-1.

10. Venue is proper in Lake County under Indiana Trial Rule 75(A)(5).
11. Declaratory relief is authorized by Indiana Code § 34-14-1 and Indiana Trial Rule 57.
12. As set forth below, Sheriff Martinez' rights, status, or other legal relationships are affected by unconstitutional statutes to be enforced by the defendants. Sheriff Martinez has a substantial present interest in the relief sought insofar as he seeks to exercise a constitutional right without criminal prosecution for the same.

INTRODUCTION

13. Sheriff Martinez has served as a merit sheriff's deputy since 1993.
14. In September 2017, he was selected by caucus to fill the vacant Lake County Sheriff's Office and was elected in his own right in November of 2018.
15. Throughout his nearly 30-year law enforcement career, Sheriff Martinez has carried a handgun, both in the course of his official duties and privately pursuant to licensing exceptions provided by statute.
16. On January 6, 2022, a grand jury in Lake County, Indiana returned an indictment ("the indictment") against Sheriff Martinez following grand jury proceedings in Cause No. 45G01-2112-CB-00396.
17. The indictments alleged that Sheriff Martinez committed resisting law enforcement, a Level 6 Felony, punishable by a term of imprisonment up to 2.5 years and reckless driving, a Class C Misdemeanor punishable by up to 6 months.
18. The indictment resulted in a criminal case being opened against Sheriff

Martinez, to wit: *State of Indiana v. Oscar Martinez, Jr.*, Cause No. 45G03-2201-F6-000024, which is still pending.

19. Just prior to the indictment, on January 1, 2022, House Bill 1296 (“Firearms Matters Law” or “Law”) was authored by Representative Ben Smaltz.

20. After multiple readings and Committee reports in both the Indiana House of Representatives and Senate, House Enrolled Act 1296 was signed by the Speaker of the House and President Pro Tempore on March 9, 2022.

21. On March 15, 2022, House Enrolled Act 1296 was signed by the President of the Senate.

22. On March 21, 2022, House Enrolled Act 1296 was signed into law (Public Law 175) by Governor Eric Holcomb.

23. Effective July 1, 2022, the Firearms Matters Law modified Indiana Code § 35-47-2-3 to permit “A person who is at least eighteen (18) years of age and is not otherwise prohibited from carrying or possessing a handgun under state or federal law” to carry a handgun in Indiana without a license.

24. The Firearms Matters Law also modified Indiana Code § 35-47-2-1, which previously required a person to obtain a license to carry a handgun in Indiana with exceptions for the person’s home; fixed place of business; certain private or public property; and a vehicle if the handgun was unloaded, not readily accessible, and secured in a case.

25. As of July 1, 2022, Indiana Code § 35-47-2-1 continued to provide said exceptions for unlicensed carry but applied *only* to persons not prohibited from carrying

a handgun under federal law, not prohibited from possessing or carrying a handgun under Indiana law, and not eligible for a license to carry under the revised statute.

26. The Firearms Matters Law also added Indiana Code § 35-47-2-1.5, a new section prohibiting certain persons from carrying a handgun under penalty of criminal prosecution.

27. Among the additions to those prohibited from carrying a handgun is “a person under indictment,” with “Indictment” defined as “any formal accusation of a crime made by a prosecuting attorney in any court for a crime punishable by a term of imprisonment exceeding one (1) year.”

28. Indiana Code § 35-47-2-1.5 further provides that a person who knowingly or intentionally carries a handgun when prohibited under that section commits a Class A Misdemeanor, which can be enhanced to a Level 5 Felony under certain circumstances.

29. Additionally, the Firearms Matters Law repealed certain “obsolete provisions.”

30. One of the “obsolete provisions” was Indiana Code § 35-47-2-2, which explicitly codified exceptions to Indiana Code § 35-47-2-1, including sheriffs and law enforcement officers, among other public officials and first responders.

31. On June 28, 2022, Indiana Attorney General Theodore Rokita announced the publication of the “Gun Owner’s Bill of Rights” to clarify legal responsibility by including answers to commonly asked questions.

32. According to the “Gun Owner’s Bill of Rights,” any proper person as

defined in Ind. Code § 35-47-1-7, may legally carry a handgun. That definition does not exclude those under indictment.

33. On or about April 27, 2022, State Representative Ben Smaltz, the sponsor of the Firearms Matters Law, was asked for comment by the Northwest Indiana Times regarding the effect of the law on Sheriff Martinez. Representative Smaltz stated that any person under indictment for felony is ineligible to carry a handgun in public beginning July 1, 2022, including a county sheriff.

34. Sheriff Martinez is not prohibited from possessing or carrying a handgun under federal law. He continues to enjoy the presumption of innocence and is therefore still a law-abiding citizen unless and until convicted. However, because of the indictment in the presently pending criminal case – and only because of that indictment – the Firearms Matters Law prohibits Sheriff Martinez from carrying a handgun, both privately and in the course of his duties.

STANDING

35. A primary requirement of the Uniform Declaratory Judgments Act is that the plaintiff(s) must demonstrate that they have standing for the relief requested.

Community Action of Great Indianapolis, Inc. v. Indiana Farmer's Mut. Ins. Co., 708 N.E.2d 882 (Ind. Ct. App. 1999).

36. Indiana Code § 34-14-1-2 provides that “Any person [...] whose rights, status, or other legal relations are affected by a statute, [...], may have determined any question of construction or validity arising under the [...] statute, [...] and obtain a declaration of rights, status, or other legal relations thereunder.”.

37. Furthermore, a declaratory action is appropriate “to test the validity of a criminal statute which affects one in his trade, business, or occupation, though such an action will not operate to stay the enforcement of the statute during the pendency thereof. Doyle v. Clark, 220 Ind. 271, 274, 41 N.E.2d 949, 951 (1942).

38. Sheriff Martinez’ ability to carry a handgun in his home, his county of residence, and his county of trade, business, or occupation is presently infringed by the statutory threat of criminal prosecution by the defendants pursuant to Indiana Code § 35-47-2-1.5.

CONSTITUTIONAL RIGHTS RELEVANT TO DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

I. Indiana Constitutional Provisions

39. Indiana has been governed by two constitutions since its founding in 1816: the 1816 Constitution, and the 1851 Constitution.

40. Listed below are the applicable provisions pertaining to gun rights and defense, as well as rights afforded to those accused in a criminal prosecution, contained in both the 1816 and 1851 Constitutions:

a. Article 1 § 32 of the 1851 Indiana State Constitution:

“The People shall have a right to bear arms, for the defense of themselves and the State.”

b. Article 1 § 20 of the 1816 Indiana State Constitution:

“That the people have a right to bear arms for the defence [sic] of themselves, and the state; and that the military shall be kept in strict subordination to the civil power.”

41. Notably, the history and tradition of the Indiana right to bear arms differs slightly from its federal counterpart. During its time as part of the Northwest Territory and subsequently the Indiana Territory, what would become Indiana and its governing leaders encouraged and facilitated the private possession and carrying of firearms, a policy that continued through the admission of Indiana to the Union and the adoption of the 1816 Constitution.

42. When nearly identical language was adopted for the 1851 Constitution, distinctions were drawn between concealed weapons and carrying weapons generally, with general prohibitions on carrying weapons recognized as unconstitutional.

II. United States Constitutional Provisions

43. Listed below are the applicable provisions pertaining to gun rights and defense, as well as rights afforded to those accused in a criminal prosecution, contained in the United States Constitution:

a. Amendment II of the United States Constitution:

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

b. Amendment XIV of the United States Constitution:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

44. Notably, while our Nation's history and tradition supports the concept of prohibiting certain classes of people from carrying firearms, there is little or no evidence that such disability applied to those merely under indictment.

**COUNT I: DECLARATORY JUDGEMENT AND PERMANENT
INJUNCTION TO DECLARE INDIANA CODE § 35-47-2-1.5, IN PART,
AN UNCONSTITUTIONAL INFRINGEMENT OF ARTICLE 1, SECTION 32 OF THE
INDIANA CONSTITUTION AND ENJOIN ITS ENFORCEMENT**

45. Sheriff Martinez incorporates herein by reference all previous allegations.

46. A declaratory judgment action is the proper procedural vehicle to determine the constitutionality of a newly enacted statute.

47. A declaration is necessary to answer the question of validity of the recently enacted Indiana Code § 35-47-2-1.5 insofar as it prohibits a person "under indictment" from carrying a handgun.

48. Sheriff Martinez is an interested person due to his rights, status, or other legal relations being affected by the Firearms Matters Law.

49. Specifically, Sheriff Martinez is a person presently under indictment as the statute defines that term and therefore may not knowingly or intentionally carry a handgun under threat of criminal prosecution.

50. Article 1, Section 32 of the Indiana Constitution expressly preserves the right to bear arms. The readoption of that language specifically rejected a prohibition on the general carrying of arms, and the language, history, and legal tradition of Indiana does not support blanket prohibition of carrying handguns by those merely under indictment.

51. This matter is ripe for judgment because disputed provisions of the Firearms Matters Law *currently* materially burden Sheriff Martinez' exercise of his right to bear arms privately and in the course of his trade, business, or occupation. Were he to continue exercise of this fundamental right in his normal place of residence and business, the Indiana Code provides that Prosecutor Carter *shall* investigate, cause process to issue, and prosecute Sheriff Martinez or task Special Prosecutor Levco with the same as Sheriff Martinez' disability arises from the scope of Special Prosecutor Levco's existing appointment.

52. A declaratory judgment by this Court determining the constitutionality of the disputed parts of Indiana Code § 35-47-2-1.5 is necessary to resolve the existing dispute between Sheriff Martinez' exercise of his right and the duties of the prosecuting defendants as provided by statute and prior court order.

53. For these reasons, Sheriff Martinez respectfully requests that the Court declare the disputed portions of Indiana Code § 35-47-2-1.5 an unconstitutional infringement on his right to keep and bear arms for the defense of himself and the State.

**COUNT II: DECLARATORY JUDGEMENT AND PERMANENT
INJUNCTION TO DECLARE INDIANA CODE § 35-47-2-1.5, IN PART,
AN UNCONSTITUTIONAL INFRINGEMENT OF THE SECOND AMENDMENT TO
THE UNITED STATES CONSTITUTION AND ENJOIN ITS ENFORCEMENT**

54. Sheriff Martinez incorporates herein by reference all previous allegations.

55. The prohibition of persons "under indictment," as defined by Indiana Code § 35-47-2-1.5, from carrying a handgun infringes the bearing of arms.

56. The Second Amendment to the United States Constitution expressly

prohibits infringement of the right to bear arms and extends that prohibition to the states by way of the 14th Amendment.

57. Prohibiting those merely under indictment from bearing arms is inconsistent with the United States' history and tradition of firearm regulation.

58. This matter is ripe for judgment because disputed provisions of the Firearms Matters Law *currently* and unconstitutionally prohibit Sheriff Martinez from carrying a handgun privately and in the course of his trade, business, or occupation. Were he to continue exercise of this fundamental right in his normal place of residence and business, the Indiana Code provides that Prosecutor Carter *shall* investigate, cause process to issue, and prosecute Sheriff Martinez or task Special Prosecutor Levco with the same as Sheriff Martinez' disability arises from the scope of Special Prosecutor Levco's existing appointment.

59. A declaratory judgment by this Court determining the constitutionality of the disputed parts of Indiana Code § 35-47-2-1.5 is necessary to resolve the existing dispute between Sheriff Martinez' exercise of his Second Amendment right and the duties of the prosecuting defendants as provided by statute and prior court order.

60. For these reasons, Sheriff Martinez respectfully requests that the Court declare the disputed portions of Indiana Code § 35-47-2-1.5 an unconstitutional infringement on his right to keep and bear arms as protected by the Second Amendment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Oscar Martinez, Jr., Sheriff of Lake County, Indiana,

respectfully requests that this honorable Court declare that the disputed provisions of Indiana Code § 35-47-2-1.5 which prohibit those under indictment from carrying a handgun unconstitutional and permanently enjoin the enforcement of the disputed provisions of the Firearms Matters Law by the defendants or by any other individuals or governmental bodies; and for all other proper relief in the premises.

Respectfully submitted,

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