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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SIGITAS RAULINAITIS,

Plaintiff,

vs.

VENTURA COUNTY SHERIFFS
DEPARTMENT,

Defendants.

) **CASE NO. CV 13-2605MAN**

) **PLAINTIFF'S MOTION FOR**

) **SUMMARY JUDGMENT, OPENING**

) **BRIEF; DECLARATION OF SIGITAS**

) **RAULINAITIS**

I. INTRODUCTION

At issue in this case is whether the Sheriff can supplant his own desire in place of what the legislature has stated. California law and statutes use two terms to define a persons home, residence and domicile and both have very different meanings, but under either standard, Plaintiff is a resident of Ventura County. The Legislature used the term resident in the Statute at issue herein, but defendant has adopted his own definition that is more akin to Domicile, and upon that basis has apparently found that Plaintiff is not a resident of the County and as such denied him the ability to exercise his second Amendment Right outside of his home.

1 **II. FACTUAL BACKGROUND BASED UPON STIPULATED FACTS**

2 The parties have stipulated that Plaintiff Sig Raulinaitis applied for and was
 3 denied a permit for a concealed weapon by Defendant because he was not a resident
 4 of Ventura County. Technically, Defendant, the Ventura County Sheriff denied the
 5 permit finding that Plaintiff did not meet the Sheriff's own definition of resident,
 6 which the Sheriff has stipulated is:

7 The County in which a person spends most of his or her time and conducts
 8 most of his or her activities.¹

9 Plaintiff is a resident of Ventura County, but the Sheriff has declared he is not,
 10 and as such, has engaged in an apparent abuse of discretion by creating a more
 11 stringent definition than that permitted at law or required by Statute. In fact, the
 12 Sheriff has stipulated that Plaintiff owns and maintains a home in Ventura County.
 13 Thus, there is no dispute that Plaintiff has a fixed and permanent abode in Ventura
 14 County and Defendant also admits that this address is in fact where Plaintiff is
 15 registered to vote as well, thus making Plaintiff both a resident and domiciliary under
 16 any State statutory definition as set forth in his declaration attached hereto.

17 **III. LEGAL DISPUTE**

18 The Sheriff's office seeks to do two things in this action, first to possibly
 19 change the legal definition of residence to the extent he interprets in beyond that
 20 permitted by Statute² a definition Plaintiff clearly satisfies by maintaining a fixed and
 21 permanent home he returns to monthly. Second, if the Sheriff is found to be wrong,
 22 then Defendant seeks a second bite at the apple by seeking permission to find another
 23 reason to deny Plaintiff his rights.
 24

25 ¹ The Statute requires only that: The applicant is a resident of the county or a city
 26 within the county... Pen. Code, § 26150

27 ² The Sheriff appears to be modeling Government Code Section 244 which defines
 28 residence as "(a) It is the place where one remains when not called elsewhere for
 labor or other special or temporary purpose, and to which he or she returns in seasons
 of repose." while limiting those activities to Ventura County.

1 Addressing this second issue first, the Defendant has no basis to revisit the
 2 application: Defendant received a complete package, conducted an interview and then
 3 made a decision. Plaintiff is under no obligation to submit a new application and the
 4 Sheriff is without authority to reconsider an application he denied within the
 5 Statutory time frame. The Sheriff's office was free to deny on whatever grounds it
 6 felt appropriate, but by its' own admission, did not find any other grounds for the
 7 denial of the permit, as such, if the definition fails, or even if it stands and Plaintiff is
 8 in fact a resident, Plaintiff is entitled to an order mandating that the Sheriff change his
 9 definition to comply with the law and to issue Plaintiff his permit.

10 11 **a. DOMICILE V. RESIDENCE**

12 California uses two terms to define a persons' home for the purpose of
 13 conferring legal rights such as voting and jurisdiction and Plaintiff meets either
 14 standard, thus making Defendants denial curious.

15 Courts and legal writers usually distinguish 'domicile' and 'residence,' so that
 16 'domicile' is the one location with which for legal purposes a person is
 17 considered to have the most settled and permanent connection, the place where
 18 he intends to remain and to which, whenever he is absent, he has the intention
 19 of returning, but which the law may also assign to him constructively; whereas
 20 'residence' connotes any factual place of abode of some permanency, more
 21 than a mere temporary sojourn. 'Domicile' normally is the more
 22 comprehensive term, in that it includes both the act of residence and an
 23 intention to remain; a person may have only one domicile at a given time, but
 24 he may have more than one physical residence separate from his domicile, and
 25 at the same time.

26 Smith v. Smith (1955) 45 Cal.2d 235, 239.

1 As the California Supreme Court has stated, a person can have many
 2 residences, but only one domicile, and the Statute at issue in this case refers to
 3 residence, not domicile:

4 Section 200 of the Elections Code provides: “(a) Except as provided in this
 5 article, the term ‘residence’ as used in this code for voting purposes means a
 6 person's domicile. [¶] (b) The domicile of a person is that place in which his or
 7 her habitation is fixed, wherein the person has the intention of remaining, and
 8 to which, whenever he or she is absent, the person has the intention of
 9 returning. At a given time, a person may only have one domicile. [¶] (c) The
 10 residence of a person, as used in this article, is that place in which the person's
 11 habitation is fixed for some period of time, but wherein he or she does not have
 12 the intention of remaining. At a given time, a person may have more than one
 13 residence.”

14 Walters v. Weed (1988) 45 Cal.3d 1, 6

15 Defendant has changed the statutory definition of resident and instead uses
 16 Domicile, but regardless, has somehow come to the conclusion that Plaintiff does not
 17 reside in Ventura County, presumably because Plaintiff has several homes. Such
 18 action is inconsistent with his duties and with the clearly stated legislative intent:

19 In testifying before the Senate Committee on Elections and Reapportionment
 20 as to the purpose of Senate Bill No. 1653, the bill's author stated: “I'm sure you
 21 recognize the fact that a person can have more than one residence but a person
 22 cannot have more than one domicile and so [Senate Bill No. 1653] seeks to
 23 arrive at that particular point.... [The bill attempts] to set forth ... in statutory
 24 form for the first time some of the court decisions on the question of domicile
 25 and residence ... [so] the Clerks and the voters will know where people should
 26 vote.... [Senate Bill No. 1653] also defines what's meant by domicile and
 27 residence; a question of act and intent required to establish a domicile....”
 28 (Transcript of Hg. on Voter Residency and Registration before Sen.Com. on
 Elec. and Reapportionment (Mar. 5, 1976) pp. 6–13.)

Walters v. Weed (1988) 45 Cal.3d 1, 9

1 **b. ABUSE OF DISCRETION**

2 It is repugnant to Constitutional Jurisprudence to suggest that an elected
3 official could supplant his own wisdom for that clearly stated by the legislature and
4 then exercise that discretion to deny Plaintiff the ability to exercise a Fundamental
5 Right in any lawful manner outside of his home. Under Cantwell v. Connecticut
6 (1940) 310 U.S. 296, and its progeny, States and localities may not condition a
7 license necessary to engage in constitutionally protected conduct on the grant of a
8 license officials have discretion to withhold. Further, a host of prior restraint cases
9 establish that “the peaceful enjoyment of freedoms which the Constitution
10 guarantees” may not be made “contingent upon the uncontrolled will of an official.”
11 Staub v. Baxley (1958) 355 U.S. 313, 322.

12
13 **c. VIOLATION OF PLAINTIFFS SECOND AMENDMENT RIGHT**

14 In Heller the Supreme Court held that the Constitution guarantees the
15 individual right to possess and carry weapons in case of confrontation. District of
16 Columbia v. Heller (2008) 554 U.S. 570 at 592. “Self-defense is a basic right,
17 recognized by many legal systems from ancient times to the present day, and in
18 Heller, we held that individual self-defense is “the central component” of the Second
19 Amendment right”. McDonald v. City of Chicago (2010) 130 S. Ct. 3020, at 3037.

20 In California, the only manner in which a resident of the State can bear arms
21 for self defense outside of the home is with a permit to carry a concealed weapon. It
22 is illegal to carry an exposed or loaded weapon and federal law prohibits passing
23 within 1,000 feet of any school with a weapon unless it is in a locked container, the
24 person is a law enforcement official engaged in official duties, or as a private citizen,
25 he has a permit to carry a concealed weapon.

1 The Right to Bear Arms outside the home is also a fundamental right and
2 California only recognizes one method for the exercise of this writ, a permit granted
3 pursuant to Penal Code, § 26150 :

4 The Second Amendment states: "A well regulated Militia, being necessary to
5 the security of a free State, the right of the people to keep and bear Arms, shall
6 not be infringed." U.S. Const. amend. II. In Heller, the Supreme Court struck
7 down the District of Columbia's ban on handgun possession, concluding that
8 the Second Amendment "guarantee[s] the individual right to possess and carry
9 weapons in case of confrontation." 554 U.S. at 592, 635.

10 U.S. v. Henry (9th Circuit, filed August 9, 2012), No. 11-30181, at 9040

11 **IV. CONCLUSION**

12 Plaintiff submitted a complete application for a concealed weapons permit and
13 submitted for an interview. After exercising all of the statutory time, Defendant
14 denied the application on the sole ground that Plaintiff was not a resident of Ventura
15 County. As set forth herein, such decision was in violation of California law, and
16 more importantly, was in violation of Plaintiff's Second Amendment Rights. As
17 such, Plaintiff respectfully requests that this Court Declare that Plaintiff is a resident
18 of Ventura County and thus entitled to a Permit for a concealed Weapon.

19 June 3, 2013

/s/

Jonathan W. Birdt
Counsel for Plaintiff