

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT, IN AND
FOR ST. JOHNS COUNTY, FLORIDA
CIVIL DIVISION**

CASE NO. 552026CA001218A000MX

FLORIDA CARRY, INC.,
Plaintiff,

versus

CITY OF ST. AUGUSTINE, FLORIDA, a
political subdivision of the State of Florida,
DAVID BIRCHAM, individually,
NANCY SIKES-KLINE, individually,
JIM SPRINGFIELD, individually,
JON DEPRETER, individually,
CYNTHIA GARRIS, individually,

Defendant.

COMPLAINT (JURY TRIAL DEMANDED)

Plaintiff Florida Carry, Inc., sues the defendants, the CITY OF ST. AUGUSTINE, FLORIDA (the “City” or “Defendant”), a political subdivision of the State of Florida, as well as DAVID BIRCHAM, NANCY SIKES-KLINE, JIM SPRINGFIELD, JON DEPRETER, and CYNTHIA GARRIS, in their individual capacities.

INTRODUCTION

This action challenges City of St. Augustine’s unlawful regulation of firearms through the posting and maintenance of a sign at the Visitor Information Center, 10 South Castillo Dr., St Augustine, FL 32084, that prohibits firearms on the property. The sign and its enforcement are preempted by § 790.33, Florida Statutes, and are null and void. Plaintiff seeks declaratory and injunctive relief, statutory fines and

damages where authorized, and attorneys' fees and costs. This is an action for declaratory and injunctive relief under § 790.33, Fla Stat.

JURISDICTION AND PARTIES

1. This Court has jurisdiction over this action pursuant to § 790.33(f), Florida Statutes.

2. This is also an action for damages in excess of \$50,000.00 and/or statutory fines, not including costs, attorney's fees, and prejudgment interest.

3. All condition precedents have been satisfied and/or waived.

4. Plaintiff Florida Carry, Inc. is a non-profit corporation incorporated under the laws of Florida with its principal place of business in Jacksonville, Florida. Florida Carry is a membership organization which has standing to sue pursuant to § 790.33(3)(f).

5. Defendant City of St. Augustine, Florida is a political subdivision of the State of Florida.

6. Defendant David Bircham is the City Manager of St. Augustine and is sued in his individual capacity.

7. Defendant Nancy Sikes-Kline is the Mayor of St. Augustine and is sued in her individual capacity.

8. Jim Springfield is a City Commissioner for St. Augustine and is sued in his individual capacity.

9. Jon DePreter is a City Commissioner for St. Augustine and is sued in his individual capacity.

10. Cynthia Garris is a City Commissioner for St. Augustine and is sued in her individual capacity.

11. Venue is properly in St. Johns County, Florida because it is where all the parties reside and where the events complained of occurred.

GENERAL ALLEGATIONS

12. The Florida Legislature in 1987 enacted § 790.33, Florida Statutes, expressly stating the Florida Legislature's intent to occupy the entire field of firearms and ammunition regulations. In its current form, § 790.33, known as the Joe Carlucci Uniform Firearms Act, makes plain that only the Florida Legislature has the authority to regulate firearms and ammunition in any way whatsoever, providing in pertinent part as follows:

Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.

13. By enacting this legislation, the Florida Legislature made its governing body the only Florida governmental entity that is authorized to enact, promulgate, and enforce laws regulating firearms and ammunition in any way. Section 790.33 ensures uniformity in firearms regulations throughout the State of Florida by guaranteeing that laws do not vary from county to county and city to city. Local and municipal governments seeking the enactment of firearm and ammunition regulations must pursue statewide legislative action.

14. Despite § 790.33, the City has posted and maintains a sign at the Visitor Information Center prohibiting firearms on the property, purporting to regulate who may possess firearms and where they may be possessed. Such regulation is expressly preempted and is null and void:



15. The City's sign chills and deters lawful possession and carry of firearms by the Plaintiff and similarly situated persons on public property where possession is otherwise lawful under state law, causing ongoing harm that cannot be fully remedied by money damages alone.

16. The sign deters persons from exercising their lawful right to possess and carry a firearm at the Visitor Information Center due to the City's prohibition and the threat of enforcement.

17. Florida Carry's members living in or visiting St. Augustine routinely use the Visitor Center and are adversely affected by the City's unlawful firearms prohibition posted at the Visitor Center.

18. The Visitor's center is the last public restroom facility individuals encounter when returning to their vehicles, and the only one generally near available public parking in the historic district.

19. The City's conduct frustrates Florida Carry's mission and requires the diversion of resources to address the preempted policy.

20. The City has placed signs around other facilities, including its City Hall, which prohibit the possession of firearms in public facilities.

21. The City must be enjoined from enacting and continuing these laws, policies, and procedures that violate § 790.33.

COUNT I - VIOLATION OF § 790.33, FLORIDA STATUTES
(Preempted Firearms Regulation)

22. Plaintiff repeats and realleges paragraphs 1 through 21, incorporating them by reference herein.

23. Pursuant to § 790.33, Florida Statutes, the Florida Legislature expressly preempted the entire field of firearms and ammunition regulation, including but not limited to, the definition of firearms, the method and place of carry, the manner of use, who may possess firearms, and where firearms may be possessed.

24. Article I, Sec. 8, of the Florida Constitution reserves to the Legislature the exclusive authority to regulate the manner of bearing arms.

25. By posting, maintaining, and enforcing a sign at the Visitor Center that prohibits firearms on City property, the City has enacted and enforced a policy, rule, or regulation relating to the possession of firearms, in violation of § 790.33.

26. The City's conduct is knowing and willful within the meaning of § 790.33 because the preemption statute has long been in effect and plainly prohibits local firearm regulations, yet the City continues to promulgate and/or enforce its own set of firearms regulations.

27. The City prohibition is unconstitutional and violates § 790.33, Florida Statutes. Accordingly, Plaintiff seeks:

- a. A declaration that the City's firearms-prohibition sign, policy, and any related rules or practices at the Visitor Center regulating possession of firearms are invalid, unconstitutional, and null and void under § 790.33;
- b. An award of actual and statutory damages and/or fines;
- c. An injunction against the enforcement of any sign, policy, ordinance, rule, or practice purporting to regulate the possession of firearms at the Visitor Center or other City facilities, except as expressly authorized by state law;
- d. An order directing the City to remove the unlawful firearms-prohibition sign and to purge the unlawful policy from all signage, publications, and electronic content;

- e. A finding that the City knowingly and willfully violated the provisions of § 790.33, Florida Statutes; and
- f. An award of attorneys' fees, costs, and all other relief deemed just and equitable.

COUNT II - DECLARATORY JUDGMENT

(Pursuant to § 790.33, Florida Statutes)

28. Plaintiff repeats and realleges paragraphs 1 through 21, incorporating them by reference herein.

29. This is an action for declaratory relief pursuant to § 790.33(f), Florida Statutes.

30. Plaintiff seeks a ruling from the Court that all parts of the aforementioned City of St. Augustine laws, policies, procedures, ordinances, regulations, and/or SOPs that regulate and purport to regulate firearms and weapons are expressly and impliedly preempted.

31. Plaintiff and its members will be adversely affected without a declaratory judgment as its members will be denied the exercise of their right to bear arms as specifically authorized by Florida law, in order to avail themselves of public spaces open to all others except persons lawfully exercising their Second Amendment right to bear arms.

32. Section 790.33(f), Florida Statutes, specifically authorizes Plaintiff to seek a declaratory judgment in this matter.

33. The City continues the promulgation and enforcement of City of St. Augustine laws, policies, procedures, ordinances, regulations, and/or SOPs regulating

firearms, weapons, and ammunition, leaving the Plaintiff with no clear remedy other than a declaratory judgment that the City is in violation of the preemption statute, and an order requiring the City to take immediate corrective action to remedy the illegal laws, policies, procedures, ordinances, regulations, and/or SOPs and conduct.

34. Accordingly, Plaintiff request that the Court:

- a. Declare that the City's firearms-prohibition sign, policy, and any related rules or practices regulating firearms at the Visitor Center are expressly preempted by § 790.33 and are null and void.
- b. Award attorneys' fees, costs.
- c. Grant such other and further relief as is just and proper.

COUNT III - PERMANENT INJUNCTION
(Pursuant to § 790.33)

35. Plaintiff repeats and realleges paragraphs 1 through 21, incorporating them by reference herein.

36. The Florida Legislature declared all regulation of firearms are preempted by the Legislature, and determined that local governments may not enact ordinances regulating firearms and ammunition in any way.

37. The City continues the regulation of firearms and ammunition, contrary to the express preemption, and continues to harm the Plaintiff.

38. The City has no legal or reasonable basis for the enactment of the laws, policies, procedures, ordinances, regulations, and/or SOPs regarding firearms.

39. The continued promulgation of laws, policies, procedures, ordinances, regulations, and/or SOPs regarding firearms by the City in violation of Florida law

leaves the Plaintiff without clear guidance as to conduct and as to whether rights under United States and Florida law are not guaranteed when entering the City.

40. Plaintiff seeks an injunction against the City prohibiting any enforcement of any City of St. Augustine laws, policies, procedures, ordinances, regulations, and/or SOPs regarding the possession of firearms and weapons in a manner inconsistent with § 790.33, and an injunction and/or a writ of mandamus, ordering:

- a. The City to repeal the aforementioned City of St. Augustine policies, procedures, ordinances, regulations, and/or SOPs;
- b. The City to replace all signage, brochures, pamphlets, and any other printed or published materials promulgating the aforementioned City policies, procedures, ordinances, regulations, and/or SOPs;
- c. The City to eliminate any policies, procedures, ordinances, regulations, and/or SOPs regarding the possession and/or use of firearms in all publications; and
- d. All other relief deemed just and equitable.

DEMAND FOR JURY TRIAL

41. Plaintiff demands trial by jury on all issues.

Respectfully submitted,
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