

IN THE CIRCUIT COURT, FOR THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

CASE NO.: 2011-CA-08012
DIVISION: CV-G

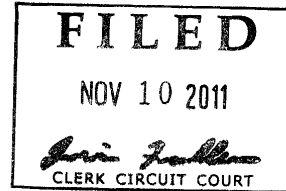
FLORIDA CARRY, INC., and
ALEXANDRIA LAINEZ

Plaintiffs,

v.

UNIVERSITY OF NORTH FLORIDA,
JOHN DELANEY.

Defendants.



MOTION FOR TEMPORARY INJUNCTION

COMES NOW Plaintiff, Alexandria Lainez, and through her undersigned attorneys moves for the entry of a temporary order enjoining the enforcement of Defendants' rules regarding possession of a securely encased firearm in her vehicle and as grounds therefore states:

1. Plaintiff Lainez filed suit against Defendants on October 3, 2011, to enforce Fla. Stat. 790.33, and seeking an injunction against Defendants from enforcing rules and regulation enacted contrary to the laws of the State of Florida.
2. Plaintiff Lainez has no adequate remedy at law.
3. Any remedy awarded by this Court will not adequately compensate Plaintiff for the loss of her right to keep and bear arms during the pendency of the case, as protected by the Florida Constitution, and as regulated and recognized by the Florida

Legislature.

4. Plaintiff has a right to bear arms for self-defense in her vehicle pursuant to Art. I Sec. 8, Florida Constitution, Sec. 790.25, and Sec. 790.06, Fla. Stat. *Davis v. State*, 146 So.2d 892, 893 (Fla. 1962)(holding that the Florida constitutional guarantee was intended to secure to the people the right to carry weapons for their protection).

5. This right is superior to any rule or regulation by any state or local entity not specifically authorized by the laws of Florida.

6. While Plaintiff does seek imposition of a fine and damages as allowed by law, no award of damages can adequately compensate Plaintiff for the loss of her rights under Florida law. *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011).

7. When there is a deprivation of a constitutional right, irreparable injury is presumed. *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011)(holding that an ordinance substantially impairing range training, an important corollary right to the right to bear arms, was a violation of the Second Amendment to the United States Constitution).

8. The Florida Constitution's right to keep and bear arms, is interpreted similarly to the United States Constitution. *Brook v. State*, 999 So.2d 1093, 1094 (Fla. 5th DCA 2009).

9. Plaintiff Alexandria Lainez is a student enrolled at UNF, and a member of Florida Carry, Inc., who desires to carry a firearm while traveling to and from school as lawful method of self defense, and to store the firearm in her vehicle while on campus and has filed suit seeking a declaration by this Court that she has the right to do so and that the Defendant's rules and regulations are preempted by state law.

10. Plaintiff Lainez is a single mother with a young child who carries a firearm for the protection of herself and her child.

11. Plaintiff has a strong likelihood of prevailing on the merits of her claim.

12. The law is clear that only a school district may restrict the possession of a firearm on campus for purposes of student parking privileges.

13. Nothing in the Florida Statutes creates a reasonable inference that the definition of "school district" includes a college or university.

14. Sec. 790.25, the provision under which Plaintiff seeks to possess her firearm in her car, clearly states that:

The Legislature finds as a matter of public policy and fact that it is necessary to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home, and property,**, and as otherwise now authorized by law, including the right to use and own firearms for *** other lawful purposes. Sub. (1) DECLARATION OF POLICY.;

and

This act shall be liberally construed to carry out the declaration of policy herein and in favor of the constitutional right to keep and bear arms for lawful purposes. This act is supplemental and additional to existing rights to bear arms now guaranteed by law and decisions of the courts of Florida, and nothing herein shall impair or diminish any of such rights. This act shall supersede any law, ordinance, or regulation in conflict herewith. Sub. (4) CONSTRUCTION.

15. The legislature has the last word on public policy declarations, and courts must give great weight to legislative findings of fact. *Am. Liberty Ins. Co. v. W. & Conyers, Architects & Engineers*, 491 So.2d 573, 575 (Fla. 2d DCA 1986).

16. Based on the Legislature's declaration and its stated and intended method of construction, and the presumed validity of an enacted statute, the

Defendant's have a heightened burden in this case that they are unlikely to overcome.

17. Furthermore, as a holder of a Florida Concealed Weapon Firearm License, Sec 790.06, only prohibits Plaintiff Lainez from taking her firearm "into" any college or university facility, quickly followed by Sub. (12)(b) stating "A person licensed under this section shall not be prohibited from carrying or storing a firearm in a vehicle for lawful purposes." Sec. 790.06, Fla. Stat.

18. The legislature then makes an additional public policy declaration that

(15) The Legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed weapons and firearms for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed weapons or firearms for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this section is subjectively or arbitrarily denied his or her rights. *** This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense. This section is supplemental and additional to existing rights to bear arms, and nothing in this section shall impair or diminish such rights.

19. The balance of harm is entirely against Plaintiff Lainez.

20. Defendant's will not be burdened in any way by allowing Plaintiff Lainez to exercise her right under the Florida constitution, as regulated by the Florida Legislature, to keep a securely encased firearm in her vehicle.

21. Plaintiff Lainez and other students are at all times while traveling to and from campus, at risk of violent attack, while being deprived of their right and most common means of self-defense. *Dist. of Columbia v. Heller*, 554 U.S. 570, 628 (2008).

22. Even Defendant Delaney conceded, while appearing on a news program regarding this case, that a student's desire to have a firearm for protection while traveling to and from school was a legitimate situation for the bearing of arms in a

vehicle.

23. Since the filing of this case, Plaintiff has had an attempted break-in into the apartment increasing her desire to have a firearm available when returning home from her vehicle.

24. A temporary injunction should issue without the requirement of a bond.

25. Plaintiff Lainez, does not have the financial resources to post a bond in any amount.

26. Requiring the posting of a bond to protect her rights under the Florida Constitution would restrict her access to seek appropriate relief from this Court and would constitute a limitation on her rights, based on her economic circumstances.

27. This action is brought pursuant to a private right of action to enforce the laws of the State of Florida.

28. Plaintiff stands in the shoes of the legislature seeking to enforce its duly enacted statutes.

29. Because Plaintiff Lainez is seeking enforcement of a state statute and a civil right through a private right of action provision enacted by the Legislature, the Court should also apply the exception for posting a bond granted to the State and waive the requirement of a bond.

30. Furthermore, Plaintiff is indigent and does not possess the means to post a bond.

31. Plaintiff has retained the undersigned law firm to represent her in this matter and has paid or become obligated to pay a fee for the services of the firm.

WHEREFORE, Plaintiff request a temporary injunction:

- a. Prohibiting the Defendants from enforcing, for the duration of this case, any rules or regulations presently existing or subsequently enacted, regarding the possession of a weapon or firearm in a vehicle by any person otherwise lawfully entitled to possess a weapon or firearm in their private vehicle.
- b. Prohibiting the Defendants from punishing in any way, through prosecution or administrative or academic discipline, any student for otherwise lawful possession of a weapon or firearm in a private conveyance, if such conduct occurred while an injunction was in effect.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via US Mail this

10th day of November, 2011 to:

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