

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

A. B., an individual and  
FLORIDA CARRY, INC.,  
a Florida non-profit corporation  
Plaintiff,

CASE NO:  
DIV:

v.

CITY OF DAYTONA BEACH, FLORIDA;  
DERRICK L. HENRY, an individual, and  
MICHAEL CHITWOOD, an individual,  
Defendants.

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**COMPLAINT**

COMES NOW, Plaintiffs A.B. and Florida Carry, Inc., by and through their undersigned counsel and sue Defendants CITY OF DAYTONA BEACH, FLORIDA; DERRICK L. HENRY, an individual, and MICHAEL CHITWOOD, an individual, and as grounds therefore states:

1. This is an action for damages in excess of \$15,000.00.
2. Plaintiff A.B. was at all times material a resident of Volusia County Florida.
3. Plaintiff A.B. is identified by his initials only to protect his right of privacy as a gun owner pursuant to Chpt. 790, Fla. Stat., as well as the protection of confidential mental health information and allegations by Defendant(s) herein.
4. Plaintiff Florida Carry, Inc. ("Florida Carry"), is a Florida non-profit corporation organized and existing under the laws of the State of Florida.
5. Plaintiff Florida Carry exists for the purpose of representing the rights of Florida firearms owners, and their interests, especially in the existence of uniform firearms laws throughout the state.

6. Plaintiff Florida Carry has statutory authority pursuant to Sec. 790.33, as an organization representing the rights of firearms owners to bring actions for violations of Sec. 790.33 by entities and individuals.

7. Defendant City of Daytona Beach, Florida, is a municipality organized and existing under the laws of the State of Florida.

8. Defendant Derrick L. Henry is the mayor of the City of Daytona Beach, Florida, and the elected local government official and person under whose jurisdiction and authority the acts complained of occurred.

9. Defendant Michael Chitwood, is the appointed agency head of an administrative department known as the Daytona Beach Police Department, and is an agency head and person under whose jurisdiction and authority the acts complained of occurred.

10. The statute on which this action is brought specifically provides for cause of action against both the agency and the head of the agency, and any person who are alleged to have violated the statute at issue.

11. On or about 23/24 December 2012 in the late evening and early morning hours of the respective dates, A.B., a combat veteran sought assistance from a veteran's assistance hotline. The hotline requested that the Daytona Beach Police Department respond to Plaintiff's home and make contact with Plaintiff.

12. On or about 24 December 2012, officers of the Daytona Beach Police Department, acting as agents of Defendants seized from Plaintiff's home multiple firearms, weapons and other personal property without the consent of Plaintiff. A complete list of the items seized is attached as Exhibit A.

13. The estimated value of the property unlawfully held is \$20,000.00.

14. Plaintiff A.B. is the owner of the property by purchase and was lawfully in possession of the property at the time it was seized. Ownership of the firearms is not based on any written instrument or registration as the keeping of any registration records of a firearms ownership is a felony in the state of Florida. Plaintiff A.B. is unable to locate further proof of ownership of other items seized at this time.

15. The seizure was allegedly based solely on the Plaintiff A.B. being detained pursuant to Florida's Baker Act mental health law.

16. Subsequent to the seizure, Plaintiff A.B. was informed by representatives of Defendants that the firearms and other items would be returned in accordance with Sec. 790.17 Fla. Stat., and that he needed to obtain additional affidavits from others, including additional mental health professionals before his property would be returned.

17. Upon obtaining the requested documents, Plaintiff A.B. was informed that the return of his property would require a court order.

18. Nothing in Florida law requires a Court order or any proof of sound mind for the return of firearms seized pursuant to an involuntary mental health evaluation.

19. Plaintiff A.B. has not been adjudicated mentally defective as defined in Sec. 790.065, nor has any court or doctor found Plaintiff to be of "unsound mind," a term not defined by Florida statutes or any court case, other than as a person unable to care for themselves.

20. Plaintiff A.B. handles his own affairs on a day to day basis.

21. Defendants have not filed any action or taken any other steps to have Plaintiff A.B. declared mentally defective.

22. The Defendants have enacted a policy or procedure to require documentation and/or a court order prior to returning firearms seized from a person who has been detained

pursuant to Florida's Baker Act law.

23. Defendants have created a policy or rule to require Plaintiffs and others similarly situated to file a complaint for replevin and obtain a writ of replevin prior to releasing firearms seized from persons Baker Acted, and in other circumstances where there is no crime.

24. Alternatively, Defendant has required citizens to provide access to the citizen's protected mental health records, and/ or letters from mental health professionals stating that the citizen is of sound mind, prior to the return of any seized firearms.

25. The Florida legislature has preempted the entire field of the regulation of the field of firearms, "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." Sec. 790.33, Fla. Stat.

26. Sec. 790.33, Fla. Stat., prohibits any entity, whether state agency, city, county or other public entity from establishing any rule, regulation or policy regarding firearms by "enacting or causing to be enforced any local ordinance or administrative rule or regulation impinging upon such exclusive occupation of the field" of firearms.

27. Sec. 790.33, Fla. Stat., provides for a private right of action by an individual against any agency that violates the provisions of Sec. 790.33, Fla. Stat., along with a right of action against the head of the agency or any person.

28. Plaintiff A.B.'s property is being unlawfully held and detained by the City of Daytona Beach, Defendants Henry and Chitwood, through the actions of their agents and employees and its police department.

29. The Plaintiffs have agreed to pay a fee to the undersigned firm for representation

in this matter, and has incurred court costs.

**COUNT 1- REPLEVIN-Plaintiff A.B. Only**

Plaintiff A.B. re-alleges paragraphs 1 through 29 as if set forth in full and further alleges:

30. Plaintiff is entitled to possession of the firearms and other property seized by Defendants.

31. Defendants are holding Plaintiff's property without lawful authority.

32. Plaintiff has requested the return of the firearms and other property.

33. Defendants have refused to return the firearms and other property.

34. The firearms and other property were not taken for any lawful tax, assessment, fine, execution, or attachment against the property of the Plaintiff.

35. The sole legal basis for the initial seizure claimed by Defendants no longer exists, and any continued possession by the Defendants is not based on any lawful claim.

WHEREFORE, Plaintiff seeks a writ of replevin ordering the return of the firearms, costs of this action, and all other relief deemed just and equitable by this Court.

**COUNT 2- VIOLATION OF SEC. 790.33, Fla. Stat.**

Plaintiff's re-alleges paragraphs 1 through 29 as if set forth in full and further allege:

36. Defendants have a policy of not returning firearms seized from Baker Act patients except pursuant to Court order as shown by the fact that Defendants have and use forms for persons similar to the Plaintiff that they must complete and file and obtain a writ of replevin in order to obtain return of their firearms.

37. Defendant City of Daytona Beach continues to Hold Plaintiff A.B.'s firearms without legal basis and refuses to return the same.

38. As the elected mayor of the City of Daytona Beach, Florida, Defendant Henry is

the elected official responsible for the illegal rules or policies enacted and enforced in violation of Sec. 790.33 Fla. Stat., and individually, bears ultimate responsibility for the actions, rules and policies of his agents, the officers of the Daytona Beach Police Department.

39. As the appointed head of the Daytona Beach Police Department, Defendant Chitwood, is the agency head over the department of the city of Daytona Beach, Florida, which is unlawfully holding and refusing to return Plaintiff's property.

40. Defendants' illegal rules, policies and procedures violate the rights of all lawful firearm owners who possess firearms in Volusia County.

41. Defendants' illegal rules, policies and procedures violate the language and intent of Sec. 790.33, Fla. Stat., by impairing the uniformity of firearms laws throughout the state.

42. Defendants' policy is not supported by any legal authority under Florida law.

43. Defendants' policy was ruled improper by the Attorney General in Florida Attorney General Opinion 2009-04.

44. Defendants' policy is a rule, regulation or policy, within the meaning of Sec. 790.33, Fla. Stat.

45. Defendants have enacted their policy despite the clear prohibition on such policies in Sec. 790.33, Fla. Stat.

46. Nothing in Sec. 790.17, Fla. Stat, requires Plaintiffs or their members to prove to any person or Court that they is of sound mind to possess a firearm.

47. Florida Law provides a procedure to declare a person to be mentally defective and therefore prohibited from possessing firearms.

48. Defendants' violation of Sec. 790.33 is willful and knowing.

49. Sec. 790.33 provides for statutory fine of \$5000.00 and actual damages.

50. In addition to the statutory fine, Plaintiff A.B. has suffered actual damages by the deprivation of his property rights and constitutional right to bear arms under the United States and Florida Constitutions.

51. Plaintiff A.B. has been denied his Second Amendment right to bear arms by the loss of the firearms seized.

52. Plaintiff A.B. has been denied his Fifth Amendment right by being deprived of his property without due process.

53. Plaintiff A.B. has been damaged by the loss of use of his property due to the Defendant's unlawful detention of the Plaintiff's property.

54. Sec. 790.33 provides for the issuance of an injunction to prevent continued violation of illegal policies or rules.

55. Plaintiff Florida Carry, on behalf of its members, has an interest in uniform firearm laws throughout the state of Florida, and in preventing illegal policies, rules or regulations by individuals and entities in violation of Sec. 790.33, Fla. Stat.

56. Florida Carry, seeks nominal damages of \$1.00 each, on behalf of all residents of Volusia County who hold Concealed Weapons Firearms Licenses, who have been or may have been subject to the enactment of unlawful rules, regulations or policies in violation of Florida law by the Defendant's herein for bringing this case to enforce the terms of Sec. 790.33, Fla. Stat. By private right of action as allowed by statute.

57. Plaintiffs are entitled to an award of attorney's fees pursuant to Sec. 790.33(3)(f)(1).

WHEREFORE, Plaintiffs requests:

a. a judgment finding Defendant has violated Sec 790.33, Fla. Stat.;

- b. an injunction prohibiting Defendant from continuing to enforce any policy contrary to the provisions of Sec. 790.33;
- c. ordering the return of Plaintiff A.B.'s property without further restrictions or obligations;
- d. reserving jurisdiction to award additional damages for any damage to the property of A.B. while in the possession of Defendant
- e. an award of statutory fine plus nominal damages of \$1.00 each on behalf of each resident of Volusia County who holds a Concealed Weapons Firearms License issued by the State of Florida, to Florida Carry for bringing this enforcement action; and
- f. awarding Plaintiff A.B. the statutory fine and actual damages to property and loss of use and violation of constitutional rights, as well as costs, attorneys fees and all other relief deemed just and equitable.

Plaintiffs demand trial by jury on all issues so triable.

Dated this 22<sup>nd</sup> day of May 2013

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## **EXHIBIT A:**

### **Items Seized**

#### Handguns:

- Springfield XD 9mm
- Uberti Single Action Revolver .45LC
- Uberti Single Action Revolver .45LC
- Heritage Rough Rider Revolver .22LR
- Derringer .22LR
- KelTec 9mm
- Sig Mosquito .22LR
- S&W Bodyguard .380

#### Rifles:

- Winchester Bolt Action .270
- Weatherby Bolt Action .308
- Japanese Ariska
- Lee Enfield Bolt Action .303 British
- Ruger 10/22 .22LR
- Savage Semi-Auto .22LR
- AR .223

#### Other:

- Hoyt Compound Bow with quiver and 8 arrows with target points on them
- Crossbow with quiver with 6 bolts with target points on them
- Over/Under shotgun 12 gauge

- 1 green plastic container with ammunition for the following calibers
  - o .270
  - o .308
  - o .22LR
  - o 9mm
  - o .223
  - o 12 gauge
  - o .380
- 1 plate carrier WITH PLATES and magazine pouches, medical pouch (FULL of supplies), drop pouch, and TRUAMA SHEARS
- 1 Kevlar helmet
- 1 Ipod with headphones that was in the magazine pouch of the body armor