

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN AND FOR
LAKE COUNTY, STATE OF FLORIDA

FLORIDA CARRY, INC.,
a Florida Not-For-Profit Corporation,

Plaintiff,

CASE NUMBER: 12-CA-1001
JUDGE: SEMENTO, Lawrence J.

vs.

CITY OF LEESBURG, FLORIDA,
a Political Subdivision of The State of Florida,
and JAY EVANS,
City Manager of The City of Leesburg, Florida

Defendants,

FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT, INJUNCTIVE RELIEF

COMES NOW, the Plaintiff Florida Carry, Inc., a Florida Not-For-Profit Corporation (“Florida Carry”) by and through the undersigned Counsel and sues Defendant, City of Leesburg, a Political Subdivision of the State of Florida (“Leesburg”), and Jay Evans, City Manager of The City of Leesburg (“Evans”) and states:

1. This is an action for Declaratory Judgment and for Supplemental legal and equitable relief pursuant to Chapter 86, Florida Statutes.
2. This is an action for Injunctive Relief.
3. The Plaintiff is Florida Carry. Florida Carry is a Florida Not-For Profit Corporation with a principal place of business located at 1090 Wild Holly Drive., Port Orange, FL 32129.
4. The Defendant is the City of Leesburg. The City of Leesburg is a Political Subdivision of the State of Florida.

5. The Defendant is Jay Evans, City Manager, City of Leesburg.

JURISDICTION and VENUE

6. This court has jurisdiction pursuant to §26.102, Florida Statutes, §790.33(3)(f), Florida Statutes, and Article V, Section 5 of The Constitution of the State of Florida.
7. Venue is appropriate in Lake County as the Defendant is located in Lake County, Florida.

FACTUAL ALLEGATIONS AS TO PLAINTIFF

8. The plaintiff is Florida Carry, Inc. ("Florida Carry"). Florida Carry is a Not-For-Profit Corporation, chartered under the Laws of the State of Florida.
9. Florida Carry's membership is confidential and consists exclusively of honest, law-abiding citizens that exercise their right to keep and bear arms as guaranteed by the Second Amendment to the United States Constitution; Article One, Section Eight of the Constitution of the State of Florida; and Chapter 790, Florida Statutes. It is the mission of Florida Carry to protect and advance the fundamental civil rights of all Floridians to keep and bear arms for lawful self defense and to safeguard the citizens of Florida by, interalia, ensuring Florida's political subdivisions follow State firearm laws.
10. Plaintiff has standing pursuant to §790.33(3)(f), Florida Statutes, as an organization whose membership is adversely affected by Defendant's ordinance.

FACTUAL ALLEGATIONS AS TO THE DEFENDANTS

11. The City of Leesburg is located in Lake County, Florida ("Leesburg").

12. Leesburg is governed by a mayor, the Honorable Mayor Sanna Henderson, and the Leesburg City Commission.
13. The administrative head of Leesburg is a City Manager and is appointed by the City Commission. The City Managers duties include seeing that all laws and ordinances are enforced, and make recommendations to the City Commission for the adoption of such measures as he deems necessary or beneficial to the City.
14. The City Manager is Jay Evans (“Evans”).
15. As Evans is the City Manager, and the city manager is responsible to see that the laws and ordinances are enforced, he is, in his official capacity, an appropriate party to this action.
16. §24 of the Leesburg City Charter is titled “Ordinances and laws to continue in force until re-enacted or repealed by the City Commission.”
17. §24 of the Leesburg City Charter states, “That all ordinances and laws of the said municipality of the City of Leesburg shall *continue to be in force* until the same are re-enacted or repealed by the City Commission of the City of Leesburg.” [Emphasis Added]
18. §28 of the Code of the Ordinances of the City of Leesburg establishes the “Powers and Duties” of the City Managers. The section reads, in part, “The city manager shall be responsible to the city commission for the proper administration of all affairs of the city and to that end his powers are and they shall be:
 - ‘(a) *Law Enforcement*. To see that the laws and ordinances are enforced.’
 - ‘(f) *Make Recommendations to Commission*. To recommend to the commission for adoption such measures as he may deem necessary or expedient in the interest of the City.’

“(h) *Perform all prescribed duties.* To perform such other duties as maybe prescribed under the Charter or as maybe required of him by the Ordinance or resolution of the City Commission.”

FACTS IN COMMON

19. §15-3 of The Code of Ordinances of the City of Leesburg criminalizes the discharge of firearms in the City Limits except for protection of person or property. The section states:

Sec. 15-3.- Discharging firearms in the City.

“It shall be unlawful for any person to discharge any firearms within the corporate limits of the city except for the protection of person or property, unless authorized or permitted so to do by the chief of police. It shall be unlawful for any person to fire or discharge any air gun, which, for the purpose of this Code, is defined as any gun, rifle or pistol which is designed to expel a projectile by the action of compressed air or gas, or by the action of a spring or elastic, within the corporate limits of the city; provided, that such an air gun, rifle or pistol may be fired or discharged on any private grounds or residence under circumstances such that persons and property will not be endangered and also in such a manner as to prevent the projectile from traversing any grounds or space outside the limits of such grounds or residence and further provided that such air gun, pistols or rifle may be fired or discharged on a target range which has been approved by the chief of police of the city. “

20. The Florida Legislature has occupied the whole field of regulation of firearms and ammunition.

a. §790.33 (1) is clear that unless The Florida Constitution or the general laws of Florida expressly provide an exception, Florida firearms regulation is the exclusive domain of the Florida Legislature to the exclusion of all existing and future county, city, town, or municipal ordinances adopted by local governments relating thereto and any such existing ordinances, rules, or regulations are hereby declared null and void.

b. “§790.33 Field of regulation of firearms and ammunition preempted.

(1) PREEMPTION.—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.” [Emphasis Added]

21. §15-3 of The Code of Ordinances of the City of Leesburg, *supra*, violates The Florida Legislature’s occupation of the whole field of regulation of firearms and ammunition by enacting or causing to be enforced any local ordinance or regulation. See §790.33(3)(a).

22. §15-3 of The Code of Ordinances of The City of Leesburg, *supra*, infringes upon and disregards the intent of the Florida Legislature to provide for uniform firearms laws throughout the State of Florida. The Florida legislature has declared its intent to deter and prevent the violation of rights protected under The Constitution and the laws of

Florida related to firearms by the abuse of official authority that occurs when enactments are passed in violation of State Law or under color of local authority. (See Section 790.33(2)(b)).

23. §790.33(3)(a) provides for penalties should any person, municipality or other entity violate The Florida Legislature's occupation of the whole field of regulation of firearms.
24. §790.33(3)(b) states, in part, that if any city violates this section, the court shall declare the improper ordinance invalid and issue a permanent injunction prohibiting it from enforcing such ordinance.
25. §790.33(3)(c) states that if The Court determines that a violation was knowing and willful, The Court shall assess a civil fine of up to \$5,000 against the elected or appointed local government official or officials under whose jurisdiction the violation occurred.

COUNT I

ACTION FOR DECLARATORY RELIEF

26. Paragraphs 1-25 are re-alleged and reincorporated herein by reference.
27. This is an action for Declaratory Relief and for supplemental legal and equitable relief pursuant to Chapter 86, Florida Statutes, and Chapter 790, Florida Statutes.
28. Florida Carry is an interested party whose legal rights and privileges are affected by §15-3 of The Code of Ordinances of The City of Leesburg. The Plaintiff is in doubt as to whether §15-3 of The Code of Ordinances of The City of Leesburg is legally enforceable or is "null and void" as declared by the Florida Legislature, Chapter 790, Florida Statutes.
29. The Adverse legal interests of parties are of sufficient immediacy and materiality to warrant a Declaratory Judgment.

30. This relief is not advisory in nature.
31. By adopting §15-3, The City of Leesburg frustrated and deterred Plaintiff in the exercise of its members constitutional and statutory rights and privileges.
32. Florida Carry seeks a declaration on the validity and enforceability of §15-3.
33. Pursuant to §790.33(3)(b), Florida Statute, The City of Leesburg shall have no defense that it was acting in good faith or upon advice of counsel.
34. If the Court determines that a violation was knowing and willful, the Court shall assess a civil fine of up to \$5,000 against the elected or appointed city official or officials under whose jurisdiction the violation occurred.
35. At no time may public funds be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated this section.
36. Florida Carry is entitled to reasonable attorney's fees and costs in accordance with the laws of this state, including a contingency fee multiplier, as authorized by law.
37. Florida Carry asks this Court to enter an order, a declaration, in negative form, stating §15-3 is invalid as violates §790.33, Florida Statutes.
38. Florida Carry asks this Court to enter an order, in negative form, stating §15-3 is invalid as the Florida Constitution prohibits governments from passing laws that conflict with State laws.
39. Florida Carry asks this Court to reserve jurisdiction to provide further relief as the Court deems necessary and proper.
40. Florida Carry has retained The Law Offices of J. Patrick Buckley III, 1404 Dean Street, Third Floor, Fort Myers, Florida 33901, and agreed to pay a fee for its professional services.

41. Florida Carry has retained Fletcher & Phillips, 541 E. Monroe, Suite 1, Jacksonville, Florida 32202 and agreed to pay a fee for its professional services.

WHEREFORE, the Plaintiff asks this Honorable Court for a declaration pursuant to Chapters 86 and 790, Florida Statutes that §15-3 is invalid null and void and otherwise unenforceable, along with reasonable attorney fees, including a contingency fee multiplier, and court costs along with such other relief this Court deems appropriate and necessary.

COUNT II
PETITION FOR INJUNCTIVE RELIEF PURSUANT TO SECTION
§790.33(3)(b)

42. Paragraphs 1-25 are re-alleged and reincorporated herein by reference.

43. This is an action for a permanent injunction against The City of Leesburg to enjoin The City of Leesburg, its City Manager, and the City Commission prohibiting it from enforcing §15-3.

44. Plaintiff's members will suffer if the City of Leesburg is permitted to enforce §15-3.

45. Plaintiff has a reasonable fear that its members can be cited or arrested for violating §15-3.

46. Plaintiff has a substantial likelihood of success on the merits.

47. A permanent injunction serves the public interest.

48. Plaintiff is entitled to a clear legal right to the relief sought.

49. In accordance with §790, Florida Statutes, Florida Carry does not need to post a bond to acquire an injunction.

50. If an injunction is granted, Defendant will suffer no hardship.

51. Florida Carry has retained The Law Offices of J. Patrick Buckley III, 1404 Dean Street, Third Floor, Fort Myers, Florida 33901, and agreed to pay a fee for its professional services.

52. Florida Carry has retained Fletcher & Phillips, 541 E. Monroe, Suite 1, Jacksonville, Florida 32202 and agreed to pay a fee for its professional services.

WHEREFORE, the Plaintiff asks this Honorable Court for a declaration pursuant to Chapters 86 and 790, Florida Statutes that §15-3 is invalid null and void and otherwise unenforceable, along with reasonable attorney fees, including a contingency fee multiplier, and court costs along with such other relief this Court Deems appropriate and necessary.

COUNT III
COMPLAINT FOR DECLARATORY RELIEF AND PETITION FOR INJUNCTIVE
RELIEF PURSUANT TO
§790.33(3)(f)

53. Paragraphs 1-25 are re-alleged and reincorporated herein by reference.

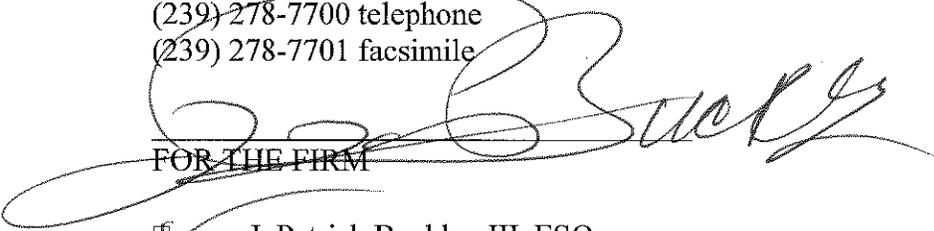
54. This is an action for Declaratory Relief and injunctive relief pursuant to §790.33(3)(f), Florida Statutes.

55. The Defendant(s) have promulgated an ordinance, or caused an ordinance to be promulgated in violation of §790.33(3)(f), Florida Statutes, that adversely affect the members of Florida Carry. §15 of the Code of Ordinances of the City of Leesburg, its City Manager, or both have taken this action and refused, upon receiving actual notice of violation of §790.33, to repeal the offending ordinance.

56. Evans has written an e-mail to Florida Carry stating that he and the City of Leesburg are well aware of §790.33, and that there is “[N]o requirement that we repeal said laws.” Evans continues by stating that any action taken in the future will be at the discretion, pleasure, and timing of the City Commission.
57. Florida Carry asks for a declaratory relief pursuant to §790.33(3)(f) along with injunctive relief pursuant to §790.33(3)(f).
58. Florida Carry believes that compensatory damages will be impossible to prove and therefore seeks nominal damages. “[N]ominal damages can be awarded when a legal wrong has been proven, but the aggrieved party has suffered no damages ... or where ... recoverable damages were not proven.” *Continuum Condo. Ass’n v Continuum VI, Inc.*, 549 So.2d 1125, 1127 (Fla. 3d DCA 1989).
59. Florida Carry asks this Court to reserve jurisdiction to provide further relief as the Court deems necessary and proper.
60. Florida Carry has retained The Law Offices of J. Patrick Buckley III, 1404 Dean Street, Third Floor, Fort Myers, Florida 33901, and agreed to pay a fee for its professional services.
61. Florida Carry has retained Fletcher & Phillips, 541 E. Monroe, Suite 1, Jacksonville, Florida 32202 and agreed to pay a fee for its professional services.

WHEREFORE, the Plaintiff asks this Honorable Court for declaratory and injunctive relief and for actual or, alternatively nominal, damages caused by the violation and asks this Court to award the prevailing Plaintiff reasonable attorney’s fees and costs in accordance with the laws of this state, including a contingency fee multiplier, as authorized by law; along with such other relief this Court deems appropriate and necessary.

The Law Offices of J. Patrick Buckley III
1404 Dean Street, Third Floor
Fort Myers, Florida 33901
(239) 278-7700 telephone
(239) 278-7701 facsimile


~~FOR THE FIRM~~

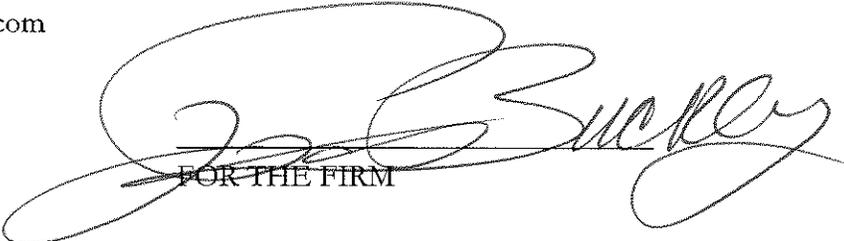
- J. Patrick Buckley III, ESQ
Florida Bar Number: 467707
- Terry Cramer III, ESQ
Florida Bar Number: 99360
- Leland M. Taylor, ESQ
Florida Bar Number: 52905

*Attorney for Plaintiff, Florida Carry, Inc., a Florida
Not-For-Profit Corporation*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S.
Mail/E-Mail/Fax Transmission this 5th day of February 2013 to:

Fred A. Morrison, Esquire
McLin Burnsed
PO Box 491357
Leesburg, Florida 34749-1357
E-Mail: FredM@mcclinburnsed.com


~~FOR THE FIRM~~