

IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

FLORIDA CARRY, INC.,
a Florida non-profit corporation,

Plaintiff,

v.

UNIVERSITY OF FLORIDA,
a state university; and
BERNIE MACHEN, an individual,

Defendants.

Case No: 2014-CA-000104

Division: J

MOTION TO DISMISS FOR LACK OF STANDING

Defendants, University of Florida and Bernie Machen, move to dismiss the Complaint for lack of standing on the grounds set forth below.

The Complaint alleges that the defendants have violated the Florida Constitution and various Florida statutes by prohibiting students from keeping guns in their cars while on campus and in their on-campus housing. The Complaint fails to demonstrate standing with respect to either of these claims.

Guns in Vehicles

Plaintiff alleges that defendants have violated provisions of Sections 790.33, 790.06(12)(b) and 790.25, Florida Statutes, which provisions allow persons to store firearms in a motor vehicle under specified conditions. In order to have standing to sue on behalf of its members, an association must be able to demonstrate that “a substantial number of its members, although not necessarily a majority, are ‘substantially affected’ by the challenged rule.” *Florida Home Builders Assoc. v. Dept. of Labor and Employment Security*, 412 So. 2d 351, 353 (Fla.

1982); *Florida Home Builders Assoc. v. City of Tallahassee*, 15 So. 3d 612, 613 (Fla. 1st DCA 2009).¹ With respect to its members, plaintiff states only the following:

3. Plaintiff's membership consists of individuals who seek to protect their rights to keep and to bear arms, including but not limited to firearms, pursuant to the Constitution and laws of the State of Florida.

4. Plaintiff's members desire to carry a firearm while traveling to and from the University of Florida as lawful method of self defense, and to store the firearm while on campus.

The Complaint fails to allege that even one member, much less a substantial number of members, are substantially affected by an alleged University violation of the cited statutory provisions. Even more importantly, the Complaint states no facts that would support such an allegation. There are no allegations, for example, that any member of the plaintiff association possesses a firearm, drives or rides in a car on campus, has ever carried or stored a firearm in such car, intends or desires to do so while the motor vehicle is on the University campus and, since the December 10, 2013 decision of the First District Court of Appeal in Case No. ID12-2174, has been prohibited by the University or Dr. Machen to possess a firearm in a car.

In addition to seeking damages, plaintiff also seeks declaratory and injunctive relief. An action for such relief requires a showing "that there is a bona fide dispute with an actual present need for judicial intervention." *Florida Builders Association, Inc. v. City of Tallahassee*, 15 So. 3d at 613. The Complaint fails to allege the existence of any such dispute. To the contrary, the Complaint states that the University has adopted a footnote to its regulations regarding the

¹ The Complaint cites Section 790.33(3)(f), Florida Statutes, which gives standing to an association to judicially challenge a regulation alleged to be in violation of the statute if its "membership is adversely affected" by the ordinance. The provision is not in conflict with the judicial standard for associational standing set forth above and neither the provision nor its legislative history suggest that the Legislature intended to overturn the standard. In any case, the Complaint fails to meet even a more liberal reading of the statutory standing provision because, as noted, it fails to allege that even one member is adversely affected.

possession of guns on campus in which the University states that it will comply with Florida law as recently interpreted by the First District Court of Appeal's decision. Complaint, ¶ 19. As confirmed by the attached affidavit, the note referenced in the Complaint is appended to the University's regulation 2.001 and states:

Intent/application: As university regulations and their implementation are subject to applicable law, the University will comply with Florida law governing firearms in vehicles under Section 790.25(5), Florida Statutes, including firearms that are securely encased or otherwise not readily accessible for immediate use in vehicles by individuals 18 years old and older, as decided by the First District Court of Appeal on December 10, 2013 (Case No. 1D12-2174).

Moreover, as further attested to in the attached affidavit, the University's Vice President and General Counsel, Jamie Lewis Keith, spoke to the Executive Director of the plaintiff on January 7, 2014, in which conversation she informed him that the University fully intends to comply with Florida firearms and weapons statutes as interpreted by the First District decision in *Florida Carry, Inc. v. University of North Florida*, 2013 WL 6480789(12/10/2013). The affidavit further states that the University's legal office met with the University's Chief of Police and the Senior Vice President and Vice President who are responsible for the University's Police Department, and communicated with the Dean of Students office and the Vice President for Student Affairs the day after the First District's decision was issued to ensure the University's Police Department and the offices responsible for administering the University's student conduct policies and processes understood the decision and would comply with Florida law as interpreted by the First District Court of Appeal. The affidavit also states that the University's legal office and information technology office undertook a thorough review of the University's regulations, publications and practices to be sure that they are in compliance with Florida law as interpreted by the First District Court of Appeal, added the footnote to provide clarity respecting compliance, and took other appropriate steps to comply. In the absence of an allegation that any

member of the plaintiff association has been threatened by the University since the First District Court of Appeal's decision or has any rational fear of adverse action because of possession of a firearm in a motor vehicle in compliance with the subject statutes, there is no justiciable controversy.

Guns in Campus Housing

The Complaint alleges that the defendants are in violation of the Florida Constitution and Florida statutes by prohibiting students from possessing firearms in campus housing, notwithstanding the provisions of Section 790.115(2), Florida Statutes. Again, the Complaint fails to allege that even one of the plaintiff's members, much less a substantial number, are adversely affected by the alleged violations. In addition, the Complaint fails to allege supporting facts, including that any member of the plaintiff association lives in on-campus housing, possesses a firearm, and desires to keep such a firearm in his or her campus housing.

Conclusion

The Complaint fails to allege any connection between any member of the plaintiff association and the University of Florida, much less a connection relating to the alleged causes of action. Because the Complaint fails to allege facts that are essential to establish standing with respect to any of plaintiff's claims, the Complaint should be dismissed.

S/ BARRY RICHARD
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed this 31st day of
January, 2014 via the Florida ePortal, for service upon:

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S/ BARRY RICHARD

TAL 451825955v1

AFFIDAVIT OF JAMIE LEWIS KEITH

STATE OF FLORIDA

COUNTY OF ALACHUA

BEFORE ME, the undersigned authority, on this date personally appeared Jamie Lewis Keith, who, after being by me duly sworn, deposes and says as follows:

1. I am the Vice President and General Counsel of University of Florida and have held this position since October 2006, and I am above the age of majority under Florida law.
2. On January 7, 2014, I had a telephone conversation with Sean Caranna who identified himself as the Executive Director of Florida Carry.
3. That telephone conversation is the only communication I have had--and, based on information and belief, that conversation is the only communication that my office has had--with Mr. Caranna or Florida Carry, Inc. or its representatives, until the filing of the instant lawsuit.
4. In that telephone conversation:
 - a. I informed and emphasized to Mr. Caranna throughout our conversation that the University fully intends to comply and is complying with Florida firearms and weapons statutes as interpreted by the December 10, 2013 First District Court of Appeal decision involving Florida Carry and the University of North Florida. (That decision is *Florida Carry, Inc. v. University of North Florida*, 2013 WL 6480789(12/10/2013).)
 - b. I informed Mr. Caranna that my office had met with the University's Police Chief right after the First District's decision was rendered to make sure the University Police Department was aware of the First District's decision, understood its meaning, and would comply with Florida law as determined by that decision.
 - c. I also informed Mr. Caranna that I am confident the University Police Chief understands the law as determined by the First District's decision, intends her Department to comply, and would require compliance.
 - d. I informed Mr. Caranna that the University Police Department policy on firearms on campus was the only University policy referencing firearms in vehicles, that none of the University's regulations reference firearms in vehicles, and that the Police Department policy was removed as a policy by the Police Department promptly after the First District Court of Appeal's decision.
 - e. I pointed Mr. Caranna to the footnote that the University had added to University of Florida Regulation 2.001--even though the University's regulations do not specifically reference firearms in vehicles--to make clear that the University will comply with Florida law concerning firearms in vehicles, as determined by the First District Court of Appeal's decision.
 - f. I informed Mr. Caranna that the University had also made and would continue to make public statements to the media that the University will comply with such law.

- g. Mr. Caranna never mentioned suing the University or President Machen and never referenced University housing or University housing policies.
 - h. Mr. Caranna stated that he could put his lawyer in touch with me to talk if there are any disagreements in interpretation of the firearms in vehicles statute, pointed me to some additional detail in Section 790.25(5), and said he would review the footnote with his lawyer.
5. Immediately upon the issuance and my first review of the First District Court of Appeal's decision, on December 10, 2013, I alerted senior officials, including the President, Chief of the University's Police Department, Vice President for Student Affairs, and Senior Vice President with responsibility for the Police Department.
 6. On December 11, 2013, the day after the First District Court of Appeal issued its 75-page opinion, I met with the University's Chief of Police and the Senior Vice President and Vice President who are responsible for the University's Police Department, and my office communicated with the Dean of Students office and the Vice President for Student Affairs to ensure the University's Police Department and the offices responsible for administering the University's student conduct policies and processes understood the decision and would comply with Florida law as interpreted by the First District Court of Appeal.
 7. At a Presidential Cabinet meeting on December 17, 2013, one week after that decision was issued, I advised the University's Cabinet of Vice Presidents about Florida law on firearms in vehicles as interpreted by the First District Court of Appeal and the President emphasized to the Cabinet that the University will comply with the law as so interpreted.
 8. Soon after issuance of the First District's December decision, my office and the information technology office began a thorough review of the University's regulations, publications and practices to be sure that they are in compliance with Florida law on firearms in vehicles as interpreted by the First District Court of Appeal, added the footnote to UF Regulation 2.001 to provide clarity respecting compliance, and took other appropriate steps to comply--including making a change to the Human Resource Services Department's workplace violence policy cited in plaintiff's complaint upon its coming to my office's attention. Although based on information and belief my office has completed this review, the University stands ready to take appropriate action to comply if we find any additional materials or practices that require action.
 9. Based on Mr. Caranna's pointing out some detailed language in Section 790.25(5), Florida Statutes, and even though the footnote already clearly stated that the University will comply with Florida law on firearms in vehicles as determined by the First District Court of Appeal in its December 10, 2013 decision, I inserted additional detail in the footnote to the University's regulations, which currently states:

"Intent/application: As university regulations and their implementation are subject to applicable law, the University will comply with Florida law governing firearms in vehicles under Section 790.25(5), Florida Statutes, including firearms that are securely encased or otherwise not readily accessible for immediate use in vehicles by individuals 18 years old and older, as decided by the First District Court of Appeal on December 10, 2013 (Case No. 1D12-2174)."

FURTHER AFFIANT SAYETH NOT.

Jamie Lewis Keith
Jamie Lewis Keith

SWORN TO AND SUBSCRIBED before me this 31 day of January, 2014.

Kristina M. Souza
NOTARY PUBLIC



State of Florida

My Commission Expires: 6/3/17

Personally known to me

Produced identification