

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

CASE NO.: 16-2011-CA-8012  
DIVISION: CV-G

FLORIDA CARRY, INC., and  
ALEXANDRIA LAINEZ,

Plaintiffs,

v.

UNIVERSITY OF NORTH FLORIDA, and  
JOHN DELANEY,

Defendants.

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**MEMORANDUM OF LAW IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION**

**Factual and Legal Background**

Florida Carry, Inc., and Alexandria Lainez ("Plaintiffs") have sued University of North Florida ("UNF") and its President, John Delaney ("President Delaney") (collectively, "Defendants"), alleging violations of Section 790.33, Florida Statutes. Ms. Lainez is a student at UNF and a member of Florida Carry, Inc., a firearms owner advocacy group. Plaintiffs allege that UNF violated Section 790.33 by publishing a Student Handbook and a Student Code of Conduct that prohibit students from possessing firearms on campus, without any exception for firearms in private conveyances.<sup>1</sup> Plaintiffs argue that UNF's prohibition, as applied to firearms stored in private conveyances, is preempted by Section 790.33. ~~Defendants assert that Florida law expressly permits universities to regulate firearms on university property.~~

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<sup>1</sup> Plaintiffs allege that President Delaney participated in UNF's purported violations of Section 790.33. Further references to UNF in this Memorandum refer to President Delaney as well.

Section 790.33 declares the Legislature's occupation of the field of firearms regulation, and prohibits any local ordinance or administrative rule that regulates firearms, "[e]xcept as expressly provided by the State Constitution or general law." Fla. Stat. § 790.33(1) (emphasis added). Further, Section 790.33 imposes liability upon "any person" who "enact[s] or cause[s] to be enforced" any such preempted firearms regulation. Fla. Stat. § 790.33(3). Section 790.33 may be privately enforced by individuals and by organizations whose membership are adversely affected by regulations that violate the statute. Fla. Stat. § 790.33(3)(f) (2011). Section 790.33 authorizes plaintiffs to seek declaratory and injunctive relief, actual damages up to \$100,000, attorney's fees and costs.

Plaintiffs 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.

Plaintiff's Motion for Temporary Injunction, at ¶ 31.

#### **Legal Standard**

"[A] preliminary injunction is an extraordinary remedy which should be granted sparingly." *Hadi v. Liberty Behavioral Health Corp.*, 927 So. 2d 34, 38 (Fla. 1st DCA 2006). The purpose of a temporary injunction is to preserve the status quo pending final hearing. *Garcia v. Dumenigo*, 46 So. 3d 1085, 1087 (Fla. 3d DCA 2010). A petitioner seeking a temporary injunction must establish four elements: "a substantial likelihood of success on the merits; lack of an adequate remedy at law; irreparable harm absent the entry of an injunction; and that

injunctive relief will serve the public interest." *Liberty Counsel v. Fla. Bar Bd. of Governors*, 12 So. 3d 183, 186 n.7 (Fla. 2009) (quoting *Reform Party of Fla. v. Black*, 885 So. 2d 303, 305 (Fla. 2004)). See also *St. Johns Investment Mgmt. Co. v. Albaneze*, 22 So. 3d 728, 731 (Fla. 1st DCA 2009). The petitioner bears the burden of satisfying each of the four elements by substantial, competent evidence. *St. Johns Investment Mgmt. Co.*, 22 So. 3d at 731. As discussed below, Plaintiffs request an injunction that would disturb the status quo and cannot establish any of the four elements. Thus, the request for a temporary injunction should be denied.

### Argument

#### I. Plaintiffs' requested temporary injunction would disturb, not preserve, the status quo

"It is axiomatic that the purpose of a temporary injunction is to preserve the status quo pending the final hearing." *Garcia v. Dumenigo*, 46 So. 3d at 1087. "Moreover, '[t]he status quo preserved by a temporary injunction is the last peaceable noncontested condition that preceded the controversy.'" *Id.* (quoting *Bailey v. Christo*, 453 So. 2d 1134, 1137 (Fla. 1st DCA 1984)). The temporary injunction requested by Plaintiffs would not preserve UNF's rules, regulations and disciplinary structure in the last peaceable noncontested condition they were in prior to the controversy. Instead, it would effectively resolve the case in Plaintiffs' favor, which is not the purpose of a temporary injunction. See *Escudero v. Hasbun*, 689 So. 2d 1144, 1146 (Fla. 3d DCA 1997). Thus, Plaintiff's request for temporary injunction should be denied.

#### II. Plaintiffs are not likely to succeed on the merits, because universities are expressly authorized by Florida law to regulate firearms on their property

Section 790.33, upon which Plaintiffs rely, preempts local or administrative regulation of firearms "[e]xcept as expressly provided by the State Constitution or general law." Fla. Stat. § 790.33(1) (2011). UNF's regulation of firearms storage in private conveyances on its property is

expressly provided by general law. Accordingly, UNF's regulation does not impinge upon the Legislature's preemption of firearms regulation, nor violate Section 790.33, and Plaintiffs cannot establish a substantial likelihood of success on the merits.

**A. Section 790.251 permits schools, including universities, to regulate firearms storage in private conveyances located on their property**

Section 790.251, Florida Statutes, permits UNF to regulate firearms storage in private conveyances located on its property. *See Fla. Stat. § 790.251 (2011)*. Generally, Section 790.251 forbids employers from prohibiting firearms storage in private conveyances:

(4) PROHIBITED ACTS. No public or private employer may violate the constitutional rights of any customer, employee, or invitee as provided in paragraphs (a)-(e):

(a) No public or private employer may prohibit any customer, employee, or invitee from possessing any legally owned firearm when such firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot and when the customer, employee, or invitee is lawfully in such area.

*Id.* However, Section 790.251 provides an exception for school property:

(7) EXCEPTIONS. The prohibitions in subsection (4) do not apply to:  
(a) Any school property as defined and regulated under s. 790.115.

*Id.*

Section 790.115 does not define "school property." *See Fla. Stat. 790.115 (2011)*. However, Section 790.115 defines "school" to mean "any preschool, elementary school, middle school, junior high school, secondary school, career center, or *postsecondary school*, whether public or nonpublic." *Id.* (emphasis added). A university, such as UNF, is a postsecondary school. Thus, UNF property is "school property", and Section 790.251 permits UNF to regulate firearms storage in private conveyances on its property. Notably, although Plaintiffs claim that UNF's regulations were preempted by Florida law, they fail to even mention Section 790.251.

**B. Plaintiff's interpretation of Section 790.115 to exclude universities contradicts clearly expressed legislative intent and would lead to an absurd result**

Although Plaintiffs ignore Section 790.251, they argue that Section 790.115, to which Section 790.251 refers, does not apply to UNF. Section 790.115 provides, in relevant part:

(2)(a) A person shall not possess any firearm . . . at a school-sponsored event or on the property of any school, school bus, or school bus stop; however, a person may carry a firearm:

...

3. In a vehicle pursuant to s. 790.25(5); except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges.

For the purposes of this section, "school" means any preschool, elementary school, middle school, junior high school, secondary school, career center, or *postsecondary school*, whether public or nonpublic.

Fla. Stat. § 790.115 (2011) (emphasis added). Plaintiffs argue that UNF is not a "school district" as defined in the Florida Constitution. *See* Complaint, at ¶ 26; *see also* Fla. Const. Art IV, Section 9 (describing the role of school districts in Florida's public school system). Thus, according to Plaintiffs, UNF cannot regulate firearms on its property. Section 790.115 does not provide a definition for "school district". *See* Fla. Stat. § 790.115 (2011). However, in the very next sentence after Section 790.115 mentions "school districts", the statute defines "school"

broadly to include schools from preschool through postsecondary "whether public or nonpublic."

*Id.* Applying Plaintiffs' definition of "school district" to Section 790.115 would permit only

public schools to regulate firearms on their property, frustrating the clearly expressed intent of

the Legislature to cover all schools "whether public or private." *See* Fla. Stat. § 1001.31 (2011)

(school district systems include all *public* schools). According to Plaintiff's interpretation, a public preschool could forbid firearm storage on school property, but a private preschool could

not; an absurd result that the Legislature could not and did not intend? Instead, the court's interpretation should follow Section 790.115's clearly expressed intent to protect all schools, including universities such as UNF. *See Dennis v. State*, 51 So. 3d 456, 461 (Fla. 2010) ("Statutory enactments are to be interpreted so as to accomplish rather than defeat their purpose."); *Blinn v. Fla. Dep't. of Transp.*, 781 So. 2d 1103, 1107 (Fla. 1st DCA 2000) ("Where the literal language of the statute is in conflict with the stated legislative policy of the act, the court will not give the language its literal interpretation when to do so would lead to an unreasonable conclusion or defeat legislative intent or result in a manifest incongruity.")

**C. To the extent the court finds Section 790.251 ambiguous, its legislative history demonstrates clear legislative intent to permit universities to regulate firearms storage in private conveyances on university property**

Defendants believe Section 790.251 unambiguously permits UNF to regulate firearms storage in private conveyances located on its property. However, to the extent the court finds Section 790.251 ambiguous, it may consider the statute's legislative history. *See Am. Home Assur. Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 369 (Fla. 2005) ("[L]egislative history ... is a basic and invaluable tool of statutory construction"); *Doe v. Am. Online, Inc.*, 718 So. 2d 385, 388 (Fla. 4th DCA 1998) (notwithstanding the four corners of the complaint rule, trial court deciding a motion to dismiss may consider legislative history). The legislative history of Section 790.251 demonstrates the Legislature intended to permit all schools, including universities, to regulate firearms storage in private conveyances located on their property.

For example, a discussion between Senator Arthenia Joyner, representing the 18th District, and Senator Durell Peaden, representing the 2nd District, demonstrates that the Legislature intended university property to be considered "school property," and thus, that universities are permitted to prohibit firearms storage in private conveyances on their property.

Senator Joyner: Thank you, Mr. President. Senator Peaden, the prohibitions list first school property and my question is, does school property include colleges, *universities*, law schools, community colleges and any other institutions of higher learning?

Mr. President: Senator Peaden.

Senator Peaden: (*Unintelligible*). It is my understanding that the definition in the statute of schools all of these are covered for this particular bill.

*Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles: Second Reading and Debate on SB 1130, at 1:56:02-1:56:34 P.M. (Fla. Apr. 3, 2008) (emphasis added).*

Similarly, Senator Ted Deutch, representing the 30th district, noted that Section 790.251 incorporated Section 790.115's broad definition of "schools":

Senator Deutch: Thank you, Mr. President. Mr. President, just for purposes of clarification, and members of the Senate, school as it is defined in Section 790.115 means any preschool, elementary school, middle school, junior high school, secondary school, career center, or *post secondary school*, whether public or non public. *Under the bill as drafted, all of those schools are exempt from this statute.*

*Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles: Second Reading and Debate on SB 1130, at 2:00:11- 2:00:45 PM (Fla. Apr. 3, 2008) (emphasis added).*

Universities came up again during discussion of an amendment which would have added child care centers to Section 790.251's "school property" exception. While Senator Deutch's statement dealt primarily with child care centers, the excerpt demonstrates the Legislature's understanding that the bill, *without* his proposed amendment, already excepted universities:

Senator Deutch: Thank you Mr. President. For the record the statute that Senator Peaden refers to clearly does not include preschools, child care centers are not included in the definition of schools so members if you vote against this amendment, you'll be making the decision to protect the kids in our K-12 *and universities* while choosing to put the safety of our kids in our preschools those are perhaps the most vulnerable kids that we drop off in the morning and pick up after work putting in jeopardy the safety of those kids. Please understand that as we vote on this amendment.

*Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles: Second Reading and Debate on SB 1130*, at 1:44:22-1:44:50 P.M. (Fla. Apr. 3, 2008) (emphasis added).

Thus, the legislative history demonstrates that the Legislature intended to permit all schools, including universities, to regulate firearms storage in private conveyances located on their property.

**D. Sections 790.06 and 790.025 do not contradict Section 790.251**

Plaintiffs claim that UNF is ~~impliedly~~ preempted from regulating firearms storage in private conveyances on school property by Sections 790.06 and 790.25, Florida Statutes.

Section 790.06(12)(b), upon which Plaintiffs rely, provides that "[a] person licensed under this section shall not be prohibited from carrying or storing a firearm in a vehicle for lawful purposes." Fla. Stat. § 790.06(12)(b). Notwithstanding, the very next line of the statute states: "This section does not modify the terms or conditions of s. 790.251(7)." Fla. Stat. § 790.06(12)(c). Thus, UNF's power to regulate firearms storage in private conveyances located on its property, which is provided by Section 790.251(7), is not preempted by Section 790.06(12)(b). Just as Plaintiffs fail to even mention Section 790.251(7), Plaintiffs entirely disregard Section 790.06(12)(c).

Similarly, Plaintiffs rely upon Section 790.25. However, as noted above, Section 790.115 expressly limits the application of 790.25 on ~~school property~~. See Fla. Stat. § 790.115. Interpreting Section 790.25 to provide an unlimited right to store firearms would render Section 790.115 and Section 790.251 meaningless. Moreover, it would result in an absurd situation. Section 790.25, by its terms, applies only to persons without a concealed weapons license. Fla. Stat. § 790.25(5) ("[I]t is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose



within the interior of a private conveyance, *without a license*, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use.") Were the court to accept Plaintiff's interpretation, persons without concealed weapons licenses could store firearms on school property, but persons with concealed weapons licenses could not. The court should avoid interpreting Section 790.25 in a way that would result in a manifest incongruity. *Blinn*, 781 So. 2d at 1107.

As the foregoing demonstrates, the Legislature has expressly authorized universities such as UNF to regulate firearms on their property. Thus, UNF has not impinged upon the Legislature's preemption of firearms regulation and Plaintiffs cannot establish a substantial likelihood of success on the merits.

### **III. Plaintiffs have an adequate remedy at law**

A temporary injunction is unavailable when the plaintiff has an adequate remedy available at law. *See DiChristopher v. Bd. of County Comm'rs*, 908 So. 2d 492, 495 (Fla. 5th DCA 2005). Here, Plaintiffs have an adequate remedy for violation of Section 790.33, as the statute expressly provides for an award of actual damages incurred, up to \$100,000. Fla. Stat. § 790.33(3)(f)(2).<sup>2</sup>

### **IV. Plaintiffs would not be irreparably harmed without a temporary injunction**

Similarly, Plaintiffs cannot establish the third element, irreparable harm, because there is an available monetary remedy for violation of Section 790.33. *See DiChristopher*, 908 So. 2d at 496 (noting that an injury is not irreparable if money damages are available as a remedy); *Yachting Promotions, Inc. v. Broward*, 792 So. 2d 660, 663 (Fla. 4th DCA 2001) (same).

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<sup>2</sup> Although Plaintiffs' Motion for Temporary Injunction contains several references to the Second Amendment, and to Florida's Constitution, Plaintiffs' Complaint alleges solely a violation of Section 790.33. Accordingly, neither the U.S. nor the Florida Constitution is at issue.

Furthermore, the purpose of a temporary injunction is to *preserve* the status quo in order to prevent irreparable harm. *Camji v. Helmsley*, 602 So. 2d 617, 618 (Fla. 3d DCA 1992). As noted above, Plaintiffs are seeking to disturb the status quo. Plaintiffs have not alleged and cannot establish that UNF will modify the status quo to their detriment unless an injunction is entered. Finally, Plaintiffs have alleged that the risk of assault is an irreparable harm; however, to satisfy their burden Plaintiffs must establish an *immediate* irreparable harm, not a "doubtful, eventual or contingent" one. *Yachting Promotions*, 792 So. 2d at 663. *See also City of Boynton Beach v. Finizio*, 611 So. 2d 74, 74 (Fla. 4th DCA 1992) (holding that the *threat* of loss of employment did not constitute irreparable harm).

**V. Injunctive relief would not serve the public's interest**

A preliminary injunction should be denied when the potential injury to the public outweighs an individual's right to relief. *See Dragomirecky v. Town of Ponce Inlet*, 882 So. 2d 495, 497 (Fla. 5th DCA 2004). *See also Tom v. Russ*, 752 So. 2d 1250, 1251 (Fla. 1st DCA 2000) (reversing a preliminary injunction that failed to consider the public interest). Here, the potential for injury to the public has been recognized by the Legislature. *See Fla. Stat. § 790.115* (2011) (making it a felony to possess or discharge weapons or firearms at school sponsored events or on school property). Further, the Legislature has explicitly acknowledged that even firearms stored in motor vehicles pose a risk to the public. Section 790.251(7) (permitting regulation of firearms storage in motor vehicles at schools, correctional institutions, nuclear power plants, explosives manufacturers, and more).

**Conclusion**

For the foregoing reasons, Plaintiff's request for a temporary injunction should be denied.