

**IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA  
CIVIL DIVISION  
CASE NO.**

**FLORIDA CARRY, INC.,**  
Plaintiff,

versus

**BROWARD COUNTY**, a Florida County  
and Political Subdivision of the State of  
Florida, **BERTHA HENRY**, individually  
and in her official capacity,  
  
Defendants.

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**JURY TRIAL DEMANDED**

**INTRODUCTION**

Plaintiff Florida Carry, Inc. brings this action against Broward County and Bertha Henry. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes as well as injunctive relief concerning several ordinances of Broward County that purport to regulate the possession and use of firearms. These ordinances are preempted in full by § 790.33, Florida Statutes (2014), through which “the Legislature hereby declares that it is occupying the whole field of regulation of firearms . . . including the . . . 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.” The ordinances are also preempted by other provisions of the laws of Florida and the United States because they infringe on the right of the people to keep and bear arms as guaranteed by the United States Constitution and the Florida Constitution.

## **JURISDICTION**

1. The Court has jurisdiction over this action pursuant to § 86.011, Florida Statutes, for declaratory judgment and injunctive relief.

2. This Court has jurisdiction over this action pursuant to §790.33(f), Florida Statutes.

3. This is also an action for damages in excess of \$15,000.00 and/or statutory fines.

4. Plaintiff has statutory standing to bring this action because Plaintiff's membership consists of individuals who are eligible and seek to protect and exercise their rights to keep and to bear arms, including but not limited to firearms, pursuant to the Constitution and laws of the United States and the State of Florida, and who are substantially affected by the preempted rules and regulations enacted by Defendants.

5. All conditions precedent have been satisfied and/or waived.

## **PARTIES**

6. Plaintiff Florida Carry, Inc. is a non-profit association incorporated under the laws of Florida with its principal place of business in Port Orange, Florida. Plaintiff's membership consists of individuals who seek to protect and exercise their rights to keep and to bear arms, including but not limited to firearms, and to protect their right of self-defense under the Constitution and laws of the United States and the State of Florida. Plaintiff's members desire statewide uniformity regarding the laws governing the purchase, sale, transfer, taxation,

manufacture, ownership, possession, storage, and transportation of firearms and ammunition. Plaintiff has standing to sue pursuant to § 790.33(3)(f).

7. Defendant Broward County is a County and political subdivision of the State of Florida, duly organized and existing under Florida law.

8. Defendant Bertha Henry is the County Administrator for Broward County. Henry is the chief executive officer of Broward County Government and directs the day-to-day functions of County government.

### **GENERAL ALLEGATIONS**

9. The Florida Legislature in 1987 enacted § 790.33, Florida Statutes, expressly stating the Florida Legislature's intent to occupy the entire field of firearms and ammunition regulations. In its current form, § 790.33, known as the Joe Carlucci Uniform Firearms Act, provides in pertinent part, as follows:

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.

10. By so enacting, the Florida Legislature made its governing body the only Florida governmental entity that may enact, promulgate, and enforce laws regulating firearms and ammunition. Section 790.33 ensures uniformity in firearms regulations throughout the State of Florida by guaranteeing that laws do not vary from county to county and city to city. Local and municipal governments seeking the

enactment of firearm and ammunition regulations must pursue statewide legislative action.

11. More than twenty-five years later, Broward County has continued promulgating and enacting county ordinances that unlawfully regulate the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation of firearms and ammunitions.

12. These ordinances violate the letter and spirit of § 790.33, Florida Statutes. These offending and conflicting ordinances are illegal and unauthorized, and must be declared invalid. Broward County must be enjoined from enacting and continuing the laws that violate § 790.33.

**COUNT I- VIOLATION OF § 790.33, FLORIDA STATUTES**

(By the Continued Promulgation of § 2-137.1(e))

13. Plaintiff repeats and realleges paragraphs 1 through 12, incorporating them by reference herein.

14. Pursuant to § 790.33, Florida Statutes, the Legislature has expressly preempted the entire field of firearms and ammunition regulation, including but not limited to, the definition of firearms, the method and place of carry, the manner of use, and who may possess firearms where firearms may be possessed.

15. Article I, Sec. 8, of the Florida Constitution reserves to the Legislature the exclusive authority to regulate the manner of bearing arms.

16. The Defendants have enacted and have continued to promulgate Section 2-137.1(e) in its Code of Ordinances. Section 2-137.1(e) regulates the possession of weapons outside the sterile zone at North Perry Airport:

*Weapons.*

(1)

Unless duly authorized by law, no person, other than federal, state, or local law enforcement officers on duty, shall carry or transport any weapon on the Airport in a manner contrary to governing law.

(2)

No person shall discharge any firearm on the Airport, except in the performance of official duties requiring the discharge thereof, or in the lawful defense of life or property.

(3)

No person shall furnish, give, sell or trade any weapon or simulated weapon on the Airport unless authorized under appropriate lease with or permit issued by the County.

17. This regulation is unconstitutional and in violation of § 790.33, Florida Statutes.

Plaintiff seeks:

18. A declaration that Section 2-137.1(e) is invalid;

19. An award of actual and statutory damages and/or fines;

20. An injunction against the enforcement of Section 2-137.1(e) by Broward County and any agent thereof;

21. An order to remove Section 2-137.1(e) from any signage, brochures, pamphlets, or any other printed or published materials promulgating this rule;

22. An order requiring that the Defendants repeal Section 2-137.1(e);

23. A finding that the Defendants have knowingly and willfully violated the provisions of § 790.33, Florida Statutes;

24. An award of attorneys' fees and costs and all other relief deemed just and equitable.

**COUNT II - VIOLATION OF § 790.33, FLORIDA STATUTES**  
(By the Continued Promulgation of § 2-39(e))

25. Plaintiff repeats and realleges paragraphs 1 through 12, incorporating them by reference herein.

26. Pursuant to § 790.33, Florida Statutes, the Legislature has expressly preempted the entire field of firearms and ammunition regulation, including but not limited to, the definition of firearms, the method and place of carry, the manner of use, and who may possess firearms where firearms may be possessed.

27. Article I, Sec. 8, of the Florida Constitution reserves to the Legislature the exclusive authority to regulate the manner of bearing arms.

28. The Defendants have enacted and have continued to promulgate Section 2-39(e) in its Code of Ordinances. Section 2-39(e) regulates the possession of weapons outside the sterile zone at Fort Lauderdale-Hollywood International Airport:

Weapons.

(1)

Unless duly authorized by law, no person, other than federal, state, or local law enforcement officers on duty, shall carry or transport any weapon on the Airport in a manner contrary to governing law.

(2)

No person shall discharge any gun on the Airport, except in the performance of official duties requiring the discharge thereof, or in the lawful defense of life or property.

(3)

No person shall furnish, give, sell, or trade any weapon or simulated weapon on the Airport unless authorized under appropriate lease with

or permit issued by the County.

29. This regulation is unconstitutional and in violation of § 790.33, Florida Statutes.

Plaintiff seeks:

30. A declaration that Section 2-39(e) is invalid;

31. An award of actual and statutory damages and/or fines;

32. An injunction against the enforcement of Section 2-39(e) by Broward County and any agent thereof;

33. An order to remove Section 2-137.1(e) from any signage, brochures, pamphlets, or any other printed or published materials promulgating this rule;

34. An order requiring that the Defendants repeal Section 2-39(e);

35. A finding that the Defendants have knowingly and willfully violated the provisions of § 790.33, Florida Statutes;

36. An award of attorneys' fees and costs and all other relief deemed just and equitable.

**COUNT III - VIOLATION OF § 790.33, FLORIDA STATUTES**

(By the Continued Promulgation of Section 7-5.01(i))

37. Plaintiff repeats and realleges paragraphs 1 through 12, incorporating them by reference herein.

38. Pursuant to § 790.33, Florida Statutes, the Legislature has expressly preempted the entire field of firearms and ammunition regulation, including but not

limited to, the definition of firearms, the method and place of carry, the manner of use, and who may possess firearms where firearms may be possessed.

39. Article I, Sec. 8, of the Florida Constitution reserves to the Legislature the exclusive authority to regulate the manner of bearing arms.

40. The Defendants have enacted and have continued to promulgate Section 7-5.01(i) in its Code of Ordinances. Section 7-5.01(i) prohibits firearms on the premises of child care facilities:

Firearms: No firearms shall be kept on the premises of the child care facility.

41. This regulation is unconstitutional and in violation of § 790.33, Florida Statutes.

Plaintiff seeks:

42. A declaration that Section 7-5.01(i) is invalid;

43. An award of actual and statutory damages and/or fines;

44. An injunction against the enforcement of Section 7-5.01(i) by Broward County and any agent thereof;

45. An order to remove Section 7-5.01(i) from any signage, brochures, pamphlets, or any other printed or published materials promulgating this rule;

46. An order requiring that the Defendants repeal Section 7-5.01(i);

47. A finding that the Defendants have knowingly and willfully violated the provisions of § 790.33, Florida Statutes;

48. An award of attorneys' fees and costs and all other relief deemed just and equitable.

**COUNT IV - VIOLATION OF § 790.33, FLORIDA STATUTES**

(By the Continued Promulgation of Section 20-295(I)(f))

49. Plaintiff repeats and realleges paragraphs 1 through 12, incorporating them by reference herein.

50. Pursuant to § 790.33, Florida Statutes, the Legislature has expressly preempted the entire field of firearms and ammunition regulation, including but not limited to, the definition of firearms, the method and place of carry, the manner of use, and who may possess firearms where firearms may be possessed.

51. Article I, Sec. 8, of the Florida Constitution reserves to the Legislature the exclusive authority to regulate the manner of bearing arms.

52. The Defendants have enacted and have continued to promulgate Section 20-295(I)(f) in its Code of Ordinances. Section 20-295(I)(f) regulates the possession of firearms on the premises of child care homes:

If any firearms are kept in the family child care home, they must be stored, unloaded, and locked in a cabinet.

53. This regulation is unconstitutional and in violation of § 790.33, Florida Statutes.

Plaintiff seeks:

54. A declaration that Section 20-295(I)(f) is invalid;

55. An award of actual and statutory damages and/or fines;

56. An injunction against the enforcement of Section 20-295(I)(f) by Broward County and any agent thereof;

57. An order to remove Section 20-295(I)(f) from any signage, brochures, pamphlets, or any other printed or published materials promulgating this rule;

58. An order requiring that the Defendants repeal Section 20-295(I)(f);

59. A finding that the Defendants have knowingly and willfully violated the provisions of § 790.33, Florida Statutes;

60. An award of attorneys' fees and costs and all other relief deemed just and equitable.

**COUNT VI - VIOLATION OF § 790.33, FLORIDA STATUTES**

(By the Continued Promulgation of Section 22½-9A(v))

61. Plaintiff repeats and realleges paragraphs 1 through 12, incorporating them by reference herein.

62. Pursuant to § 790.33, Florida Statutes, the Legislature has expressly preempted the entire field of firearms and ammunition regulation, including but not limited to, the definition of firearms, the method and place of carry, the manner of use, and who may possess firearms where firearms may be possessed.

63. Article I, Sec. 8, of the Florida Constitution reserves to the Legislature the exclusive authority to regulate the manner of bearing arms.

64. The Defendants have enacted and have continued to promulgate Section 22½-9A(v) in its Code of Ordinances. Section 22½-9A(v) regulates the possession of firearms by "common motor carriers":

Possession of firearms, switchblades, knives, clubs, or other weapons by operators, inconsistent with Chapter 790, F.S., whether in the vehicle or on the person, is prohibited.

65. This regulation is unconstitutional and in violation of § 790.33, Florida Statutes.

Plaintiff seeks:

66. A declaration that Section 22½-9A(v) is invalid;

67. An award of actual and statutory damages and/or fines;

68. An injunction against the enforcement of Section 22½-9A(v) by Broward County and any agent thereof;

69. An order to remove Section 22½-9A(v) from any signage, brochures, pamphlets, or any other printed or published materials promulgating this rule;

70. An order requiring that the Defendants repeal Section 22½-9A(v);

71. A finding that the Defendants have knowingly and willfully violated the provisions of § 790.33, Florida Statutes;

72. An award of attorneys' fees and costs and all other relief deemed just and equitable.

**COUNT VII - VIOLATION OF § 790.33, FLORIDA STATUTES**

(By the Continued Promulgation of Section 25½-6(b))

73. Plaintiff repeats and realleges paragraphs 1 through 12, incorporating them by reference herein.

74. Pursuant to § 790.33, Florida Statutes, the Legislature has expressly preempted the entire field of firearms and ammunition regulation, including but not limited to, the definition of firearms, the method and place of carry, the manner of use, and who may possess firearms where firearms may be possessed.

75. Article I, Sec. 8, of the Florida Constitution reserves to the Legislature the exclusive authority to regulate the manner of bearing arms.

76. The Defendants have enacted and have continued to promulgate Section 25½-6(b) in its Code of Ordinances. Section 25½-6(b) regulates the possession and discharge of firearms in county parks:

*Firearms, weapons.* Possession or discharge of any instrument that fires a potentially dangerous projectile, gas or liquid is prohibited except in designated areas.

77. This regulation is unconstitutional and in violation of § 790.33, Florida Statutes.

Plaintiff seeks:

78. A declaration that Section 25½-6(b) is invalid;

79. An award of actual and statutory damages and/or fines;

80. An injunction against the enforcement of Section 25½-6(b) by Broward County and any agent thereof;

81. An order to remove Section 25½-6(b) from any signage, brochures, pamphlets, or any other printed or published materials promulgating this rule;

82. An order requiring that the Defendants repeal Section 25½-6(b);

83. A finding that the Defendants have knowingly and willfully violated the provisions of § 790.33, Florida Statutes;

84. An award of attorneys' fees and costs and all other relief deemed just and equitable.

**COUNT VIII - VIOLATION OF § 790.33, FLORIDA STATUTES**

(By the Continued Promulgation of Section 21-8)

85. Plaintiff repeats and realleges paragraphs 1 through 12, incorporating them by reference herein.

86. Pursuant to § 790.33, Florida Statutes, the Legislature has expressly preempted the entire field of firearms and ammunition regulation, including but not limited to, the definition of firearms, the method and place of carry, the manner of use, and who may possess firearms where firearms may be possessed.

87. Article I, Sec. 8, of the Florida Constitution reserves to the Legislature the exclusive authority to regulate the manner of bearing arms.

88. The Defendants have enacted and have continued to promulgate Section 21-8 in its Code of Ordinances. Section 21-8 prohibits the discharge of firearms in unincorporated areas of Broward County and provides, in pertinent part, as follows:

(c)

No person shall discharge a firearm where he knows or should reasonably be expected to know the trajectory of the expelled projectile to be on or over any unpaved public road, highway or street in the unincorporated area of Broward County, Florida.

(d)

No person shall discharge a firearm, other than a shotgun firing shot, where he knows or should reasonably be expected to know the trajectory of the expelled projectile to be within one thousand two hundred fifty (1,250) feet of any unpaved public road, highway or street in the unincorporated area of Broward County, Florida.

(e)

No person shall discharge a firearm other than a shotgun firing shot where he knows or should reasonably be expected to know the trajectory of the expelled projectile to be in the general direction of, and within two thousand six hundred forty (2,640) feet of any open space that is being used for a recreational activity including but not

limited to parks, picnic areas, golf courses or fishing camps, in the unincorporated area of Broward County, Florida. No person shall discharge a shotgun firing shot where he knows or should reasonably be expected to know the trajectory of the expelled shot to be in the general direction of, and within one thousand two hundred fifty (1,250) feet of any open space that is being used for a recreational activity including but not limited to parks, picnic areas, golf courses or fishing camps, in the unincorporated area of Broward County, Florida.

(f)

No person shall discharge a firearm other than a shotgun firing shot where he knows or should be reasonably expected to know the trajectory of the expelled projectile to be in the general direction of, and within two thousand six hundred forty (2,640) feet of any occupied or unoccupied public building, private building, vessel, ship or aircraft in the unincorporated areas of Broward County, Florida. No person shall discharge a shotgun firing shot where he knows or should be reasonably expected to know the trajectory of the expelled shot to be in the general direction of and within one thousand two hundred fifty (1,250) feet of any occupied or unoccupied public building, private building, vessel, ship or aircraft in the unincorporated area of Broward County, Florida.

.....

(j)

Persons violating any of the provisions of this section shall be punished as provided by law.

89. This regulation is unconstitutional and in violation of § 790.33, Florida Statutes.

Plaintiff seeks:

90. A declaration that Section 21-8 is invalid;

91. An award of actual and statutory damages and/or fines;

92. An injunction against the enforcement of Section 21-8 by Broward County and any agent thereof;

93. An order to remove Section 21-8 from any signage, brochures, pamphlets, or any other printed or published materials promulgating this rule;

94. An order requiring that the Defendants repeal Section 21-8;

95. A finding that the Defendants have knowingly and willfully violated the provisions of § 790.33, Florida Statutes;

96. An award of attorneys' fees and costs and all other relief deemed just and equitable.

**COUNT IX DECLARATORY JUDGMENT**

(Pursuant to § 790.33, Florida Statutes)

97. Plaintiff re-alleges the allegations in paragraphs 1 through 96 as if set forth in full and further says:

98. This is an action for declaratory relief pursuant to § 790.33(f), Florida Statutes.

99. Plaintiff seeks a ruling of the Court on behalf of its membership that all parts of the Broward County code that regulate and purport to firearms and weapons are expressly and impliedly preempted.

100. Plaintiff's members will suffer material harm without a declaratory judgment as they will be denied the exercise of their right to bear arms as specifically authorized by Florida law.

101. Section 790.33(f), Florida Statutes, specifically authorizes Plaintiff to seek a declaratory judgment in this matter.

102. The Defendants continued promulgation of county codes regulating firearms, weapons, and ammunition leaves Plaintiff with no clear remedy other than a declaratory judgment that the Defendants are in violation of the preemption

statute, and an order requiring the Defendants to take corrective action to remedy their illegal ordinances and conduct.

Plaintiff requests an order:

103. Finding that any Broward County code and ordinance that regulates or purports to regulate firearms in a manner inconsistent with § 790.33 is null and void.

104. Award attorneys' fees and costs and all other relief deemed just and equitable.

#### **COUNT X INJUNCTION AND WRIT OF MANDAMUS**

105. Plaintiff re-alleges the allegations in paragraphs 1 through 96 as if set forth in full and further says:

106. The Legislature has declared all regulation of firearms to be preempted by the Legislature, and has determined that local governments may not enact ordinances so regulating.

107. Broward County has continued the regulation of firearms and ammunition in the face of express preemption and is continually harming the members of Plaintiff Florida Carry, Inc.

108. The risk of assault or other physical force against the members of Florida Carry and the lack of any duty by Broward County to protect them is a harm which cannot be compensated solely by an award of money damages.

109. The Defendants have no reasonable basis for their enactment of rules regarding firearms and are unlikely to prevail on the merits.

110. The continued promulgation of misinformation regarding the Defendants in violation of state law leaves the citizens of Florida and members of Florida Carry without clear guidance as to their conduct and as to whether their rights under Florida law end when crossing into Broward County.

Plaintiff seeks an injunction against the Defendants prohibiting any enforcement of County regulations regarding the possession of firearms and weapons in a manner inconsistent with § 790.33, and an injunction and/or a writ of mandamus, ordering the Defendants:

111. To repeal all enjoined rules and regulations;

112. To replace all signage, brochures, pamphlets, and any other printed or published materials promulgating the enjoined statutes;

113. To eliminate any rule, regulation, or provision regarding the possession and/or use of firearms in all publications; and

114. All other relief deemed just and equitable.

**DEMAND FOR JURY TRIAL**

115. Plaintiff demands trial by jury on all issues.

Respectfully submitted,

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DATE: May 2, 2014