

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

DAN DALEY, in his official capacity as )  
Commissioner of the City of Coral Springs, Florida, )  
FRANK C. ORTIS, in his official capacity as Mayor )  
of the City of Pembroke Pines, Florida, )  
REBECCA A. TOOLEY, in her official capacity as )  
Commissioner of the City of Coconut Creek, Florida, )  
GARY RESNICK, in his official capacity as Mayor )  
of the City of Wilton Manors, Florida, )  
CITY OF CORAL SPRINGS, )  
CITY OF PEMBROKE PINES, )  
CITY OF COCONUT CREEK, and )  
CITY OF WILTON MANORS, )

Plaintiffs, )

v. )

STATE OF FLORIDA, )  
THE HONORABLE RICHARD L. SCOTT, in his )  
official capacity as Governor of the State of Florida, )  
THE HONORABLE MICHAEL J. SATZ, in his )  
official capacity as State Attorney, 17th Judicial )  
Circuit, )  
THE HONORABLE BRENDA D. FORMAN, in her )  
official capacity as Broward County Clerk of the )  
Courts, )  
THE HONORABLE SCOTT J. ISRAEL, in his )  
official capacity as Sheriff of Broward County, )  
THE HONORABLE PAMELA BONDI, in her )  
official capacity as Attorney General of the State of )  
Florida, and )  
THE HONORABLE RICHARD L. SWEARINGEN, )  
in his official capacity as Commissioner of the )  
Florida Department of Law Enforcement, )

Defendants. )

CIVIL ACTION  
DOCKET NO: CACE-18-008664

AMENDED COMPLAINT

## PRELIMINARY STATEMENT

1. This Complaint alleges that the State of Florida acted unconstitutionally and illegally by enacting a punitive firearms preemption law that imposes substantial sanctions on local legislators and municipalities that enact ordinances found to be preempted by Florida state law. That law also imposes obligations on Defendants who are charged with enforcing that law. The punitive preemption law is an unconstitutional and unlawful effort to silence and oppressively punish local elected officials and the municipalities they represent, and it stands in the way of specific legislative steps that Plaintiffs seek to take to protect their cities from gun violence by prohibiting the sale or transfer of most large capacity magazines and requiring firearms dealers to inform local authorities whenever a prospective firearm purchaser fails a background check.

2. The penalties set forth in Florida Statutes (“Fla. Stat.”) § 790.33(3)—hereinafter the “Punitive Provisions”—were added to Fla. Stat. §§ 790.33(1)-(2)—hereinafter the “Firearms Preemption Law”—by the Florida legislature in 2011, and impermissibly chill local elected officials and municipalities from passing and enforcing ordinances that they believe will reduce the likelihood of future gun violence in their communities without violating the Firearms Preemption Law.

3. The Punitive Provisions threaten local officials and cities with severe financial penalties—and even removal from office—if they enact or enforce an ordinance that may later be found to be preempted.

4. The Punitive Provisions are contrary to bedrock principles of the United States and Florida Constitutions that are essential to a functioning system of representative government. By threatening to punish elected local officials and their cities for quintessentially legislative acts like voting in favor of an ordinance, the State of Florida has improperly interfered with local

democracy, establishing a system in which local officials' legislative decisions are necessarily restrained by concerns about individual and municipal legal and financial liability instead of the safety and well-being of their constituents and communities.

5. The chilling effect of the Punitive Provisions is compounded by the vagueness of certain aspects of both those provisions and the Firearms Preemption Law. Local elected officials have and will continue to refrain from voting in favor of any local ordinance that even arguably relates to firearms because both the Firearms Preemption Law and the Punitive Provisions are vague and the elected officials cannot ascertain whether they will be subject to penalty.

6. Plaintiffs in this case are the cities of Coral Springs, Pembroke Pines, Coconut Creek, and Wilton Manors, Florida (collectively, the "Plaintiff Municipalities"), Dan Daley ("Plaintiff Daley"), in his official capacity as an elected Commissioner of Coral Springs, Florida, Frank C. Ortis ("Plaintiff Ortis"), in his official capacity as the Mayor of Pembroke Pines, Florida, Rebecca A. Tooley ("Plaintiff Tooley"), in her official capacity as an elected Commissioner of Coconut Creek, Florida, and Gary Resnick ("Plaintiff Resnick"), in his official capacity as the Mayor of Wilton Manors, Florida. Plaintiff Daley, Plaintiff Ortis, Plaintiff Tooley, and Plaintiff Resnick (together "Plaintiff Elected Officials") are voting members of their city commissions who receive compensation for their public service.

7. Coral Springs is a neighboring city to Parkland, Florida, and home to roughly half of the students who attend Marjory Stoneman Douglas High School. On February 14, 2018, a former student used a semi-automatic rifle to kill 17 students, teachers, and administrators at Marjory Stoneman Douglas and injure many more members of the school community.

8. Police officers from the police departments of both Plaintiff Coral Springs and Plaintiff Coconut Creek (another neighboring city to Parkland) responded to the shooting with an officer from Plaintiff Coconut Creek apprehending the shooter.

9. In the wake of this horrific mass shooting and many others that preceded it—many of which involved large capacity magazines—Plaintiff Daley, Plaintiff Ortis, and Plaintiff Tooley, and a majority of their fellow Commissioners, wish to enact ordinances prohibiting the sale and transfer of most large capacity magazines within their respective city limits. Plaintiff Resnick and a majority of the Wilton Manors Commission wish to enact an ordinance requiring licensed firearms dealers doing business within its city limits to inform the Wilton Manors Chief of Police whenever a firearms licensee receives a nonapproval number for a firearms transaction (*i.e.*, a prospective purchaser fails a background check). Plaintiffs believe that these ordinances (collectively, the “Proposed Ordinances”) will make their local communities safer—and might prevent or mitigate a future school shooting—without infringing on the right to keep and bear arms or violating the Firearms Preemption Law.

10. If Plaintiffs enact the Proposed Ordinances, as they have expressed a clear desire to do, they will be subject to potential lawsuits and potential liability under the Punitive Provisions. Individual local officials, including the Plaintiff Elected Officials, who vote “yes” in favor of the Proposed Ordinances will face the risk of personal fines and removal from office if the Proposed Ordinances are later found to be preempted, and they face the further risk of being unable to use public funds to help defend against lawsuits seeking to impose liability on them for their vote. Plaintiff Municipalities and their taxpayers will bear the risk of lawsuits and potential damages of up to \$100,000 and unlimited attorneys’ fees in each such suit.

11. Plaintiffs accordingly seek a declaratory judgment finding and declaring that the Punitive Provisions are unconstitutional, unlawful, and invalid and an injunction preventing the enforcement of the Punitive Provisions. Such a ruling would enable Plaintiffs to pass the Proposed Ordinances without fear that they would be putting themselves and their constituents at serious financial risk.

### JURISDICTION AND VENUE

12. This action seeks declaratory and injunctive relief and is brought pursuant to Chapter 86 of Florida Statutes, Declaratory Judgments. This Court has jurisdiction over this action pursuant to Fla. Stat. §§ 86.011, 86.021, 86.101.

13. Venue appropriately lies in this Judicial Circuit pursuant to Fla. Stat. § 47.011 because events giving rise to this cause of action occurred in Coral Springs, Pembroke Pines, Coconut Creek, and Wilton Manors, Florida, all in Broward County. Venue further applies because the threat of official action to enforce the Punitive Provisions in Broward County is both real and imminent. Such threats violate Plaintiffs' Constitutional rights, the effect of which is felt in Broward County where Plaintiff Elected Officials reside and act and desire to act in their official capacities and where Plaintiff Municipalities are all located.

14. Venue is further proper in this Seventeenth Judicial Circuit because the Punitive Provisions authorize their enforcement by local officials, including Defendants Michael J. Satz, in his official capacity as State Attorney, Brenda D. Forman, in her official capacity as Broward County Clerk of the Courts, and Scott J. Israel, in his official capacity as Sheriff of Broward County.

### THE PARTIES

15. Plaintiff Dan Daley, suing in his official capacity, is an elected Commissioner of the City of Coral Springs. He has served as a Commissioner since 2012. Plaintiff Daley has

resided in Coral Springs, Florida since 2001, and he is a graduate of Marjory Stoneman Douglas High School in Parkland, where the February 14, 2018 mass shooting occurred.

16. Plaintiff Frank C. Ortis, suing in his official capacity, is the elected Mayor of the City of Pembroke Pines. He has served as Mayor since 2004 and has resided in Pembroke Pines since 1977.

17. Plaintiff Rebecca A. Tooley, suing in her official capacity, is an elected Commissioner of the City of Coconut Creek. She has served as a Commissioner since 2001 and served as Mayor of the City of Coconut Creek from March 2017 to March 2018. She has resided in Coconut Creek since 1987.

18. Plaintiff Gary Resnick, suing in his official capacity, is the elected Mayor of the City of Wilton Manors. He has served as Mayor since 2008 and has resided in Wilton Manors since 1995.

19. Plaintiff City of Coral Springs is a duly incorporated municipal corporation organized and existing under the laws of the State of Florida.

20. Plaintiff City of Pembroke Pines is a duly incorporated municipal corporation organized and existing under the laws of the State of Florida.

21. Plaintiff City of Coconut Creek is a duly incorporated municipal corporation organized and existing under the laws of the State of Florida.

22. Plaintiff City of Wilton Manors is a duly incorporated municipal corporation organized and existing under the laws of the State of Florida.

23. Defendant State of Florida is a governmental entity, which, through its Legislature and Governor, adopted the challenged Punitive Provisions.

24. The Honorable Richard L. Scott, sued in his official capacity, is the Governor of Florida. As Governor, he is the supreme executive power in the state. Article IV, Section 1(a) of the Florida Constitution provides that he “shall take care that the laws be faithfully executed.” The Punitive Provisions assign to the Governor the responsibility of removing local elected officials later found to have violated the Firearms Preemption Law.

25. The Honorable Michael J. Satz, sued in his official capacity, is the State Attorney for the Seventeenth Judicial Circuit in and for Broward County. Under Article V, Section 17 of the Florida Constitution, and Chapter 27 of the Florida Statutes, as State Attorney, he is charged with defending all suits in this judicial circuit in which the state is a party and prosecuting violations of Florida’s criminal laws within Broward County, Florida. Because the state is a party in this case and the Punitive Provisions were placed within the criminal provisions of the Florida Statutes, Defendant Satz appears to have responsibility for participating in the enforcement of the Florida Preemption Provisions in Broward County.

26. The Honorable Brenda D. Forman, sued in her official capacity, is the duly elected Broward County Clerk of Courts. As Broward County Clerk of Courts, she is responsible for filing court proceedings, collecting court fees, and entering court orders and judgments issued by the Seventeenth Judicial Circuit in and for Broward County, Florida, including any fines, damages, fees or other judgments issued against local elected officials or municipalities pursuant to the Punitive Provisions.

27. The Honorable Scott J. Israel, sued in his official capacity, is the duly elected Sheriff of Broward County, Florida. Under Article V of the Florida Constitution, and Chapter 30 of the Florida Statutes, as Sheriff, he is responsible for enforcing court orders and judgments issued by the Seventeenth Judicial Circuit in and for Broward County, Florida, including any

finances, damages, fees or other judgments issued against local elected officials or municipalities pursuant to the Punitive Provisions.

28. The Honorable Pamela Bondi, sued in her official capacity, is the Attorney General of Florida. As Attorney General, she is the chief state legal officer, and the statewide prosecutor having concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws. Art. IV, § 4(b), Fla. Const. The Attorney General advocates on behalf of the State of Florida in enforcing its laws and defends the constitutionality of Florida state statutes, including the Punitive Provisions.

29. The Honorable Richard L. Swearingen, sued in his official capacity, is the Commissioner and Executive Director of the Florida Department of Law Enforcement. As Commissioner he exercises, delegates, or supervises all the powers and duties of the Department, which is charged under Chapter 943, Florida Statutes, and Chapter 11, Florida Administrative Code with enforcing the criminal laws of the state. The Punitive Provisions were placed within the criminal provisions of the Florida Statutes and the Florida Department of Law Enforcement is involved in the regulation of the sale and delivery of firearms under Fla. Stat. § 790.06. Therefore Defendant Swearingen may be responsible for participating in the enforcement of the Punitive Provisions.

### FACTUAL BACKGROUND

#### ***The Punitive Provisions***

30. In 1987, the Florida state legislature passed the Firearms Preemption Law, declaring that it was “occupying the whole field of regulation of firearms and ammunition.” Fla. Stat. § 790.33(1). All existing local ordinances, rules or regulations were declared “null and void” and any future such ordinances were prohibited. *Id.*



31. In 2011, the Florida Legislature added the Punitive Provisions to the Firearms Preemption Law. Fla. Stat. § 790.33(3).

32. Specifically, Fla. Stat. § 790.33(3)(a) seeks to impose liability for “any person” who “violates the Legislature’s occupation of the whole field of regulation of firearms and ammunition” by “enacting or causing to be enforced any local ordinance or administrative rule or regulation impinging upon such exclusive occupation of the field.”

33. The law provides in Subsection (3)(c) that if a “court determines that a violation [of Fla. Stat. § 790.33] was knowing and willful, the court shall assess a civil fine of up to \$5,000 against the elected or appointed government official or officials or administrative agency head under whose jurisdiction the violation occurred.”

34. Fla. Stat. § 790.33(3)(e) provides that a “knowing and willful violation of any provision of this section by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation prohibited under paragraph (a) [of Fla. Stat. § 790.33(3)] or otherwise under color of law shall be cause for termination of employment or contract or removal from office by the Governor.”

35. The Punitive Provisions forbid the use of public funds to defend government officials facing these penalties. Fla. Stat. § 790.33(3)(d) thus provides that “[e]xcept as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated this section.”

36. The Punitive Provisions create a right of action for declaratory and injunctive relief and for actual damages for a “person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section.” Fla. Stat. § 790.33(3)(f).

37. Fla. Stat. § 790.33(3)(f) also provides that the Court “shall award the prevailing plaintiff in any such suit: 1. Reasonable attorney’s fees and costs in accordance with the laws of this state, including a contingency fee multiplier, as authorized by law; and 2. The actual damages incurred, but not more than \$100,000.” This provision makes municipalities and any “other entity” liable for damages and uncapped attorneys’ fees for enacting or enforcing any ordinance later found to be preempted.

38. Subsection (3)(b) provides that “[i]t is no defense that in enacting the ordinance, regulation, or rule the local government was acting in good faith or upon advice of counsel.”

39. According to the plain language of the statute, the actions that give rise to liability are core discretionary legislative and executive functions: “enacting” or “causing to be enforced” any local ordinance, rule, or regulation.<sup>1</sup>

### ***The Proposed Ordinances***

40. As noted above, on February 14, 2018, a gunman with hundreds of rounds of ammunition opened fire at Marjory Stoneman Douglas High School in Parkland, Florida. The gunman used a semi-automatic rifle. Seventeen members of the Marjory Stoneman Douglas High School community were killed, and many more were injured, in what was the deadliest mass shooting at a school in the United States since the Sandy Hook School shooting in Newtown, Connecticut on December 14, 2012.

41. According to public reports, investigators have stated that they believe that the gunman became frustrated when the firearm malfunctioned during the process of changing

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<sup>1</sup> During the same session and on the same day as the Florida legislature passed the Punitive Provisions, the Legislature also passed another set of punitive and unconstitutional restrictions that, among other things, chilled Florida doctors from inquiring about or discussing firearm ownership with their patients. Several of those provisions were held to be unconstitutional by an *en banc* decision of the United States Court of Appeals for the Eleventh Circuit in *Wollschlaeger v. Governor, Florida*, 848 F. 3d 1293 (11th Cir. 2017).

magazines and fled the scene. Investigators believe that the shooting stopped only when the shooter ran out of ammunition and needed to change magazines.

42. Large capacity magazines were employed in many of our country's deadliest mass shootings, including the Sandy Hook shooting in Newtown, at a concert in Las Vegas, Nevada, at a nightclub in Orlando, Florida, at a movie theater in Aurora, Colorado, in a church in Sutherland Springs, Texas, on a military base at Fort Hood, in a supermarket parking lot in Tucson, Arizona, and in an office building in San Bernardino, California.

43. Detachable large capacity magazines are available for many semi-automatic firearms that accept a detachable magazine, including semi-automatic handguns. Incidents in which large capacity magazines are used often result in more people shot and more people killed compared to other mass shootings.

44. Multiple courts have ruled that prohibitions on large capacity magazines do not violate the Second Amendment.

45. At the time of the Parkland shooting and currently, neither federal law nor Florida state law prohibit the sale, transfer, or possession of large capacity magazines.

46. Plaintiff Daley, Plaintiff Ortis, Plaintiff Tooley, Plaintiff Coral Springs, Plaintiff Pembroke Pines, and Plaintiff Coconut Creek believe that prohibiting the sale and transfer of most large capacity magazines would make the citizens of their respective cities and neighboring communities safer. They also believe that detachable large capacity magazines sold separately from firearms are optional firearm "accessories," commonly referred to as such, and therefore, adoption by said cities of ordinances regulating the sale of large capacity magazines is not preempted by the Firearms Preemption Law, which prohibits local regulation of "firearms, ammunition, or components thereof," but not "accessories." However, there are others who

disagree with that interpretation and believe that adoption of such local laws would be preempted by the Firearms Preemption Law.

47. Plaintiff Resnick and Plaintiff Wilton Manors believe that requiring firearms dealers to inform the Wilton Manors Chief of Police whenever a prospective firearm purchaser fails a background check would make Wilton Manors and its citizens safer. Plaintiff Resnick and Plaintiff Wilton Manors also believe that adoption by Plaintiff Wilton Manors of an ordinance regulating the reporting of failed background checks is not preempted by the Firearms Preemption Law because such an ordinance is not a regulation of “firearms, ammunition, or components thereof.” However, Plaintiff Resnick and Plaintiff Wilton Manors expect that there are others who disagree with that interpretation and believe that adoption of such local law would be preempted by the Firearms Preemption Law.

48. On February 28, 2018, Plaintiff Daley proposed that the Commission of Coral Springs consider a Coral Springs Proposed Ordinance that would prohibit the sale and transfer of large capacity magazines when sold as accessories separate from a firearm. (A copy of the Coral Springs Proposed Ordinance is attached as Exhibit A.) Plaintiff Daley and all of his fellow Commissioners (except for one who was not present for the meeting) indicated that they would vote for the Coral Springs Proposed Ordinance but for the threat of penalties and liability posed by the Punitive Provisions.

49. At a subsequent meeting of the Coral Springs City Commission, the Commissioners approved the filing of a lawsuit challenging the legality of the Punitive Provisions, in order to clear the way for passage of the Coral Springs Proposed Ordinance.

50. On March 21, 2018, Plaintiff Ortis and the Pembroke Pines City Commission also discussed a resolution proposing to prohibit the sale and transfer of large capacity magazines,

similar to the Coral Springs Proposed Ordinance. A majority of the Pembroke Pines Commissioners would vote for a similar resolution (the Pembroke Pines Proposed Ordinance) but for the threat of penalties and liability posed by the Punitive Provisions. The Pembroke Pines City Commission also authorized the joining of a lawsuit challenging the legality of the Punitive Provisions.

51. On March 22, 2018, the Coconut Creek City Commission discussed a similar resolution proposing to prohibit the sale and transfer of large capacity magazines.

52. A majority of the Coconut Creek Commissioners would vote to pass a similar resolution—the Coconut Creek Proposed Ordinance—but for the threat of penalties and liability posed by the Punitive Provisions. The Coconut Creek City Commission also approved the filing of a lawsuit challenging the legality of the Punitive Provisions.

53. On April 10, 2018, the Wilton Manors City Commission discussed a Wilton Manors Proposed Ordinance that would require licensed firearms dealers doing business in Wilton Manors to inform the Wilton Manors Chief of Police whenever a firearms licensee receives a nonapproval number for a firearms transaction (*i.e.*, a prospective purchaser fails a background check). (A copy of the Wilton Manors Proposed Ordinance is attached as Exhibit B.) Four of the five voting members of the Wilton Manors Commission (one was absent), including Plaintiff Resnick, indicated that they would vote for the Wilton Manors Proposed Ordinance but for the threat of penalties and liability posed by the Punitive Provisions.

54. The Wilton Manors Commission also approved the filing of a lawsuit challenging the legality of the Punitive Provisions.

55. Based upon prior litigation, threats of litigation, and other public statements concerning the Punitive Provisions, Plaintiffs face an imminent risk and have a reasonable

expectation that the Punitive Provisions will be enforced against them if Plaintiffs vote for and enact the Proposed Ordinances. Consequently, Plaintiffs have refrained from enacting the Proposed Ordinances, which they would otherwise enact but for the Punitive Provisions.

***The Current Controversy***

56. An actual and substantial controversy exists between Plaintiffs and Defendants as to their respective legal rights and duties. Plaintiff Elected Officials contend that their ability to serve as elected officials and to legislate, and Plaintiff Municipalities contend that their ability to have laws enacted that are in the best interests of their residents, is chilled by the Punitive Provisions. Plaintiffs further contend that the Punitive Provisions are unconstitutional and illegal under the United States and Florida Constitutions.

57. Defendants are obligated to enforce and defend the Punitive Provisions unless they are found to be unlawful.

58. But for the Punitive Provisions, Plaintiff Elected Officials (and a majority of other Commissioners from Plaintiff Municipalities) would have voted for, and Plaintiff Municipalities would have adopted, the respective Proposed Ordinances. The Punitive Provisions have chilled Plaintiffs from passing and having enacted ordinances that they believe will advance the public safety, health, and welfare of the citizens of the Plaintiff Municipalities without violating the Firearms Preemption Law.

59. The Punitive Provisions have infringed upon the rights of Plaintiff Elected Officials (and many other Commissioners from Plaintiff Municipalities); rights that would have been exercised in Broward County.

60. In enforcing the Punitive Provisions, Defendants are denying Plaintiffs' rights secured by federal and state law, including the United States and Florida Constitutions.

61. A justiciable controversy exists as Plaintiffs seek to invalidate the Punitive Provisions in order to enact the Proposed Ordinances, which Plaintiffs believe to be lawful, without fear of personal and municipal penalties, and the Defendants are the heads of the government entities responsible for enforcing and defending the Punitive Provisions.

62. The issue involved in the controversy is ripe for judicial determination because there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

#### EXPEDITED CONSIDERATION

63. Pursuant to Fla. Stat. § 86.111, Plaintiffs request expedited consideration of this action for a declaratory judgment.

#### CLAIMS FOR RELIEF

##### **COUNT I**

##### **Declaratory Relief that the Punitive Provisions are Invalid Because They Violate the Absolute Legislative Immunity Rights of Plaintiff Elected Officials**

64. Plaintiffs repeat, reallege, and incorporate by reference each of the allegations of paragraphs 1-63 as though fully set forth herein.

65. Legislative immunity is a longstanding, well-established doctrine in the United States, which protects legislators from lawsuits and liability for exercising their legislative duties.

66. Legislative immunity is a right of all legislators, derived from English common law predating the birth of the United States and later secured in the United States Constitution through the Speech or Debate Clause (Article I, Section 6).

67. Florida has adopted the principles of absolute legislative immunity and Florida courts have consistently applied and upheld legislative immunity. Article II, Section 3 of the Florida Constitution (the “Separation of Powers Provision”) states, “The powers of the state government shall be divided into legislative, executive and judicial branches. No person

belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

68. Legislative immunity provides that government officials have absolute immunity from suit and liability for claims based on their legislative acts, which includes protection against overreach by the state legislature, and the judicial and executive branches of government.

69. Absolute legislative immunity extends to state, regional, and local officials who perform legislative acts.

70. Legislative acts include core legislative functions that require discretion and judgment on the part of the official, such as introducing and voting in favor of (or against) ordinances.

71. The Punitive Provisions are an unconstitutional abridgement, on their face and as applied or threatened to be applied, of the Plaintiff Elected Officials’ and other local legislators’ rights to absolute legislative immunity, by subjecting them to judicial scrutiny, lawsuits and liability for legislative acts, including inquiries into their state of mind and motivations for the legislative actions they take.

72. The Plaintiff Elected Officials and the vast majority of Commissioners of Plaintiff Municipalities support enacting the Proposed Ordinances. But for the Punitive Provisions, these Commissioners would already have voted to enact the Proposed Ordinances.

73. Although Plaintiffs believe that the Proposed Ordinances are not preempted by the Firearms Preemption Law, in the event those Proposed Ordinances are found preempted, the Plaintiffs face a substantial and imminent risk of being subject to the Punitive Provisions, including large financial penalties, removal from office, and legal action, damages, and uncapped attorneys’ fees and costs.



74. For example, Fla. Stat. § 790.33(3)(c), imposes sanctions on local legislators for their legislative acts. Fla. Stat. § 790.33(3)(c) mandates that the judicial branch—the courts—shall assess a fine of up to \$5,000 against Plaintiff Elected Officials if it determines that they knowingly and willfully voted in favor of an ordinance later found to be preempted, even though such a vote is a purely legislative act. Fla. Stat. § 790.33(3)(e) also allows the Governor of Florida to encroach on the legislative branch by removing Plaintiff Elected Officials from office, again after a judicial inquiry requiring a determination as to whether they knowingly and willfully voted in favor of a preempted ordinance. Fla. Stat. § 790.33(3)(f) subjects municipalities and any “other entity” to potential legal action and substantial liability as soon as a preempted law is “promulgated,” without those vague quoted terms being defined.

75. The Punitive Provisions have chilled Plaintiff Elected Officials and the Commissioners of Plaintiff Municipalities from enacting the Proposed Ordinances, which they believe to be lawful and in the best interests of the health, welfare and safety of their constituents.

76. Thus, the Punitive Provisions violate the absolute legislative immunity rights of Plaintiff Elected Officials and are invalid under federal and state law because the Punitive Provisions impose sanctions on legislators for performing their legislative acts, and mandate that the Defendants and the courts, and allow the Governor to, inflict severe penalties on Plaintiff Elected Officials for exercising legislative discretion, and subject Plaintiff Elected Officials to legal action for their legislative acts and judicial scrutiny as to their state of mind and motivations.

**COUNT II**  
**Declaratory Relief that the Punitive Provisions Applicable to Municipalities are Invalid**  
**Because They Violate the Separation of Powers Required**  
**Under the Constitution of the State of Florida**

77. Plaintiffs repeat, reallege, and incorporate by reference each of the allegations of paragraphs 1-63 as though fully set forth herein.

78. The Separation of Powers Provision of the Florida Constitution (Article II, Section 3) ensures that one branch of government does not encroach on powers vested exclusively in another.

79. The proper separation of powers required by the Florida Constitution cannot be maintained where a statute passed by the Florida Legislature allows the judicial and executive branches to force municipalities into court and hold them liable for discretionary decisions necessary to the core legislative functions of these local elected officials and the political subdivisions they represent.

80. The separation of powers required by the Florida Constitution cannot be maintained where a state statute allows the executive branch to force municipalities into court and requires the judicial branch to hold the municipalities liable for damages and uncapped attorneys' fees and costs solely based on the discretionary legislative actions of their local officials.

81. Fla. Stat. § 790.33(3)(f) improperly grants the judicial and executive branches the right and obligation to encroach on the legislative authority of Plaintiff Municipalities by inflicting substantial monetary penalties on Plaintiff Municipalities for their local officials voting in favor of what is later determined to be a preempted ordinance.

82. Thus, the Punitive Provisions violate the separation of powers required under the Florida Constitution by mandating that the courts, and allowing the Governor to, impose severe penalties on Plaintiff Municipalities for the legislative acts of their governing body.

### **COUNT III**

#### **Declaratory Relief that the Punitive Provisions Applicable to Municipalities are Invalid Because They Violate Governmental Immunity Under the Constitution of the State of Florida**

83. Plaintiffs repeat, reallege, and incorporate by reference each of the allegations of paragraphs 1-63 as though fully set forth herein.

84. The doctrine of governmental immunity, which is based on the Separation of Powers Provision of the Florida Constitution (Article II, Section 3), protects municipalities from liability for discretionary governmental actions.

85. Fla. Stat. § 790.33(3)(f) creates a private right of action against municipalities for any person or organization whose members are adversely affected by an ordinance, found to be preempted, regulating firearms, ammunition, or components thereof.

86. Therefore, Fla. Stat. § 790.33(3)(f) violates the doctrine of governmental immunity by subjecting municipalities to legal action and monetary penalties for a purely discretionary act—enacting an ordinance—performed by their governing bodies.

### **COUNT IV**

#### **Declaratory Relief that the Punitive Provisions are Invalid Because They Violate the Rights of Plaintiff Elected Officials Under the First Amendment of the United States Constitution and Article I, Sections 4 and 5 of the Constitution of the State of Florida**

87. Plaintiffs repeat, reallege, and incorporate by reference each of the allegations of paragraphs 1-63 as though fully set forth herein.

88. The First Amendment of the United States Constitution provides that “Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

89. The First Amendment is applicable to the States through the Fourteenth Amendment to the United States Constitution which provides that “[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law.”

90. Article I, Section 4 of the Florida Constitution states, “Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.”

91. Article I, Section 5 of the Florida Constitution states, “The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.”

92. The rights set forth in the First Amendment of the United States Constitution and Article I, Sections 4 and 5 of the Florida Constitution are hereinafter referred to as the “Free Speech Rights.”

93. The Punitive Provisions are unconstitutional abridgements, on their face and as applied or threatened to be applied, of Plaintiff Elected Officials’ Free Speech Rights.

94. The Punitive Provisions threaten to penalize local elected officials for enacting, promulgating, or causing to be enforced a local law or ordinance that regulates firearms, ammunition, or components thereof. Specifically, the Punitive Provisions subject Plaintiff Elected Officials, if such a local law is enacted and is later found preempted, to a monetary fine, removal from office, and the risk of legal action with potential damages of up to \$100,000 and uncapped attorneys’ fees and costs.

95. Plaintiff Elected Officials and fellow elected officials from Plaintiff Municipalities have expressed their intention to vote for and enact the Proposed Ordinances, which they would have already done but for the Punitive Provisions.

96. Although Plaintiff Elected Officials and many of the other officials of Plaintiff Municipalities believe that the Proposed Ordinances are not preempted under the Firearms Preemption Law, the Punitive Provisions are severe enough to have caused them to refrain from voting on the Proposed Ordinances.

97. The Punitive Provisions subject Plaintiff Elected Officials to the threat of legal action—that they will have to defend at their own expense— by any number of people or entities who will contend that the Proposed Ordinances are preempted, even though Plaintiff Elected Officials believe the ordinances are not preempted.

98. The Punitive Provisions are the only reason that Plaintiff Elected Officials have refrained from exercising their Free Speech Rights to vote on the Proposed Ordinances.

99. The Punitive Provisions also chill the Free Speech Rights of Plaintiff Elected Officials and other local elected officials to fully express their views in favor of preempted or arguably preempted gun violence prevention measures due to the increased likelihood that they will be fined, removed from office, and/or sued under the Punitive Provisions.

100. The Punitive Provisions also chill the Free Speech Rights of Plaintiff Elected Officials to freely associate and express solidarity with constituents in favor of the respective Proposed Ordinances or other local gun violence prevention measures.

101. The Punitive Provisions violate the Free Speech Rights of Plaintiff Elected Officials because the penalties in that statute necessarily punish Plaintiff Elected Officials if they vote in favor of gun violence prevention legislation that is later found to have been preempted, because they have a clear incentive to avoid subjecting their cities—and, thus, their constituents—to potential legal action with uncapped monetary penalties.

102. The Punitive Provisions are content discriminatory because they regulate expression based on content—firearms, ammunition, or components thereof.

103. The Punitive Provisions are viewpoint discriminatory—and target a particular class of elected officials and citizen constituents—because they only impose penalties on the Commissioners who vote “yes” for ordinances that regulate firearms, ammunition, or components thereof. The Punitive Provisions do not penalize those who vote “no” or abstain from voting.

104. The Punitive Provisions are also viewpoint discriminatory because they increase the likelihood that Commissioners who speak publicly, associate, or otherwise express themselves in favor of local gun violence prevention measures will be subject to legal action brought by a private person, organization, or the State of Florida.

105. The Punitive Provisions are not narrowly tailored to serve a compelling interest.

106. Thus, the Punitive Provisions are invalid under the First Amendment of the United States Constitution, as applied to the states under the Fourteenth Amendment, and Article I, Sections 4 and 5 of the Florida Constitution and violate the rights of Plaintiff Elected Officials.

#### **COUNT V**

#### **Declaratory Relief that the Punitive Provisions are Invalid Because They Violate the First Amendment Rights of Plaintiff Municipalities Under the United States Constitution**

107. Plaintiffs repeat, reallege, and incorporate by reference each of the allegations of paragraphs 1-63 as though fully set forth herein.

108. The First Amendment of the United States Constitution, together with the Fourteenth Amendment, protects the rights of free speech, peaceable assembly, and to petition the Government, and is not limited to certain speakers or natural persons. These protections also

apply to the speech, assembly and petitions of municipal corporations and other associations of individuals.

109. Plaintiff Municipalities are municipal corporations and associations of individuals and have First Amendment rights. The Punitive Provisions, which subject Plaintiff Municipalities to legal action, damages up to \$100,000, and uncapped attorneys' fees and costs, are an unconstitutional abridgement, on their face and as applied or threatened to be applied, of Plaintiff Municipalities' First Amendment rights to express the views of their constituents, to hold a vote, and to enact an ordinance relating to a matter of significant public concern.

110. The Punitive Provisions infringe on Plaintiff Municipalities' First Amendment rights by chilling Plaintiff Municipalities from enacting or even holding a vote on ordinances that are preempted or arguably preempted because they fear the legal action and penalties they will face if the ordinance is ultimately found to be preempted.

111. The Punitive Provisions regulate the speech and expression of Plaintiff Municipalities on the basis of the content and viewpoint of such speech and expression by subjecting Plaintiff Municipalities to penalties for expressing their views on particular content—voting “yes” on and enacting a regulation of firearms, ammunition, or components thereof.

112. Thus, the Punitive Provisions are invalid under the First Amendment of the United States Constitution, as applied to the states under the Fourteenth Amendment and violate the rights of Plaintiff Municipalities.

## **COUNT VI**

### **Declaratory Relief that the Punitive Provisions Are Invalid Because They Violate the Due Process Rights of Plaintiff Elected Officials Under the United States Constitution and the Constitution of the State of Florida (Vagueness)**

113. Plaintiffs repeat, reallege, and incorporate by reference the allegations of paragraphs 1-63 as though fully set forth herein.

114. The Fourteenth Amendment to the United States Constitution provides that a State shall not “deprive any person of life, liberty, or property, without due process of law.”

115. Article I, Section 9 of the Florida Constitution similarly states, “No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.”

116. State statutes are unconstitutionally vague where a penalty statute does not sufficiently define the punishable conduct or it is so standardless that it invites arbitrary enforcement. The Punitive Provisions impose severe sanctions against local legislators who willfully and knowingly violate Fla. Stat. § 790.33(3) by enacting or causing to be enforced an ordinance that is preempted by the Firearms Preemption Law. The law preempts regulation of “the whole field of regulation of firearms and ammunition” without a clear definition of that phrase. In addition, Fla. Stat. § 790.33(3)(d) allows third parties to bring suit and seek damages against “any entity” that “promulgated” a “measure,” “directive,” “rule,” “order” or “policy” in violation off the Firearms Preemption Law, without a clear definition of any of those quoted terms.

117. The Punitive Provisions are an unconstitutional abridgement, on their face and as applied or threatened to be applied, of Plaintiff Elected Officials’ due process rights because the statute is vague in not sufficiently defining the punishable conduct.

118. Although Plaintiffs believe that the Proposed Ordinances are not preempted under the Firearms Preemption Law, because that law threatens penalties without clearly defining what constitutes a regulation of “the whole field of” firearms and ammunition, and fails to define what it means to “promulgate” such a regulation or ordinance or other non-defined types of actions, Plaintiff Elected Officials have refrained from voting on their respective Proposed Ordinances



because they cannot determine whether voting for and passing the Proposed Ordinances would violate the Firearms Preemption Law.

119. In addition, the Punitive Provisions subject Plaintiff Elected Officials to penalties, including legal action by private persons. Those private persons are permitted to reach their own conclusions as to whether an ordinance is preempted and may seek to enforce the Punitive Provisions against Plaintiff Elected Officials.

120. Due to the vagueness of the Punitive Provisions, the statute threatens severe penalties without giving adequate notice of what conduct is prohibited.

121. Plaintiff Elected Officials can only avoid potential enforcement of the Punitive Provisions by refraining from considering and voting on any ordinance that even arguably affects or relates to firearms, even if such ordinance would ultimately be held not to be preempted.

122. Thus, the Punitive Provisions, because of their vagueness and threatened penalties, violate the due process rights of Plaintiff Elected Officials under the Fourteenth Amendment of the United States Constitution and Article I, Section 9 of the Florida Constitution.

**COUNT VII**  
**Declaratory Relief that Fla. Stat. § 790.33(3)(e) Is Invalid Because it Violates the**  
**Due Process Rights of Plaintiff Elected Officials**  
**Under the United States Constitution and Constitution of the State of Florida**  
**(Property Right to Office)**

123. Plaintiffs repeat, reallege, and incorporate by reference each of the allegations of paragraphs 1-63 as though fully set forth herein.

124. Under the United States and Florida Constitutions, due process protects against deprivations of state-based property rights.

125. Plaintiff Elected Officials, as duly elected and compensated officials for their respective cities, have a property right in their offices.

126. Fla. Stat. § 790.33(3)(e), on its face and as applied or threatened to be applied, unconstitutionally deprives Plaintiff Elected Officials of a property right.

127. Although Plaintiff Elected Officials believe that the Proposed Ordinances are not preempted under the Firearms Preemption Law, the Governor could still seek to remove the Plaintiff Elected Officials from office for voting in favor of those Proposed Ordinances.

128. There is no rational basis to support a finding that the punitive removal provisions were needed to prevent the passage or enforcement of preempted local ordinances. The Firearms Preemption Law was already doing so and numerous other Florida preemption laws relating to other subject areas operate effectively without such punitive penalties.

129. Because there was no rational basis for adding penalties to the Firearms Preemption Law, the Punitive Provisions violate Plaintiff Elected Officials' due process rights under the United States and Florida Constitutions by allowing the Governor, pursuant to Fla. Stat. § 790.33(3)(e), to deprive officers of their property rights in their elected offices.

#### **COUNT VIII**

#### **Declaratory Relief that Fla. Stat. § 790.33(3)(e) is Invalid Because it Violates the Rights of Plaintiff Elected Officials Under Article IV, Section 7(c) of the Constitution of the State of Florida Not to be Removed From Office Except under Specified Circumstances**

130. Plaintiffs repeat, reallege, and incorporate by reference each of the allegations of paragraphs 1-63 as though fully set forth herein.

131. Article IV, Section 7(c) of the Florida Constitution states, "By order of the governor any elected municipal officer indicted for crime may be suspended from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter."

132. There is no provision in the Florida Constitution allowing the Governor to suspend or remove an elected municipal official for any other reason. The Florida Constitution,

therefore, does not allow the legislature to authorize the Governor to suspend or remove an elected official for any reason other than for that individual's indictment of or conviction for a crime.

133. Therefore, Fla. Stat. § 790.33(3)(e), which allows the Governor to remove Plaintiff Elected Officials from office for knowingly and willfully enacting or enforcing an ordinance later found to be preempted, violates Article IV, Section 7(c) of the Florida Constitution.

**COUNT IX**  
**Declaratory Relief that the Punitive Provisions Are Invalid Because They Violate the Home Rule Rights of Plaintiff Municipalities Under the Constitution of the State of Florida**

134. Plaintiffs repeat, reallege, and incorporate by reference each of the allegations of paragraphs 1-63 as though fully set forth herein.

135. The Florida Constitution grants municipalities the right of home rule. Specifically, Article VIII, Section 2(b) addresses the role of municipalities in Florida: "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective."

136. As "elective" bodies, municipalities in Florida are representative governments where citizens speak through their elected officials and possess the powers of local self-government.

137. The Florida state legislature cannot tell elected city officials how to vote on an ordinance introduced by a city commissioner.

138. The right to vote on whether or not to pass ordinances falls within the well-established right of Plaintiff Municipalities to self-govern.

139. The Punitive Provisions, which subject Plaintiff Municipalities to potential liability and monetary loss for enacting the Proposed Ordinances, unlawfully impinge on Plaintiff Municipalities' right to self-govern and violate the home rule provision of the Florida Constitution.

**COUNT X**  
**Claim for Attorney's Fees Against the Defendant Officials**  
**Under 42 U.S.C. § 1988 for Violations of the**  
**United States Constitution and 42 U.S.C. § 1983**

140. As set forth in Counts I, IV, V, VI, and VII, the Punitive Provisions violate the United States Constitution. Accordingly, the Punitive Provisions also violate 42 U.S.C. § 1983.

141. 42 U.S.C. § 1983 states, in pertinent part, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

142. Because the Punitive Provisions violate the United States Constitution, Plaintiffs seek declaratory relief that the Defendant Officials (all Defendants except the State of Florida), acting in their official capacities, violate 42 U.S.C. § 1983 by enforcing or threatening to enforce the Punitive Provisions.

143. Plaintiffs are, therefore, entitled to attorney's fees against the Defendant Officials, in their official capacities, pursuant to 42 U.S.C. § 1988.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and that the Court:

(A) Declare that the Punitive Provisions unconstitutionally and illegally violate the rights of Plaintiff Elected Officials to absolute legislative immunity;

(B) Declare that the Punitive Provisions applicable to Plaintiff Municipalities violate the separation of powers and governmental immunity mandated by the Florida Constitution;

(C) Declare that the Punitive Provisions violate the rights of Plaintiffs under the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 4 and 5 of the Florida Constitution;

(D) Declare that the Punitive Provisions violate the due process rights of Plaintiff Elected Officials under the United States and Florida Constitutions;

(E) Declare that Plaintiff Elected Officials' rights under Article IV, Section 7(c) of the Florida Constitution not to be removed from office except for indictment or conviction of a crime is violated by the removal power given to the Governor under the Florida Punitive Provisions;

(F) Declare that the Punitive Provisions violate the home rule rights of Plaintiff Municipalities under the Florida Constitution;

(G) Award Plaintiffs attorney's fees pursuant to 42 U.S.C. §§ 1983 and 1988 against all Defendants other than the State of Florida;

(H) Enjoin Defendants from enforcing the Punitive Provisions; and

(I) Grant such other relief as the Court may deem just and proper.

*[Remainder of page intentionally left blank]*

Dated: April 25, 2018

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Respectfully Submitted,

s/ Matthew Triggs

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\*Application for admission *pro hac vice*  
pending.

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, this 25th day of April, 2018, that a true and correct copy of the foregoing will be served via U.S. mail upon:

STATE OF FLORIDA, by serving  
State Attorney Michael J. Satz  
Office of the State Attorney, 17th Judicial  
Circuit, Broward County Florida  
201 SE 6th Street, Suite 655  
Fort Lauderdale, FL 33301

THE HONORABLE BRENDA D.  
FORMAN, in her official capacity as  
Broward County Clerk of the Courts  
Broward County Clerk of the Courts  
201 SE 6th Street  
Fort Lauderdale, FL 33301

THE HONORABLE RICHARD L. SCOTT,  
in his official capacity as Governor of the  
State of Florida  
Office of Governor of the State of Florida  
The Capitol  
400 S. Monroe St.  
Tallahassee, FL 32399-0001

THE HONORABLE SCOTT J. ISRAEL,  
in his official capacity as Sheriff of  
Broward County  
Broward County Sheriff's Office  
2601 West Broward Boulevard  
Fort Lauderdale, FL 33312

THE HONORABLE MICHAEL J. SATZ,  
in his official capacity as State Attorney,  
17th Judicial Circuit  
Office of the State Attorney  
17th Judicial Circuit, Broward County Florida  
201 SE 6th Street, Suite 655  
Fort Lauderdale, FL 33301

THE HONORABLE PAMELA BONDI,  
in her official capacity as Attorney  
General of the State of Florida  
Office of Attorney General, State of  
Florida  
The Capitol PL-01  
Tallahassee, Florida 32399

THE HONORABLE RICHARD L. SWEARINGEN,  
in his official capacity as Commissioner of the Florida  
Department of Law Enforcement  
Florida Department of Law Enforcement  
2331 Phillips Road  
Tallahassee, FL 32308

s/ Matthew Triggs  
Matthew Triggs

# EXHIBIT A



CITY OF CORAL SPRINGS

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL SPRINGS, FLORIDA, EXPRESSING SUPPORT TO AMEND CHAPTER 11 OF THE CITY CODE ENTITLED "OFFENSES - MISCELLANEOUS" TO ADD PROVISIONS PROHIBITING THE SALE OR TRANSFER OF LARGE CAPACITY MAGAZINES; AND PROVIDING PENALTY FOR VIOLATION.

**WHEREAS**, the City Commission of the City of Coral Springs, Florida recognizes that gun violence represents a significant public safety risk to the citizens of the City of Coral Springs, the State of Florida, and the United States of America;

**WHEREAS**, on February 14, 2018, our neighboring city of Parkland, Florida suffered the deadliest school shooting since the mass shooting at Sandy Hook School in Newtown, Connecticut on December 14, 2012, which occurred at Marjory Stoneman Douglas High School; the City of Coral Springs mourns the 17 teachers, students, and administrators killed in the shooting on Valentine's Day and the inordinate number of people injured;

**WHEREAS**, investigators believe that the alleged shooter in the recent shooting ended his massacre and fled the scene because his weapon jammed while he was changing magazine clips, having run out of ammunition;

**WHEREAS**, large capacity magazines were employed in many of our country's deadliest mass shootings -- including the Sandy Hook shooting in Newtown, at a concert in Las Vegas, Nevada, at a nightclub in Orlando, Florida, at a movie theater in Aurora, Colorado, in a church in Sutherland Springs, Texas, on a military base at Fort Hood, in a supermarket parking lot in Tucson, Arizona, in an office building in San Francisco, California, and most recently at Marjory Stoneman Douglas High School;

**WHEREAS**, although detachable large-capacity magazines are typically associated with machine guns or semi-automatic assault weapons, such devices are available for any semi-automatic firearm that accepts a detachable magazine, including semi-automatic handguns;

**WHEREAS**, the Commission has found that limiting large capacity magazines provides greater protection to law enforcement because shooters without large capacity magazines must reload, and put themselves in a position to be subdued, before they can cause mass casualties;

**WHEREAS**, the City Commission has found that federal law and the state of Florida permits the sale and transfer of large capacity magazines;

**WHEREAS**, detachable large capacity magazines sold separately from firearms are optional firearms accessories that have no operational capability unless attached to a firearm;

**WHEREAS**, in *District of Columbia v. Heller*, the United States Supreme Court specifically acknowledged that the Constitutional protections afforded by the Second Amendment to the Constitution of the United States are not unlimited;

**WHEREAS**, multiple federal courts, including the Fourth Circuit sitting en banc in *Kolbe v. Hogan*, the Second Circuit in *New York State Rifle and Pistol Ass'n, Inc. v. Cuomo*, and the Seventh Circuit in *Friedman v. City of Highland Park, IL*, have held that prohibitions on large capacity magazines do not violate the Second Amendment;

**WHEREAS**, the Commission has determined that the City could be susceptible to the dangers of large capacity magazines; and

**WHEREAS**, the City Commission has determined that amending the City Code of Ordinances to prohibit the sale and transfer of large capacity magazines is in the interest of the public health, safety, and welfare of the City's residents;

NOW THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF CORAL SPRINGS, FLORIDA, THAT:

SECTION 1. The recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

SECTION 2. That Chapter 11 of the City Code is hereby amended to include a prohibition on the sale and transfer of large capacity magazines.

#### **Sec. I. Definitions.**

As used in this Part:

(A) *Ammunition* means an object consisting of all of the following: (a) A fixed metallic or nonmetallic hull or casing containing a primer. (b) One or more projectiles, one or more bullets, or shot. (c) Gunpowder.

(B) *Detachable Magazine* means an Ammunition feeding device that can be removed from a firearm without disassembly of the firearm action.

(C) *Large Capacity Magazine* means any Detachable Magazine with the capacity to accept more than ten rounds, but shall not be construed to include the following:

- 1) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds of Ammunition.
- 2) A 22-caliber tube Ammunition feeding device.
- 3) A tubular magazine that is contained in a lever-action firearm.

#### **Sec. II. Prohibitions.**

No person shall sell, offer or display for sale, give, lend, or transfer ownership of any Large Capacity Magazine, unless expressly exempted in Section III.

### **Sec. III. Exemptions.**

The prohibitions set forth in Section II shall not apply to:

- (A) The sale or transfer to any officer, agent, or employee of the City or any other municipality or state or of the United States, members of the armed forces of the United States, or the organized militia of this or any other state; or peace officers, but only to the extent that any such person named in this Section II is otherwise authorized to acquire a Large Capacity Magazine and does so while acting within the scope of his or her duties;
- (B) Any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c), but only to the extent that the Large Capacity Magazine is safely stored or displayed by the officer in compliance with Section IV; or
- (C) Any large capacity magazine that came originally packaged as a single item with the firearm.

### **Sec. IV. Possession or Sale in Violation of this Part.**

Any Large Capacity Magazine sold or transferred in violation of Section II is hereby declared to be contraband and shall be seized and destroyed in accordance with the provisions of Section V.

### **Sec. V. Destruction of Magazines.**

The Chief of Police shall cause to be destroyed each Large Capacity Magazine confiscated pursuant to Section IV; provided, however, that no Large Capacity Magazine shall be destroyed until such time as the Chief of Police determines that the Large Capacity Magazine is not needed as evidence in any matter. The Chief of Police shall cause to be kept a record of the date and method of destruction of each Large Capacity Magazine destroyed pursuant to this section.

### **Sec. VI. Penalty.**

The violation of any provision of this Part is a misdemeanor, punishable therefor under the laws of the state.

**SECTION 3.** This ordinance shall become effective ten (10) days following passage and adoption of same.

# **EXHIBIT B**

**RESOLUTION NO. 2018-039**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WILTON MANORS, FLORIDA, EXPRESSING SUPPORT TO AMEND CHAPTER 10 OF THE CITY CODE ENTITLED "LICENSES, PERMITS AND BUSINESS REGULATIONS" BY CREATING SECTION 10-400, TO BE ENTITLED "FIREARM IMPORTERS, MANUFACTURERS, OR DEALERS TO INFORM THE CHIEF OF POLICE WHENEVER A PROSPECTIVE FIREARM LICENSEE RECEIVES A NONAPPROVAL NUMBER"; AND PROVIDING PENALTY FOR VIOLATION; AUTHORIZING AND DIRECTING THE FILING OF A LAWSUIT SEEKING A DECLARATION THAT THE PROVISIONS PUNISHING ELECTED OFFICIALS SET FORTH IN SECTION 790.33, FLORIDA STATUTES, FOR VIOLATING THE PREEMPTION RELATED TO THE REGULATION OF FIREARMS AND AMMUNITION ARE INVALID; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Commission of the City of Wilton Manors, Florida recognizes that gun violence represents a significant public safety risk to the citizens of the City of Wilton Manors, the State of Florida, and the United States of America; and

**WHEREAS**, on February 14, 2018, the City of Parkland, Florida suffered the deadliest school shooting since the mass shooting at Sandy Hook School in Newton, Connecticut on December 14, 2012, which occurred at Marjory Stoneman Douglas High School; the City of Wilton Manors mourns the 17 teachers, students, and administrators killed in the shooting on Valentine's Day and the inordinate number of people injured; and

**WHEREAS**, National and State leaders continue to fail to act to implement sensible gun law reforms that are supported by a majority of the nation; and

1           **WHEREAS**, in Section 790.33, Florida Statutes, the State of Florida (a)  
2       declared that it is occupying the whole field of regulation of firearms and ammunition,  
3       to the exclusion of all existing and future county or city ordinances, regulations, or  
4       rules, (b) purports to prohibit the enactment of any future ordinances or regulations  
5       “relating to firearms,” and (c) also purports to create potential liability for damages for  
6       actions other than ordinances and regulations, including any “measure, directive, rule,  
7       enactment, order, or policy promulgated or caused to be enforced”; and

8           **WHEREAS**, the purported preemption, by using the terms “relating to  
9       firearms” and “any measure, directive, rule, enactment, order or policy promulgated,” is  
10      extremely broad and vague, and

11          **WHEREAS**, the potential violation of the broad and vague preemption of  
12      firearm regulation in Section 790.33, Florida Statutes, carries the risk of onerous and  
13      punitive consequences, including but not limited to damages up to \$100,000 and fines  
14      up to \$5,000 (for which the official may be personally liable), removal from office by  
15      the Governor without due process of law, and a prohibition of the use of public funds to  
16      pay or reimburse the official for fines, damages or defense costs (collectively, the  
17      “Onerous Preemption Penalties”); and

18          **WHEREAS**, as a result of the Onerous Preemption Penalties, the City  
19      Commission and its members fear taking any steps that could even remotely be viewed  
20      as a violation of the preemption, creating a chilling effect upon City action and  
21      preventing the City Commission from responding to the petitions and requests of the  
22      City’s residents to do something to protect against the dangers of firearms; and

1           **WHEREAS**, the Onerous Preemption Penalties infringe on the free speech  
2 rights of the City Commission and its members, and interfere with their ability to  
3 perform their official duties; and

4           **WHEREAS**, the Onerous Preemption Penalties infringe upon the legislative  
5 immunity the members of the City Commission enjoy under law when casting votes in  
6 their official capacities; and

7           **WHEREAS**, the portion of the Onerous Preemption Penalties related to the  
8 removal from office by the Governor conflicts with Article 4, Section 7 of the Florida  
9 Constitution, by allowing the Governor to remove a municipal official who has not been  
10 indicted for any crime, and violates due process; and

11           **WHEREAS**, in *District of Columbia v. Heller*, the United States Supreme Court  
12 specifically acknowledged that the Constitutional protections afforded by the Second  
13 Amendment to the Constitution of the United States are not unlimited; and

14           **WHEREAS**, the City Commission has found that amending the City Code of  
15 Ordinances to require licensed firearm importers, manufacturers, or dealers doing  
16 business in the City of Wilton Manors to inform the Chief of Police of the City of  
17 Wilton Manors whenever a prospective firearm licensee receives a nonapproval number  
18 for a transaction subject to the requirements of section 790.065, Fla. Stat. would be in  
19 the best interest of the public health, safety, and welfare of the City's residents and  
20 businesses.

21           **NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION**  
22 **OF THE CITY OF WILTON MANORS, FLORIDA, THAT:**

1           **Section 1.**     The recitals and findings contained in the Preamble to this  
2     Resolution are adopted by reference and incorporated as if fully set forth in this Section.

3           **Section 2.**     But for the Onerous Preemption Penalties, the City Commission  
4     would adopt the following Ordinance:

5           Chapter 10 of the Code of Ordinances of the City of Wilton Manors is amended  
6     to add Article XV, entitled "Firearm importers, manufacturers, or dealers to inform the  
7     Chief of Police whenever a prospective firearm licensee receives a nonapproval  
8     number" as follows:

9           Sec. 10-400. Firearm importers, manufacturers, or dealers to inform the Chief of  
10    Police whenever a prospective firearm licensee receives a nonapproval number.

11    Whenever a licensee receives a nonapproval number for a transaction subject to the  
12    requirements of section 790.065, Fla. Stat. they shall notify the Chief of Police or his or  
13    her designated agent, within 24 hours, that a potential unlawful act has occurred.

14  
15           (a). The notice provided by the licensee shall include the name and address of  
16    the party for which the nonapproval number was issued, the licensee's name  
17    and address, the date when the transaction was initiated, and the date when the  
18    nonapproval number was received by the licensee.

19  
20           (b) The notice required by this section shall be in a form to be prescribed by the  
21    Chief of Police.

22  
23           (c) No later than 60 days after the effective date of this ordinance, and annually  
24    thereafter, the Chief of Police shall contact any licensee doing business within  
25    this jurisdiction of the City of Wilton Manors in writing to inform them of the  
26    requirements of this section, to request that licensees provide records as  
27    required by subsection (a), and to inform them of the means of providing notice  
28    as determined by subsection (b).

29  
30           (d) The Chief of Police or his or her designee shall require that any notices  
31    received under this section be investigated to determine if any unlawful acts  
32    have occurred.

33  
34           (e) Any licensee who fails to provide the notice required by this section shall be  
35    punished by a fine of \$500.  
36



1           (f) For the purposes of this section, "licensee" means a dealer, manufacturer, or  
2           importer, licensed under 18 U.S.C. § 923, and required to comply with s.  
3           790.065, Fla. Stat.  
4

5           **Section 3.**     The City Commission hereby authorizes and directs the filing or  
6           joining of a lawsuit naming the City and those individual Members of the Commission  
7           (in their official capacity) who choose to participate, as plaintiffs, seeking declaratory  
8           and other appropriate relief to challenge the Onerous Preemption Penalties contained in  
9           Section 790.33, Florida Statutes, based upon any appropriate legal theories, including  
10          those set forth above.

11          **Section 4.**     The City Clerk is directed to distribute this Resolution to all  
12          local governments in Broward County.

13          **Section 5.**     That the appropriate City Officials are hereby authorized to do  
14          all things necessary and expedient to carry out the aims of this Resolution.

15          **Section 6.**     All Ordinances or parts of Ordinances, Resolutions or part of  
16          Resolutions in conflict herewith are to the extent of such conflicts hereby repealed.

17          **Section 7.**     If any clause, section, or other part or application of this  
18          Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or  
19          invalid, such unconstitutional or invalid part or application shall be considered as  
20          eliminated and so not affecting the validity of the remaining portions or applications  
21          remaining in full force and effect.

22          **Section 8.**     This Resolution shall become effective upon adoption.  
23  
24  
25  
26  
27  
28

1 PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF  
2 WILTON MANORS, FLORIDA, THIS 10<sup>th</sup> DAY OF APRIL, 2018.

3  
4 CITY OF WILTON MANORS, FLORIDA

5  
6  
7 By: \_\_\_\_\_

8 GARY RESNICK, MAYOR

9  
10 ATTEST:

11   
12  
13 FAITH LOMBARDO  
14 CITY CLERK

15 RECORD OF COMMISSION VOTE

16 MAYOR RESNICK  
17 VICE MAYOR FLIPPEN  
18 COMMISSIONER CARSON  
19 COMMISSIONER GREEN  
20 COMMISSIONER NEWTON

*aye*  
*aye*  
*absent*  
*aye*  
*aye*

21 I HEREBY CERTIFY that I have  
22 approved the form of this Resolution.

23   
24 KERRY L. EZROL, ESQ.  
25 CITY ATTORNEY